

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,) CASE NO: 2:13-CV-00193
)
Plaintiffs,) CIVIL
)
vs.) Corpus Christi, Texas
)
RICK PERRY, ET AL.,) Thursday, September 11, 2014
) (8:00 a.m. to 11:59 a.m.)
Defendants.) (1:30 p.m. to 1:47 p.m.)

BENCH TRIAL - DAY 8

BEFORE THE HONORABLE NELVA GONZALES RAMOS,
UNITED STATES DISTRICT JUDGE

Appearances: See Next Page
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1 Corpus Christi, Texas; Thursday, September 11, 2014; 8:00 a.m.

2 (Call to Order)

3 THE COURT: Good morning.

4 (Counsel respond, "Good morning.")

5 THE COURT: You can have a seat.

6 MR. SCOTT: Good morning.

7 THE COURT: Good morning.

8 MR. SCOTT: Your Honor, Plaintiffs would call
9 Mr. John Crawford from the Department of Public Safety.

10 THE COURT: Good morning. Would you raise your right
11 hand?

12 JOHN WILLIAM CRAWFORD, PLAINTIFFS' WITNESS, SWORN

13 DIRECT EXAMINATION

14 BY MR. SCOTT:

15 Q Mr. Crawford, would you introduce yourself to the Court,
16 please.

17 A Yes. I'm John William Crawford.

18 Q Mr. Crawford, what do you -- who do you currently work
19 for?

20 A I work for the Information Technology Division of the
21 Texas Department of Public Safety.

22 Q And what do you do in your capacity -- what do you do --
23 what's your capacity over there at the DPS?

24 A I am the manager of licensing services applications, so I
25 have a team of software developers/programmers that support the

1 applications used by the Driver License and Regulatory Services
2 Divisions at DPS.

3 Q And how many folks work for you?

4 A Nineteen.

5 Q And with regard to your operations over there, are you the
6 manager over the records that -- the driver's license records,
7 personal ID., and EIC records that are stored with the
8 Department of Public Safety?

9 A Yes.

10 Q And how long have you been over there?

11 A I've been with the department for six years.

12 Q And how long have you been in your current capacity?

13 A Since December of 2012.

14 **MR. SCOTT:** May I approach, your Honor?

15 **THE COURT:** Yes.

16 Q I'm going to hand you --

17 **MR. SCOTT:** Brian, will you put up 2746?

18 Q I'm going to hand you what's been marked for --

19 **MR. DUNN:** Your Honor, I'd like to be heard on this
20 matter, if I could?

21 **THE COURT:** Okay.

22 **MR. DUNN:** I would like to take this witness on voir
23 dire and demonstrate that what he is about to provide is
24 undisclosed and, in fact, concealed, purposely concealed,
25 expert testimony, without a proper designation, without a

1 proper foundation.

2 **MR. SCOTT:** Okay. We're having a cross -- I mean,
3 we've got cross. It's a bench trial.

4 **THE COURT:** Is he offered as an expert?

5 **MR. SCOTT:** He's not offered as an expert. He's --
6 he's proving up a summary information of just a DPS comparison
7 with DOJ comparison. They do a database match of the two
8 materials that have been provided to both sides, and this is
9 the results. He's just doing it in summary form. He's just
10 proving the document up.

11 **MR. DUNN:** In other words, the witness has done an
12 undisclosed database match. And had we known that this wasn't
13 expert testimony, the Department of Justice or the private
14 clients could have saved ourselves thousands of dollars and
15 months of effort producing reports --

16 **THE COURT:** So did he do a matching?

17 **MR. SCOTT:** There was a computer comparison of --

18 **THE COURT:** That --

19 **MR. SCOTT:** -- their chart.

20 **THE COURT:** And it was provided to the Defendants?

21 **MR. DUNN:** Yesterday.

22 **MR. SCOTT:** Well, this chart was because they just
23 did this yesterday. This is in response to Dr. Ansolahere's
24 deposition -- I mean, testimony that he said in this case.

25 **THE COURT:** You-all have had that a long time.

1 Q I beg your pardon, no disrespect meant. It's also my
2 understanding that you personally are not a programmer; is that
3 correct?

4 A That is correct.

5 Q And, in fact, you manager a team of programmers; is that
6 true?

7 A That is correct.

8 Q And you told us at your deposition that reading code and
9 reading programming is not something that you understand; is
10 that right?

11 A It's not something that I do as a rule, no.

12 Q And, in fact, you have to rely upon others; is that true?

13 A That's correct.

14 Q Now, ultimately, if, if the Court permits it today, you
15 intend to testify about a match of the DPS records to the no
16 match list that was provided by the Department of Justice; is
17 that right?

18 A I don't believe that it was the no match list; I believe
19 that it was the list of -- my understanding is it was a list of
20 voters.

21 Q I see. So, but, nevertheless, what you -- what your
22 department has done is taken the DPS race ID. and compared it
23 with the race ID.s that have been used in an expert report in
24 this case; is that right?

25 A I'm not aware that that's an expert report, but, yes, it

1 was a comparison of a file provided from the Department of
2 Justice and files that we provided from DPS.

3 Q Now I understand based upon what your testimony in your
4 deposition is, but that's not something that you did, that's
5 something people who work for you did; is that true?

6 A That is correct.

7 Q It's also my understanding, based solely on the fact that
8 we just received this a little more than 24 hours ago, but it's
9 my understanding that this analysis has been performed in,
10 would you say, the last week and a half?

11 A No, sir. I believe it was performed on the 4th or 5th of
12 September. So it would have been last -- like a week ago
13 today, I believe.

14 Q Last week. So were you present for any discussions when
15 it was decided when or how this would be produced to the
16 Plaintiffs in this case?

17 A When? No, sir. I've been in discussions with the
18 attorneys from, from the Attorney General's Office, but not
19 specifically about when it was going to be provided.

20 Q So I suppose you couldn't enlighten us at all in why it
21 was 24 hours or so ago that we first learned about your
22 analysis?

23 A I don't know that.

24 Q I do want to show you a few things. Did you help the
25 department -- the Office of the Attorney General prepare some

1 of the filings or descriptions of you as a witness in this
2 case?

3 A I'm sorry, could you --

4 Q Sure.

5 A -- restate?

6 Q And maybe I ought to explain. When we have a lawsuit, the
7 parties have to disclose their witnesses. And I just want to
8 know if you helped review those and edit those.

9 **MR. SCOTT:** Your Honor, is this voir dire on the
10 underlying issue? This seems like cross examination.

11 **THE COURT:** Argument, probably, for the Court.

12 **MR. DUNN:** All right. That's fine, Judge.

13 **BY MR. DUNN:**

14 Q So, lastly, I guess I want to, just to understand,
15 Mr. Crawford, whatever it is that you can tell us about these
16 race ID. matters pertains to activities that somebody else in
17 your department took; is that right?

18 A That is correct.

19 Q And the code was constructed in order to do this
20 comparison; is that true?

21 A That is correct.

22 Q And I assume you provided that to the Attorney General's
23 Office, the actual code?

24 A I did not personally, no.

25 Q Well, I can tell you it hasn't been provided to the

1 Plaintiffs in this case. Was that your decision?

2 A No, sir.

3 Q And then, in terms of the data set or the, the output, so
4 to speak, from this code that you -- that your office
5 performed, have you provided that to the Attorney General's
6 Office?

7 A One more time, please.

8 Q Sure. After the code is run, this code that your
9 department developed, after it's run it comes up with an
10 output; is that right?

11 A Yes.

12 Q Has that output actually been provided to the Attorney
13 General's Office?

14 A Yes. It's, it's this exhibit.

15 Q Well, and let me -- let me be more precise. The exhibit,
16 as I understand it, is a summary --

17 A That's correct.

18 Q -- of the output; is that true?

19 A That is correct.

20 Q So what I'm asking you is has the actual output been
21 provided to the Attorney General's Office?

22 A Well, this is the output. The summary is what the code
23 was constructed to do.

24 Q Well, the code ultimately went and flagged individual
25 entries, would you agree, in its comparison?

1 A No, I would not. Flag individual entries? No, sir.

2 Q But your testimony to this Court, that when that formula
3 was run, when that algorithm was run, you received nothing else
4 from the computer system, other than what's on this table?

5 A I, personally, did not.

6 Q And that's because this was actually performed by somebody
7 else in your office; is that right?

8 A That's correct.

9 **MR. DUNN:** Your Honor, at this point, I'm not going
10 to move to exclude this testimony, but I hope I've demonstrated
11 that its late disclosure, and the fact that this witness didn't
12 actually perform it undermines its reliability.

13 **THE COURT:** All right.

14 **MR. SCOTT:** And, your Honor, a couple of points:
15 one, the data that he's talking about that he -- that Mr. Dunn
16 has said they didn't have is the Department of Justice
17 Ansolahere -- I'm sorry, the common interest Ansolahere
18 data output that was pursuant to an order of this Court and
19 provided to the State of Texas, that is the data that he took
20 on one of the comparisons, from Dr. Ansolahere.

21 The second is the data that was provided by the
22 Department of Public Safety to the common interest Plaintiffs
23 that designated the race on every one of these individuals, the
24 race field. So all the underlying data has, in fact, been
25 provided and is there.

1 **THE COURT:** But, but you don't just get to take that
2 data and have someone do an analysis on it and then spring it
3 on the other side. Right?

4 **MR. SCOTT:** Well, I think that if it was sprung, I
5 would agree. We're simply trying to rebut what the testimony
6 that was -- Dr. Ansolahehere rendered at trial, from the
7 standpoint of race comparison.

8 **THE COURT:** But that's something that could have
9 been -- with what you had and the information that the state
10 had, that could have been done already. It was not necessary
11 to wait until now.

12 **MR. SCOTT:** I think that's right. You're right.

13 **THE COURT:** All right. So let's move on.

14 **MR. SCOTT:** So, Brian, will you bring that up?

15 **DIRECT EXAMINATION (RESUMED)**

16 **BY MR. SCOTT:**

17 Q Mr. Crawford, in your capacity as manager of the
18 information -- what's the name of the section, the division?

19 A Let me think for a minute, Licensing Services
20 Applications. Sorry.

21 Q It's okay. First time you ever testified?

22 A Yes, sir.

23 Q How many times have you been in Federal Court?

24 A Only in this room, yesterday and then a couple of weeks
25 ago, and today.

1 Q So, but the underlying foundation of the information
2 that's here, where did the DOJ race column information come
3 from on, for purposes of identification, Defendants' 2746?

4 A The, the race information was provided in a file of
5 approximately 13 1/2 million records that the Attorney
6 General's Office sent us. And my understanding is that it came
7 from the Department of Justice.

8 Q Over here, the next column it says, "DPS race"; is that
9 correct?

10 A Yes, sir.

11 Q Where did that come from?

12 A That is a listing of the -- of the races that can be
13 entered into the driver license database.

14 Q And who -- and so it's entered by someone, either the
15 customer service representative whom they receive it from a
16 customer or just a citizen trying to get an ID. card, a
17 driver's license, or an EIC; is that correct?

18 A Yes, that's correct.

19 Q That's self-identified information; is that correct?

20 A Yes, sir. The customer provides that information when he
21 or she fills out the -- an application form.

22 Q The VUID count over here, what is that?

23 A That is -- so we -- when we match the Department of
24 Justice data against the DPS driver license data, we matched
25 approximately 12.6 million records. Of those, 309,487 were

1 designated Asian in the Department of Justice data set. We
2 compared that race information to the race information for the
3 matching record, and the DPS data set. So, for example, of the
4 309,000 records that had Asian as a designation, we found
5 216,782 that had that designation in the DPS data.

6 Q So a comparison was made from the material that was
7 provided by DOJ as, as to the race. The data that was in the
8 data field was provided by DOJ, which is the self-identified in
9 this column as Asian, and over here is how many out of that
10 data field matched up between those two documents; is that
11 correct?

12 A That's correct. Out of that 309,487, 216,782 were
13 designated Asian.

14 Q So, for instance, here is a person who has been identified
15 as Asian. They have self-identified with the DPS public
16 records as being Hispanic, and there were 1,750 of those out of
17 this 309,487; is that correct?

18 A That is correct.

19 Q Okay.

20 **MR. SCOTT:** So Brian, if you'll switch up -- if
21 you'll move the chart up, please? Stop for a second.

22 Q So, again, DOJ race Black, self-identified White, how many
23 VUID would have been incorrectly -- well, not incorrectly, but
24 not matched?

25 A Well, that -- of the -- for those designated Black in the

1 Department of Justice file, there were 1.5 million, 1.57
2 million, 1,189,000 matched. Those were also designated Black,
3 345,564 were designated White.

4 Q Okay. So, and then let's go to the Caucasian. DOJ race
5 designation, White, correct?

6 A Yes.

7 Q DPS self-identified records, public records, Black, and
8 how many of those were like that?

9 A 433,787.

10 Q So that means that there were misclassified as Anglos in
11 the DOJ material, 433,000 people who, in fact, are African
12 American, correct -- or self-identified themselves as Black?

13 A They identified themselves as, as African American, yes,
14 as Black.

15 Q Okay.

16 **MR. SCOTT:** Brian, if you'll move this -- reduce
17 that, please?

18 Q So, over here to the right-hand side we have an additional
19 breakout.

20 **MR. SCOTT:** I guess, one more thing. Brian, go to
21 Page 2. Bring up the Hispanic, or just enlarge that whole
22 area.

23 Q So, DOJ race designation, Hispanic, correct?

24 A Yes.

25 Q What's the DPS race for Hispanic over here in this column?

1 A That's the H.

2 Q Okay. And how many of the ones out of the 2.7 million who
3 were identified by DOJ as Hispanic, and DPS self-identified
4 public records had as Hispanic, how many was the total count?

5 A 717,857.

6 Q So, go down, drop down to the bottom one. Hispanic in
7 DOJ's document, DPS self-identified race, White, how many were
8 those?

9 A 1,784,838.

10 Q American Indian, what is the designation -- so, walk
11 through -- walk the Court through, if you would, the DPS self-
12 identified race identifier that's in our -- the public record.

13 A The A designation is Asian and Pacific Islander; B is
14 Black; H is Hispanic; I is American Indian and Alaskan Native;
15 O is other; and W is White.

16 Q And those are all self-identified by the customer,
17 correct?

18 A That is correct.

19 Q Is there any kind of -- I mean, you-all don't attempt to
20 try and classify people, do you?

21 A We do not. We take whatever -- the customer service
22 representative takes whatever is entered on the form,
23 whatever's disclosed by the, the applicant and enters that into
24 the driver license database.

25 Q And that is the material that's contained in your records,

1 the Department of Public Safety records that you're in charge
2 of?

3 A That's correct.

4 Q Okay.

5 **MR. SCOTT:** Okay. If you'll reduce that, Brian, and
6 go back up to Page 1, please, sir. If you'd enlarge this
7 section over here.

8 Q Tell us what we're looking at.

9 A That is the summary of the, the number of records that
10 matched in the first column. For example, 216,782 matched on
11 Asian; 92,656 were different, between DOJ and DPS data.

12 Q With regard to the DOJ -- so, next, next door to that
13 you've got DPS and DOJ same, correct?

14 A That's correct. That was a match.

15 Q So, and by "match," it means simply that they are the
16 same? I mean, the designation by DOJ and the report that they
17 produced on race classification, and the self-identified
18 Department of Public Safety records are the same, correct?

19 A That's correct.

20 Q Now, the next column is DPS and DOJ different. What's,
21 what's contained within that column?

22 A That's a summary of the number of records that had a
23 different race designation between DPS and DOJ data.

24 Q And so, when we look down at -- is -- what the total down
25 here, what is that 3.1 -- 3,151,228 related to?

1 A Of the records that we match, the 12.6 million, I believe,
2 is the number at the bottom of the page, those are the
3 number -- that's the number that were different, which the race
4 designation was different between the Department of Justice and
5 DPS data.

6 Q The last column, it is another set of numbers that's to
7 the right, it's in yellow highlighted, but why are those
8 numbers -- what -- explain that column.

9 A In -- until 2010, Hispanic was not a choice that could be
10 made in the DPS database. In other words, you couldn't self-
11 identify as Hispanic. That capability became possible in 2010.
12 So that is the number of people who either applied for an
13 original driver license or ID. card, or who renewed their
14 license in a driver license office since 210 -- I'm sorry,
15 since 2010.

16 Q So --

17 A And --

18 Q So let me stop you there. Prior to 2010 -- and I think
19 it's November 2009 was the first time we started collecting
20 that data as a state?

21 A The very end of 2009 was in three offices, that's when it
22 began.

23 Q And that was the first time that the designation
24 "Hispanic" was set out by itself; is that correct?

25 A That is correct.

1 Q Okay. With regard to that, are the numbers in the right-
2 hand side, those have all been developed as a result of self-
3 identification subsequent to this 2010 date; is that correct?

4 A That's correct.

5 Q Okay. And what is the total of misclassifications since
6 2010 and the Hispanic information has been being captured?

7 A The total of all of them is 1,813,217.

8 Q So does that mean then that the Hispanic -- I guess I want
9 to make sure we can clarify something. How is it possible then
10 that we have Hispanic over here in the middle column that is
11 different than this number over on the far hand -- right-hand
12 side?

13 A Because since 2010 -- and let me make sure I got this
14 clear -- since 2010 the option of, of entering Hispanic as a
15 race in the driver license database became possible, so that
16 1,047,000 people who were designated Hispanic in the Department
17 of Justice data had the opportunity to enter Hispanic as a race
18 in the driver license database.

19 Q So how often does the field turn over? So we've got how
20 many records, approximately, in the system?

21 A In the -- in the total driver license database --

22 Q Yes.

23 A -- I believe it's about 28 million.

24 Q But you compared this only to the data extracted from
25 January and -- that were provided to the common interest

1 Plaintiffs, and in July after the DPS snafu, those documents
2 were providing -- another 3.1 million approximate records were
3 provided, correct?

4 A That's, that's correct.

5 Q And out of that grand universe, and only out of that grand
6 universe, was this match done as evidenced in Defendants'
7 Exhibit 2746 for identification purposes, correct?

8 A That is correct.

9 Q Okay.

10 **MR. SCOTT:** Your Honor, at this time we would offer
11 Defendants' Exhibit 2746.

12 **MR. DUNN:** Your Honor, we have the reliability
13 objections that we made earlier and others that we're going to
14 tease out in cross examination, so -- but we don't object to
15 the admission of the exhibit, just that, that it's hearsay and
16 that it shouldn't be relied upon for any matter.

17 **MR. SCOTT:** The underlying records are from public
18 records to the --

19 **THE COURT:** Okay. Anyone --

20 **MR. SCOTT:** -- Department of Justice.

21 **THE COURT:** Anyone else? So then --

22 **MR. SCOTT:** I'm sorry.

23 **THE COURT:** Go ahead.

24 **MS. BALDWIN:** Again, we're not going to try and
25 preclude the testimony, but it's likely that at the end we're

1 going to ask your Honor to not give the testimony any weight as
2 improper expert testimony.

3 **THE COURT:** It's going to the weight, but no
4 objection to its admissibility, is what I'm hearing.

5 **MR. DUNN:** Yes.

6 **THE COURT:** Okay. So, it will be admitted.

7 **(Defendants' Exhibit Number 2746 was received in evidence)**

8 **MR. SCOTT:** Pass the witness.

9 **MS. BALDWIN:** Good morning, Mr. Crawford.

10 **THE WITNESS:** Good morning.

11 **MS. BALDWIN:** Just let me get situated. One moment.

12 **(Pause)**

13 **MS. BALDWIN:** And if I could approach the witness,
14 your Honor, just to him a copy --

15 **THE COURT:** Yes.

16 **THE WITNESS:** Thanks.

17 **CROSS EXAMINATION**

18 **BY MS. BALDWIN:**

19 Q Good morning. And I'm Anna Baldwin representing the
20 United States. We've met before at your deposition.

21 A Yes. Good morning.

22 Q Good morning. So, I just wanted to -- I don't want to
23 belabor some of the points that you've discussed with Mr. Scott
24 and also with Mr. Dunn, but in practical terms at the
25 Department of Public Safety, you supervise a team of people who

1 actually do programming and coding, correct?

2 A That is correct.

3 Q And you don't do that work yourself?

4 A That is correct, I do not.

5 Q And you didn't do any of the underlying work that went
6 into this chart that we've seen this morning yourself?

7 A I did not.

8 Q So, just in order to understand the steps that had to be
9 taken to make up this chart, the DPS database is a relational
10 database made up of a lot of interlocking tables; is that
11 right?

12 A The database is, yes, that's correct.

13 Q And so, just to get the information out of that database,
14 you have to write programming code to extract relevant
15 information, right?

16 A That is correct.

17 Q And you didn't do that?

18 A I did not.

19 Q And, in fact, because you don't code, you don't know -- if
20 you saw the code, could you even be sure that it was accurate
21 and correctly done?

22 A I could not, no.

23 Q Okay. So that's the first task that has to be done, is
24 the actual extract of the relevant records from DPS to be
25 compared. The second task, you said there was a match done and

1 this is sort of in the conversation you were having with
2 Mr. Scott almost just assumed, it -- you can't just
3 automatically take these records from the voter registration
4 database and say, "Oh, it matches to this record from the
5 driver's license database," right? You have to develop
6 matching criteria, right?

7 A That's correct. That is correct.

8 Q And you're not at all expert in developing matching
9 criteria, are you?

10 A I am not.

11 Q Do you even know what the matching criteria were that were
12 used in that?

13 A Yes, I -- I believe that I do.

14 Q And what were those?

15 A The first match was on driver license number and last
16 name. And, so, if you get a match there, on those two
17 elements, then that's considered a good match. For records
18 that didn't match there, another criteria was, I believe,
19 social security number and last name. I don't have the -- all
20 of the criteria here, but --

21 Q So -- so, sitting here today, you're not actually sure
22 what matching criteria were used.

23 A I can't repeat that to you.

24 **MR. SCOTT:** Objection. Mischaracterizes the
25 evidence. He's identified two (indiscernible).

1 **MS. BALDWIN:** Two. But there were more than two,
2 right?

3 **THE WITNESS:** I --

4 **THE COURT:** Overruled.

5 **THE WITNESS:** There were -- I believe there were
6 four.

7 **BY MS. BALDWIN:**

8 Q And do you know what the other two were?

9 A I can't recall off the top of my head, no.

10 Q And would you understand that what the specific matching
11 criteria are could be important to how records are connected?

12 A Yes.

13 Q And using better or worse criteria could result in a
14 correct identifying two people who are actually the same or
15 using poor criteria could result in connecting people who
16 aren't actually the same?

17 A Yes.

18 Q But, again, sitting here today, you don't actually know
19 what was done?

20 A I know what was done; I can't recall the specific details
21 without referring to some notes or some information from the
22 developer.

23 Q Okay. Because you weren't the developer.

24 A I was not the developer. That's correct.

25 Q And you don't have any expertise to evaluate the

1 appropriateness of those steps that were taken, in any event,
2 do you?

3 A Expertise? Well, I'd say that in years of I.T.
4 experience, I have experience in understanding what it takes to
5 match two records together.

6 Q Okay. Have you done any peer-reviewed studies of database
7 matching?

8 A I have not.

9 Q Do you keep up with the scholarship on the best techniques
10 in database matching?

11 A I personally do not.

12 Q So -- and, then, so we've talked about there is the
13 extraction stage, there's the matching stage, and then there's
14 the comparing the actual -- once the records have been matched,
15 comparing what the race is in one dataset with what the race is
16 in another dataset, correct?

17 A Yes.

18 Q And that also takes a separate set of code to make that
19 comparison, correct?

20 A Yes.

21 Q And you didn't write that code.

22 A I did not.

23 Q And if you reviewed that code, you would have no basis to
24 know whether there were errors in it or not.

25 A I personally would not.

1 Q So, essentially, if I understand your testimony, you
2 didn't do the extraction; you didn't do the match; and you
3 didn't do the comparison of the race; and, in fact, on some of
4 those steps you don't know what was done, you don't know how it
5 would do it, but you're just asking the Court to trust you and
6 vouch that the information that you've put up is accurate. Is
7 that correct?

8 A I -- I trust the people who work for me to know how to do
9 those jobs. So, yes, when they tell me that -- that they've
10 done the work correctly, then -- then, yes, I believe them,
11 based on my experience in working with them.

12 Q So, your testimony today is based solely on what you were
13 told by someone else.

14 A That is correct.

15 Q Somebody who's not here in the courtroom and who, in fact,
16 hasn't even been identified to the plaintiffs.

17 A For this particular extract, yes.

18 Q Now, I saw that you were in court some yesterday. Were
19 you here during the testimony of Dr. Hood?

20 A I'm sorry; which -- who was Dr. Hood?

21 Q Sure. Dr. Hood is an expert who was retained by the
22 State. He was talking about some of the matching --

23 A Yes, I was here for part of his testimony.

24 Q Okay. And, so, did you know that -- again, Dr. Hood was
25 retained by the State of Texas?

1 A I did not know that before, no, before being in the
2 courtroom.

3 Q Do you know that Dr. Hood has done his own database
4 matching in prior cases?

5 A I was not aware of that, no.

6 Q Do you know why the State asked the Department of Public
7 Safety to do this matching rather than its own expert who it
8 hired for this litigation and has done matching in previous
9 cases?

10 A I do not.

11 Q You understand that -- this work that you did here, I just
12 want to get clear on the timeline of it as well. When was the
13 first time that DPS conducted any comparison of the race
14 information from information produced by the plaintiffs to DPS
15 self-identified race?

16 A I believe that we received the file on -- last week, on
17 September 3rd, and the matching exercise began on the 4th of
18 September.

19 Q Okay. So, DPS, your testimony is, had done nothing prior
20 to look at any mismatches between race I.D.'s prior to
21 September 3rd.

22 A Not to my recollection, no.

23 Q But that involvement, of course, wasn't DPS's first
24 involvement in data used in this case, right?

25 A That's correct.

1 Q Okay. And you understand that DPS was required to produce
2 to the United States an extract of the DPS database showing
3 people who have driver's licenses or personal I.D.'s, right?

4 A Yes.

5 Q And for that case, that production occurred way back in
6 February, right?

7 A Yes.

8 Q And the February production was supposed to be a snapshot
9 of certain information from the driver's license database as it
10 existed on January 15th, 2014, right?

11 A That is correct.

12 Q And there were serious errors in the production of that
13 January 15th extract; isn't that true?

14 A There were errors. There were -- there was missing data,
15 yes.

16 Q In fact, there were millions of driver's license and
17 personal I.D. records that should have been extracted and
18 produced back in February that weren't, right?

19 A That is correct.

20 Q And that happened because of a programming error by DPS
21 staff.

22 A That is correct.

23 Q Somebody at DPS wrote incorrect computer code, and it
24 resulted in millions of records being omitted from a very
25 straightforward process of extracting data from the database,

1 right?

2 A I'm not sure I would agree that it was straightforward.

3 Q Okay.

4 A It's a very complex database.

5 Q Okay. So, it's a complex database, and the extraction was
6 done incorrectly, and millions of records were omitted.

7 A That's correct.

8 Q And the process you've just put up here, extraction is
9 only the first step. You have to do several other programming
10 steps after that, right?

11 A Well, the data that was used here had already been
12 extracted, so extraction was not part of this exercise.

13 Q Okay. Going back to January, though, so there was an
14 error that resulted in millions of records being omitted,
15 correct?

16 A That's correct.

17 Q And at your deposition we talked about how in the normal
18 course of business at DPS code that was used for the January
19 extract would have been subject to review by a quality
20 assurance team, correct?

21 A I'm sorry; would you repeat that, please.

22 Q At your deposition in January -- at your deposition we
23 talked about how in the normal course of business at DPS code
24 like the code that was used for the January extract would have
25 been subject to a quality assurance team review.

1 A In the normal course of business, yes, that's true.

2 Q But for that data production in this case, there was no
3 quality assurance team, right?

4 A That's correct.

5 Q And that happened because you weren't given adequate time,
6 your staff wasn't given adequate time to do the extract, right?

7 A We were not given adequate time to include a formal
8 quality assurance activity.

9 Q And in your deposition you testified that you were
10 concerned about having to run that extract quickly, right?

11 A Yes.

12 Q And you were concerned about the accuracy, potentially,
13 given the quickness, that that could have an impact.

14 A I was concerned about how quickly we needed to provide the
15 data, yes.

16 Q And you also testified that it would have been your usual
17 practice, when you have a concern about the accuracy of your
18 work that you were being asked to do, that you would express
19 that concern to others.

20 A Yes.

21 Q And you also testified that -- excuse me. Strike that.

22 Notwithstanding the concern that you couldn't follow
23 the normal quality assurance process and you didn't -- you
24 know, you were concerned about the amount of time, you didn't
25 realize that this mistake had been made until July. Is that

1 correct?

2 A That's correct.

3 Q So, months passed before anybody had any idea that the
4 data that all the parties in this case were relying on was
5 incomplete.

6 A That's correct.

7 Q So, if we could pull up the Crawford declaration; and next
8 page; and -- so, zoom into paragraph three.

9 So, this paragraph reviews what we have just been
10 talking about, that for data that was produced in February, it
11 took until July 22nd to realize, you know, more than six months
12 later, that there had been a problem with the programming,
13 right?

14 A Yes.

15 Q And, so, again, just as a comparison, this process
16 happened last week, and nobody, outside of DPS, has had a
17 chance to review the code that was used for the information you
18 presented to the Court today.

19 A That's correct.

20 Q So, in your declaration you told the Court that --

21 If we could zoom out of that paragraph; can we go to
22 the next page? Can we zoom in on paragraph five?

23 -- said that the misapplication of the data qualifier
24 resulted in the inadvertent exclusion of approximately 2.8
25 million records. And that 2.8 number that you provided there

1 turned out to be inaccurate, correct?

2 A It was -- it was low, yes.

3 Q What DPS ultimately produced to the Department of Justice
4 was not 2.8 million records, but 3.1 million records, right?

5 A That's correct.

6 Q So, the number of records that you told the Court in a
7 sworn declaration would be affected was off by about 300,000,
8 correct?

9 A That is correct.

10 Q And didn't you testify in your deposition that the
11 2.8 million figure that you had put in that sworn statement had
12 just been based on a guess?

13 A It was based on an estimate by the programmer that was --
14 that was addressing this issue.

15 Q If you could turn in your deposition to page 67.

16 Shirley, let's pull this up on the screen if we
17 could; 67 line four -- 24.

18 **MR. SPEAKER:** I'm sorry; which line?

19 **MS. BALDWIN:** So, we'll start at line 24. How did --
20 and then we'll go to the next page.

21 **BY MS. BALDWIN:**

22 Q "QUESTION: How did someone arrive at the estimate of
23 2.8 million?

24 And your answer:

25 "ANSWER: I believe that Bob Brandel examined some of

1 the database parameters" --

2 We're on the next page.

3 -- "to get a rough idea of what would be -- what the
4 number would -- would likely be.

5 "QUESTION: In more concrete terms, can you explain
6 what you mean by 'examine database parameters'? If
7 you look at a count of the number of status records
8 that appeared on the database, which I believe was
9 over four million, with the assumption that some of
10 those records would have appeared in the January
11 extract, it's just a rough estimate based on that
12 number. In other words, taking the number of four
13 million, it's just a guess based on a proportion."

14 And your answer was: "Yes."

15 A A guess based on a proportion, yes.

16 Q Okay. And did you tell the Court in your sworn statement
17 that 2.8 was -- million records being affected was just a
18 guess?

19 A A guess based on a proportion.

20 Q You put that in your sworn statement to the Court, that
21 the 2.8 million number of records affected was a guess based on
22 a proportion? We can pull up your declaration, but I don't --

23 A Yes.

24 Q -- believe that language appears in it.

25 Could we go back to the declaration? If we could go

1 to the next page.

2 So, I see in paragraph five:

3 "The misapplication of the data qualifier resulted in
4 the inadvertent exclusion of approximately
5 2.8 million records."

6 There is no qualification that that's a guess based
7 on a proportion, is there?

8 A No. It says approximately.

9 Q Okay. So, I want to move on and talk about what you've
10 been asked to do today. So, you talked with Mr. Scott about
11 the fact that there was a long period of time during which DPS
12 did not give anyone the option to self-identify as Hispanic,
13 correct?

14 A That is correct. Prior to 2010 that was not an option.

15 Q So, if we could bring up Plaintiffs' 942; and the second
16 page. If we could go to the prior -- in the first paragraph,
17 prior to May, 2010, and zoom in on that first paragraph.

18 "Prior to May, 2010" --

19 And this is a letter that we've seen a number of
20 times before from the director of elections to the Department
21 of Justice sent in 2012.

22 "Prior to May, 2010, the DPS followed Federal Office
23 of Management and Budget guidelines, which does not
24 categorize Hispanic as a race. Thus, in following
25 DOJ's directive to match voter registration lists

1 with the list of driver's license and I.D. holders
2 produces anomalous and highly misleading results.
3 Due to the recent addition of Hispanic to the
4 driver's license and personal I.D. application, the
5 number of Hispanic I.D. holders in Texas is
6 exponentially higher than DPS's raw data indicates."
7 You don't have any basis to disagree with that
8 statement, do you?

9 A I've never seen it before --

10 **MR. SCOTT:** Your Honor, under the rule of optional
11 completeness, may the witness be able to read the rest of the
12 document?

13 **THE COURT:** Yes.

14 **MR. SCOTT:** Do you have a copy for the witness?

15 **MS. BALDWIN:** Sure. I'm happy to hand up a copy.

16 **MR. SCOTT:** Specifically, that portion that applies
17 to November -- that they started capturing that information,
18 November 29, 2009.

19 **MS. BALDWIN:** And, Mr. Scott, I don't have the --

20 **MR. SCOTT:** What is this?

21 **MS. BALDWIN:** This is Plaintiffs' 942. I don't have
22 the Excel spreadsheets that were attached, but I do have the
23 complete letter.

24 And the portion I was reading from is on this
25 paragraph.

1 **THE WITNESS:** And you want me to read --

2 **MS. BALDWIN:** I think Mr. Scott wanted --

3 **MR. SCOTT:** You were about to review the document.

4 **THE WITNESS:** Okay.

5 **MR. SCOTT:** Your Honor, may I approach the witness?

6 **THE COURT:** Yes.

7 **MR. SCOTT:** Just to look at it; I don't have a copy
8 either.

9 **(Pause)**

10 **BY MS. BALDWIN:**

11 Q Okay. So, my question is, you don't contest that there
12 are errors that still today remain in DPS's race data because
13 until fairly recently a major demographic group in the state of
14 Texas, Hispanics, had no option of correctly self-reporting
15 their race.

16 A I don't think I am in a position to say whether those are
17 errors or not.

18 Q So, if I got a -- if I identified as Hispanic and I got a
19 driver's license in January, 2009, and I had no option to
20 choose Hispanic, you don't think that anything that the person
21 selected would be an error because they don't actually identify
22 as any of those races?

23 A I don't personally have the kind of background to
24 understand what that means.

25 Q Okay.

1 A At the time that someone applies for a license and is
2 required to provide information, it's whatever information is
3 available to provide.

4 Q Right. And, so, but there certainly could be a scenario
5 where, until very recently, the option that a person wanted to
6 select, who is Hispanic, wouldn't have been available to them,
7 correct?

8 A Hispanic was not an available choice --

9 Q Okay.

10 A -- in the January, 2010, that you -- example that you
11 cited.

12 Q So, as a result of not having Hispanic as an option, there
13 are a number of entries -- I mean, well -- strike that. Let me
14 step back.

15 So, your testimony is you don't know whether there
16 are any errors or not as relates to Hispanic self-I.D.'s in the
17 DPS driver license database?

18 A Uh, what would you -- I don't know what your definition of
19 "error" is.

20 Q Someone who, in fact, identifies themselves as Hispanic
21 that's not identified as Hispanic in the driver's license
22 database.

23 A If the option wasn't there, I don't see how that could be
24 classified as an error.

25 Q But it wouldn't correctly represent their self-

1 identification, right?

2 A If someone wanted to identify as Hispanic and couldn't,
3 then they couldn't.

4 **MS. BALDWIN:** Right. Okay.

5 Well, I'd just like to -- I'm going to hand up an
6 exhibit just because it's an excerpt from the driver license
7 database and which has been, you know, marked as highly
8 confidential, so I, you know, wouldn't want to publish that to
9 the Court without consent. I can hand around a copy.

10 **MR. SCOTT:** Yeah, I -- I mean, I think that's the
11 goal; we're trying to keep confidential information of the
12 citizens out of the record, so --

13 **MS. BALDWIN:** And it's been redacted to have social
14 security and address information taken out.

15 **(Pause)**

16 **MS. BALDWIN:** And I apologize for the small type on
17 this.

18 **BY MS. BALDWIN:**

19 Q Mr. Crawford, do you know who Rafael Edward Cruz is?

20 A I do not.

21 Q Can we pull up the Texas Tribune website that I sent
22 earlier? And could we click on the link that says "Ted Cruz,"
23 and I'll represent to you that he's much more commonly known
24 under the U.S. Congress Senators? All the way on the other
25 side. Get my pointer.

1 **MR. SPEAKER:** Here?

2 **BY MS. BALDWIN:**

3 Q Now, can -- now, in this -- this is an excerpt from the
4 driver license database. Do you see under "race" where it
5 identifies Rafael Edward Cruz as white?

6 A Yes.

7 Q Do you have any knowledge of whether Senator Ted Cruz is,
8 in fact, Hispanic?

9 A I personally do not, unless -- well, just based on the
10 information that's on the screen there.

11 Q Okay. Let's look at the next entry on this sheet, which
12 is for Filemon Bartolome Vela. If we could hit the "back" and
13 look under the Congressional delegation; scrolling down, under
14 the B's. All the way at the bottom; can we keep -- can we --
15 whoo. Can we click right there?

16 **MR. SPEAKER:** No.

17 **MS. BALDWIN:** Vela, not Veasey. Vela.

18 **MR. SPEAKER:** Okay.

19 **BY MS. BALDWIN:**

20 Q And, Mr. Crawford, what race does the DPS driver license
21 database identify Mr. Vela as?

22 A White.

23 Q And in this public profile what race is he identified as?

24 A Hispanic.

25 Q Okay. Let's hit "back" again. And if we could take a

1 look at Ruben Eloy Hinojosa. And in the driver license
2 database what race is U.S. Congressman Hinojosa identified as?

3 A White.

4 Q And what race is he identified as here in this public
5 profile?

6 A Hispanic.

7 Q Okay. If we could go back, and if we could take a look at
8 U.S. Representative Cuellar, Henry Cuellar; what race is
9 Enrique Roberto Cuellar identified as by DPS?

10 A Hispanic.

11 Q Hispanic. And here is a case -- the entire Congressional
12 delegation doesn't appear to be misidentified. If we could hit
13 "back."

14 Now, the next two entries on your sheet are Joaquin
15 and Julian Castro. Do you know who those men are?

16 A Yes, I believe that they're brothers, and one -- I believe
17 one is a Congressman and the other is a former mayor of San
18 Antonio.

19 Q Right, who is currently a cabinet member?

20 A Yes.

21 Q And they're twins, right?

22 A Yes. That's my understanding.

23 Q And do you see that DPS has identified one of them as
24 white and the other as Hispanic?

25 **MR. SCOTT:** Objection --

1 **THE WITNESS:** DPS did not --

2 **MR. SCOTT:** -- to form, your Honor. I think the
3 representation by this witness -- it mischaracterizes his
4 testimony. The information in the public database that is the
5 Department of Public Safety records is self-identified
6 information from the customer who is registered. And I think
7 that's the only testimony that this witness has said, so I
8 object to the mischaracterization of the evidence.

9 **MS. BALDWIN:** The DPS database identifies one of --

10 **THE COURT:** I don't remember --

11 **MS. BALDWIN:** Oh, I'm sorry.

12 **THE COURT:** -- the question now, as it was phrased,
13 so start over.

14 **MS. BALDWIN:** Okay. I'll withdraw whatever that
15 question was, your Honor, and ask it better.

16 **BY MS. BALDWIN:**

17 Q You would agree that in the DPS database one of these men,
18 who are brothers, is identified as White and the other as
19 Hispanic.

20 A That's what's contained in the DPS database according to
21 this sheet, yes.

22 Q Okay. Let's take a look at Pete Gallego, Representative
23 Pete Gallego. And in the DPS database what race is
24 Representative Gallego listed as?

25 A White.

1 Q And here we see in this public profile that he's
2 identified as Hispanic, correct?

3 A Hispanic. Yes.

4 Q And there are a few more, but just last, do you know who
5 Alberto Gonzalez is? The --

6 A It --

7 Q -- the former Attorney General of the United States?

8 A The former attorney -- yes. I -- I recognize that name.

9 Q Yes, sir.

10 A There is no identification here that says that's who that
11 is, but --

12 Q I'll represent to you based on the data brick that that
13 is, in fact, the former attorney general; and what race is he
14 listed as in the DPS database?

15 A White.

16 Q Okay. So, do these -- these are anecdotal examples, but I
17 want to look at the demonstrative that you've actually created
18 for this case.

19 If we could bring up what I called the "new proffer";
20 and go to the next page. Zoom in big on that, please.

21 So, if I understand, every individual represented in
22 the charts that appear on the left-hand side, that's you know,
23 representing a voter who you're saying has matched to the DPS
24 database. So, it -- each of those numbers represents a
25 registered voter who, based on the match, would have a DPS form

1 of I.D. Is that correct?

2 A That is correct.

3 Q Okay. And, so, this chart doesn't, by itself, list the
4 number of registered voters who are Hispanic, in total,
5 according to DPS race classifications, right? It just breaks
6 out -- in other words, it goes -- the Catalist, or what's
7 referred to here as Anso race, and then the concordance with
8 the DPS race, but it -- this -- the demonstrative never gives a
9 total for in total of all the people who matched, how many
10 people DPS says are Hispanic, right?

11 A I'm sorry; could you do that one more time, please?

12 Q Sure. If I wanted to figure out, based on the match, the
13 total number of registered voters who DPS has identified to be
14 Hispanic and have a driver's license database, that number
15 isn't already given in this chart.

16 A Well, DPS doesn't identify anyone as Hispanic. The -- the
17 individuals do.

18 Q Sure. And I don't mean to be tripping up over that. But
19 the self-identification, if I wanted to know the number of
20 people who've self-identified as Hispanic who are registered
21 voters, there's -- who you matched -- there's not one number
22 that represents that in this chart.

23 (Pause)

24 A Would you ask it one more time, please?

25 Q Sure.

1 A It's --

2 Q If I wanted to know how many people DPS has in its
3 database listed as Hispanic, there's not one number who are
4 registered voters; you never give a summary note total,
5 Hispanic registered -- Hispanic, according to DPS self-I.D.'s,
6 Hispanic registered voters, right? That's not a number that's
7 already added up.

8 A It's not, because we don't know who registered voters are.

9 Q But based on your match, you don't provide a summary of
10 the match total. Everybody on this chart is registered voters,
11 as you just testified.

12 A Okay.

13 Q Okay. So, if we wanted to figure out the total number of
14 people who matched and who are identified in the DPS database
15 as Hispanic, would you agree with me that we would take from
16 each of those boxes the number of "H" for Hispanic here, the
17 number for "H" for Hispanic here, the number for "H" for
18 Hispanic here, and so on, and just add those up, and that would
19 be all the people who are matched who have a I.D. in the DPS
20 database as Hispanic?

21 A Yes, I believe that's correct.

22 Q Okay. Well, let's do that math. If I could approach with
23 a calculator?

24 **(Pause)**

25 So, starting in this chart, let's enter 1,750 and add

1 11,814, and then add 68,737. If we could go to the next page,
2 so, the number Hispanics listed here is 717,857, and add to
3 that 869, and add to that 2,639. And what total do you get?

4 A I get 803,666.

5 Q Me, too. So, that number seems awfully low to me.

6 Doesn't it to you? That out of 12 million voters who matched
7 to an I.D., only a little over 800,000 Hispanic registered
8 vote -- people who are Hispanic have a DPS I.D., if this is the
9 metric you're using?

10 A And what's your question?

11 Q Doesn't it seem awfully low to think that there are only
12 800,000 Hispanic registered voters with an I.D. in the state of
13 Texas out of 12 million?

14 A I -- I don't have the -- the knowledge to -- to speculate
15 on -- on how many there should be.

16 Q So, there is a figure called "Spanish Surname Voter
17 Registration." Have you ever heard of that?

18 A I have not.

19 Q Okay. Just so we can define it, let's pull up PL-694 and
20 go to page 16 of this document. This is a document from the
21 Texas Legislative Council. And just as a basis for my
22 question -- I'm sorry; it's page 10. It was 16 of the PDF.

23 "Spanish Surname Voter Registration, also reported in
24 the Secretary of State's statewide voter registration
25 database, is generated using a comparison to the 2000

1 Census Bureau list of Spanish surnames. While most
2 sources agree that the match between people who have
3 Spanish surnames and those who consider themselves
4 Hispanic is relatively good in Texas, the Census
5 Bureau estimates a 90-percent correlation for this
6 state. The number of reported registered voters with
7 Spanish surname is not a precise measure of Hispanic
8 voter registration."

9 And it continues.

10 So, basically, the idea of this is the Secretary of
11 State keeps a list of voters who have Spanish surnames. So
12 that we can compare how that 800,000 number of people listed as
13 Hispanic in the DPS database compares to the Spanish surname
14 voter registration population, I'd like to just briefly show
15 you --

16 Could you bring up the C-235 redistricting report?

17 And I'm just going to show you this so you can see
18 that it's the basis for the next demonstrative and where the
19 figures are taken from. This is a document that was created --

20 Can you zoom in, in the top corner over there?

21 By the Texas Legislative Council.

22 You can hide that now.

23 And this list -- this is for all the congressional
24 districts in the state, and it lists the total voter
25 registration and the percentage of Spanish surname voter

1 registration. And, so, I'm just showing you this chart just as
2 the basis for everything in the next demonstrative is coming
3 from.

4 If you could pull up the C-235 redistricting
5 demonstrative.

6 So, this lists for each of the congressional
7 districts the total voter registration, the same percent of
8 Spanish surname voter registration, and then the raw total of
9 registered voters who have Spanish surnames. And when you sum
10 all of those numbers, you get -- if you can hide that pull-
11 out -- you get this total number of 2.9 million.

12 Two point nine million is an awfully lot larger than
13 the 803,666 figure on your demonstrative, isn't it?

14 A They're two different numbers, yes.

15 Q Okay. So, you're not taking the self-reported race
16 information in DPS's database as the actual truth, are you?
17 That's just what, based on the available options at any one
18 time, what was entered, as far as you understand?

19 A That is the information that was entered into the
20 database, yes.

21 Q And if -- it's likely that if one were to try and take
22 that as the truth and to try and say, oh, this represents the
23 number of Hispanics, it would likely significantly undercount
24 Hispanics based on the simple fact that there was no option to
25 self-identify until very recently, right?

1 A I -- I don't think that I am in a position to express an
2 opinion on that.

3 Q Okay. Well, the 2.9 and 800,000 kind of speak for
4 themselves.

5 We talked a little bit about this, but I just want to
6 make sure we're clear that every time, prior to the option
7 being available, that a Hispanic person was forced to self-
8 identify and not given the option of Hispanic and they chose
9 another race, that could be something that makes those other
10 categories, like White or Black, not represent the actual truth
11 of how that person self-identifies as well. Wouldn't you
12 agree?

13 A If the option wasn't there that a person wanted to choose,
14 that person would have to choose one of the available options.

15 Q Right. And you wouldn't have any way to know, sitting
16 here today, which option somebody would have chosen if they
17 weren't presented with Hispanic. There is no way to know what
18 calculus every individual had to go through to make those
19 choices.

20 A That's correct.

21 Q And, so, there is no way to know how many people actually
22 identified as Hispanic and chose White.

23 A That's correct.

24 Q And there is no way to know how many people actually
25 identified as Hispanic and chose Black.

1 A That's correct.

2 Q So, you don't have any basis to disagree with something
3 that Mr. Ingram wrote in the letter, which you have up there,
4 that:

5 "It's impossible to identify which racial
6 classifications Texans of Hispanic descent selected
7 on I.D. applications completed prior to May, 2010.
8 For this reason, DPS's race data for racial
9 classifications other than Hispanic are no doubt
10 significantly distorted."

11 It's on the second page of that letter. If you'd
12 pull up PL-942.

13 A Yeah, I can't -- oh, I see what you're --

14 Q You don't have any basis to disagree with -- with that
15 statement?

16 A I don't have any basis to -- to disagree or make any kind
17 of judgment on it.

18 Q Okay. If we could go back to the Crawford demonstrative,
19 please; and the first page of the chart. Could we zoom in on
20 this part of the page?

21 Do you know that prior to circulating this version of
22 the chart your counsel circulated another version that had
23 different labels of these? For the DPS and Anso same and DPS
24 and Anso different?

25 A Yes.

1 Q And do you recall what the -- this column originally was
2 called?

3 A I'm sorry; could you point it out? That one -- I believe
4 that was initially labeled "correct."

5 Q And this one was originally labeled --

6 A That was originally labeled "incorrect."

7 Q And why were those changed?

8 A Because --

9 **MR. SCOTT:** Your Honor --

10 **THE WITNESS:** -- I believe --

11 **MR. SCOTT:** -- to the extent it involves
12 conversations with counsel, I would assert the attorney-client
13 privilege. Department of Public Safety is one of our clients.
14 They have been sued in this lawsuit --

15 **THE COURT:** Sustained.

16 **MR. SCOTT:** -- representing them.

17 **BY MS. BALDWIN:**

18 Q You would agree that it would be misleading to have called
19 this "correct" and "incorrect" based on the fact that Hispanics
20 didn't have an option to self-report race.

21 **MR. SCOTT:** Objection to form. Argumentative.

22 **THE COURT:** Overruled.

23 **THE WITNESS:** Would you -- one more time, please?

24 Q This chart would have been significantly misleading had
25 this label been "correct" and this label been "incorrect" given

1 that Hispanics didn't have the option to self-report race until
2 very recently.

3 A I'm not sure that I would agree with the word
4 "misleading."

5 Q It wouldn't necessarily -- that data wouldn't necessarily
6 represent those people's own correct self-identifications,
7 because they didn't have the option to do so.

8 A Yes. I agree.

9 Q And, so, it would have been misleading to have called this
10 "correct" and this second column "incorrect."

11 A I -- I can't say that I would agree with the statement of
12 "misleading."

13 Q So, this column here, DPS and Anso different, who applied
14 for original card or renewed their card in a field office since
15 2010, what's the purpose of separating out the 2010 data here?

16 A Because Hispanic was an available choice in the driver
17 license database starting in 2010; so that those people who
18 either got an original driver license or I.D. card or who
19 renewed their license in a -- in a DPS office, in a driver
20 license office, had the option of selecting Hispanic as race in
21 the race category.

22 Q But it's not something that's automatically updated, is
23 it?

24 A No.

25 Q Okay. Could you pull up, please, the Germane (phonetic)

1 Martinez deposition at page 35? 9:05:24

2 Do you know Germane Martinez?

3 A I do.

4 Q Okay. This is from a deposition that she gave as a Rule
5 30(b)(6) witness in 2012. And let's see; let's look at -- if
6 we could zoom in on line three.

7 And she was asked:

8 "QUESTION: Once information as to certain licensee's
9 ethnicity in terms of whether they're Hispanic or not
10 is in the system, how is that information treated in
11 the system? By that I'll be much more specific. Do
12 you go back and revise the prior information?

13 "ANSWER: No, sir. It's only" --

14 And I believe that's supposed to be "updated" --

15 "-- when the applicant reapplies for some reason and
16 if they choose to change it on their application at
17 that time."

18 This testimony from a 30(b)(6) witness represents
19 that it would only be updated at the time of making a totally
20 new application. Are you saying that this testimony is -- do
21 you have a basis to believe that this is incorrect?

22 A My understanding, and -- and remember I'm an I.T. person
23 not a driver license division employee. My understanding is
24 that when -- if you go into a driver license office to renew
25 your license, you do have the option of updating information

1 about your -- that's associated with your particular license.

2 Q But, as you just said, you're an I.T. person, not a
3 business person, right?

4 A That's correct.

5 Q And you don't work in the field offices.

6 A I do not.

7 OQ And you're not familiar with all of the procedures that
8 occur in the field offices.

9 A I am not.

10 Q And this is someone who is a 30(b)(6) designee for the
11 Department of Public Safety, and she testified that it's only
12 at reapplication that there would be a option to change it.
13 So, do you have any personal knowledge that allows you to say
14 that this statement is incorrect?

15 A I don't think it --

16 **MR. SCOTT:** Your Honor, that's why we've done the
17 chart the way we did, and so I don't know that this is
18 proper -- well, sorry.

19 **THE COURT:** Go ahead.

20 **THE WITNESS:** I'm sorry?

21 **THE COURT:** Go ahead. You can answer.

22 **THE WITNESS:** Okay.

23 **THE COURT:** You can respond.

24 **(Voices and whispers off the record)**

25 //

1 **BY MS. BALDWIN:**

2 Q Does this language here -- just to be clear, does this say
3 "renewal" or "reapply"?

4 A Renewal. I don't know what "reapplies for some reason"
5 means in that context.

6 Q But it doesn't say that it happens at renewal, does it?

7 A That does not say that. That's correct.

8 Q If we could go back to the Crawford demonstrative. And
9 go -- keep going. Can you zoom in on that chart, I think?

10 So, this chart shows for each racial group in here
11 that Anso race, I understand, is information that was taken
12 from the file from the Department of Justice? This is
13 information from the Department of Justice file here in this
14 Anso race column?

15 A I believe that's correct, yes.

16 Q And the same with this race confidence, highly likely,
17 likely, possibly? Is that --

18 A That's my understanding, yes.

19 Q Okay. And, then, the DPS and Anso same; what does this
20 column represent?

21 A That represents records in which the race field matched
22 between the DPS and the Department of Justice data.

23 Q And the DPS and Anso different is where they didn't match?

24 A That's correct.

25 Q And, then, the sum is just the total of both of these?

1 A That's correct, yes.

2 Q Okay. So, if I wanted to find out the percentage that was
3 correct -- let me not say correct -- the percentage that was
4 the same between the DPS database and the DOJ file for, for
5 example, Blacks, who had this highly likely race confidence,
6 would you agree that I would divide four thousand four hundred
7 fourteen six fifty-four over the sum?

8 A Yes. To -- that would produce the percentage, yes.

9 Q Could you do that for me?

10 A And which -- which number? Four fourteen --

11 Q The four fourteen six --

12 A -- six fifty-four?

13 Q Yes, sir; over the sum.

14 A That says 95.6 percent.

15 Q Okay. And let's do the likely. What percentage are the
16 same for African Americans who are likely?

17 A That's 79.2 percent.

18 Q Okay. And Black possibly?

19 A I got 65.5 percent.

20 Q Okay. So, those are the percentages overlap between the
21 DOJ Catalist race estimates and the DPS reports. Do you know
22 that your -- a version of this chart was initially circulated
23 to all parties in this case that had those percentages on the
24 chart?

25 A I don't recall seeing that. I might have, but I don't

1 recall seeing it.

2 Q Okay. Well, they're not here now, at any rate.

3 **THE COURT:** Do you have an objection?

4 **MR. SCOTT:** Well, your Honor, to the extent that
5 she's referring to demonstratives which by agreement of the
6 parties we were going to provide and we did, in fact, provide
7 to the other side all potential demonstratives we'd be using,
8 we've decided to just use this one so far, so that's the only
9 one.

10 **THE COURT:** Okay.

11 **MS. BALDWIN:** And my question is just whether he knew
12 that there was another demonstrative that had this math already
13 stated on it.

14 **THE COURT:** Okay.

15 **THE WITNESS:** I -- I don't recall seeing it. I may
16 have, but I don't specifically remember seeing it.

17 **BY MS. BALDWIN:**

18 Q Okay. Let's do the same for the Caucasian highly likely,
19 if we could. So, the percentage overlap, when you divide the
20 same over the sum.

21 A That's 96.35 percent.

22 Q Okay. And the likely?

23 **(Pause)**

24 A I'm sorry; I typed it in wrong.

25 Q No problem.

1 A I've got to start over. Just a second. Four four five
2 three seven nine two divided by four six -- oh, no, I'm sorry.
3 I did it wrong again. We're talking about Caucasian likely.

4 Q Caucasian likely; so that --

5 A Eighteen -- eighteen ninety-three --

6 Q Seven twenty-two.

7 A -- seven two two --

8 Q Over two --

9 A -- divided by two zero --

10 Q Five two.

11 A -- five two --

12 Q Six one seven.

13 A -- six one seven. I did something wrong again. I'm
14 sorry.

15 Q That's okay.

16 A I --

17 Q The percentages are what the percentages are. We can all
18 clearly understand that you can calculate the percentage
19 overlap from this.

20 The outlier in terms of the percentage overlap is
21 with the Hispanic numbers; wouldn't you agree? These have a
22 significantly lower percentage being the same than the
23 Caucasian and the Black.

24 A It -- it would appear to be the case, yes.

25 Q And that could certainly be because of the lack of the

1 ability to self-identify as Hispanic.

2 A That would be a logical assumption, yes.

3 Q Okay. The last thing I just wanted to ask, you had
4 previously testified that throughout this process you relied on
5 your staff to make accurate data comparisons, correct?

6 A Yes.

7 Q Just the same as you relied on them to do the January data
8 extract correctly.

9 A Yes.

10 **MS. BALDWIN:** That's all.

11 **MR. DUNN:** Your Honor, we have no further questions.

12 **THE COURT:** All right. Mr. Scott, then?

13 **MR. SCOTT:** No redirect, your Honor. We ask that
14 this witness be excused.

15 **THE COURT:** All right. Thank you, sir. You can step
16 down.

17 **THE WITNESS:** Thank you, your Honor. Do I leave
18 everything here?

19 **THE COURT:** Yes. We'll get it.

20 **THE WITNESS:** Okay.

21 **MR. SCOTT:** (indiscernible) hand this to the Court.

22 **THE WITNESS:** Thank you.

23 **(Witness stepped down; pause)**

24 **MR. SCOTT:** Your Honor, we're -- going to be some
25 readings, I think, of some excerpts of depositions at this

1 point in time, your Honor.

2 **THE COURT:** Okay.

3 **(Pause; voices and whispers off the record)**

4 **MS. WOLF:** Your Honor, Lindsey Wolf for the
5 defendants. We're going to present the trial testimony of
6 Major Forrest Mitchell both from the bench trial in the
7 Section 5 case as well as Major Mitchell's deposition in this
8 case, and I would just note for the record the bench trial
9 transcript that we handed your Honor is a little bit broader
10 than what we'll be reading into the record today. And I'll be
11 starting from the trial testimony from the Section 5 case.

12 **THE COURT:** Okay.

13 **EXAMINATION OF FORREST MITCHELL**

14 **BY EXCERPTS OF DEPOSITION TESTIMONY**

15 **(QUESTIONS READ BY MS. WOLF; ANSWERS READ BY COUNSEL)**

16 "QUESTION: What is it that you do for the Texas
17 Attorney General's Office?

18 "ANSWER: I'm a state criminal investigator with
19 supervisory responsibility.

20 "QUESTION: And where do you currently live?

21 "ANSWER: I live in Austin, Texas, with my wife and
22 children.

23 "QUESTION: How long have you worked for the Office
24 of Attorney General in Austin?

25 "ANSWER: Since -- in September it will be 15 years.

1 "QUESTION: And what did you do when you first joined
2 the office?

3 "ANSWER: When I first joined the office, I was
4 assigned to the prosecution assistance division, and
5 our job was to travel around the state and help
6 smaller, rural jurisdictions in the capital murder
7 prosecutions.

8 "QUESTION: And what was your next position with the
9 Office of Attorney General after that?

10 "ANSWER: In June of 2005 I was promoted to the rank
11 of lieutenant with special -- with the Special
12 Investigations Unit.

13 "QUESTION: Can you tell the Court what it is that
14 the Special Investigations Unit does?

15 "ANSWER: Yes. The Special Investigations Unit is a
16 team of -- or has a team of investigators that
17 conduct criminal investigations in a wide variety of
18 areas. Some of these areas include money laundering,
19 human trafficking, public integrity, white-collar
20 crime, and election violations. I also have a team
21 of investigators who assist local D.A.'s with
22 criminal cases as well.

23 "QUESTION: When was this unit formed, sir?

24 "ANSWER: It was formed in the summer of 2005.

25 "QUESTION: And how many law enforcement officers do

1 you supervise total within the SIU?

2 "ANSWER: There are 40 investigators in the Special
3 Investigations Unit.

4 "QUESTION: How -- do all of those work on elections
5 investigations?

6 "ANSWER: No, sir, only a portion.

7 "QUESTION: And, in fact, of the 64 officers under
8 your charge, how many work on election violations?

9 "ANSWER: We currently have three investigators
10 assigned to work election cases in the State of
11 Texas.

12 "QUESTION: And how do you refer to that subgroup of
13 the SIU?

14 "ANSWER: We refer to them as the elections team.

15 "QUESTION: Now, what are the types of election code
16 violations that the election team investigates?

17 "ANSWER: It would be illegal voting and other
18 violations of the Texas Election Code or Penal Code
19 offenses surrounding elections.

20 "QUESTION: And let's focus on the illegal voting
21 cases for a moment. Are there different types of
22 illegal voting cases that you investigate?

23 "ANSWER: Yes, sir. Under Chapter 64 of the Texas
24 Election Code, the offense of illegal voting is kind
25 of broken into four categories: The first category

1 would be an ineligible voter casting a ballot in an
2 election; another would be voter impersonation;
3 another example is a voter who votes more than once
4 in an election; and then the final type of illegal
5 voting is a person who marks a ballot contrary to the
6 instructions of a voter.

7 "QUESTION: Okay. Now, one of the things you said is
8 'voter impersonation.' What is that?

9 "ANSWER: Voter impersonation is when someone uses
10 another's identity to cast a ballot in an election,
11 either to vote again or to vote in an election
12 they're not eligible to vote in.

13 "QUESTION: Now, I want to talk first before we go
14 into that in more detail about the referral
15 investigation process. How does the SIU learn of
16 potential cases of election violations?

17 "ANSWER: The Office of the Attorney General receives
18 investigative referral requests from a wide variety
19 of sources. The first would be the Texas Secretary
20 of State's Office; another source would be the local
21 district and county attorneys, and then also from
22 elections administrators and then from local law
23 enforcement. And then when the Attorney General's
24 Office receives these referrals, they're routed to
25 the Special Investigations Unit.

1 "QUESTION: So we're clear, does the Office of
2 Attorney General ever initiate investigations on its
3 own without a referral?

4 "ANSWER: By our policy, we're referral driven.

5 "QUESTION: Are all election violation referrals to
6 the Office of Attorney General typically routed to
7 the SIU office?

8 "ANSWER: Yes, sir.

9 "QUESTION: Does the SIU or the Office of Attorney
10 General's office have sole jurisdiction over election
11 violation cases within the State of Texas?

12 "ANSWER: No, sir. Local district and county
13 attorneys have concurrent jurisdiction on elections,
14 and also the federal government has jurisdiction in,
15 I would presume, national elections.

16 "QUESTION: Now, are those county D.A.'s or county
17 attorneys, are they required to refer to the Office
18 of Attorney General cases to you, or can they
19 prosecute those on their own?

20 "ANSWER: There's no legal requirement for the local
21 county and district attorneys to refer a case to us.
22 They have concurrent jurisdiction and they're capable
23 of investigating and prosecuting those on their own.

24 "QUESTION: In addition to your supervisory
25 responsibilities, have you personally been assigned

1 to investigate election violations?

2 "ANSWER: Yes, sir. I have been assigned cases and I
3 have assisted in investigation of election code
4 offenses.

5 "QUESTION: And do you keep track of all election
6 violation cases that are referred to your office?

7 "ANSWER: Yes, sir, I do."

8 **MS. WOLF:** And we're going to skip to page 42,
9 line 22.

10 "QUESTION: Now, after you receive the referral and
11 enter it on your spreadsheet, what do you do after
12 that?

13 "ANSWER: Well, we evaluate the case and make sure
14 that the criminal investigation is warranted, and
15 then it would be approved -- or it would be assigned
16 to a member of the elections team to investigate."

17 **MS. WOLF:** And we're going to skip to page 44, line
18 three.

19 "QUESTION: Does your election spreadsheet contain
20 federal investigations of election violations?

21 "ANSWER: No, sir. We don't have information on
22 federal prosecutions or investigations.

23 "QUESTION: All right. Now, in terms of referrals of
24 election violations to SIU for investigation, how
25 many have been referred?

1 "ANSWER: Since approximately 2002, there have been
2 320 referrals made to the Office of the Attorney
3 General.

4 "QUESTION: And of those 320 referrals, how many
5 different Texas counties does that represent?

6 "ANSWER: I believe it represents 97 of the 254
7 counties.

8 "QUESTION: Now, you talked about the referral
9 process and sometimes you don't proceed with it. So
10 let me ask you, of the 320 referrals, how many has
11 the SIU actually investigated?

12 "ANSWER: Since 2004, we've investigated a total of
13 186 cases.

14 "QUESTION: So, of the 186 investigated cases that
15 SIU has investigated, in general terms, the types of
16 election code violations, what types of election code
17 violations did those involve?

18 "ANSWER: These could be illegal voting or other
19 violations of the Texas Election Code or Penal Code
20 offenses.

21 "QUESTION: Of the 186 cases, how many of those have
22 been referred for prosecution?

23 "ANSWER: Sixty-two.

24 "QUESTION: Of the 62 cases that have been referred
25 to prosecution, how many have resulted in positive

1 outcomes or convictions?

2 "ANSWER: I believe that number is 50.

3 "QUESTION: One of the areas you described earlier is
4 illegal voting, and I think one of those types is in-
5 person voter fraud. So I want to ask you, of the 62
6 cases referred for prosecution, how many of those
7 involved voter impersonation?

8 "ANSWER: There are a total of six cases that
9 involved voter impersonation that were prosecuted.

10 "QUESTION: And of those 62 cases referred for
11 prosecution, how many involve in-person voter
12 impersonation?

13 "ANSWER: There have been five cases that have been
14 sent for prosecution involving in-person voter
15 impersonation.

16 "QUESTION: Does this tally include any referrals
17 from the May primaries?

18 "ANSWER: No, sir.

19 "QUESTION: Is there any case that you've
20 investigated that comes to mind that involves in-
21 person voter impersonation?

22 "ANSWER: Yes, sir, there is a case.

23 "QUESTION: Can you tell the Court the general facts
24 of that case?

25 "ANSWER: This case involved the 2009 Progreso

1 Independent School District election down in Hidalgo
2 County, and this case involved two brothers and their
3 mother who went to the polling place. One brother --
4 I'm sorry, if I may clarify. One brother was
5 actually incarcerated in the state penitentiary in
6 San Antonio. The other brother went to the polling
7 place with the incarcerated brother's voter
8 registration certificate and he presented himself as
9 if he were his brother.

10 "This was discovered by a poll worker
11 inside the location, and she alerted the election
12 judge. However, since the voter had a lawful voter
13 registration certificate, the elections department
14 let him proceed to vote.

15 "QUESTION: Now, were there -- other than the two --
16 other than the brother who attempted to vote on
17 behalf of the other brother, was there another
18 defendant involved in that case?

19 "ANSWER: Yes, there was. The other defendant, Reyna
20 Almanza, is the mother of two sons, and she was
21 actually present with Lorenzo Antonio Almanza, and
22 she interjected with the election judge and vouched
23 for the identity of her son who was using the
24 impersonation -- the impersonated voter registration
25 certificate.

1 "QUESTION: How is it that the case -- how was it
2 that case was discovered and brought to the attention
3 of the authorities?

4 "ANSWER: The case was brought to light through the
5 poll worker who was present at the polling place.

6 "QUESTION: And the poll worker, did she know both
7 brothers?

8 "ANSWER: Yes, she did. The poll worker actually
9 went to high school with the incarcerated brother.

10 "QUESTION: As a supervisor or an investigator with
11 SIU, you've worked on cases involving voter
12 impersonation at the polling place?

13 "ANSWER: That's correct.

14 "QUESTION: From your experience, can you tell us how
15 difficult it is to detect in-person voter
16 impersonation at the polling place?

17 "ANSWER: I would say it's very difficult to detect.

18 "QUESTION: Why is that?

19 "ANSWER: Because it would require somebody at the
20 polling place actually having personal knowledge of
21 the voter who is presenting themselves as the
22 impersonated voter, and then they would also
23 additionally have to be able to observe how that
24 person is checked in during the accepting a voter
25 process.

1 "QUESTION: As compared to mail-in voting fraud, how
2 difficult is in-person voter impersonation to detect
3 or investigate?

4 "ANSWER: I believe in-person voter impersonation is
5 more difficult to detect than mail-in ballot, for
6 instance, voter impersonation. And it really deals
7 with the amount of time that the suspect spends with
8 the voters. In mail-in ballot cases, they spend a
9 great deal of time with the voters and use their
10 mail-in ballots to cast the election. In voter
11 impersonation cases, there's very little interaction
12 with the witnesses, so frequently they're unable to
13 identify the suspects through a conventional photo
14 array.

15 "QUESTION: In addition to this case, have you -- are
16 you aware of any other additional pending voter
17 impersonation cases within the State of Texas?

18 "ANSWER: Pending criminal cases?

19 "QUESTION: Yeah, currently.

20 "ANSWER: We currently have two pending criminal
21 cases in the state of Texas right now with the
22 Attorney General's office that involve voter
23 impersonation. One is the Mara Comparion case out of
24 Bexar County and then the second case is Lorenzo
25 Antonio Almanza, the one in Hidalgo County.

1 "QUESTION: Are you aware of any others that your
2 office is not pursuing or investigating?

3 "ANSWER: No, I'm not aware.

4 "QUESTION: Are you familiar --

5 "ANSWER: I apologize.

6 "QUESTION: Okay.

7 "ANSWER: I am aware -- sorry. I am aware of another
8 case that is being investigated by a local District
9 Attorney up in Tarrant County where a mother had her
10 son vote in an election.

11 "QUESTION: Are you familiar with the voter ID bill
12 at issue in this case, Senate Bill 14, just generally
13 the terms?

14 "ANSWER: Yes, I am.

15 "QUESTION: Does Senate Bill 14 increase the
16 penalties for voter impersonation?

17 "ANSWER: Yes, sir, it does. It affects all types of
18 illegal voting, not just voter impersonation. It
19 enhances the penalty for a criminal attempt from a
20 Class A misdemeanor to a state jail felony and then
21 it also enhances the actual offense of illegal voting
22 from a third-degree felony to a second-degree felony
23 and that would apply to all four types of illegal
24 voting.

25 "QUESTION: And then you identified a second -- or a

1 sixth case and I believe you identified that as
2 Tarrant County?

3 "ANSWER: Well, sir, I identified a case that we were
4 also involved in which was the Melvin K. Ponce
5 investigation which was a mail-in ballot voter
6 impersonation.

7 "QUESTION: In the Melvin K. Ponce case, that would
8 not have been covered by SB 14 had it been in place;
9 isn't that correct?

10 "ANSWER: Into what regard?

11 "QUESTION: In regards SB 14 would not have stopped
12 the Melvin K. Ponce case; isn't that correct?

13 "ANSWER: It could have had a deterrent effect.

14 "QUESTION: And just so I'm clear, SB 14 as it's
15 drafted deals specifically with voter impersonation
16 at the polling place. Isn't that your understanding?

17 "ANSWER: No, sir. It is drafted in that one of the
18 portions of SB 14 deals with the offense of illegal
19 voting and there are four categories of that and it
20 enhances the penalty range for all four types of the
21 offense.

22 "QUESTION: SB 14 would not have presented the case
23 of Dolores McMillan -- SB 14 would not have prevented
24 the case of Dolores McMillan because it occurred
25 before the polls open; isn't that correct?

1 "ANSWER: Again, I believe there could have been a
2 deterrent effect based upon the statute but it
3 wouldn't -- but it would not have prevented her from
4 doing so.

5 "QUESTION: And then finally the last case that you
6 mentioned was -- and actually didn't mention it by
7 name but Jack Crowder, III. Would that be one of the
8 voter impersonation cases that you're identifying
9 here today for the judges?

10 "ANSWER: Yes, sir. That is Jack Carol Crowder and
11 that was the 2008 general elections in Harris County,
12 Houston, Texas.

13 "QUESTION: Now, the allegation for the Jack Carol
14 Crowder case is that he voted on behalf of his
15 deceased father; is that accurate?

16 "ANSWER: Yes, sir. He presented his deceased
17 father's voter registration certificate and cast a
18 ballot in that election.

19 "QUESTION: And how do you know he presented his
20 father's voter registration card?

21 "ANSWER: I believe he told me that and he provided
22 the voter registration certificate to us during an
23 interview.

24 "QUESTION: Of all the types of voter fraud that you
25 investigate as an investigator, which is the most

1 difficult to detect?

2 "ANSWER: I would think in-person voter
3 impersonation.

4 "QUESTION: With respect to the Almanza case, can you
5 tell us who has been charged in that fact pattern
6 that you described early in your testimony?

7 "ANSWER: Both Lorenzo Almanza and Reyna Almanza were
8 charged with illegal voter impersonation and then
9 Reyna Almanza has been convicted by Brooks County
10 Court for illegal voting -- voter -- voting
11 impersonation.

12 "QUESTION: And the other case is pending; is that
13 correct?

14 "ANSWER: Yes, sir.

15 **MS. WOLF:** And now we'll switch to Major Mitchell's
16 deposition from August 12th, 2014.

17 "QUESTION: All right, Major Mitchell. We're still
18 talking about the Prosecutions Resolved portion of
19 your spreadsheet and we've identified the different
20 cases since the -- since your last deposition --
21 sorry. And we've identified the 17 different cases
22 since the -- since your last deposition. Of those
23 17, how many involved charges of in-person voter
24 impersonation?

25 "ANSWER: There's only one case that's specifically

1 illegal voting -- voter impersonation was charged and
2 convicted.

3 "QUESTION: And that's Mr. Almanza; is that correct?

4 "ANSWER: Yes, sir, Lorenzo Antonio Almanza, Jr.

5 "QUESTION: And what can you tell me about that case?

6 "ANSWER: I believe I testified in my trial and in
7 the deposition that the facts and the circumstances
8 of that case were Lorenzo Antonio Almanza presented
9 himself at the Progreso School District election and
10 utilized his brother's voter registration
11 certificate. His brother at the time -- I believe
12 his name was Orlando Almanza -- was in custody in
13 San Antonio in the state penitentiary when that
14 election occurred and that Lorenzo used his voter
15 registration certificate to vote a second time in
16 that election.

17 During the course of the -- when he presented himself
18 to the elections officials there, a poll watcher
19 observed the name that was being put down on the
20 combination form and recognized that this was not
21 Orlando Almanza. This was his brother, Lorenzo
22 Antonio, Jr., and brought that attention of
23 -- brought that to the attention of the election
24 judge. It was at that point in time, I believe, that
25 the mother, who had previously been convicted in our

1 -- at the time of my deposition and at the time of
2 the trial, that she interjected herself and began to
3 argue with the elections judge and election workers,
4 vouching that that was, indeed, her son Orlando and
5 not Lorenzo. And the elections administrator for
6 that school district election allowed him to vote,
7 which became a second vote in that election,
8 utilizing his brother's voter registration
9 certificate.

10 "QUESTION: Put differently, you were able to
11 investigate and prosecute Mr. Almanza for what he did
12 without an SB 14 photo identification requirement in
13 effect, correct?

14 "ANSWER: Yes, sir, because we had a witness who was
15 able to positively identify that suspect.

16 "QUESTION: Right. Was Mr. Almanza a part -- were
17 there allegations in Mr. Almanza's case that this was
18 part of a kind of coordinated effort to affect the
19 outcome of the election at issue?

20 **MS. WOLF:** There's an objection.

21 "ANSWER: This case involved many allegations
22 involving many people.

23 "QUESTION: And, Mr. Almanza, I believe we said, pled
24 guilty to illegal voting/voter impersonation and he
25 was sentenced to two years in TDCJ; is that right?

1 "ANSWER: Yes, sir. That refers to Texas Department
2 of Criminal Justice and that would be our state
3 penitentiary.

4 "QUESTION: Sure. This is Page 5 of your own
5 spreadsheet which may be easier for you to use. And
6 you're -- so you're referring to 000237? Oh, I'm
7 sorry.

8 "ANSWER: So you're referring to 000237?

9 "QUESTION: Yes, sir.

10 "ANSWER: In Gillespie County?

11 "QUESTION: Yes, sir. I think it's eight up from the
12 bottom.

13 "ANSWER: Yes, sir, okay.

14 "QUESTION: Starting with that and then going four
15 pages of the spreadsheet to Page -- well, it actually
16 carries over to Page 13, Texas I.R. 000245, the very
17 top entry. You have what appears to be hundreds of
18 referrals that were made on the same day that all
19 have the same allegation listed, which is illegal
20 voting, voter impersonation, deceased voter that were
21 referred from the Secretary of State's office. Am I
22 -- am I understanding that spreadsheet correctly?

23 "ANSWER: Yes, sir.

24 **MS. WOLF:** And there's an objection.

25 "QUESTION: And those are from counties across Texas,

1 it appears; is that correct?

2 "ANSWER: Yes, sir. There are multiple counties that
3 are listed in this -- in that -- in these referrals.

4 "QUESTION: Can you provide me any background on how
5 these referrals came from the Secretary of State's
6 office?

7 **MS. WOLF:** And there's an objection.

8 "ANSWER: These come to the Secretary -- these come
9 from the Secretary of State's office like all of our
10 referrals come from the Secretary of State's office.

11 A packet was prepared that was referred to the
12 director of law enforcement and then given to our
13 criminal justice intake division --

14 "QUESTION: Uh-huh.

15 "ANSWER: And containing allegations of deceased
16 voters --

17 "QUESTION: Uh-huh.

18 "ANSWER: -- who were voting in elections throughout
19 all the different counties mentioned in the
20 spreadsheet and the various elections mentioned in
21 the spreadsheet.

22 "QUESTION: But you don't recall anything
23 specifically about this bucket of a couple hundred
24 referrals?

25 "ANSWER: I think it's 254 referrals.

1 "QUESTION: Two hundred and fifty-four.

2 "ANSWER: And I don't know specifically exactly how
3 they were identified in each one.

4 "QUESTION: But it is unusual -- and I'm just looking
5 at your spreadsheet. At least there's no other
6 occasion that I can tell where the Secretary of
7 State's office has sent over this volume of referrals
8 at once, is there?

9 **MS. WOLF:** And there's an objection.

10 "ANSWER: There's one case that we received
11 allegations of illegal voting/voter impersonation
12 with deceased voters out of Harris County --

13 "QUESTION: Uh-huh.

14 "ANSWER: -- which also -- which is also contained in
15 the spreadsheet.

16 "QUESTION: Uh-huh.

17 "ANSWER: When we received that referral, it said
18 that there were 10,000 individuals.

19 "QUESTION: Uh-huh.

20 "ANSWER: So we do receive allegations of deceased
21 voters in elections. It is atypical to get that many
22 from different jurisdictions.

23 "QUESTION: Right. And there's a lot of -- there's a
24 lot of ways that someone might attempt to
25 impersonate a deceased voter and vote, correct?

1 **MS. WOLF:** And there's an objection.

2 "ANSWER: Yes. We have cases where voters have
3 impersonated someone else and that's been done in
4 different ways.

5 "QUESTION: Within SIU, which of your investigative
6 teams is currently the most resource intensive?

7 "ANSWER: I would say it's the money laundering team.

8 "QUESTION: Money laundering. And where would the
9 election team rank?

10 **MS. WOLF:** Objection.

11 "ANSWER: As I previously testified, it's on par with
12 the public integrity team. Each of those teams have
13 about three or four investigators. And if I could
14 even further clarify.

15 "QUESTION: Please.

16 "ANSWER: The resources depend on the actual year.
17 We receive more referrals in a year which contain a
18 primary and a general election than we do in the off
19 years where we only have, perhaps, school district
20 and municipal elections. So on even numbers of
21 years, we tend to see more cases than we do on the
22 odd number of years.

23 "QUESTION: Thank you. Mr. Mitchell, do you believe
24 that there is undetected in-person voter
25 impersonation fraud occurring in Texas?

1 "ANSWER: It is my opinion, yes.

2 "QUESTION: And what is your source for that opinion?

3 "ANSWER: Having conducted criminal investigations
4 and in reviewing criminal investigations of my staff
5 over my tenure here at this office.

6 "QUESTION: So could you be more specific or it's
7 just your general instinct?

8 "ANSWER: We -- we have conducted investigations that
9 did not result in criminal charges where we suspected
10 voter impersonation occurred and that is both through
11 my experience as an investigator investigating cases
12 and also as a supervisor reviewing investigative
13 reports.

14 **MS. WOLF:** And that concludes Defendants' readings
15 from Mr. Mitchell.

16 **THE COURT:** Okay.

17 **MR. DUNN:** Your Honor, we did our initial readings
18 earlier.

19 **THE COURT:** Okay. So nothing from the Plaintiffs on
20 that?

21 **MR. ROSENBERG:** Nothing further. We're relying what
22 has already been read into the record.

23 **THE COURT:** Okay.

24 **(Counsel conferred)**

25 //

1 **MR. KEISTER:** Good morning, your Honor, Ronnie
2 Keister and Ben Donnell for the Defense. And we'll be reading
3 selected portions of the Senator Williams deposition.

4 **EXAMINATION OF TOMMY WILLIAMS**

5 **BY EXCERPTS OF DEPOSITION TESTIMONY**

6 **(QUESTIONS READ BY MR. KEISTER; ANSWERS READ BY MR. DONNELL)**

7 "QUESTION: Good morning, Senator Williams. How are
8 you this morning?

9 "ANSWER: I'm well.

10 "QUESTION: Okay. Let's talk about your tenure in
11 the Texas legislature. You were initially elected to
12 the Texas House in 1996; is that right?

13 "ANSWER: That's correct.

14 "QUESTION: And you served there until you were
15 elected to the Senate in 2002?

16 "ANSWER: That's correct.

17 "QUESTION: House Bill 218 in the 2000 session was a
18 bill designed to combat in-person voter fraud; is
19 that correct?

20 "ANSWER: Yes.

21 "QUESTION: Do you recall House Bill 218 generally?

22 "ANSWER: Only that it was a voter ID bill.

23 "QUESTION: Do you recall who sponsored it on the
24 Senate side?

25 "ANSWER: I don't know.

1 "QUESTION: If I told you that Troy Fraser sponsored
2 that bill, would that sound right to you?

3 "ANSWER: He was very involved in the issue, yes.

4 "QUESTION: When did you become very involved in the
5 issue?

6 "ANSWER: You know, I don't have a specific
7 recollection about when I became involved in it.
8 It's a -- it was an issue that was important to a lot
9 of people and a lot of my constituents during my
10 legislative career.

11 "QUESTION: Okay. But to be fair, voter ID
12 legislation was fairly controversial legislation for
13 several sessions, correct?

14 "ANSWER: I don't think it was controversial. There
15 was a lot of opposition to it on one side but I
16 wouldn't say it was controversial. It was widely
17 perceived by the public as something that was a good
18 thing.

19 "QUESTION: Okay. Do you recognize Exhibit 1?

20 "ANSWER: This looks like it is the filed version of
21 House Bill 218 as it was filed in the House.

22 "QUESTION: Okay. And that was the voter ID
23 legislation filed during the 2007 legislative
24 session, correct?

25 "ANSWER: Yes. It looks like it was pre-filed in

1 November of 2006. So it would have been for the 80th
2 regular session, it says.

3 "QUESTION: And the purpose of this legislation was
4 to combat in-person ID -- in-person voter ID fraud,
5 correct?

6 "ANSWER: I think that was the intent of the author,
7 yes.

8 "QUESTION: Sure. At the time that House Bill 218
9 was being considered by you in committee, did you
10 consider a student identification card to be an
11 acceptable form of photo ID?

12 "ANSWER: I don't recall that I cared for this
13 provision. It was a part of the bill but I'm not
14 sure that I -- I don't necessarily agree with every
15 provision of every bill. So --

16 "QUESTION: Fair enough. Can you tell me why you
17 might not have agreed with this particular provision?

18 "ANSWER: I think, you know, it makes it a lot more
19 difficult for the people who are working at the polls
20 to identify -- to know whether it's a valid ID or not
21 because we have 38 general academic institutions in
22 this state and we have a bunch of health science
23 centers and a lot of people that are issuing student
24 ID cards, including all of our community colleges and
25 so I think it becomes very difficult for someone at

1 the poll to know whether that's actually a valid ID
2 or not.

3 "QUESTION: And is it your opinion that the only form
4 of identification that can truly identify or verify
5 who a person is is a photo identification?

6 "ANSWER: I think that -- that the way it -- that's
7 the way it was listed in Senate Bill -- I was --
8 excuse me -- Senate Bill 14 was. There were primary
9 forms of identification and secondary forms of
10 identification and I think that a match -- a much
11 more reasonable way to determine whether the person
12 before you is really the person they said they were.
13 So --

14 "QUESTION: Was one of the purposes of Senate Bill --
15 excuse me. Was one of the purposes of Senate Bill 14
16 to ensure that people who show up to the polls to
17 vote are United States citizens?

18 "ANSWER: I think that would have been -- I don't
19 remember that as a primary objective but I think the
20 objective was that they were registered and legal to
21 vote and that that would be one of the things. I
22 don't remember that being -- I think the purpose of
23 the bill was to prevent in-person voter fraud. That
24 would include people who weren't citizens of the
25 United States who tried to vote but I don't think

1 that was the only thing.

2 "QUESTION: Are you aware that the DPS in 2011 had
3 antiquated technology in its driver's license
4 division?

5 "ANSWER: I know that I spent a lot of time and
6 effort during the 2011 session working with the
7 department to figure out how we could modernize and
8 streamline the issuance of driver's licenses and
9 election identification certificates. My interest in
10 that was primarily because I think I got -- I believe
11 it's correct to say that we received more complaints
12 in our office about the waiting lines at driver's
13 license offices than any other single function of
14 state government. So there was a problem there.

15 "QUESTION: Okay. So were your efforts to try and
16 modernize and streamline the process for issuing
17 driver's license -- driver's licenses more a function
18 of general public complaints about that process or
19 was it more something done in conjunction with SB 14
20 and this whole new notion of obtaining an election
21 identification certificate?

22 "ANSWER: I think it's a matter of public record that
23 I wanted the -- for -- just as a general policy of
24 making state government work for the citizens, that
25 this was something that needed to be done but that it

1 was also important that we address the issue if we
2 were going to require people to have to go to the DPS
3 office and obtain these Election Identification
4 Certificates. And I felt like it was important that
5 they be able to get that in a timely and reasonable
6 way.

7 "QUESTION: And were you satisfied prior to the
8 passage of SB 14 that people were going to be able to
9 obtain Election Identification Certificates in a
10 timely and reasonable way?

11 "ANSWER: Yes.

12 "QUESTION: And why is that?

13 "ANSWER: It would have been based on what my efforts
14 were with the DPS, the discussions that I'd had, what
15 we were doing, planning to do in the budget and all
16 those sorts of things.

17 "QUESTION: Okay. Let's talk about that. What was
18 your plan, prior to the passage of SB 14, for
19 budgeting for the kinds of things that would be
20 required to streamline and modernize the issuance of
21 driver's licenses Electronic Identification
22 Certificates?

23 "ANSWER: I think it would be a mischaracterization
24 to say it was my plan. I think that it might be more
25 accurate to say that I had asked the DPS to tell me,

1 what is it going to take to solve this problem and
2 then work with them to mold that into something that
3 we could put into the budget to address this issue.

4 "QUESTION: Okay. And when you got to that end point
5 in the 2011 legislative session, were you satisfied
6 that the DPS was going to get enough budgetary
7 dollars to do what it needed to do to, as you said,
8 modernize and streamline the issuance of driver's
9 licenses and electronic" --

10 **MR. KEISTER:** Which is spelling incorrect. It should
11 be "election."

12 "QUESTION: -- identification certificates?

13 "ANSWER: I think, based on what they knew at that
14 time and what I knew at that time, I believe that was
15 true.

16 "QUESTION: Do you know whether there were specific
17 dollars set aside that year for the processing of --

18 **MR. KEISTER:** Once again, it says "electronic." It
19 should be "election."

20 "QUESTION: -- identification certificates?

21 "ANSWER: That would be a question that you'd be
22 better to ask the Department of Public Safety. In
23 general, what I recall is that their message to me
24 was that they should be able to -- they would be able
25 to deal with the cost and I don't think there was a

1 -- I recall there wasn't a fiscal note related to the
2 cost of this, that they felt like they could handle
3 it in the ordinary course of business and so -- that
4 it wouldn't be an overwhelming problem for them. And
5 I think, in particular, since we were giving them the
6 money for these mega centers and mobile driver's
7 license centers and the things that we had talked to
8 them about, you know, I think they felt like they
9 could take care of it.

10 "QUESTION: And is it fair to say that those mega
11 centers were in heavily populated areas where the
12 demand was higher?

13 "ANSWER: I think that they were put in place to
14 relieve the inadequate facilities that we had in
15 heavily populated areas. So we're probably saying
16 close to the same thing. So --

17 "QUESTION: Okay. And then the other thing that you
18 mentioned was mobile units. Explain to me what
19 mobile units were -- are.

20 "ANSWER: Well, there were driver's license offices
21 that weren't open every day in some rural areas of
22 the state. And as I recall, we were encouraging them
23 to develop mobile units that they could have a
24 regular circuit that they went around to address this
25 renewal and issuance of driver's licenses and I guess

1 as an ancillary to the voter ID thing. So --

2 "QUESTION: Did you know on January 25th, 2011 when
3 SB 14 was passed out of the Senate whether there
4 would be enough budgetary dollars to go to the things
5 that would be required by SB 14?

6 "ANSWER: Yes.

7 "QUESTION: How did you know that?

8 "ANSWER: I am a member of the Senate Finance
9 Committee and I discussed it with the chairman of the
10 Senate Finance Committee and the Lieutenant Governor,
11 the other members of the Senate Finance Committee and
12 we were committed to making sure there was enough
13 money in the budget to address whatever issues that
14 were related to this.

15 "QUESTION: Did you ever perform an analysis or ask
16 the DPS to perform an analysis of how many people in
17 Texas who are registered -- who are able to vote
18 lacked one of the other forms of photo identification
19 listed in SB 14?

20 "ANSWER: You know, I don't think it would have been
21 just the Department of Public Safety. I know that
22 there were discussions with the Secretary of State
23 and the Department of Public Safety and there were
24 some estimates. I have no recollection of what that
25 is. My recollection is that the department was

1 comfortable that they would not require an additional
2 appropriation to be able to issue the Election
3 Identification Certificates.

4 "QUESTION: But what did the --

5 "ANSWER: They felt like that it would have had an
6 insignificant impact on their workload if we were
7 able to address these other issues they had, which I
8 was committed to doing.

9 "QUESTION: Do you have any knowledge of whether the
10 Secretary of State's office, now in hindsight, has
11 had sufficient money to educate Texas voters about
12 the new ID requirements?

13 "ANSWER: To my knowledge, it hasn't been a problem.
14 So I would say, yes, they had sufficient resources to
15 do it. And I don't recall ever having the Secretary
16 of State come to me when I was chair of finance or
17 chair of transportation and Homeland Security saying
18 we needed more money for voter education.

19 "QUESTION: Do you know why in 2011 the legislation
20 that was put forward eliminated a voter's ability to
21 present secondary forms of identification?

22 "ANSWER: I think that you're mischaracterizing what
23 the legislation did. I think what it did was, it
24 provided for a form of photo identification that was
25 free of charge and many of these things that were

1 secondary items of identification in the previous
2 bills could be used to obtain an Election
3 Identification Certificate. So I think you phrased
4 and mischaracterized what the bill did. What the
5 bill did was, it said, you know, we're going to have
6 really basically one of these two forms of photo
7 identification and a lot of the alternative forms
8 were incorporated into what it took to get the
9 Election Identification Certificate, not completely
10 but in general.

11 "QUESTION: Was it your opinion when you were
12 considering SB 14 that a more restrictive bill that
13 only allowed voters to present photo identification
14 at the polls was a better form of voter ID
15 legislation?

16 "ANSWER: I wouldn't characterize it that way.

17 "QUESTION: How would you characterize it?

18 "ANSWER: I think SB 14 was a better bill than the
19 bills that had been considered in the previous two
20 sessions because it required a more secure form of
21 identification and it would be easier for the people
22 who were working at the polls to determine if they
23 were being presented with a valid form of ID or not.

24 "QUESTION: Okay. What did you do prior to the
25 passage of SB 14 to research in-person voter fraud in

1 Texas?

2 "ANSWER: I think the primary information that we
3 received about this was from the testimony that we
4 received either in the State Affairs Committee or in
5 the Committee as a Whole.

6 "QUESTION: What did you do prior to voting for SB 14
7 to satisfy yourself that there would not be a
8 disproportionate impact on the minority voting
9 community in Texas?

10 "ANSWER: Well, we took extensive testimony in the
11 State Affairs Committee over a couple of different
12 sessions. And while I don't have a specific
13 recollection, I'm sure that this issue was brought up
14 because Senator Ellis and Senator Van de Putte had
15 both voted against the bills and were members of the
16 committee and they would have raised those issues.
17 So I know it was discussed and I'm certain it was
18 discussed in -- in committee. And that's the purpose
19 of having a bill heard before it comes to the floor,
20 is to get these kind of things vetted.

21 "QUESTION: You do recall testimony from various
22 interest groups that African-Americans and Hispanics
23 would have disproportionate burdens as a result of
24 SB 14, didn't you?

25 "ANSWER: And that was asserted in some groups.

1 "QUESTION: Did you do anything to look into those
2 assertions or satisfy yourself about whether those
3 assertions were accurate?

4 "ANSWER: Yes. That was a part of the debate. That
5 would have been when I considered it.

6 "QUESTION: Prior to voting on Senate Bill 14, did
7 you look into this issue of whether African-Americans
8 and Latino citizens in Texas disproportionately
9 lacked access to motor vehicles?

10 "ANSWER: First of all, I would say that with respect
11 to this entire document that I have before me, I have
12 no idea whether these assertions are true. This is a
13 viewpoint of an advocacy group. The second thing I
14 would say is that with respect to your specific
15 question, is that that would have been something that
16 we considered both in committee, in the State Affairs
17 Committee, in the Committee as a Whole and it would
18 have been the subject of floor debate. So if you're
19 asking me if I considered these things, I listened
20 carefully to everybody's viewpoint. I may not always
21 agree with it but, yes, this would have been
22 something that we would have considered during the
23 process.

24 "QUESTION: Did it concern you in voting on SB 14
25 that African-Americans and Latinos might

1 disproportionately lack access to a motor vehicle?

2 "ANSWER: I voted for the bill and I don't believe
3 that there was anything in the bill that has
4 prevented any African-American from being able to
5 obtain an Election Identification Certificate if they
6 needed one to vote, if they didn't already have a
7 driver's license.

8 "QUESTION: Did you do anything -- was there anything
9 in SB 14 that ameliorates the cost to obtaining an
10 EIC for indigents, people who are indigent in Texas?

11 "ANSWER: It was free. If you -- if you didn't have
12 one of the other forms of ID, the document -- the
13 Election Identification Certificate was free.

14 "QUESTION: In any event, there is no exception in
15 SB 14 for people who are indigent in Texas, correct?

16 "ANSWER: I think the Election Identification
17 Certificate is free of charge. That is the
18 exception.

19 "QUESTION: Sorry, I misspoke. There is no exception
20 to the photo ID requirement for people who are
21 indigent; is that right?

22 "ANSWER: No, the certificate is free.

23 "QUESTION: One of the things that the minor -- or
24 the Democratic opposition, I should say, was pretty
25 vocal about in the debates about Senate Bill 14 is

1 that there was really no significant in-person voter
2 fraud in Texas, right?

3 "ANSWER: I'm not sure. They may have asserted that
4 but I'm not sure that I agree that that's true.

5 "QUESTION: I understand that. I just -- my only
6 point is that that was part of what opposition was
7 lodged against this legislation is that it didn't --
8 there was no real in-person voter fraud to combat.
9 Do you recall that?

10 "ANSWER: Well, you know, once again, what I would
11 say is that voter fraud is very difficult to detect
12 if you don't require an ID when someone votes. How
13 are you going to know if they're committing fraud if
14 you don't ask them for an ID? So it's very difficult
15 to detect unless you require some form of
16 identification. Now, it's -- I have a lot of
17 anecdotal evidence that it happens. My grandfather
18 voted for 62 years in the Democratic primary after he
19 died.

20 "QUESTION: Okay. Was there any budgetary request or
21 any budgetary issues with regard to SB 14 with regard
22 to DPS?

23 "ANSWER: I think what I asked -- what I testified to
24 was the Department of Public Safety -- that I
25 specifically asked them what did they need to be able

1 to streamline the whole process of issuing driver's
2 license and thereby also the EINs but to get their
3 whole operation where we didn't have this backlog of
4 people who were standing in line for hours to get
5 their license or Election Identification Certificate
6 after the law passed. So we gave them the money that
7 they needed.

8 "QUESTION: Has there been any report of people
9 faking their photo identification in order to vote?

10 "ANSWER: You know, I'll answer it this way. I
11 haven't had a single complaint about Senate Bill 14
12 since the bill was passed. I don't know whether
13 there have been any reports of people who were trying
14 to vote or if they were just kept away by the
15 knowledge that they would have to produce an ID but I
16 am unaware of a single person in the entire state of
17 Texas that was denied the right to vote because of
18 Senate Bill 14. I'm not saying it doesn't exist but
19 if it does, I am completely unaware of it.

20 "QUESTION: Did you believe there was a lot of
21 support for SB 14, a lot of public support?

22 "ANSWER: There was a lot of bipartisan support for
23 it in the public, not in the legislature.

24 "QUESTION: And can you look at JA000844? And do you
25 see there's a statement by you and at the very bottom

1 going up to the next page, it says, 'And then finally
2 I wanted to ask you. We had talked earlier about the
3 project that I asked you to do, to cross-reference
4 the driver's licenses and the voter registration.
5 How is that coming along? I know I only asked today'
6 and Ms. McGeehan says, 'Yes.' Do you see that?

7 "ANSWER: I see it.

8 "QUESTION: Does this refresh your recollection that
9 you asked for an analysis from DPS and SOS about
10 registered voters who didn't have a driver's license
11 or a Texas ID?

12 "ANSWER: Yes, what I did -- what I don't know by
13 looking at this is whether it would appear -- but I'm
14 not sure and I'd like to clarify for the record that
15 this was the -- it was -- if this was the Committee
16 of the Whole. It looks like it was.

17 "QUESTION: This was -- this was the Committee of the
18 Whole, yes.

19 "ANSWER: Okay, so this was a Committee hearing and
20 this would have been the appropriate place for me to
21 ask such a thing.

22 "QUESTION: And do you recall asking Ms. McGeehan?

23 "ANSWER: Now that you showed me this I do.

24 "QUESTION: Why did you want this analysis?

25 "ANSWER: Let me see what the -- I don't know. It

1 would appear from the transcript that I wanted to
2 know if we could focus our education efforts on the
3 people that were registered voters who didn't have a
4 driver's license or a state-issued ID already.

5 "QUESTION: Didn't you say that you wanted to -- you
6 wanted this analysis for voter education, is that
7 right?

8 "ANSWER: It would appear from the transcript. I'd
9 like to take another look at it and see. So it looks
10 like what we were trying to do is -- Ms. McGeehan
11 says I approached her earlier today to do some
12 comparisons to try to further focus in on those who
13 are registered voters that don't have or have not
14 been issued a driver's license or personal ID, so
15 we're trying to run some of these numbers.

16 So I think that was I trying to do was just see who
17 these people were, how many there were, and if we
18 could focus the education efforts on making sure that
19 they knew what they needed to do to be able to vote
20 the next time.

21 "QUESTION: Okay. What -- when you say that you
22 could "focus voter education on these voters," can
23 you tell me what you mean by that?

24 "ANSWER: I wanted to be sure that we understood how
25 big the problem was. I think, you know, we needed,

1 if there was a problem and I think it was up to the
2 Secretary of State's office, but I wanted to know --
3 I wanted them, if that analysis had been done, that
4 we would have known whether or not they could address
5 the problem, and so I felt like it was important that
6 we ask that question.

7 "QUESTION: And when you say you wanted to make sure
8 "we" understood how big the problem was, "we" means
9 the legislature?

10 "ANSWER: Yes.

11 "QUESTION: And you wanted to know -- to make sure
12 that you could address that issue?

13 "ANSWER: Make sure that it was being addressed.

14 "QUESTION: I see. So you didn't necessarily intend
15 the legislature to take an action to address the
16 problem?

17 "ANSWER: I don't think it would be -- I think it
18 would not have been necessary for anything to happen
19 in this bill. But it would have given us, in the
20 Senate Finance Committee, an idea whether they had
21 adequate resources or not. So it was a question to
22 make sure the agency was considering what they needed
23 to do."

24 **(End of reading of excerpts)**

25 //

1 **MR. KEISTER:** Okay, thank you. That completes our
2 reading, your Honor.

3 **THE COURT:** Okay.

4 **(Pause)**

5 **MS. RUDD:** Amy Rudd for Texas NAACP and MALC, and for
6 the record my colleague, Vishal Agraharkar, is sitting in the
7 witness box. And, your Honor, we'll be reading from three
8 different transcripts, the June 1st, 2012 deposition transcript
9 for Senator Williams; his transcript from the Section 5 trial;
10 and also the transcript from his June 29th, 2014 deposition.

11 If I could approach I have a copy for you-all.

12 **THE COURT:** Yes.

13 **EXAMINATION OF TOMMY WILLIAMS**

14 **BY EXCERPTS OF DEPOSITION AND TRIAL TESTIMONY**

15 **(QUESTIONS READ BY MS. RUDD; ANSWERS READ BY MR. AGRAHARKAR)**

16 "QUESTION: Do you recognize Exhibit 1?

17 **MS. RUDD:** And for the record, excuse me, for the
18 record that's PL-859.

19 "ANSWER: This looks like it is the filed version of
20 House Vote 218, as it was filed in the House.

21 "QUESTION: And that was the voter ID legislation
22 filed during the 2007 legislative session, correct?

23 "ANSWER: Yeah. It looks like it was pre-filed in
24 November of 2006, so it would have been for the 80th
25 regular session it says.

1 "QUESTION: Do you recall that HB 218 passed out of
2 the State Affairs Committee?

3 "ANSWER: Yes, it did.

4 "QUESTION: And you voted to pass that out of
5 Committee, correct?

6 "ANSWER: I did.

7 "QUESTION: Do you recall that that vote was strictly
8 along party lines?

9 "ANSWER: It wouldn't surprise me if it was. I don't
10 recall the vote.

11 "QUESTION: At the time that you voted to pass HB 218
12 out of Committee, did you think it was a good bill?

13 "ANSWER: I did.

14 "QUESTION: There are seven different forms of
15 photographic identification that were acceptable
16 under HB 218 in this version, correct?

17 "ANSWER: Correct.

18 "QUESTION: And then if you look at Subsection (b),
19 there are 11 different forms of nonphoto ID that were
20 acceptable under this version of the legislation,
21 correct?

22 "ANSWER: I have to read it.

23 "QUESTION: Sure.

24 "ANSWER: Actually I -- let's see, yeah, there are
25 11, that's correct.

1 "QUESTION: Senator Fraser made a motion to consider
2 HB 218 outside the regular course of business,
3 correct?

4 "ANSWER: I believe he made a motion to suspend the
5 regular order of business to take up and consider
6 House Bill 218.

7 "QUESTION: And when you say the "regular order of
8 business," that's the sort of default calendar in the
9 Senate, correct?

10 "ANSWER: The regular order of business is the order
11 of the bill -- the order that bills come out of
12 Committee numerically and by time, when they were
13 voted out of Committee. That's the regular order of
14 business out of the Substantive Committee.

15 "QUESTION: And in the regular order of business,
16 bills are considered in the order that they come out
17 of Committee, correct?

18 "ANSWER: Under the regular order of business.

19 "QUESTION: And if you want a bill to be considered
20 outside the regular order you have to suspend the
21 regular order of business, is that right?

22 "ANSWER: That's correct.

23 "QUESTION: And, typically, to suspend the regular
24 order of business you need a two-thirds vote of
25 Senate members present at the time?

1 "ANSWER: That's true of the Senate and the House.

2 "QUESTION: Exhibit 4," which is PL-860, "is a copy
3 of the Senate Journal from May 15th, 2007, is that
4 right?

5 "ANSWER: It would appear to be.

6 "QUESTION: And if you look at the second page of
7 that document, at the bottom of the page, there's a
8 portion titled 'COMMITTEE SUBSTITUTE HOUSE BILL 218
9 ON SECOND READING,' do you see that?

10 "ANSWER: I do.

11 "QUESTION: And there it says that 'Senator Fraser
12 moved to suspend the regular order of business to
13 consider CSHB 218,' correct?

14 "ANSWER: Would you repeat the question?

15 "QUESTION: Sure. I'm just verifying that that says
16 that Senator Fraser moved to suspend the regular
17 order of business to take up consideration of CSHB
18 218.

19 "ANSWER: Correct.

20 "QUESTION: And then at the very bottom it says that
21 Senator Shapleigh called for a verification of the
22 vote?

23 "ANSWER: I see that.

24 "QUESTION: So -- and you have no reason to question
25 whether that recording in the Senate Journal is

1 accurate, correct?

2 "ANSWER: I believe that it's accurate.

3 "QUESTION: And then there was a roll call performed,
4 correct?

5 "ANSWER: Yes.

6 "QUESTION: And this time Senators Whitmire and
7 Uresti voted against considering CSHB 218 outside the
8 regular course of business, correct?

9 "ANSWER: Correct. The motion failed 20 to 11.

10 "QUESTION: And so no voter ID after that -- no voter
11 ID legislation passed out of the Senate in the 2007
12 session, is that right?

13 "ANSWER: I don't believe so.

14 "QUESTION: And you mentioned that there were
15 actually two votes taken in the Senate on whether to
16 bring HB 218 to the Floor, is that right?

17 "ANSWER: That's correct.

18 "QUESTION: And the result of the first vote was that
19 more than two-thirds of the senators present voted to
20 suspend the regular order of business and take up HB
21 218, is that right?

22 "ANSWER: The first vote, yes.

23 "QUESTION: And Senator Carlos Uresti was not present
24 on the Senate Floor for that first vote because he
25 was ill, is that right?

1 "ANSWER: I believe he was excused as being ill.

2 "QUESTION: And Senator Uresti is Hispanic, correct?

3 "ANSWER: Yes, he is.

4 "QUESTION: He represents a large Hispanic population
5 in Texas, is that correct?

6 "ANSWER: Yes.

7 "QUESTION: Senator Uresti had publicly opposed HB
8 218, is that right?

9 "ANSWER: I believe he had. I don't know that he
10 expressed that to me, but I would have presumed that
11 he was against it.

12 "QUESTION: The result of the second vote on HB 218
13 was that the Senate was not able to suspend the
14 regular order of business and take up the bill, is
15 that correct?

16 "ANSWER: That's correct.

17 "QUESTION: And Senator Uresti, you mentioned in your
18 Direct testimony, voted in that second vote, is that
19 correct?

20 "ANSWER: That's right. He came to the Floor.

21 "QUESTION: And is it the case that you were
22 disappointed in how the Senate handled the two votes
23 on HB 218 in 2007?

24 "ANSWER: Yes, that was my public statement in the
25 following session, in '09.

1 "QUESTION: And in that same public statement did you
2 characterize the vote on the Senate Floor as 'a very
3 ugly scene?'

4 "ANSWER: I did.

5 "QUESTION: One of the things that happened in the
6 2009 session is that you proposed a rule change, a
7 change to Senate rules. Do you recall that?

8 "ANSWER: I recall that I proposed a rule change. It
9 could have been in 2009, I don't recall the exact
10 session.

11 "QUESTION: The rule change that I'm referencing is a
12 change that would allow any bill relating to voter
13 identification requirements to be set as a special
14 order and considered by the Senate on a majority
15 vote. Do you recall that rule change?

16 "ANSWER: Yes, I proposed a rule change. I don't
17 recall which session it was off the top of my head.
18 If you have something that could refresh my memory,
19 I'll be glad to take a look at it.

20 "QUESTION: Exhibit 6," which is PL-423, "is a copy
21 of the Senate Journal dated January 14th, 2009,
22 correct?

23 "ANSWER: It would appear to be.

24 "QUESTION: And if you look at the third -- the
25 second line down, the Secretary is recorded as

1 saying, 'Senate Resolution 14 adopting the rules of
2 the Senate of the 80th Legislature as the permanent
3 rules of the Senate of the 81st Legislature with the
4 following modifications by Williams.' Do you see
5 that?

6 "ANSWER: I see that.

7 "QUESTION: Does that refresh your recollection that
8 you proposed a rule change to the rules of the Senate
9 in the 2009 legislative session?

10 "ANSWER: Yes.

11 "QUESTION: And this was the very session after HB
12 218 had failed to gain a two-thirds vote to come to
13 the Floor of the Senate, correct?

14 "ANSWER: That's correct.

15 "QUESTION: In 2009 the Senate considered and passed
16 voter ID legislation titled SB 362, correct?

17 "ANSWER: That's correct.

18 "QUESTION: And we've talked about it, and you
19 mentioned in your Direct testimony, you were the
20 sponsor of that rules resolution that allowed SB 362
21 to be considered on the Floor of the Senate, correct?

22 "ANSWER: That's correct.

23 "QUESTION: The Senate adopts a rules resolution
24 prior to each legislative session, is that right?

25 "ANSWER: That's correct.

1 "QUESTION: And the rules set forth how the Senate
2 will operate during the session, is that right?

3 "ANSWER: That's correct.

4 "QUESTION: So one of the things that the rule change
5 at the beginning of the 2009 session allowed you to
6 do as -- as the Senate, is to consider voter
7 identification bills as a special order of business,
8 is that correct?

9 "ANSWER: This -- the rule amendment that I offered
10 in the 2009 session allowed voter identification
11 legislation to be considered under a special order.
12 My recollection is that it had to be passed out of
13 the Committee of the Whole by a majority vote to be
14 able -- to be eligible to be considered under the
15 special order provision.

16 "QUESTION: Okay.

17 "ANSWER: That's my recollection.

18 "QUESTION: So adopting your proposed rule change
19 took a majority vote of senators, correct?

20 "ANSWER: That's true every session.

21 "QUESTION: Fair. And in considering voter ID
22 legislation as a special order also took a majority
23 vote of senators out of the Committee of the Whole,
24 correct?

25 "ANSWER: I think that the voter ID legislation was

1 required to be considered by the Committee of the
2 Whole. It had to pass out of Committee under the
3 regular Committee rules, which would have been a
4 majority vote, and then it could be brought to the
5 Floor under a special order that would only require a
6 majority vote.

7 "QUESTION: Right. Without your rule change,
8 considering voter ID legislation as a special order
9 after it passed out of Committee, would have required
10 a two-thirds vote of senators present, correct?

11 "ANSWER: If you were going to consider it out of the
12 regular order of business it would be true.

13 "QUESTION: Right. So what I'm -- without your rule
14 change it would have required to consider it outside
15 the regular order of business after it passed out of
16 Committee, a two-thirds vote of senators present,
17 correct?

18 "ANSWER: If it were being considered out of the
19 regular order of business.

20 "QUESTION: Right, which is exactly what I just said,
21 so I'm correct?

22 "ANSWER: Is that a question?

23 "QUESTION: Yes.

24 "ANSWER: I think you are.

25 "QUESTION: One of the things we were discussing

1 before was that at least in Senator Whitmire's tenure
2 as Dean of the Senate, prior to 2009 he typically
3 laid out the rules of the Senate. Is that consistent
4 with your recollection?

5 "ANSWER: I can't speak to that, how it was done
6 prior to 2009. From the '03, the '05 and the '07
7 session he laid out the rules, but I can't speak to
8 prior to that. I don't know before '03.

9 "QUESTION: But in your tenure as a senator, while up
10 until 2009 Senator Whitmire laid out the rules of the
11 Senate?

12 "ANSWER: He did in the '03 session, the '05 session
13 and the '07 session.

14 "QUESTION: And the reason that he didn't do so in
15 the 2009 session is because he was opposed to this
16 proposed rule change, is that correct?

17 "ANSWER: He was opposed to this, that's correct.

18 "QUESTION: And it's a matter of public record, isn't
19 it, that you carried SR 14, the Senate Resolution in
20 2009, to the Floor because Senator Whitmire did not
21 want to do it, correct?

22 "ANSWER: That's correct.

23 "QUESTION: Do you recall that the proposed rule
24 change in 2009 was relatively controversial in the
25 Senate?

1 "ANSWER: There was a lot of opposition and there was
2 a lot of debate about the rule change.

3 "QUESTION: I think you previously testified that
4 there were about six hours of debate on the proposed
5 rule change?

6 "ANSWER: About six, six and a half hours, yeah.

7 "QUESTION: And all of the Democratic Senators were
8 opposed to the rule change, is that correct?

9 "ANSWER: That's correct.

10 "QUESTION: And we talked about this earlier, but
11 within Senate Resolution 14 there was a majority vote
12 requirement rather than a two-thirds vote requirement
13 to set bills addressing the issue of voter
14 identification as special orders, correct?

15 "ANSWER: That's correct.

16 "QUESTION: And you mentioned Rule 5.11(d) as being a
17 rule applicable to that, correct?

18 "ANSWER: Correct.

19 "QUESTION: And during the hearing on SR 14 you said
20 that you modeled Rule 5.11(d) off of the rules of the
21 67th legislative session in 1981 addressing the issue
22 of redistricting, correct?

23 "ANSWER: I believe that's correct.

24 "QUESTION: And this is from the research that you
25 talked about in the hearings on SR 14, is that

1 correct?

2 "ANSWER: Yes.

3 "QUESTION: And during that hearing other senators
4 voiced disagreement with your research, is that
5 right?

6 "ANSWER: No, I think they were -- they didn't
7 necessarily agree with what I was saying, but I'm not
8 sure. Yeah, there were people who disagreed with me,
9 yeah.

10 "QUESTION: We have Senate Resolution 67 from the
11 81st legislative session, and you can see the date at
12 the bottom here, Senator, and this is Senate
13 Resolution 98, and it's adopted on February 5th,
14 1981. So would that be the 67th legislative session,
15 is that correct?

16 "ANSWER: You know, I don't know, it could be.

17 "QUESTION: Well, Senator, a legislative session
18 would adopt rules in January or February, is that
19 correct?

20 "ANSWER: Correct.

21 "QUESTION: And we're talking about the legislative
22 session, they occur on odd-numbers -- odd-numbered
23 years, is that right?

24 "ANSWER: That's correct.

25 "QUESTION: So here we have February 5th, 1981, is

1 that correct?

2 "ANSWER: Yeah.

3 "QUESTION: And if we move onto Pages 12, 13 and 14
4 of this exhibit and we'll see special orders on the
5 bottom of Page 12, correct, Senator?

6 "ANSWER: Yes.

7 "QUESTION: And I'll let you take a look at the text
8 after Number 14, and under the category of 'Special
9 Orders,' and ask if you can point me to the area
10 where redistricting bills are allowed to be set as
11 special orders pursuant to a majority vote?

12 "ANSWER: It wasn't in -- I don't believe it was in
13 this rules resolution. I believe it was a separate
14 resolution.

15 "QUESTION: So a separate resolution. Your testimony
16 is that a separate resolution set redistricting as a
17 special order, is that correct?

18 "ANSWER: To the best of my recollection, yes.

19 "QUESTION: And voter identification, however, under
20 Rule 5.11(d) and Rule 16.077 were contained in the
21 Senate Resolution 14 in 2009, is that correct?

22 "ANSWER: Yes.

23 "QUESTION: And they were contained in the Senate
24 Resolution the next year, in 2011, is that right?

25 "ANSWER: That's correct.

1 "QUESTION: And during the hearing on SR 14, and you
2 mention this in your Direct testimony, you defined
3 voter ID as an intractable issue in the Texas Senate?

4 "ANSWER: That was a part of my public testimony,
5 yes.

6 "QUESTION: And that's why you proposed a majority
7 vote to address it, is that right?

8 "ANSWER: That's correct.

9 "QUESTION: Every single vote during the debate on
10 your proposed rule change in 2009 split along party
11 lines, is that right?

12 "ANSWER: I don't -- I don't recall, it was either
13 party line or very close to party line vote.

14 "QUESTION: You would stand by whatever appears in
15 the Senate Journal on that debate?

16 "ANSWER: I think that the Senate Journal accurately
17 reflects what happened. Senator Carona had an
18 objection to it, and I'm not sure how he voted on
19 every single one of those amendments.

20 "QUESTION: Ultimately, your proposed rule change in
21 2009 passed, is that correct?

22 "ANSWER: It did.

23 "QUESTION: In 2009 the Senate considered and passed
24 voter ID legislation titled SB 362, correct?

25 "ANSWER: That's correct.

1 "QUESTION: Senator Williams, you supported S --
2 Senate Bill 362, is that correct?

3 "ANSWER: I did.

4 "QUESTION: And Senate Bill 362 provided for the
5 alternative of bringing two nonphoto IDs to the
6 polls, is that correct?

7 "ANSWER: I think what it did is that it provided
8 that if you had your voter registration card and one
9 other form of ID, that that would be sufficient.

10 "QUESTION: Senate Bill 362 was ultimately considered
11 by the Committee of the Whole, correct?

12 "ANSWER: I believe that's true.

13 "QUESTION: And the Committee of the Whole is just
14 the entire body of senators making up the Senate, is
15 that right?

16 "ANSWER: That's correct.

17 "QUESTION: And eventually the Senate, the Committee
18 of the Whole, voted to pass Senate Bill 362 out of
19 Committee, correct?

20 "ANSWER: I believe that's correct.

21 "QUESTION: And you voted to pass Senate Bill 362 out
22 of Committee, correct?

23 "ANSWER: I did.

24 "QUESTION: After Senate Bill 362 was voted out of
25 the Committee of the Whole, it was set as a special

1 order, is that right?

2 "ANSWER: You know, I believe it was. I don't -- I
3 don't have a specific recollection of that. I'm sure
4 it's in the Senate Journal. Whatever is reflected in
5 the Senate Journal is accurate.

6 "QUESTION: Okay. Well, let's take a look at Page
7 592 of the Senate Journal, Item 4.

8 "ANSWER: Uh-huh (yes.) I see it.

9 "QUESTION: Does that refresh your recollection that
10 Senate Bill 362 was set as a special order?

11 "ANSWER: The Journal says that, 'On March 11th, 2009
12 the Senate voted to set Senate Bill 362 and no other
13 bill for special order. The vote on the special
14 order was 19 to 12.'

15 "QUESTION: And that's consistent with your
16 recollection, yes?

17 "ANSWER: I have no reason to believe that's not
18 true.

19 "QUESTION: And, again, all eight ethnic minorities
20 listed here in the Senate Journal voted against
21 sending Senate Bill 360 -- setting Senate Bill 362 as
22 a special order, is that right?

23 "ANSWER: That's my recollection, and that's what it
24 says here in the Senate Journal.

25 "QUESTION: And then, ultimately, Senate Bill 362

1 passed on the third reading. Is that right, it
2 passed out of the Senate?

3 "ANSWER: It was passed out of the Senate and it was
4 sent to the House.

5 "QUESTION: And, again, the vote to pass Senate Bill
6 362 out of the Senate was split along party lines,
7 right?

8 "ANSWER: Yes.

9 "QUESTION: With everybody who is self-identified as
10 an ethnic minority voting against passing it out of
11 the Senate, correct?

12 "ANSWER: To the best of my knowledge, yes.

13 "QUESTION: And then, ultimately, what happened is
14 that Senate Bill 362 didn't pass the House in that
15 particular legislative session, is that right?

16 "ANSWER: That's my recollection.

17 "QUESTION: And so voter ID legislation didn't become
18 the law in the 2009 session, right?

19 "ANSWER: That's correct.

20 "QUESTION: So in 2007 and 2009, that legislation
21 that was proposed allowed voters to go to the polls
22 with two forms of secondary identification to
23 identify themselves, right?

24 "ANSWER: Had it been enacted, that would have been
25 true.

1 "QUESTION: And in 2011 the legislation, SB 14,
2 didn't allow voters to present those forms of
3 secondary identification at the polls to identify
4 themselves, right?

5 "ANSWER: That's correct.

6 "QUESTION: Instead, what SB 14 does is it requires
7 anybody who can't get one of the forms of primary
8 photographic identification to take their secondary
9 forms of ID to the DPS to get an electronic (sic)
10 identification certificate, is that right?

11 "ANSWER: Election.

12 "QUESTION: I'm sorry, election identification
13 certificate?

14 "ANSWER: That's correct.

15 "QUESTION: Do you know if a noncitizen can obtain a
16 driver's license in Texas?

17 "ANSWER: Yes, they can.

18 "QUESTION: Do you know whether or not everyone who
19 holds -- currently holds a Texas driver's license has
20 shown proof of US citizenship?

21 "ANSWER: What I know is that they have either shown
22 it previously, or they will be required to show it
23 when their license is renewed, and so that's a
24 process that would take a few years because I think
25 your license is good for about six years, so --

1 "QUESTION: Do you know how many people currently
2 hold a Texas driver's license who has not shown proof
3 of US citizenship?

4 "ANSWER: You could get that from DPS, but I don't
5 know that number.

6 "QUESTION: Does your driver's license state that you
7 are a citizen?

8 "ANSWER: No.

9 "QUESTION: And do you know if the driver's license
10 held by someone who is a legal permanent resident
11 would state that they are an LPR?

12 "ANSWER: I don't know the answer to that.

13 "QUESTION: Can a noncitizen be issued a military ID?

14 "ANSWER: I believe they can if they are a member of
15 the military.

16 "QUESTION: Would it surprise you to hear that there
17 are at least 10 different types of US military IDs?

18 "ANSWER: No.

19 "QUESTION: Do you know if poll workers in Texas are
20 trained to distinguish between different types of
21 military IDs?

22 "ANSWER: I don't know.

23 "QUESTION: What is a citizenship certificate?

24 "ANSWER: I don't know.

25 "QUESTION: Is one of the --

1 "ANSWER: Yeah.

2 "QUESTION: -- acceptable types of ID in Senate Bill
3 14. Have you seen one?

4 "ANSWER: No.

5 "QUESTION: And would you know how much it costs to
6 obtain one?

7 "ANSWER: No.

8 "QUESTION: Do you know how you would obtain a
9 replacement?

10 "ANSWER: No.

11 "QUESTION: Oh, you've never seen one?

12 So a person who brings to the polling booth a
13 citizenship certificate that has a picture of him
14 when he was five years old, would that verify a
15 person's identity?

16 "ANSWER: I have no idea.

17 "QUESTION: How much does it cost to obtain a US
18 passport?

19 "ANSWER: I don't know.

20 "QUESTION: Do you know how many Texan voters hold
21 valid US passports?

22 "ANSWER: No.

23 "QUESTION: Does SB 14 require employers to provide
24 paid leave so that employees may obtain an election
25 identification certificate?

1 "ANSWER: Not to my recollection. I can look at it
2 and see, but I don't recall that it did that.

3 "QUESTION: My question is do you know whether some
4 people in Texas live at least 50 miles from the
5 nearest driver's license office?

6 "ANSWER: I'm sure some do, maybe more than that.

7 "QUESTION: And how much would gas cost, at a
8 minimum, to drive a 100-mile round trip to get the
9 election identification certificate?

10 "ANSWER: I have no idea. It would depend on what
11 kind of car you were driving, or whether you were on
12 a motorcycle or riding a bicycle, or what it might
13 be.

14 "QUESTION: Senator Davis proposed Amendment 12,
15 which provided that the underlying document needed to
16 obtain an election identification certificate; that
17 is, the birth certificate, would be free for indigent
18 voters. Did you oppose this amendment?

19 "ANSWER: You'd have to look at the record. My
20 recollection is that I opposed the amendment.

21 "QUESTION: Senator Ellis proposed Amendment 19 to
22 add student IDs to the list of acceptable photo IDs,
23 and this would be limited to student IDs issued by
24 Texas public universities. Did you oppose this
25 amendment?

1 "ANSWER: My recollection is that that I voted
2 against that amendment.

3 "QUESTION: So, Senator Williams, did you have a role
4 in the introduction of Senate Bill 14 in 2011?

5 "ANSWER: I was a joint or co-sponsor of the bill.

6 "QUESTION: Was SB 14 given a designation by the
7 Governor to be emergency legislation?

8 "ANSWER: My recollection is that he did make voter
9 ID an emergency item.

10 "QUESTION: And what are the consequences of a bill
11 to have such designation?

12 "ANSWER: It can be considered earlier in the
13 sessions.

14 "QUESTION: One of the major concerns raised in
15 connection with Senate Bill 14 was that there wasn't
16 sufficient evidence of in person voter fraud in Texas
17 to justify strict photo ID law. Do you recall that?

18 "ANSWER: That was asserted by the opponents of the
19 bill.

20 "QUESTION: What did you do prior to the passage of
21 SB 14 to research in person voter fraud in Texas?

22 "ANSWER: I think the primary information that we
23 received about this was from the testimony that we
24 received either in the State Affairs Committee or in
25 the Committee as a Whole.

1 "QUESTION: Other than the testimony about in person
2 voter fraud that was received in those two
3 Committees, is there any other evidence of in person
4 voter fraud that you collected in connection with
5 your consideration of SB 14?

6 "ANSWER: I don't know what you mean by that,
7 'evidence that I collected.' How would you know if
8 someone was committing in person voter fraud if you
9 didn't require them to have an ID, can you tell me?

10 "QUESTION: Well, in person voter fraud is a
11 prosecutable offense in Texas, correct?

12 "ANSWER: It is.

13 "QUESTION: It's subject to criminal penalties,
14 correct?

15 "ANSWER: It is.

16 "QUESTION: It was subject to criminal penalties
17 prior to the passage of SB 14, correct?

18 "ANSWER: Yes.

19 "QUESTION: And prior to the passage of SB 14 there
20 were convictions for voter fraud in Texas, are you
21 aware of that?

22 "ANSWER: Yes.

23 "QUESTION: So were those -- how were those instances
24 of voter fraud detected when there was no photo ID
25 law?

1 "ANSWER: I have no specific recollection of how they
2 were prosecuted. I know that they were fairly rare.

3 "QUESTION: Is it true that there are relatively few
4 instances of prosecuted in person voter fraud in
5 Texas that have been reported?

6 "ANSWER: In relation to the number of people voting
7 it's not very high.

8 "QUESTION: And you also mentioned, during the 2011
9 session SB 14 was, in fact, made a special order by a
10 majority vote, is that correct?

11 "ANSWER: Yes.

12 "QUESTION: And it was also sent, prior to that, to a
13 Committee of the Whole hearing, is that right?

14 "ANSWER: Right.

15 "QUESTION: Prior to the Committee of the Whole
16 hearing in January 2011, on January 25th, 2011 you
17 requested that the Secretary of State's office
18 perform an analysis, correct?

19 "ANSWER: Yes.

20 "QUESTION: And you specifically requested that Ann
21 McGeehan, the Elections Director at the time, perform
22 an analysis cross-referencing registered voters and
23 driver's license data bases, is that right?

24 "ANSWER: Yes.

25 "QUESTION: And you asked Ms. McGeehan on the public

1 record if she needed any additional direction from
2 the legislature to accomplish this cross-referencing,
3 right?

4 "ANSWER: I believe that's correct.

5 "QUESTION: And you brought this request up again
6 during the Committee on the Whole hearing, and you
7 confirmed this request with a representative of DPS
8 who was testifying, Rebecca Davio, correct?

9 "ANSWER: I believe that's correct.

10 "QUESTION: And you're not sure if your office ever
11 got a response to this request, is that right?

12 "ANSWER: I wasn't sure when I was deposed.
13 Subsequent to my deposition I went back and checked
14 with my office staff and we did not receive that
15 report.

16 "QUESTION: But you considered this information
17 important enough to ask about it twice on the public
18 record, is that right?

19 "ANSWER: Yes.

20 "QUESTION: And your request was made before the
21 House considered the bill, is that right?

22 "ANSWER: Yes.

23 "QUESTION: And your request was made before SB 14
24 was signed into law, is that correct?

25 "ANSWER: Yes.

1 "QUESTION: And you were aware there was testimony
2 during the Committee on the Whole hearing concerning
3 the disproportional impact of SB 14 on minority
4 voters, correct?

5 "ANSWER: There was testimony to that effect.

6 "QUESTION: Ultimately SB 14 was passed out of the
7 Committee of the Whole, correct?

8 "ANSWER: Yes.

9 "QUESTION: And you voted to pass that bill out of
10 Committee?

11 "ANSWER: I did.

12 "QUESTION: And that bill was, again, along strict
13 party lines, correct?

14 "ANSWER: I believe that it was.

15 "QUESTION: How many other bills in this 82nd session
16 were considered by the Committee of the Whole without
17 being considered by another committee previously?

18 "ANSWER: I don't recall that there were any other
19 bills that were considered by the Committee of the
20 Whole that session, but my memory isn't perfect.
21 That's some time ago.

22 "QUESTION: During the debates on Senate Bill 14, did
23 you do anything to look into the claim that African
24 Americans disproportionately lacked access to motor
25 vehicles in Texas?

1 "ANSWER: It may have been debated, but I don't -- I
2 don't recall any specific details or anything I might
3 have done related to that.

4 "QUESTION: And was it concerning to you, when you
5 were voting on SB 14, that the Latino population in
6 Texas might live disproportionately further from DPS
7 offices?

8 "ANSWER: I'm not sure that it was something that I
9 was worried about when I voted for it. I think my
10 concerns had been satisfied.

11 "QUESTION: Do you recall testimony from various
12 interest groups that African Americans and Hispanics
13 would have disproportionate burdens as a result of SB
14 14?

15 "ANSWER: That was asserted by some groups.

16 "QUESTION: Did you do anything to look into these
17 assertions or satisfy yourself about whether these
18 assertions were accurate?

19 "ANSWER: Yes, that was a part of the debate, and
20 that would have been when I considered it.

21 "QUESTION: And I understand it was part of the
22 debate. What I'm asking is slightly different, and
23 that's whether you did anything to determine whether
24 the assertions by those groups about the
25 disproportionate burdens on the minority community

1 were true?

2 "ANSWER: Yes, that would have been part of what I
3 considered during the debate, both in Committee and
4 on the Floor.

5 "QUESTION: And I understand -- I understand that as
6 a result of considering legislation you hear
7 testimony and you have to think about the testimony.
8 Did you do any research to determine whether the
9 claims of the minority community that this
10 legislation would have as disproportionate impact on
11 their constituents was accurate?

12 "ANSWER: I -- I don't have a specific recollection.
13 My staff might have done some work on that but, you
14 know, I can't -- I can't sit here and tell you that I
15 did or I didn't.

16 "QUESTION: Did you do any research when you were
17 debating SB 14 about what percentage of African
18 Americans owned concealed handgun licenses in Texas?

19 "ANSWER: I don't have a recollection that I did or I
20 didn't.

21 "QUESTION: Was any statistical information about
22 that available to you when you voted on Senate Bill
23 14, to your knowledge?

24 "ANSWER: There may have been, I don't recall.

25 "QUESTION: Would that information have been

1 important to you in determining whether to vote for
2 the bill?

3 "ANSWER: Probably not.

4 "QUESTION: Did you look into the ethnic makeup of
5 people living below the poverty line in connection
6 with your debate about voter ID legislation in 2011?

7 "ANSWER: I do not recall at this time.

8 "QUESTION: Would knowing that African Americans and
9 Hispanics disproportionately make up those living
10 below the poverty line in Texas have made a
11 difference to you in your consideration of SB 14?

12 "ANSWER: You know, the provisions of Senate Bill 14
13 were that you could get this election identification
14 certificate at no cost, and so I don't think that
15 that was really an issue that I would have given a
16 lot of consideration to."

17 **(End of reading excerpts)**

18 **MS. RUDD:** That concludes our reading. And, your
19 Honor, I just want to draw your attention to two other
20 exhibits, PL-157, which is Senate Resolution 98 from the 67th
21 legislative session that was mentioned in that reading; and PL-
22 172, which is Senate Resolution 14 from the 81st legislative
23 session. Thank you.

24 **THE COURT:** Okay. We can go ahead and take a morning
25 break. During the lunch hour we are going to be in recess from

1 12:00 to 1:30 today. Okay.

2 **MR. SPEAKER:** Thank you, your Honor.

3 **THE CLERK:** All rise.

4 (A recess was taken from 10:24 a.m. to 10:41 a.m.; parties
5 present)

6 **THE COURT:** All right.

7 **MR. SCOTT:** Your Honor, there are -- not the next one
8 but the next two out of the next three are Department of
9 Justice witnesses and I think the Department of Justice has
10 approached the State about how to perhaps handle the reading of
11 that information. Some of it evidently contains some
12 information that does in fact relate to law enforcement
13 operations that just from a practical standpoint would be
14 better not having it on the public record.

15 It's something we can hand to you but it's pretty
16 clear from our understanding that you've already got more than
17 your fair share of reading to do --

18 **THE COURT:** Okay.

19 **MR. SCOTT:** -- and you wanted it read and so we're
20 happy to do that but --

21 **THE COURT:** Well, how much is it? What are we
22 talking?

23 **MS. WOLF:** Um.

24 **MR. SCOTT:** I think one is a 17 page exert and the
25 other's a 19 page exert out of depositions.

1 **THE COURT:** So is the proposal from both sides that
2 you all just give that to me and then what do we do with the
3 records, seal that portion? I'm not sure exactly what the
4 request is.

5 **MR. SHAPIRO:** The United States' request would be for
6 the Court to be given the documents so they could review them
7 under seal and you know, I don't think it would take that long
8 for the Court to review --

9 **THE COURT:** Okay.

10 **MR. SHAPIRO:** -- those documents.

11 **THE COURT:** And then for purposes of the record what
12 are we doing for it to be in the record? We're just going to
13 admit them sealed, what you give me and it's not going to be
14 part of the official transcript as -- for Court reporting
15 purposes?

16 **MS. WOLF:** Sure, your Honor. And -- I mean, the
17 other thing we can do is we're submitting some exhibits under
18 seal, we could mark them as exhibits if you want to just have
19 them that way and we're put them on the drive of the sealed
20 exhibits.

21 **THE COURT:** That's fine.

22 **MS. WOLF:** Okay.

23 **MR. SHAPIRO:** Thank you, your Honor.

24 **MS. WOLF:** Thank you, your Honor.

25 **THE COURT:** Okay.

1 **MR. SCOTT:** That takes two of the readings off the
2 list.

3 **THE COURT:** Okay. And that's who?

4 **MS. WOLF:** Sorry.

5 **MR. SHAPIRO:** It's Frary and Flusher.

6 **THE COURT:** Who?

7 **MR. SHAPIRO:** Michelle Flusher.

8 **MS. WOLF:** Flusher and Debra Frary.

9 **THE COURT:** Okay. How do you spell Michelle's name?
10 Last name?

11 **MS. WOLF:** F-L-U-S-H-E-R.

12 **MR. SHAPIRO:** That's correct, your Honor.

13 **THE COURT:** Okay.

14 **MR. SHAPIRO:** Can we approach with the excerpt --

15 **THE COURT:** Yes.

16 **MR. SHAPIRO:** Thank you.

17 **MR. SCOTT:** We're going to mark those as Exhibits
18 what for the record?

19 **MS. WOLF:** John, it will be 2747 and 2748.

20 **MR. SCOTT:** 2747 was the summary.

21 **MR. SPEAKER:** (indiscernible)

22 **MR. SCOTT:** Oh, okay.

23 **THE CLERK:** (indiscernible)

24 **MR. SCOTT:** Yes. Your Honor (indiscernible) that's
25 being placed under seal is the excerpts from Debra Frary,

1 F-R-A-R-Y. We've marked as Defense Exhibit 2747 and we would
2 like this to be placed into evidence and put under seal.

3 **THE COURT:** All right. The second?

4 **MR. SCOTT:** And the second is the deposition exerts
5 of Michele Slusher and it's being marked as 2748 and
6 (indiscernible) move for its admission.

7 **THE COURT:** All right. So those will be admitted
8 under seal by agreement, correct? Okay.

9 **(The Court received Defense Exhibit 2747 and Exhibit 2748**
10 **into evidence and placed under seal)**

11 **MR. SHAPIRO:** Your Honor, (indiscernible)

12 **THE COURT:** Okay.

13 **MS. WOLF:** And your Honor, our next reading will be
14 from the deposition of Carolyn Guidry and there's one
15 housekeeping matter that's also related to that. There's an
16 exhibit, Defendants' 456, which was one of the exhibits we
17 identified for you on September 2nd which we're still trying to
18 work out amongst ourselves because it's a 600 page exhibit. I
19 sent the pages to counsel this morning but they needed some
20 time to review so prior to the closing we're get your honor
21 whatever final version of that exhibit is it.

22 **THE COURT:** Okay.

23 **MS. WOLF:** But it's 456 and it's related to this
24 witness.

25 **THE COURT:** Okay.

1 **MR. HEBERT:** That's correct.

2 **THE COURT:** So now we're reading who?

3 **MS. WOLF:** (indiscernible)

4 **THE COURT:** All right.

5 **EXAMINATION OF CAROLYN GUIDRY**

6 **BY EXCERPTS OF DISPOSITION TESTIMONY**

7 **(QUESTIONS READ BY MR. WHITLEY; ANSWERS READ BY MS. WOLF)**

8 "QUESTION: State your name for the record, please.

9 "ANSWER: Carolyn Guidry.

10 "QUESTION: Do you understand you're not a party to
11 this lawsuit.

12 "ANSWER: I am.

13 "QUESTION: Okay. And you're the County Clerk for
14 Jefferson County, is that correct?

15 "ANSWER: That's correct.

16 "QUESTION: Excellent. So, to start us off, can you
17 give us a bit of background about yourself, where
18 you're from, where you went to school, past jobs?

19 "ANSWER: I ran for office in 2004 for County Clerk
20 and I was elected at that time for an unexpired term.
21 So I've been County Clerk since October of 2004. And
22 I'm serving in my ninth year as County Clerk. And as
23 County Clerk I oversee the elections for Jefferson
24 County.

25 "QUESTION: And did you run with a political party

1 when you ran for County Clerk?

2 "ANSWER: Yes, I did.

3 "QUESTION: And which party was that?

4 "ANSWER: Democrat party.

5 "QUESTION: Excellent. Have you had any other
6 experience working in a campaign?

7 "ANSWER: I've worked campaigns since I was about 12
8 years old. I've always done I get out to vote
9 campaigns. I have -- my uncle was very politically
10 active so I've been involved in campaigns since he --
11 at a very, very young age. So I've always been
12 involved especially being a union official I was
13 always very, very involved so yes.

14 "QUESTION: Okay. So you've been doing this now for
15 about nine years and how many staff do you have in
16 your office?

17 "ANSWER: As a County Clerk I have 35 people in my
18 office. For the election department I have five
19 people in the election department.

20 "QUESTION: And who are the five that are in the
21 election department?

22 "ANSWER: Right now the election manager is Naomi
23 Doyle. The election programmer is Frederick Cribbs
24 (Phonetic). The warehouse manager is Toy Linton. I
25 have Denise Plumber as a voting technician and then

1 Adrian Taylor is also a voting technician.

2 "QUESTION: And what do each of those employees do?
3 What are their responsibilities?

4 "ANSWER: Naomi Doyle is the election manager. She
5 oversees the entire department. So she's responsible
6 for everything that goes on starting with the
7 processing of all the mail ballots, all the way down
8 to everything that they do to make sure that they get
9 all the information they need to make sure the
10 program is done, to make sure the equipment is
11 processed -- the equipment is programmed, everything
12 that they need is done. Just make sure that they are
13 made ready for all the elections.

14 "QUESTION: Okay.

15 "ANSWER: Frederick Cribs, the programmer which he is
16 in training. He's new. And he does not do all that
17 programming right now. We're outsourcing that. But
18 once he gets fully training he will do all the
19 programming of our ballots and stuff. Right now he
20 does other website updating, the EA tablets that we
21 use to process the voters and stuff. So he has a lot
22 of other responsibilities as well.

23 Toy Taylor, she's the warehouse supervisor. She
24 maintains all the equipment. She actually works with
25 programming the equipment once we get the program to

1 program each (indiscernible) once it's sent out to
2 the field. They also help -- all of them help with
3 all the testing and everything before it is deployed.
4 Of course the voting technicians work under the
5 direction of the warehouse supervisor with all the
6 testing and making sure everything is operable.

7 "QUESTION: Excellent. To go back for a second, did
8 you receive a deposition notice today that requested
9 documents?

10 "ANSWER: Yes, I did.

11 "QUESTION: And did you bring documents with you
12 today?

13 "ANSWER: Yes, I did.

14 "QUESTION: And could you describe generally what's
15 included in those documents?

16 "ANSWER: Well, what's in those documents, first I
17 pulled the Senate Bill which is what we're talking
18 about. I also pulled things like the press releases
19 that we did pertinent to the photo ID, signs that we
20 post at the polling locations, training material that
21 we use to train our poll workers. Public request we
22 got pertaining to the photo ID or anything to do with
23 the photo ID or the Senate Bill.

24 Any complaints we got about the photo ID, budget
25 allocations that we did to finance for photo ID,

1 money we spent for advertising for photo ID for what
2 was required when they come to the polling locations.
3 The mailing that went out for the 2014 Tax Statements
4 that went out, communications that I had between
5 Judge Branick as well as the Secretary of State that
6 was regarding photo ID.

7 Communications and emails that we had when we were
8 trying to setup, setup for EIC in order for the
9 people in Jefferson County that did not have the
10 proper photo ID to be able to obtain their EIC
11 Certificates to be able to vote, provisional ballots
12 that we had during the March primary and the runoff
13 election that had to do with photo ID, people that
14 had to vote originally as well as the list of our
15 election workers. And then we only had one alleged
16 incident that might have been voter fraud. Those are
17 the documentation that I pulled.

18 "QUESTION: Excellent and was there someone in your
19 office who was put in charge of collecting all the
20 documents that were responsive or did you do that
21 yourself?

22 "ANSWER: I collected those documents.

23 "QUESTION: You did that, okay. And was there any
24 search for documents outside of the County Clerk's
25 Office but that might be in possession of the County?

1 "ANSWER: No.

2 "QUESTION: Closer to the election?

3 "ANSWER: What we normally do is we start training
4 before the early voting period starts. So normally
5 we have training like a month before early training
6 starts. We were in training for at least two weeks
7 because we have 200 people for training. So you have
8 training classes four days a week. They're like two
9 or three hour sessions and people come out to the
10 County session to train.

11 "QUESTION: So you offer them four days a week. Are
12 people expected to come all four days or do they pick
13 one?

14 "ANSWER: No, they only come for two to three -- two
15 to three hours one day. And we assign them classes.

16 "QUESTION: So this is an in person training?

17 "ANSWER: Right.

18 "QUESTION: Okay. So the training that the poll
19 workers in Jefferson County received, is it just the
20 in person or do they also do an online training?

21 "ANSWER: They have some online training as well.

22 "QUESTION: And do you know if it's voluntary or is
23 it mandatory?

24 "ANSWER: Oh, it's mandatory for us because we have a
25 tracking system and we can tell whether or not they

1 have taken all the classes.

2 "QUESTION: Okay. And how many classes do they have
3 to take online?

4 "ANSWER: It's a whole program of classes. I mean,
5 it's like -- I'd have to look at that program. It's
6 our clarity program and it's just a different course
7 that tells you how to set up the polling location.
8 It's tells you how to qualify a voter. It's just a
9 regular normal setup of poll worker training and it
10 is different -- I mean, it just has different classes
11 of training of how a to b of what you do the entire
12 day.

13 "QUESTION: Was there any special training on the
14 photo ID and how to accept a voter's identification?

15 "ANSWER: No, the training on photo ID was the
16 training that we gave in person.

17 "QUESTION: And did you receive materials from the
18 Secretary of State like power points or other
19 training materials to use when you educated your
20 employees or your coworkers?

21 "ANSWER: We did get some materials from the
22 Secretary of State that we implemented into our
23 entire training.

24 "QUESTION: So did you use those or did you just
25 incorporate those into the County training?

1 "ANSWER: We incorporated some of it into the
2 County's training.

3 "QUESTION: Okay. So you also mentioned that you did
4 some stuff to educate voters. What types of things
5 did you do to educate voters?

6 "ANSWER: We had radio time that we to educate the
7 voters. We did workshops to educate the voters. We
8 would reach out to different organizations and go out
9 and talk to them. Like I said we did the tax inserts
10 for every tax statement that went out. I have that
11 material here for you. We did it English and
12 Spanish. They were little, you know, little slips
13 that went out in every tax statement to let them know
14 when you go to vote now you have to have photo ID --
15 voter ID. Those are the things we did to make sure
16 that voters knew when they went to vote, effective
17 immediately, that you now had to have these types of
18 photo ID.

19 "QUESTION: Did the County do any billboards?

20 "ANSWER: No, we did not do any billboards.

21 "QUESTION: Okay. Who's generally responsible for
22 voter education activities in the State? Is it
23 usually the Secretary of State's Office, the Counties
24 or some combination of both?

25 "ANSWER: For voter education I think it's probably a

1 combination.

2 "QUESTION: And did you feel that it was particularly
3 important to educate voters about the photo ID law
4 with radio ads, tax inserts, etc.?

5 "ANSWER: Oh, definitely.

6 "QUESTION: And why did you think that was important?

7 "ANSWER: Well, I think it was a way to reach our
8 local voters. I think it was the best way for us to
9 reach our local voters anyway.

10 "QUESTION: And did your office do anything to
11 analyze the impact of SB 14 on voters?

12 "ANSWER: Not other than we lifted the number of --
13 we didn't have a horrific amount of provisional
14 ballots when we looked at it. I think we had a total
15 of seven over the March primary (indiscernible)
16 election which I guess is an enormous amount. But I
17 don't -- isn't an enormous amount but I don't think
18 that we've had a great amount of people not having ID
19 in the past. But of course most people come just
20 with their voter registration cards in the past. So
21 I don't know.

22 "QUESTION: And were there any provisional ballots in
23 the May Special Election?

24 "ANSWER: None to do with photo ID.

25 "QUESTION: Okay. Now you mentioned -- so you

1 brought up before that there may be one allegation of
2 voter fraud. Is there -- if you think that there's
3 voter fraud going on in the County, what happens? Do
4 you refer that to someone?

5 "ANSWER: Yes, I refer it to the District Attorney's
6 Office.

7 "QUESTION: Anyone else?

8 "ANSWER: No I leave it up to them where it goes from
9 there.

10 "QUESTION: Okay. Now, to turn to the substantially
11 similar names provision that we've talked about. Who
12 makes the decision -- when a voters who do they hand
13 their ID too?

14 "ANSWER: The clerk at the desk, whoever is
15 processing the voter at that time.

16 "QUESTION: And so the election clerk processes the
17 voter and what happens, the voter hands their ID
18 over?

19 "ANSWER: Right.

20 "QUESTION: And then the election clerk -- what does
21 the election clerk do with the ID?

22 "ANSWER: WE have voter administration tablets and we
23 have all the voters listed. So there names should
24 match what their voter registration says and in the
25 voter registration database they also have their

1 formal names -- former names as well. For instance,
2 for a female you may have a former name which will
3 help with your identification.

4 "QUESTION: So the election clerk takes the ID, looks
5 it up in this tablet, do they swipe the ID in a
6 machine?

7 "ANSWER: No.

8 "QUESTION: Okay. So they just type in the last name
9 or their first name?

10 "ANSWER: Right.

11 "QUESTION: And look the person up?

12 "ANSWER: Uh-huh.

13 "QUESTION: And so the election clerk has the ID.
14 Are they the ones who decide whether the ID is
15 substantially similar to the voter list?

16 "ANSWER: Right.

17 "QUESTION: And did the County give any guidance
18 beyond what the Secretary of State's Office gave out
19 about what substantially similar means?

20 "ANSWER: Yes, that's part of our training.

21 "QUESTION: And what kind of additional guidance did
22 you give?

23 "ANSWER: Well, it was part of the training that came
24 from the Secretary of State's Office about similar
25 names and it's part of the training that we have.

1 You know, just basically you have to look at names
2 and some things are just kind of like common sense
3 stuff.

4 "QUESTION: And this -- is this the training that the
5 Secretary of State's Office gave --

6 "ANSWER: Right.

7 "QUESTION: -- or is this stuff that the County
8 developed?

9 "ANSWER: The training the Secretary of State gave
10 that we implemented.

11 "QUESTION: Okay. So did you use the same examples
12 from the Secretary of State's Office?

13 "ANSWER: Right.

14 "QUESTION: And did you provide any additional
15 examples that the County developed?

16 "ANSWER: I did which is kind of funny. I provided
17 like even -- what I provided also was on there. Like
18 when you're talking about transposing numbers like
19 for their birthdates sometimes, you know. Even on
20 their driver's license they will transpose numbers.
21 They need to get it corrected. Look at the
22 birthdates, like it may be 01-27-52. They may have
23 01-17-52 or they may misspell the name and stuff.
24 Even looking at a picture, sometimes on their
25 driver's license it may not look exactly like them.

1 They may have changed their hairstyle, something but
2 you've got to really look and use some common sense
3 sometimes, is that really that person? And that's
4 what I expect them to do and then when all else
5 fails, I tell them that that's why they have the
6 judges and there are alternate judges there to help
7 them make those decisions. And if all else fails
8 before you turn down a voter that's what we're here
9 for. Many days I jump in a car, drive to a polling
10 location to make a decision.

11 "QUESTION: So did that happen at all in any of the
12 elections where you got a call and they said we have
13 an issue and you had to go to a polling place?

14 "ANSWER: Not for similar names. I've not had to do
15 that you know.

16 "QUESTION: Okay. And so if the election clerk
17 thinks that someone's name is substantially similar
18 but not an exact match, what happens?

19 "ANSWER: If they think it's substantially similar --

20 "QUESTION: Uh-huh.

21 "ANSWER: -- and not a match, then they should let
22 them vote.

23 "QUESTION: And does the voter have to do anything in
24 order to vote?

25 "ANSWER: They need to fill out a form.

1 "QUESTION: Okay. And what form is that?

2 "ANSWER: It's just a form saying yes, that's me.

3 And we have forms for that and it's in their kit and
4 they fill it out.

5 "QUESTION: Okay. Did you give me any guidance
6 perhaps on nick names, like did you give a list of
7 nick names that people go back for various names?

8 "ANSWER: Yeah, I think in here they even have
9 samples of stuff like that.

10 "QUESTION: When you say they have examples, is that
11 the Secretary of State's training?

12 "ANSWER: Well, the Secretary of State's training.

13 "QUESTION: So the complaint was that one of the
14 election workers was not implementing the law as it
15 was intended?

16 "ANSWER: Right.

17 "QUESTION: Are there any other complaints from
18 voters in Jefferson County about the photo ID law?

19 "ANSWER: Not other than that -- than the one that I
20 got from her and she had another one on there as
21 well, basically the same thing.

22 "QUESTION: That somebody was not asking for ID when
23 they should have been?

24 "ANSWER: Right, right, right.

25 "QUESTION: And so you've not received any other

1 complaints from constituents about this photo ID law?

2 "ANSWER: Have I received any complaints?

3 "QUESTION: Yes.

4 "ANSWER: No. You mean as far as going to the
5 polling locations?

6 "QUESTION: The voters, yeah.

7 "ANSWER: No.

8 "QUESTION: Okay. Are you aware that SB 14 provides
9 a disability exemption for voters with certain types
10 of disabilities?

11 "ANSWER: I'm aware of that.

12 "QUESTION: And there's a regulation from the
13 Secretary of State's Office that offers some guidance
14 on substantially similar names, is that correct?

15 "ANSWER: That's correct.

16 "QUESTION: Okay. Let me ask you, are you aware of
17 any examples in Jefferson County of a register voter
18 who has had difficulty obtaining an EIC?

19 "ANSWER: I'm not aware.

20 "QUESTION: And when they were actually set up in
21 February, did they provide you with any assistance in
22 reaching out to the residents of Jefferson County
23 regarding the availability of the mobile EIC
24 stations?

25 "ANSWER: When they set up in February, yes they did.

1 They did some radio announcements.

2 "QUESTION: But the Secretary of State's Office did
3 the radio announcement?

4 "ANSWER: Yes, they did.

5 "QUESTION: Now, with respect to what you would look
6 for or what you would train the poll workers to look
7 for with respect to a proper military ID, have you
8 been provided examples by the Secretary of State as
9 to what the various military IDs look like?

10 "ANSWER: Yes.

11 "QUESTION: Okay. During those hearings you heard
12 any -- have you heard any of the citizens of
13 Jefferson County making complaints to the
14 Commissioner's Court that they have been unable to
15 obtain photo IDs that would allow them to vote?

16 "ANSWER: No, sir.

17 "QUESTION: Okay. Has that issue even come up to
18 your knowledge at any of the Commission Court
19 Hearings that you've attended?

20 "ANSWER: No, it has not.

21 "QUESTION: Okay. Have they, putting SB 14 aside for
22 the moment, has the Commissioner's Court generally
23 been supportive of your offices' attempt to educate
24 the voters about any election issues?

25 "ANSWER: Yes, sir.

1 "QUESTION: Okay. In other words, your efforts to
2 educate voters did not begin when SB 14 went into
3 effect, correct?

4 "ANSWER: No, sir.

5 "QUESTION: There was lots of issues that you worked
6 to educate voters on that have nothing to do with
7 SB 14, correct?

8 "ANSWER: Yes, sir.

9 "QUESTION: Okay. Now how would you characterize
10 your offices' working relationship with the Texas
11 Secretary of State's Elections Division?

12 "ANSWER: We have a good working relationship with
13 them.

14 "QUESTION: Okay. And if you have a question about
15 SB 14 or anything else, are you able to contact the
16 Secretary of State's Office and ask those questions?

17 "ANSWER: Yeah.

18 "QUESTION: And are they responsive to you?

19 "ANSWER: Yes.

20 "QUESTION: Okay. So if you have a question on
21 elections, at least from the State's side or the
22 Secretary of State's side, they are willing to talk
23 to you and willing to give you the answers, correct?

24 "ANSWER: Right.

25 "QUESTION: Okay. And also do you receive emails

1 frequently from the Secretary of State's Office?

2 "ANSWER: We get advisories all the time.

3 "QUESTION: Has any groups or private organizations
4 contacted you and offered to give you assistance in
5 educating voters of Jefferson County about the
6 requirements of SB 14?

7 "ANSWER: No, they've no.

8 "QUESTION: Okay. And I believe you testified that
9 there were not provisional ballots cast during the
10 2013 Constitutional Amendment Election?

11 "ANSWER: That's correct.

12 "QUESTION: Okay. Do you know of anyone being turned
13 away from the polls during the Constitutional
14 Election -- Constitutional Amendment Election of 2013
15 because they did not have a photo ID?

16 "ANSWER: No, I do not.

17 "QUESTION: Okay. Well, let me ask it this way then.
18 During the Constitutional Amendment Election of 2013
19 to your knowledge was there any issues raised to you
20 with respect to problems caused by the substantially
21 similar name aspect of SB 14?

22 "ANSWER: Were there any problems raised?

23 "QUESTION: Right.

24 "ANSWER: Not that I'm aware of.

25 "QUESTION: Okay. So provisional ballots are cast

1 for a lot of reasons, other than the requirements of
2 SB 14, correct?

3 "ANSWER: That's correct.

4 "QUESTION: Okay. So you think with respect to the
5 March Primary of 2014, you think there were three
6 provisional ballots cast because of SB 14?

7 "ANSWER: Uh-huh.

8 "QUESTION: And do you know what the basis of each of
9 those were? Was it because the person didn't have
10 any ID or didn't have a correct ID or do you know?

11 "ANSWER: No ID.

12 "QUESTION: No ID at all?

13 "ANSWER: Well, I can tell you in a minute. Well,
14 this one says failed to present acceptable ID on the
15 first one. The second one says failed to present
16 acceptable ID. On the third one it says expired ID
17 and on the fourth one it was expired ID.

18 "QUESTION: All right. Now did you hear any
19 complaints from anyone that they were not allowed to
20 vote in the March 2012 Primary because of a similar
21 name issue?

22 "ANSWER: No, sir.

23 "QUESTION: And I guess it would have been more a
24 dissimilar name?

25 "ANSWER: Right.

1 "QUESTION: Did anyone complain to you, hey, I was
2 not allowed to vote because my name did not match my
3 ID?

4 "ANSWER: No.

5 "QUESTION: Okay. Did anyone complain to you, to
6 anyone in your office, that they were not allowed to
7 vote in the March 2014 Primary because the name on
8 the voter roll did not match exactly the name on
9 their -- the ID that they presented?

10 "ANSWER: No.

11 "QUESTION: Okay. Did anyone complain to you after
12 the 2014 March Primary that for any reason SB 14
13 prevented them from being able to vote?

14 "ANSWER: No, sir.

15 "QUESTION: Okay. Now, was the 2014 March primary
16 the issue where the gentleman complained that he was
17 not asked for an ID? Remember, we spoke that
18 earlier?

19 "ANSWER: Let me see if I have that email.

20 "QUESTION: Do you recall the letter I'm talking
21 about?

22 "ANSWER: Yes, I do.

23 "QUESTION: Okay. But I believe it was a poll worker
24 who wrote the letter the complaint that had been made
25 to her, correct?

1 "ANSWER: Yeah. It was for the March 4th primary,
2 because she sent it March 5th.

3 "QUESTION: So that particular letter, who sent it
4 before you put it back in the stack?

5 "ANSWER: It was Sherry Boudreaux.

6 "QUESTION: That's the letter that she wrote to you?

7 "ANSWER: Yes. She's one of the election judges.

8 "QUESTION: Did she relate the individual's name who
9 made the complaint?

10 "ANSWER: No, she did not.

11 "QUESTION: Okay. So that letter is the only
12 complaint you're aware of in March for the 2014
13 primary related to SB 14, correct?

14 "ANSWER: Yes.

15 "QUESTION: And the gentleman who made that complaint
16 was not complaining that he was not allowed to vote
17 because of the photographic requirement, correct?

18 "ANSWER: No, he was allowed to vote. He was
19 complaining why was he not asked for his photo ID.

20 "QUESTION: Okay. So he felt like he should have
21 been asked for a photo ID, correct?

22 "ANSWER: Right.

23 "QUESTION: And he was not?

24 "ANSWER: Yeah.

25 "QUESTION: Okay. Did he indicate that he would have

1 been more comfortable if he had asked -- if he had
2 been asked to show his photo ID?

3 "ANSWER: I guess he was trying to figure out why the
4 same rules didn't apply to him if everybody else was
5 being asked.

6 "QUESTION: And to him, it was important anyone show
7 the photo ID, correct?

8 "ANSWER: I can assume that was his reason.

9 "QUESTION: Okay. And that's the only complaint that
10 you recall from the 2014 primary?

11 "ANSWER: Yes, that's correct.

12 "QUESTION: And there was none with respect to the
13 2013 election, correct?

14 "ANSWER: No, sir.

15 "QUESTION: All right. Then the next election was
16 the runoff election?

17 "ANSWER: Yes.

18 "QUESTION: Was that in May?

19 "ANSWER: Well, it actually wasn't the next one.

20 "QUESTION: What was the next election after the
21 March, 2014 primary?

22 "ANSWER: We had the Senate District, May 5th.

23 "QUESTION: Okay.

24 "ANSWER: That was Senate District 4, we had the May
25 5th election. And then we had the runoff on May

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27th.

"QUESTION: That was a special election?

"ANSWER: Yeah.

"QUESTION: Who had been the previous senator, or who vacated their position?

"ANSWER: Tommy Williams.

"QUESTION: All right. Were there any provisional ballots cast during that particular election?

"ANSWER: No, there were none.

"QUESTION: Okay. Were there any similar names afterwards filled out during that election?

"ANSWER: There were none.

"QUESTION: Did you receive any complaints that anyone complained that they were not allowed to vote during that election because of any of the -- any of the photo ID requirements?

"ANSWER: Not that I'm aware of.

"QUESTION: Okay. Did anyone from your office report to you they had hear complaints that someone had not been allowed to vote because of the requirements of SB 14 or photo ID?

"ANSWER: No, sir.

"QUESTION: Okay. So with respect to -- well, let's just go on. The next election then would have been the runoff, correct?

1 "ANSWER: The runoff, May 27th.

2 "QUESTION: All right. And with respect to the May
3 27th runoff, were provisional ballots cast?

4 "ANSWER: Yes.

5 "QUESTION: Okay. How many were cast?

6 "ANSWER: I think there were seven, but three
7 pertaining to photo ID.

8 "QUESTION: How many total provisional ballots, if
9 you have it?

10 "ANSWER: Total? Eleven total.

11 "QUESTION: Okay. And do you know what -- why --
12 what the provisional ballots were, other than the
13 ones that were cast because of SB 14? What types of
14 issues?

15 "ANSWER: Yeah, they were like -- they would show up
16 and they already had a ballot by mail, and they would
17 show up at the polling location to vote when they
18 already had a mail ballot that we had or --

19 "QUESTION: Okay. Based upon the five elections in
20 Jefferson -- or four -- based on the five elections
21 that's occurred in Jefferson County after SB 14 has
22 become implemented or became implemented, do you,
23 based upon that experience, have any reason to think
24 SB 14 has prevented people from voting in Jefferson
25 County?

1 "ANSWER: I don't think it's prevented people from
2 voting.

3 "QUESTION: Do you see anything in the numbers of
4 those elections that would indicate to you that there
5 has been a decrease in voting in Jefferson County
6 after the implementation of SB 14?

7 "ANSWER: No, sir.

8 "QUESTION: Okay. Whose idea was it to send out with
9 the tax -- property tax statement, I assume?

10 "ANSWER: Right.

11 "QUESTION: Whose idea was it to send out, with
12 property tax statements, the SB 14 information?

13 "ANSWER: It was mine.

14 "QUESTION: Why did you do that?

15 "ANSWER: Because it was the cheapest way I could
16 think to reach all the people in Jefferson County.

17 "QUESTION: Okay. And do you think that was
18 effective?

19 "ANSWER: I hope so.

20 "QUESTION: When will your office have to start
21 preparing to get ready for the election, for the 2014
22 election?

23 "ANSWER: I've already begun.

24 "QUESTION: You've already begun?

25 "ANSWER: We've already begun. We already contacted

1 the early voting and polling locations to put them on
2 notice to make the facilities ready for November. We
3 have already done that, so we've already begun.

4 "QUESTION: Okay. So elections don't occur just
5 within a matter of days. There's months and months
6 of planning, correct?

7 "ANSWER: Months and months of planning.

8 "QUESTION: Okay.

9 "ANSWER: Absolutely."

10 **(Pause)**

11 **MS. SIMSON:** Good morning, your Honor. Emma Simson
12 for the Veasey/LULAC Plaintiffs. I'll be reading and Tania
13 Faransso will be reading the answers.

14 **EXAMINATION OF CAROLYN GUIDRY**

15 **BY EXCERPTS OF DEPOSITION TESTIMONY**

16 **(QUESTIONS READ BY MS. SIMSON; ANSWERS READ BY MS. FARANSO)**

17 "QUESTION: Could you go ahead and state your name
18 for the record, please?

19 "ANSWER: Carolyn Guidry.

20 "QUESTION: Okay. And you are the County Clerk for
21 Jefferson County; is that correct?

22 "ANSWER: That's correct. I ran for office in 2004
23 for county clerk, and I was elected at that time for
24 an unexpired term. So I've been county clerk since
25 October of 2004. And I'm serving in my ninth year as

1 county clerk. And as county clerk, I oversee the
2 elections for Jefferson County.

3 "QUESTION: Did the Secretary of State's Office
4 request any information about how many provisional
5 ballots had been cast in the elections because of an
6 ID problem?

7 "ANSWER: The Secretary of State's Office did not.

8 "QUESTION: Are you aware that other counties have
9 received authorization to issue EICs through their
10 county clerk's office?

11 "ANSWER: No, I'm not.

12 "QUESTION: Is that something that you would think
13 the county would be interested in doing if it were
14 possible for the county clerk's office to get
15 authorization to issue EICs?

16 "ANSWER: Yes.

17 "QUESTION: And you mentioned two mobile units on two
18 different days, so I took that to mean there was one
19 mobile unit on each day; is that correct?

20 "ANSWER: That's correct.

21 "QUESTION: And were those two days before the
22 November election? When were those --

23 "ANSWER: They were before the March primary.

24 "QUESTION: So there were no mobile EIC units before
25 the November election?

1 "ANSWER: There were not. They did contact me prior
2 to the November election, but they contacted me like
3 days before they wanted me to bring the unit, and I
4 didn't think that was very beneficial because it did
5 give us adequate time to notify the people in order
6 to give them adequate time to be anywhere. You know,
7 if it's going to be a benefit, I think you need to
8 have time to at least be able to circulate maybe to
9 the church or to the organizations, 'Hey, they're
10 going to be here,' so you would have a good
11 attendance.

12 "QUESTION: So the Secretary of State's office
13 contacted you about having a mobile EIC unit for the
14 November election, but you declined because you
15 didn't feel you had enough time to organize it?

16 "ANSWER: That's correct.

17 "QUESTION: So for the March election you said you
18 had two mobile units before those. And how far in
19 advance was that arranged, can you recall? Was it a
20 few days or a few weeks before the election that you
21 had those units?

22 "ANSWER: Well, I think they actually came in
23 February. They actually came in February because
24 what they had told me in November when I declined,
25 they said, 'Well, if you don't want us to come now,

1 when do you want us to come?' I said, 'Maybe in
2 January some time.' They said, 'Okay. Contact us in
3 January.' So I started contacting them in January.
4 So then when I tried to set them up in January -- and
5 I had set up some dates. And then when I contacted
6 them, they said, 'No, we can't do it then,' after I
7 had set everything up. And then they turned around
8 and gave me some more dates. And then we set up
9 those dates which ended up being in February.

10 "QUESTION: And did they say why they couldn't do the
11 dates in January?

12 "ANSWER: Well, they said that I did not give them
13 enough time. So we went -- just went back and forth
14 for a while. So they ended up coming before the
15 early voting period started in February.

16 "QUESTION: And how much time approximately did you
17 have to advertise that those units were going to be
18 here?

19 "ANSWER: I have to look at these dates. I think
20 about a week maybe.

21 "QUESTION: So only about a week?

22 "ANSWER: Yeah, I think so.

23 "QUESTION: Okay. So when you did this campaign in
24 February to advertise the mobile EIC units, you think
25 you had about a week. Did you feel that was enough

1 time to advertise the mobile units?

2 "ANSWER: Well, it was better than a couple days. It
3 was better than a couple days.

4 "QUESTION: And you mentioned two locations were
5 used. What were those two locations?

6 "ANSWER: One location was the Alice Keith Community
7 Center on Highland. That's here in Beaumont. And
8 the other one was the Port Arthur Public Library. Of
9 course, that's in Port Arthur. And the dates were
10 February 26th and February 27th.

11 **MS. SIMSON:** Okay. And, your Honor, we're now going
12 to turn to page 53, line 13.

13 "QUESTION: So were the mobile units ever sent to
14 special events, like fairs?

15 "ANSWER: No. That was the only time that they were
16 down here.

17 "QUESTION: Was there ever any discussion about
18 sending mobile units to senior citizen centers?

19 "ANSWER: No. This was the only time that they were
20 going to come down here. This is the only time
21 offered to us, period.

22 "QUESTION: So the only instance of voter fraud that
23 you can recall is this one potential fraud related to
24 a request for a mail-in ballot?

25 "ANSWER: Right.

1 "QUESTION: And have you referred this case to the
2 district attorney's office?

3 "ANSWER: I have.

4 "QUESTION: Are you aware of any instances of voter
5 fraud in Jefferson County that SB 14 could have
6 prevented?

7 "ANSWER: No.

8 "QUESTION: So the only instance of voter fraud that
9 you're aware of is a mail-in ballot?

10 "ANSWER: That's correct.

11 "QUESTION: Did the Secretary of State's office
12 contact you at all about how the implementation of
13 SB 14 went in any of the elections?

14 "ANSWER: No, they have not.

15 "QUESTION: Did the Secretary of State's office
16 collect any information from you about how the
17 implementation of SB 14 went?

18 "ANSWER: No, they have not.

19 **MS. SIMSON:** And we're going to turn to page 76, line
20 22. Sorry, line 9.

21 "QUESTION: The county also has the ability to issue
22 certified copies of birth certificates; is that
23 correct?

24 "ANSWER: That's correct.

25 "QUESTION: And what is the cost of getting a

1 certified copy of a birth certificate?

2 "ANSWER: I think it's \$23.

3 "QUESTION: If a person comes into the office and
4 says, 'I need a certified copy of my birth
5 certificate,' does the clerk know to ask whether they
6 are looking for one of these to get an EIC?

7 "ANSWER: No, they're not going to ask.

8 "QUESTION: So typically, if I walked into the office
9 and said, 'I need a certified copy of my birth
10 certificate,' the person sitting at the desk would
11 say, 'That's going to be \$22?' Is that correct?

12 "ANSWER: Twenty-three dollars, that's correct.

13 "QUESTION: Twenty-three dollars. If a person shows
14 up at the polls and the information on their ID
15 doesn't exactly match the information on the poll
16 book, can they show other documents to show the
17 election clerk that they are who they say they are?

18 "ANSWER: They have to have a -- one of their
19 approved forms of photo ID.

20 "QUESTION: Could they, for instance, show a credit
21 card to show that their name has changed?

22 "ANSWER: No.

23 "QUESTION: Okay. So it's just based on the
24 information on their ID?

25 "ANSWER: Right.

1 "QUESTION: What about if a person comes back to cure
2 their ballot? Could they show additional
3 documentation then?

4 "ANSWER: There are forms of additional documentation
5 they can show to the voter registrar.

6 "QUESTION: Based on your experience as county clerk
7 and administering elections, do you think that the
8 substantially similar name provision is one that all
9 poll workers will interpret the same way?

10 "ANSWER: No.

11 "QUESTION: And why is that?

12 "ANSWER: Well, because, I mean, you have 400 people
13 thinking 400 different ways. There is no way they
14 are all going to think the same way.

15 "QUESTION: Where are the DPS offices located in
16 Jefferson County?

17 "ANSWER: Oh, the DPS office, you cannot get there.
18 They're not accessible, I can tell you that right
19 now. And that's part of the problem. That has been
20 part of the problem. And that's been part of the
21 complaint is because I know the one in Beaumont is
22 far out of the way, and there are no buses that run
23 out there. Now, the one --

24 "QUESTION: You say that's been part of the
25 complaint?

1 "ANSWER: That's been part of the complaint that I've
2 heard from people about the DPS office being one of
3 the only places that you can go and pick up your EIC
4 card, or even going to get any type of
5 identification, for anyone, whether it's EIC or just
6 an identification period, because it's not that
7 accessible. And I don't know where the one in Port
8 Arthur is at all. I know there's one out there, but
9 I don't know where it is. But, no, it's not
10 accessible.

11 "QUESTION: Have you heard any complaints from county
12 residents regarding the DPS offices?

13 "ANSWER: Well, yeah. They complaint it's not
14 accessible, it's far, and it's always too crowded.

15 "QUESTION: Do you have an opinion as to whether or
16 not the underlying documents that are necessary to
17 present in order to receive an EIC are free?

18 "ANSWER: They are not free.

19 "QUESTION: And when you say they are not free, what
20 is the basis of your opinion?

21 "ANSWER: Well, you have to have some type of a birth
22 certificate, or a marriage license, or some type of
23 form to prove who you are.

24 "QUESTION: And I believe you also testified that if
25 an individual enters into the office of vital

1 statistics to get a birth certificate, that they
2 would not be immediately informed of the reduced fee.
3 "ANSWER: Not unless they would tell the clerk what
4 the purpose was -- what they are there for, what they
5 need it for. I mean, it's not information that's
6 just volunteered. I mean, the clerk is not going to
7 say, 'Do you need a birth certificate for an EIC
8 card?'

9 "QUESTION: How has the county advertised regarding
10 the religious exemptions for photo IDs?

11 "ANSWER: We have not advertised anything about
12 exemptions, religious exemptions.

13 "QUESTION: Has the county advertised regarding
14 disability exemptions?

15 "ANSWER: No, we have not.

16 "QUESTION: Are you aware of whether the state has
17 provided any assistance in advertising that
18 information -- that type of information regarding
19 exemptions in Jefferson County?

20 "ANSWER: I'm not aware of any.

21 "QUESTION: And as the election administrator, is it
22 fair to say that if they had, you would be aware of
23 that?

24 "ANSWER: That's correct.

25 "QUESTION: Are you aware of any county resident

1 complaining to you or your staff regarding DPS
2 because of fear of being targeted in any fashion by
3 the DPS offices?

4 "ANSWER: Well, I don't know about fear. I guess
5 there was an initial dialogue whether or not if they
6 apply for EIC, could they be arrested if they had
7 warrants.

8 "QUESTION: When you say 'initial dialogue,' who was
9 this dialogue with?

10 "ANSWER: Just citizens of Jefferson County. I mean,
11 that was the initial dialogue any time they go to
12 DPS, though.

13 "QUESTION: And what is your understanding of --
14 could you please explain the substance of that
15 dialogue?

16 "ANSWER: I mean, most people think that when they go
17 to DPS, that DPS is going to run their name to see if
18 they have any warrants. I mean, I've known a lot of
19 people that if they have warrants, they go straight
20 from DPS to jail. I guess if you do the crime, you
21 do the time.

22 "QUESTION: What about underlying traffic tickets?

23 "ANSWER: Those, too.

24 "QUESTION: And what, if any, understanding do you
25 have about the process at DPS regarding running for

1 warrants for underlying tickets or traffic tickets?

2 "ANSWER: Well, I don't know what their process is.

3 "QUESTION: So as you sit here today, your testimony
4 is that you heard from county residents regarding
5 concerns related to being arrested at DPS and having
6 their names checked for tickets or traffic tickets,
7 but you don't know what that process is at DPS
8 currently?

9 "ANSWER: That's true.

10 "QUESTION: Regarding the mobile EIC stations, did
11 the Secretary of State's office assist in any way to
12 determine the appropriate locations for the mobile
13 EIC stations?

14 "ANSWER: No, they did not.

15 "QUESTION: Did they provide you with any data that
16 may suggest where the highest no matches may be in
17 Jefferson County?

18 "ANSWER: No, they did not.

19 "QUESTION: Okay. So you think with respect to the
20 March primary of 2014, you think there were three
21 provisional ballots cast because of SB 14?

22 "ANSWER: Uh-huh.

23 "QUESTION: And do you know what the basis of each of
24 those were? Was it because the person didn't have
25 any ID or didn't have a correct ID, or do you know?

1 "ANSWER: No ID.

2 "QUESTION: No ID at all?

3 "ANSWER: Well, I can tell you in a minute. Well,
4 this one says, 'Failed to present acceptable ID,' on
5 the first one. The second one says, 'Failed to
6 present acceptable ID.' On the third one, it says,
7 'Expired ID.' And on the fourth one, it was,
8 'Expired ID.'

9 "QUESTION: Okay. So --

10 "ANSWER: So I had two expired and two failed to
11 present.

12 "QUESTION: Okay.

13 "ANSWER: So it was four for the March 4th primary.

14 "QUESTION: Okay. And were any of those provisional
15 ballots cured?

16 "ANSWER: No, sir.

17 "QUESTION: Okay. So with respect to -- well, let's
18 just go on. The next election then would have been
19 the runoff, correct?

20 "ANSWER: The runoff, May 27th.

21 "QUESTION: All right. And with respect to the May
22 27th runoff, were provisional ballots cast?

23 "ANSWER: Yes.

24 "QUESTION: Okay. How many were cast?

25 "ANSWER: I think there were seven, but three

1 pertaining to photo ID. And these two are 'no
2 presented,' 'failed to present ID,' one, twice. Two
3 of them are fail to present ID and one of them is
4 just does not have acceptable ID, whatever that
5 means.

6 "QUESTION: Okay. Were any of those cured?

7 "ANSWER: No, sir.

8 "QUESTION: With respect to the DPS offices, you say
9 there's one in Beaumont and one in Port Arthur?

10 "ANSWER: Yes, sir, I think.

11 "QUESTION: That you know of?

12 "ANSWER: Yes, sir.

13 "QUESTION: Do you know the address of the one here
14 in Beaumont?

15 "ANSWER: No, sir. I know it's way out on Tram Road
16 somewhere.

17 "QUESTION: Do you know the location? Does 7200
18 Eastex Freeway sound familiar?

19 "ANSWER: That sounds right.

20 "QUESTION: Okay. Where would that be -- we're at
21 the courthouse today, correct? The district
22 attorney's office. In relation to where we are
23 today, where would the Beaumont DPS office be that's
24 at 7200 Eastex Freeway, just generally speaking?

25 "ANSWER: Catch the freeway, go 10, go 69, Eastex

1 Freeway, 69 going north, and it's all the way until
2 you get past 105, all the way out that way, exit 105.

3 "QUESTION: I'm not that familiar.

4 "ANSWER: Okay.

5 "QUESTION: How far do you think it is from here?

6 "ANSWER: It's a good little ways out. It's nothing
7 I don't want to walk to. It's about -- way out.

8 "QUESTION: How long do you think it would take you
9 to drive it?

10 "ANSWER: It would take 20, 25 minutes to get out
11 that way, 25.

12 "QUESTION: With respect to Jefferson County, or at
13 least the people that particular office would serve -
14 - I suppose Port Arthur has its own -- geographically
15 speaking, do you think that that's centrally located
16 for the people it's trying to serve?

17 "ANSWER: No, not at all.

18 "QUESTION: Okay. And are there people over the age
19 of 65 that you know prefer to vote in person instead
20 of by mail?

21 "ANSWER: Absolutely. We have some people that will
22 not vote early and they insist on going on election
23 day to cast their ballot.

24 "QUESTION: Before SB 14, what were generally the ID
25 requirements to vote?

1 "ANSWER: Your voter registration, any form of an ID
2 issued from DPS, your student ID. You could have
3 used a utility bill, you know. We had about nine or
4 ten different forms of ID that you could have used.

5 "QUESTION: And based on your experience as a county
6 clerk administering elections, did you think those
7 requirements were sufficient to secure the voting
8 requirements?

9 "ANSWER: They were sufficient."

10 **MS. SIMSON:** Thank you, and that's all.

11 **(Pause)**

12 **MR. WHITLEY:** Your Honor, this is an excerpt from the
13 deposition of Bryan Hebert. I have a copy for you. May I
14 approach?

15 **THE COURT:** Yes.

16 **EXAMINATION OF BRYAN HEBERT**

17 **BY EXCERPTS OF DEPOSITION TESTIMONY**

18 **(QUESTIONS READ BY MR. WHITLEY; ANSWERS READ BY MR. KEISTER)**

19 "QUESTION: Do you know what happened to Senate Bill
20 362 in the House?

21 "ANSWER: It looks like on May 23rd, 2009, it would
22 have -- it was placed on the major State calendar.
23 And my memory is that there's a fair amount of
24 opposition from Democrats in the House, some would
25 say stall tactics. They talked at length on bills

1 that normally would have been passed as a matter of
2 routine. To delay consideration of the bill on the
3 major State calendar, it was certainly, again, met
4 with sort of stiff partisan opposition in the House.
5 But I can't recall the specific details of its
6 demise.

7 "QUESTION: Is there a term that is used to refer to
8 when there's a lot of talking about a bill to stop
9 consideration of other bills?

10 "ANSWER: 'Chubbing' is the word or term around the
11 Capitol that's used, yes. Again, it's -- there's no
12 filibuster allowed in the House. They have strict
13 rules on the amount of time a person may speak, but
14 if every single person uses every second of time on
15 every single bill to delay consideration of other
16 bills or other actions, 'chubbing' is the term that's
17 often used.

18 "QUESTION: And how did opponents of Senate Bill 362
19 -- how did they manage to chub it to death, so to
20 speak?

21 "ANSWER: Me memory from watching it on TV, because I
22 was not in the House, is that on other calendars, the
23 major State calendars, just one calendar bill the
24 House considers is that there were other calendars
25 for that, or days before that even, wherein the

1 Democrats -- my memory is that it was all Democrats -
2 - spoke at length on those procedural or
3 uncontroversial bills to delay the consideration of
4 the major State calendar.

5 "QUESTION: Other than what you just testified to,
6 there are no other facts that warranted such prompt
7 consideration of Senate Bill 14; is that right?

8 "ANSWER: Again, the same that I mentioned earlier,
9 the desire to actually have it passed this time.
10 This was now the third or fourth or fifth session
11 that it had been attempted to be passed. And on
12 multiple occasions had run out of time or procedural
13 obstacles had been placed in its way that stopped it.
14 So if nothing else, to get it done.

15 "QUESTION: What facts do you know or did you know at
16 the time when you wrote this set of talking points
17 that would enable you to predict that SB 14 would
18 have that effect?

19 "ANSWER: Again, I think the whole intent of the bill
20 is to make sure eligible, properly identified voters
21 are casting votes. We had had testimony over the
22 years that, in fact, the registration rules were not
23 a hundred percent accurate and, in fact, there may be
24 registration cards sent to people who are dead or
25 felons or otherwise ineligible. And so accurate, up-

1 to-date identification required at the polling place
2 seems on its face to protect against fraud and be
3 designed to count only eligible voters and votes.

4 "QUESTION: Isn't it true that some of the forms of
5 ID allowable under SB 14 could be obtained by persons
6 who are not U. S. citizens?

7 "ANSWER: Sure. No system is perfect, but I think
8 this was a step in the right direction towards
9 increasing the security. It didn't say make a
10 hundred percent secure because there's no such thing.
11 But yes, any system designed by humans can be abused
12 by humans.

13 "QUESTION: So what types of ineligible voters would
14 SB 14 prevent from voting?

15 "ANSWER: It's a broad category, I think. My
16 understanding of ineligible voters would be someone
17 who doesn't live in the state, someone who is dead,
18 someone who fraudulently obtained someone else's
19 identifying registration card, someone who produces
20 false documentation. I could go on, I guess, but
21 it's a broad category.

22 "QUESTION: Well, turning back to that first
23 category, people that don't reside in the state,
24 those people are clearly ineligible to vote in the
25 State of Texas, correct?

1 "ANSWER: Right. Well, I should say if they're a
2 resident, but currently out of the state, they may
3 vote. But yes, generally, that's right.

4 "QUESTION: Assuming someone moved to another state
5 with intent to remain in that other state and they
6 were not a Texas resident, then suppose that
7 individual came back into the state with a driver's
8 license with their former Texas address and a
9 picture, that would be a qualifying ID under SB 14,
10 correct?

11 "ANSWER: Uh-huh.

12 "QUESTION: So under that circumstance, it would not
13 prevent an ineligible voter who should not be on the
14 voter rolls from participating in an election; isn't
15 that right?

16 "ANSWER: Right. Like I said, there's no perfect
17 system. The universe of potential crimes or
18 ineligible votes that would be case is larger without
19 this bill, and it is smaller with this bill, but it's
20 not a perfect system. Of course, fraud still exists,
21 and that's why lots of other bills have been able to
22 be introduced regarding voter fraud. There are lots
23 of types of fraud and efforts to stop that.

24 "QUESTION: And then finally, what facts were you
25 aware of at the time that you wrote this, that SB 14

1 would protect public confidence in elections?

2 "ANSWER: As you asked a similar question about 362,
3 I think the polling continued to show that the voters
4 of Texas supported photo ID, and that includes
5 minority voters, Blacks and Hispanics, and then
6 voters as a whole overwhelmingly. I think you could
7 draw just from that, that public confidence would
8 increase by adopting measures supported by the
9 public.

10 "QUESTION: Turning to measures required to offset
11 burdens, how did SB 14 accomplish and fulfill these
12 required measures? And we'll start off with the
13 first one. How does SB 14 provide access to free
14 photo ID cards?

15 "ANSWER: As I see it, the bill currently as
16 implemented allows -- required DPS to create election
17 identification cards, which are similar to driver's
18 licenses, but for the purpose of having a photo ID
19 for elections, and those were to be issued at no
20 cost.

21 "QUESTION: At the time that you wrote these bullet
22 points, you knew, did you not, that it cost -- there
23 was a cost associated with obtaining a birth
24 certificate in the State of Texas, correct?

25 "ANSWER: At the time of this, yes.

1 "QUESTION: And that cost was \$22 at a minimum,
2 correct?

3 "ANSWER: Yes. But it's not today, as I understand
4 it.

5 "QUESTION: But at the time the bill was being
6 considered when you wrote these bullet points, the
7 cost was \$22, right?

8 "ANSWER: Again, yes, and this bullet point says,
9 'Access to free photo ID cards.' The cards are free.

10 "QUESTION: But the underlying documentation to get
11 the free card is not free, correct?

12 "ANSWER: If you already have a birth certificate,
13 it's free.

14 "QUESTION: If you don't have a birth certificate,
15 it's not free, though, right?

16 "ANSWER: It would have been \$22, and now I believe
17 it's either zero -- zero to \$3.

18 "QUESTION: Doesn't that card show the person's
19 identity? You can see the picture and you can see
20 the person.

21 "ANSWER: A forged student ID with a photograph would
22 be less secure, yes. In my opinion, it's more easily
23 forged than the types of documents or IDs permissible
24 under SB 14.

25 "QUESTION: But the purpose of the photo ID

1 requirement is so that the voter can prove I am who I
2 say I am, this is my picture, I am me.

3 "QUESTION: Right. On a secure, widely recognizable
4 form of ID. And there are I don't know how many
5 colleges in Texas, or in the instance of eligible
6 voters from Texas who reside in Texas and intend to
7 reside in Texas, continue school out of state or
8 private universities, the pool of potential IDs and
9 the ability to forge those gets much easier, I think.

10 "QUESTION: Can you identify any attempts to make the
11 bill less retrogressive or as least burdensome as
12 possible to voters and still accomplish the goals of
13 the legislature?

14 "ANSWER: Sure. There were additional forms of ID
15 added by amendment on the floor. There were broad
16 exemptions for certain class of people. There were
17 free election identification cards issued. I think
18 all of those things were designed to be less
19 burdensome for voters.

20 "QUESTION: What studies did the Lieutenant Governor
21 use to satisfy himself that SB 14 would not reduce
22 turnout among minority voters?

23 "ANSWER: Well, Senator -- I mean, the Lieutenant
24 Governor Dewhurst would have been a sitting member of
25 the Committee of the Whole, so he would have reviewed

1 all of those documents presented during that debate.

2 "QUESTION: Can you identify any studies that he
3 reviewed to satisfy himself that it would not reduce
4 turnout among minority voters?"

5 **MR. WHITLEY:** And there's an objection.

6 "QUESTION: You may answer.

7 "ANSWER: I don't remember specific names of reports
8 or studies. I do remember generally that Senator
9 Wentworth's presentation included voter turnout in
10 states that implemented voter ID.

11 "QUESTION: Are you aware of any facts or basis for
12 including concealed handguns as an acceptable form of
13 ID, but not Medicare cards or student ID cards?

14 "ANSWER: Well, from my own knowledge, I would -- I
15 know that the concealed handgun licenses are issued
16 by DPS, which also issues driver's licenses and
17 election ID cards and personal identification cards.
18 I know they have personal -- identifying information
19 and expiration dates on their face. Medicare cards,
20 I'm honestly not sure what those look like. I'm not
21 sure if they include expiration dates or other
22 identifying information. Student Ids, I've talked
23 about before. I think even if as in the proposed
24 amendment in the Senate, you say accredited public
25 university in Texas, that's still a very, very large

1 pool of potential identifications, which may or may
2 not have security elements or expiration dates or any
3 other number of identifying characteristics.

4 "QUESTION: Were there any forms of ID used by DPS
5 that were -- are not acceptable photo IDs under
6 Senate Bill 14?

7 "ANSWER: I'm not aware of any.

8 "QUESTION: At any time since the passage of Senate
9 Bill 14 have you come to believe that it was passed
10 with any discriminatory purpose, in the whole or in
11 part?

12 "ANSWER: I do not believe that it was passed with
13 any discriminatory purpose, in whole or in part.

14 "QUESTION: Was Senate Bill 14 enacted in part to
15 reduce the participation of Hispanic voters?

16 "ANSWER: I do not believe so.

17 "QUESTION: Was SB 14 enacted in part to reduce the
18 participation of African American voters?

19 "ANSWER: I do not believe so. And, in fact, at
20 least on the House side, there were minority members,
21 Black and Hispanics, who voted for the bill.

22 "QUESTION: At any time since the passage of Senate
23 Bill 14, have you come to believe that Senate Bill 14
24 will have a disproportionate effect on minority
25 voters as compared to Anglo voters?

1 "ANSWER: I have not seen any evidence to convince me
2 of that."

3 **MS. WESTFALL:** Elizabeth Westfall for the United
4 States, and Sam Oliker-Friedland will play Bryan Hebert. May I
5 approach?

6 **THE COURT:** Yes.

7 **MR. SCOTT:** By far the best reader.

8 **THE COURT:** Yeah, I agree. He takes his role
9 seriously.

10 (Laughter)

11 **MS. WESTFALL:** That's why he was selected. Thank you
12 for the kind words.

13 **EXAMINATION OF BRYAN HEBERT**

14 **BY EXCERPTS OF DEPOSITION TESTIMONY**

15 **(QUESTIONS READ BY MS. WESTFALL; ANSWERS READ BY**

16 **MR. OLIKER-FRIEDLAND)**

17 "QUESTION: During the five-year period that you
18 served as Mr. Dewhurst's deputy general counsel, you
19 were the point person for the Secretary of State's
20 office; is that right?

21 "ANSWER: Correct.

22 "QUESTION: Fair to say you're quite familiar with
23 the Texas election code?

24 "ANSWER: Correct.

25 "QUESTION: So was there a time when Mr. Dewhurst

1 rehired you?

2 "ANSWER: Yes.

3 "QUESTION: When was that?

4 "ANSWER: That was in October of 2012.

5 "QUESTION: What position did he hire you for?

6 "ANSWER: General counsel.

7 "QUESTION: Turning your attention back to Exhibit

8 155 --

9 **MS. WESTFALL:** Which is PL-205.

10 "QUESTION: -- Mr. Hebert, do you recognize this
11 document?

12 "ANSWER: It looks like an email I sent to Janice
13 McCoy for use -- or it says, 'For your use as
14 needed,' and it is a series of attachments relating
15 to talking points and arguments in support of Senate
16 Bill 362 as well as some overview of various election
17 laws and processes used.

18 "QUESTION: And you just described a bunch -- several
19 attachments to the email to Exhibit 155. Did you
20 draft all those attachments yourself?

21 "ANSWER: This looks like -- my memory is that, yes,
22 I drafted or at least substantially drafted these
23 documents.

24 "QUESTION: Turning your attention to the date of the
25 email, what is the date of the email?

1 "ANSWER: March 4th, 2009.

2 "QUESTION: Was this email sent to Ms. McCoy shortly
3 before the Committee of the Whole's consideration of
4 Senate Bill 362?

5 "ANSWER: I'd have to refer to the history again.
6 The email is from March 4th and the committee took
7 testimony on March 10th. It was passed after that.
8 So yes, I mean, it was before consideration by the
9 Senate.

10 "QUESTION: And several days before; is that correct?

11 "ANSWER: Correct.

12 "QUESTION: When did you draft the attachments to
13 Exhibit 155?

14 "ANSWER: I do not recall.

15 "QUESTION: Roughly around the same time as the
16 email?

17 "ANSWER: I can't recall. It may have been the fall
18 before session. It may have been right before. I
19 can't recall.

20 "QUESTION: Do you know why you drafted the
21 attachments?

22 "ANSWER: For her use as needed. Again, I think to
23 help with passage of the bill by providing outlines
24 of relevant law and arguments to extend to opponents
25 of the bill.

1 "QUESTION: Do you see that in Bullet 1 --

2 **MS. WESTFALL:** On the next page, Bullet 1.

3 "QUESTION: -- that you write, 'There is less chance
4 of disenfranchising elderly, poor, or minority
5 voters?'

6 "ANSWER: Yes, it says that.

7 "QUESTION: And how did you determine that Senate
8 Bill 362 would have that effect?

9 "ANSWER: I don't recall specific reason for that.
10 Again, other than this document taken as a whole with
11 the others are intended to be arguments in favor of
12 the bill. And, you know, any election reform has a
13 chance of disenfranchising voters, and this is
14 evidently less chance of disenfranchising voters.

15 "QUESTION: And what particular provisions in Senate
16 Bill 362 made it less likely to disenfranchise these
17 classes of voters?

18 "ANSWER: Again, I assume it's related to the forms
19 of identification that are acceptable.

20 "QUESTION: So is it fair to say that given that it
21 allowed for the use of non-photo ID, that would make
22 it less likely to disenfranchise these classes of
23 voters?

24 "ANSWER: It's possible. Again, looking at *Crawford*,
25 you know, the court allowed that forms of voter

1 reform will often disenfranchise some voters and, you
2 know, if it's some minimal number or negligible
3 number, then that might be okay if there are other
4 benefits to the law.

5 "QUESTION: Turning your attention back to what you
6 wrote about Senate Bill 362, is it fair to say that
7 you were referring to the use of non-photo ID made it
8 -- the bill less likely that it would disenfranchise
9 these forms of -- these classes of voters?

10 "ANSWER: I can't be sure. I know there are more
11 forms of ID certainly as compared to the current law,
12 but I don't know if I was specifically referring to
13 photo or non-photo.

14 **MS. WESTFALL:** And again, it says -- "less than a
15 chance."

16 "ANSWER: Less than a chance.

17 **MS. WESTFALL:** Sorry, go ahead.

18 "ANSWER: It doesn't -- I don't think it acknowledges
19 that people will be disenfranchised. It acknowledges
20 the chance of disenfranchisement is some percentage
21 less under this bill.

22 "QUESTION: Is it -- were you intending to suggest
23 there was less of a chance of disenfranchising
24 elderly, poor, or minority voters relative to hard-
25 photo ID bills than would only permit the use of

1 photo ID?

2 "ANSWER: I don't recall what I was drawing
3 comparison to. Different forms of bills is all I can
4 say.

5 "QUESTION: Is it fair to say that without the
6 provision allowing use of non-photo ID in Senate Bill
7 362, that it would increase the likelihood of
8 disenfranchisement for these groups?

9 "ANSWER: It's possible.

10 "QUESTION: Did you write this bullet about
11 preclearance --

12 **MS. WESTFALL:** And turning down to number 5,
13 preclearance.

14 "QUESTION: -- because you believed that allowing
15 more forms of ID would decrease the bill's
16 discriminatory impact on voters?

17 "ANSWER: I believe that this bill, what it says,
18 increases the chances of preclearance because it had
19 -- because of the list of acceptable ID in the bill.

20 "QUESTION: Turning your attention to 00087014, the
21 last page of Exhibit 155, Process for Obtaining a
22 Texas Birth Certificate. When Senate Bill 362 was
23 under consideration, did you consider the cost of
24 obtaining photo IDs required under that law -- bill?

25 "ANSWER: Looking at this page, it's clear that I

1 considered it. Again, I was not a bill sponsor.

2 "QUESTION: Does looking at Texas 00087014 refresh
3 your recollection as to whether you undertook or
4 someone in your office undertook research on the cost
5 of birth certificates in Texas?

6 "ANSWER: It's clear from this document that birth
7 certificates were considered. Each of the 1, 2, 3,
8 and 4 on that page mention birth certificates. I
9 can't recall if I would have been the one that did
10 it, likely, and I can't remember if I looked
11 specifically at cost or if I looked at birth
12 certificates generally.

13 "QUESTION: Do you know why you focused on the cost
14 of birth certificates?

15 "ANSWER: I don't know that I focused on the cost of
16 birth certificates. I think I looked at the
17 availability of birth certificates, looking at this
18 document.

19 "QUESTION: Do you know why you looked at the
20 availability of birth certificates as opposed to
21 other forms of identification?

22 "ANSWER: I think likely that birth -- I mean, I
23 think birth certificates are one of the more common
24 methods of obtaining other types of identification,
25 and so I looked into how one goes about getting

1 copies of birth certificates.

2 "QUESTION: You've been handed Exhibit 161.

3 **MS. WESTFALL:** Which is PL-845.

4 "QUESTION: Do you recognize this document?

5 "ANSWER: Appears to be a copy of some version of
6 SB 14.

7 "QUESTION: Do you see the date at the bottom?

8 "ANSWER: Looks like the date January 12, 2011.

9 "QUESTION: And you were involved in developing
10 Senate Bill 14; is that right?

11 "ANSWER: I had conversations with Janice McCoy
12 regarding the bill, and I had been working on it
13 previous sessions. Yes, I think it's fair to say I
14 was aware, and I was certainly -- and for my office's
15 purposes in charge of analyzing and tracking the
16 bill.

17 "QUESTION: Were you involved in drafting Senate Bill
18 14?

19 "ANSWER: I don't recall. I may have. I have a
20 background of drafting bills. It's possible that I
21 may have helped with the language, sure.

22 "QUESTION: Do you recall what sources you consulted,
23 if any, to draft Senate Bill 14?

24 "ANSWER: To the extent I did draft or help with
25 drafting language, I assume I would have looked at

1 previous versions of this bill. I would have looked
2 to other states where voter ID was implemented--
3 Indiana and Georgia and Louisiana. I would have
4 looked through testimony provided during the course
5 over the last previous few sessions on this concept.
6 I don't know what else. I imagine I would have drawn
7 from a lot of sources. But most importantly, if I
8 was asked to draft something, I would have just done
9 what I was asked to draft as a sort of administrative
10 matter.

11 "QUESTION: You've been handed what's been marked as
12 Exhibit 174.

13 **MS. WESTFALL:** Which is PL-847.

14 "QUESTION: Do you recognize this document?

15 "ANSWER: It appears to be the Senate Journal entry
16 from -- or at least part of Wednesday, January 26th,
17 2011.

18 "QUESTION: Do you see that it lists a floor
19 amendment offered by Senator Duncan --

20 "ANSWER: Yes.

21 "QUESTION: -- related to indigent voters?

22 "ANSWER: Yes.

23 "QUESTION: Would this amendment have required the
24 counting of provisional ballots of individuals,
25 voters who attest they are indigent and do not have

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ID?

"ANSWER: If the person executed an affidavit stating that they were indigent or had a religious objection or were not otherwise challenged, then it looks like, yes, that the provisional ballot would have been counted.

"QUESTION: This amendment was adopted by the Senate, was it not?

"ANSWER: I don't have the vote on that.

"QUESTION: Sir, does it indicate on page 138 the vote?

"ANSWER: I'm sorry, yes.

"QUESTION: Was it adopted by the Senate?

"ANSWER: Yes.

"QUESTION: Was this provision included in the final version of Senate Bill 14 that's signed into law?

"ANSWER: I do not believe it was.

"QUESTION: Had this been adopted into the final version of the bill signed into law, would it have reduced the burden on poor voters?

"ANSWER: I think it would -- would it have reduced the burden on poor voters if this had been adopted? It's possible.

"QUESTION: Are poor voters disproportionately minority?

1 "ANSWER: I don't know that to be true, but I suspect
2 that to be true.

3 "QUESTION: Do you see that there's a floor amendment
4 Number 12 offered by Senator Davis to prohibit state
5 agencies from charging fees for the issuance of
6 acceptable forms of photo ID under Senate Bill 14 or
7 for underlying documentation --

8 "ANSWER: Yes.

9 "QUESTION: -- to get those forms of ID?

10 "ANSWER: Yes.

11 "QUESTION: Was this amendment adopted by the Senate?

12 "ANSWER: No.

13 "QUESTION: Had this been adopted, would this have
14 reduced the burden on poor voters?

15 "ANSWER: It's possible, although, again, today, I
16 think the charge for a birth certificate is \$3 or
17 zero dollars, depending on the county.

18 "QUESTION: But at the time Senate Bill 14 was
19 adopted by the legislature, that was not the case,
20 correct?

21 "ANSWER: Correct.

22 "QUESTION: You've been handed what's been marked as
23 Exhibit 163.

24 **MS. WESTFALL:** Which is PL-271.

25 "QUESTION: Do you recognize this document?

1 "ANSWER: It looks like an email from myself to some
2 Senate staff and some people in my office with
3 attached documents related to compliance with the
4 Supreme Court, talking points on the bill, and
5 comparisons of various state election laws.

6 "QUESTION: Turning to measures required to offset
7 burdens --

8 **MS. WESTFALL:** On the following page.

9 "QUESTION: -- how did Senate Bill 14 accomplish and
10 fulfill these required measures? And we'll start off
11 with the first one. How does Senate Bill 14 provide
12 access to free photo ID cards?

13 "ANSWER: As I see it, the bill currently as
14 implemented allows -- required DPS to create election
15 identification cards, which are similar to a driver's
16 license, but for the purpose of having a photo ID for
17 elections. And they were to be issued at no cost.

18 "QUESTION: At the time that you wrote these bullet
19 points, you knew, did you not, that it cost -- there
20 was a cost associated with obtaining a birth
21 certificate in the State of Texas, correct?

22 "ANSWER: At the time of this, yes.

23 "QUESTION: And that cost was \$22 at a minimum,
24 correct?

25 "ANSWER: Yes. But it's not today, as I understand

1 it.

2 "QUESTION: But at the time the bill was being
3 considered, when you wrote these bullet points, the
4 cost was \$22, right?

5 "ANSWER: Again, yes, and this bullet point says,
6 'access to free photo ID cards.' The cards are free.

7 "QUESTION: But the underlying documentation to get
8 the free card is not free, correct?

9 "ANSWER: If you already have a birth certificate,
10 it's free.

11 "QUESTION: And if you don't have a birth
12 certificate, it's not free, though, right?

13 "ANSWER: It would have been \$22, though now I
14 believe it's zero to \$3.

15 "QUESTION: That occurred -- the change in what it
16 cost to get a birth certificate occurred after Senate
17 Bill 14 was enacted, did it not?

18 "ANSWER: I think that's right.

19 "QUESTION: Provisional ballots aren't very
20 meaningful if you cast them and they're not counted,
21 right? That's not really voting, right?

22 "ANSWER: It's voting. But I think, again, the idea
23 that a constituent can go back and confirm that their
24 ballot is being counted was the point. And then
25 SB 14 voters are allowed the opportunity to get the

1 ID and make sure that their ballot is counted.

2 "QUESTION: Do you think that having to go back to an
3 election official a second time is more burdensome or
4 less burdensome than voting a provisional ballot once
5 and having election officials determine whether
6 that's valid from the standpoint of the voters?

7 "ANSWER: It's all part of casting a vote. Two trips
8 is more than one trip. But again, in terms of
9 process of voting, there's lots of steps. In Texas,
10 for example, in primaries and caucuses and things,
11 there are multiple meetings and steps you have to
12 have to have your voice counted. So yes, if you're
13 asking me is two trips more than one, yes, it is. Is
14 it more burdensome? You know, it's part of casting a
15 vote, but I don't think it's too burdensome.

16 "QUESTION: In terms of the inconvenience of voting,
17 are you aware that to obtain an EIC, you must present
18 a document that indicates your U. S. citizenship?

19 "ANSWER: I'm not aware. I'm aware that -- my
20 understanding is that the EIC runs parallel to
21 driver's licenses. And obviously, the distinction
22 being that one is for voting only and one is for a
23 broader set of functions. So I can't say that I know
24 that to be a fact.

25 "QUESTION: Are you aware that Senate Bill 14

1 permitted DPS in creating the EIC to require
2 fingerprinting of applicants?

3 "ANSWER: I'm not aware of that. And I don't have
4 the EIC language in front of me, so I can't be a
5 hundred percent certain what the statute says.

6 "QUESTION: And voters in registering to vote need
7 not supply fingerprints; is that correct?

8 "ANSWER: To register to vote, right. I don't think
9 you need to supply fingerprints.

10 "QUESTION: To register to vote, you need not, in the
11 State of Texas, provide proof that you're a U. S.
12 citizen, other than signing under penalty of perjury
13 on your voter registration application; is that
14 correct?

15 "ANSWER: Right. I think signing that -- effectively
16 signing an affidavit is a step of assurance for the
17 State of Texas.

18 "QUESTION: And that's a different way to prove
19 citizenship in the voter registration context than to
20 obtain an EIC assuming you have to show --

21 "ANSWER: Fingerprints and signatures are different,
22 yes.

23 "QUESTION: Assuming that you must show documentary
24 proof of citizenship to obtain an EIC, that is not
25 how you prove citizenship when you register to vote;

1 is that correct?

2 "ANSWER: I think that's correct.

3 "QUESTION: You've been handed what's been marked as
4 Exhibit 164.

5 **MS. WESTFALL:** Which is PL-272.

6 "QUESTION: Do you recognize this document?

7 "ANSWER: Yes.

8 "QUESTION: What is it?

9 "ANSWER: It is an email from myself to various
10 Senate staff, cc'ing my chief of staff and policy
11 director, expressing concerns about preclearance.
12 And then there's an attachment explaining generally
13 the standard of review by the Department of Justice.

14 **MS. WESTFALL:** And turning down to the text of that -
15 - the previous page -- the text of the email. Thank
16 you.

17 "QUESTION: Do you see that at the top -- and this is
18 -- for the record, this is TX00262650 through
19 TX00262652. After you sent this email, were there
20 any changes made to the bill to address any of these
21 concerns?

22 "ANSWER: Again, I don't know for sure without seeing
23 subsequent copies of the bill. I know the bill
24 changed from January 22nd through final passage.

25 "QUESTION: The Texas legislature wanted Senate Bill

1 14 to be precleared; did it not?

2 "ANSWER: Yes.

3 "QUESTION: It wanted to enforce Senate Bill 14; did
4 it not?

5 "ANSWER: Yes.

6 "QUESTION: Do you see that in this email you made
7 the suggestion that the legislature might consider
8 adding a longer list of acceptable photo IDs?

9 "ANSWER: Yes. It says to increase the chances, you
10 might consider adding a list of additional IDs.

11 "QUESTION: And you proposed using language in
12 Georgia's law which includes ID issued by the federal
13 government, state government, or local government
14 within the state?

15 "ANSWER: That's correct.

16 "QUESTION: And you also suggested at a minimum, you
17 might include language from Senate Bill 362
18 concerning valid ID issued by an agency or
19 institution of the federal government or agency or
20 institution of political subdivision of the state.
21 Do you see that suggestion?

22 "ANSWER: Yes.

23 "QUESTION: Why did you suggest adding these forms of
24 ID to the bill?

25 "ANSWER: Again, I think we know that Georgia's law

1 was precleared, and so closer to other precleared
2 laws, the better in terms of again increasing
3 chances. It doesn't mean it was the only way to do
4 it, but I think that it's easy to argue it would
5 increase the chances of that happening.

6 "QUESTION: Do you see that you flagged the issue of
7 whether the law includes mitigating effects?

8 "ANSWER: Yes.

9 **MS. WESTFALL:** And turning to the next page, please.

10 "QUESTION: And one of the things you list is
11 education efforts targeted at minority communities.

12 "ANSWER: Yes.

13 "QUESTION: Do you recall whether Senate Bill 14
14 included any targeted education efforts at minority
15 communities as signed into law?

16 "ANSWER: Without having the final version in front
17 of me, my memory is that Secretary of State was given
18 authority to implement an education program. And the
19 need to do that and minority training I think was
20 discussed during debate over the bill.

21 "QUESTION: You've been handed what's been marked as
22 165.

23 **MS. WESTFALL:** Which is PL-899.

24 "QUESTION: Do you recognize this?

25 "ANSWER: One sixty-five is a copy of SB 14.

1 "QUESTION: This is the version that was signed into
2 law; is that correct?

3 "ANSWER: Appears so.

4 "QUESTION: So turning your attention now to Exhibit
5 165, are there education efforts targeted at minority
6 communities in this bill?

7 "ANSWER: Well, it requires the voter registrar of
8 every county that maintains a website to include
9 information, so that would presumably include
10 minority majority counties.

11 "QUESTION: But to your knowledge, it's not a
12 targeted voter education program; is that correct?

13 "ANSWER: Statute -- statutory language does not have
14 specific reference to minorities.

15 "QUESTION: In SB 14, does it include a provision
16 about providing photo IDs in isolated and
17 impoverished areas?

18 "ANSWER: I don't see specific references, again,
19 other than the fact that those individuals would fall
20 under general directives to county officials and the
21 Secretary of State.

22 "QUESTION: But to your knowledge, SB 14 did not have
23 targeted -- a targeted program for isolated and
24 impoverished areas; is that right?

25 "ANSWER: The statutory language did not, and I'm not

1 certain if the Secretary of State or DPS or other
2 state agencies have separate authority.

3 "QUESTION: You've been handed what's been marked as
4 170 --

5 **MS. WESTFALL:** Which is PL-277 and --

6 "QUESTION: -- Texas 00081575. Do you recognize this
7 document?

8 "ANSWER: Looks like an email from myself to various
9 Senate staffers and my chief of staff and policy
10 director laying out, 'the plan for Tuesday,' which I
11 assume would have been floor debate and the Committee
12 of the Whole. And it lays out invited witnesses,
13 certain roles different senators would play, some
14 other items.

15 "QUESTION: Who was Katie Ogden?

16 "ANSWER: Katie Ogden worked for Senator Wentworth, I
17 believe, as chief of staff.

18 "QUESTION: Is it fair to say this email is sort of
19 saying that plan for testimony and how consideration
20 of the bill would occur?

21 "ANSWER: To the extent you can have a plan and
22 execute it on the floor of the Senate, I suppose it
23 is an attempt to -- at best, it's an outline of how
24 things might go.

25 "QUESTION: Were you responsible for that outline?

1 "ANSWER: I honestly can't remember if these are my
2 ideas or if this is me passing a message, but this is
3 an email from me.

4 "QUESTION: Who else would have developed this plan
5 besides you?

6 "ANSWER: Senator Fraser and his staff, any of the
7 senators listed here, perhaps Blaine Brunson or Julia
8 Rathgeber.

9 "QUESTION: But is it more likely that it came from
10 your office give that you were the point person for
11 the elections and voting issues?

12 "ANSWER: It's unlikely I would have done all this
13 without significant input from the bill sponsor and
14 the senators listed. It's not my place to tell
15 senators what they're going to be doing during debate
16 of a bill.

17 "QUESTION: But was it your role to kind of organize,
18 coordinate, and communicate the plan to others?

19 "ANSWER: At least to these people, that seems fair.

20 "QUESTION: Do you see that under 'floor tasks' in
21 the parentheses, you urge senators to emphasize the
22 detection and deterrence of fraud and protect public
23 confidence in elections?

24 "ANSWER: Yes.

25 "QUESTION: Why did you stress the need for senators

1 to emphasize those points?

2 "ANSWER: Because that was the goal of the bill as I
3 understood it.

4 "QUESTION: Were you concerned that they may -- they
5 might say other things on the floor of the senate
6 about other reasons for SB 14 being considered?

7 "ANSWER: I -- even if I had concerns about a senator
8 -- what a senator might say, there's no stopping a
9 senator who wants to say something. But, yeah, to
10 the extent that senators were looking for direction,
11 I think this was an attempt to remind people what the
12 point of the bill was.

13 "QUESTION: You've been handed what's been marked as
14 Exhibit 175.

15 **MS. WESTFALL:** Which is PL-279.

16 "QUESTION: Do you recognize this document?

17 "ANSWER: It looks like a press release by the
18 Lieutenant Governor.

19 "QUESTION: Do you see that in the second paragraph,
20 it states, 'A voter ID will ensure that only U. S.
21 citizens who are legally eligible to vote in Texas
22 elections?'

23 "ANSWER: Yes.

24 "QUESTION: Do you recognize this document?

25 "ANSWER: Yes.

1 "QUESTION: What is it?

2 "ANSWER: It looks like an email from myself to
3 Senate staffers, some Senate staffers, with an
4 attachment summary of SB 14 as it passed the Senate.

5 "QUESTION: For the record, Exhibit 176 is Texas
6 00034469 through Texas 00034471.

7 **MS. WESTFALL:** PL-234.

8 "QUESTION: Did you draft the attachment to Exhibit
9 176?

10 "ANSWER: I think I probably did.

11 "QUESTION: And the attachment is titled Voter ID
12 Bill Summary, correct?

13 "ANSWER: Correct.

14 **MS. WESTFALL:** And if you could blow up the first
15 paragraph.

16 "QUESTION: Who was the intended audience of this
17 bill summary?

18 "ANSWER: I assume the people on the email that I
19 sent it to.

20 "QUESTION: Was it solely for purposes of advising
21 these staff people, or was it intended for a broader
22 audience?

23 "ANSWER: It's possible it was intended for people on
24 the Lieutenant Governor's staff, as well as the
25 recipients of this email.

1 "QUESTION: Did you circulate this summary to anybody
2 else besides the recipients of the first page of
3 Exhibit 176?

4 "ANSWER: I don't recall whether I did or not.

5 "QUESTION: Was this summary reviewed and approved by
6 anyone in your office before it went out?

7 "ANSWER: Probably not, but I can't be sure.

8 "QUESTION: Did Lieutenant Governor Dewhurst see this
9 summary?

10 "ANSWER: I can't recall. It's possible.

11 "QUESTION: Do you see it was dated January 27th,
12 2011?

13 "ANSWER: The email is dated January 27th, 2011, yes.

14 "QUESTION: Was this email drafted after the Senate
15 had adopted Senate Bill 14?

16 "ANSWER: It appears that yes, it was.

17 "QUESTION: Do you see --

18 **MS. WESTFALL:** Turning back to the bill summary.

19 "QUESTION: -- the first sentence characterizes SB 14
20 as the strictest photo ID bill in the country?

21 "ANSWER: Yes, arguably the strictest photo ID bill.

22 "QUESTION: What was your assessment based on?

23 "ANSWER: The comparison of Texas requirements to
24 states that had other photo ID requirements.

25 "QUESTION: What made it -- what particular facets of

1 the bill made it the strictest in the country?

2 "ANSWER: I assume it was related to the forms of
3 acceptable ID. It could also have been related to
4 criminal penalties associated with fraudulent
5 election activity.

6 "QUESTION: And at the time that Senate Bill 14 was
7 being considered, were you aware of any facts or
8 evidence that suggested student ID had been used for
9 voting fraud in the State of Texas?

10 "ANSWER: Not that I recall.

11 "QUESTION: Were you aware of any evidence that
12 student IDs had been used for voting fraud anywhere
13 in the country?

14 "ANSWER: Not that I recall.

15 "QUESTION: Was there any discussion about the effect
16 of excluding student IDs on voting at historically
17 Black colleges or universities in the state?

18 "ANSWER: Was there any analysis?

19 "QUESTION: Correct.

20 "ANSWER: I'm not aware.

21 "QUESTION: So there was no assessment on the impact
22 of excluding student IDs on minority voters?

23 "ANSWER: I'm not aware of any analysis.

24 "QUESTION: Are you familiar with the opinion of
25 *Texas versus Holder* denying judicial preclearance of

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Senate Bill 14?

"ANSWER: I am generally familiar.

"QUESTION: Did the Lieutenant Governor take any actions to respond to that decision?

"ANSWER: I can't remember any specific action.

"QUESTION: Did he propose any changes to Senate Bill 14?

"ANSWER: I can't recall.

"QUESTION: Did he or any senator urge that amendments to Senate Bill 14 be made to address any of the concerns raised by the court?

"ANSWER: I can't recall specific suggestions.

"QUESTION: Are you aware of any in-person voter impersonation that occurred in the State of Texas during the 2012 presidential election?

"ANSWER: I am not personally aware of any.

"QUESTION: Are you aware of any in-person voter impersonation that occurred in Texas during any election between August, 2012, and June, 2013?

"ANSWER: I cannot recall being aware of any.

"QUESTION: Were you involved in drafting the EIC provision that was adopted during the conference?

"ANSWER: I believe I was.

"QUESTION: How did you develop that language?

"ANSWER: I believe my intent was to have it parallel

1 existing statutory or rule language for drivers'
2 licenses, after removing parts that were not
3 relevant. The goal was to have the cards and the
4 information be similar to drivers' licenses and
5 issued by the same agency.

6 "QUESTION: Did you consider the hours of operation
7 for driver license offices when you were developing
8 the EIC provision?

9 "ANSWER: I mean, generally the hours of operation of
10 DPS offices were debated on the floor of the Senate,
11 so I think, yes, I would have considered it.

12 "QUESTION: Was there any response legislatively to
13 those concerns raised?

14 "ANSWER: Not within the face of this statute. But
15 I'm not sure what other legislative actions were
16 taken. And, again, I know as a fact that actions
17 were taken by the Department of Public Safety.

18 "QUESTION: Was it left to DPS, when the bill was
19 being crafted, as to what the hours of the driver
20 license offices would be?

21 "ANSWER: Yes. DPS sets the hours of their office
22 based on the whole range of factors, including
23 population and usage and so forth.

24 "QUESTION: And Senate Bill 14 did not direct or
25 influence in any way where driver licenses offices

1 were located; is that correct?

2 "ANSWER: I'd have to check to be sure. I don't see
3 any language doing that.

4 "QUESTION: Did the legislature, in crafting SB 14,
5 give any consideration to the availability of driver
6 license offices via public transit?

7 "ANSWER: Again, my recollection is that it was --
8 that it may have been part of the debate on the
9 floor, but I can't remember any specific language in
10 the face of the statute addressing that.

11 "QUESTION: During consideration of SB 14, was there
12 any analysis of cost or steps a voter would need to
13 take to obtain an EIC?

14 "ANSWER: I can't recall.

15 "QUESTION: Do you think it would be problematic if
16 SB 14 made it more difficult for Hispanic and African
17 American voters to participate in elections, even if
18 it didn't wholly disenfranchise them?

19 "ANSWER: Would it be problematic if SB 14 adversely
20 impacted minority populations?

21 "QUESTION: Made it more burdensome?

22 "ANSWER: Made it more burdensome. It would depend
23 on the extent of that burden. It would be dependent
24 on whether it was only minorities that were burdened.
25 It would depend on whether there was an intent to

1 burden only those minorities. So possibly, just to
2 answer, I guess.

3 "QUESTION: Are minority voters in Texas more likely
4 to be poor than Anglos, to your knowledge?

5 "ANSWER: I would assume, I mean, I think
6 historically poor populations have generally had
7 higher representation among minorities, that's fair.
8 And that's probably true in Texas and every other
9 state."

10 **MS. WESTFALL:** Thank you. No other questions.

11 **THE COURT:** All right. Let's recess for lunch, and
12 if you'll return at 1:30.

13 **MR. SPEAKER:** You said 1:30?

14 **THE COURT:** One-thirty.

15 **MR. SPEAKER:** Thank you.

16 **(A recess was taken from 11:59 a.m. to 1:30 p.m.; parties**
17 **present)**

18 **THE COURT:** You can have a seat.

19 **MR. SCOTT:** Your Honor, a couple of housekeeping
20 things Ms. Wolf for the State will address from our
21 perspective.

22 **MS. WOLF:** Your Honor, in terms of the exhibits, I
23 think when we started we only moved in -- or sought to move in
24 the first batch, and since both parties have been filing
25 supplemental lists.

1 **THE COURT:** Okay.

2 **MS. WOLF:** So the plan is to keep, I guess, the final
3 submission of the list open until Thursday, because we need to
4 coordinate with the other side and make sure that everybody has
5 got the right list and all the agreements that have been worked
6 out are reflected in what goes for the final version of the
7 Court.

8 But at this time, subject to that, Defendants would
9 seek to move in, I believe it's exhibits -- whatever is
10 remaining until 2750, which is the last one we're going to
11 mark, subject to the agreement that we've made with the
12 Plaintiffs in terms of reserving objections.

13 **MR. ROSENBERG:** And that's right, your Honor. And
14 we, on the Plaintiffs' side, will also be moving in at this
15 time all of our supplemental exhibit lists. I don't have the
16 numbers with us --

17 **THE COURT:** Okay.

18 **MR. ROSENBERG:** -- again, subject to the same
19 agreement.

20 **THE COURT:** But those are by agreement, right?

21 **MR. ROSENBERG:** Right.

22 **MS. WOLF:** Yes.

23 **THE COURT:** So those are admitted. But there was a
24 couple when we started on the 2nd, before we began the trial,
25 we discussed some exhibits, right, that needed --

1 **MS. WOLF:** Yes.

2 **THE COURT:** -- to be addressed by the Court still,
3 and you mentioned one earlier.

4 **MS. WOLF:** Yes.

5 **THE COURT:** But I thought there were a couple other
6 ones --

7 **MS. WOLF:** There --

8 **THE COURT:** -- too.

9 **MS. WOLF:** There are two others -- and I don't know
10 if Mr. Hebert wants to address them -- there were two others
11 that they were -- oh, Emma, if you want to address them.

12 **MS. SIMSON:** I think we can withdraw them.

13 **MS. WOLF:** Withdraw them?

14 **THE COURT:** Well, and we don't --

15 **MS. WOLF:** Okay.

16 **THE COURT:** -- have to do that right now. I just
17 know there's still something left --

18 **MS. WOLF:** No, and I --

19 **THE COURT:** -- hanging --

20 **MS. WOLF:** -- appreciate it. You guys --

21 **MS. SIMSON:** Yeah.

22 **MS. WOLF:** So they're going to withdraw those two
23 exhibits.

24 **THE COURT:** Okay.

25 **MS. WOLF:** So we'll reflect that in what we submit --

1 **THE COURT:** So the only thing --

2 **MS. WOLF:** -- on Thursday.

3 **THE COURT:** -- that's left is the one with Guidry?

4 **MS. WOLF:** Yes, ma'am.

5 **THE COURT:** That's all that's still --

6 **MS. WOLF:** For exhibits, yes.

7 **THE COURT:** For that. Okay.

8 **MS. WOLF:** And, and --

9 **MR. SCOTT:** Your Honor, I think just from
10 clarification, I know that there's some exhibits I think in the
11 common interest group that have some personal identification
12 information on it. I think there's a social security card and
13 some other things, and my understanding is they're going to
14 replace those with redacted versions. I just want to make sure
15 the record is clear.

16 That's one of the --

17 **THE COURT:** Okay.

18 **MR. SCOTT:** -- housekeeping things that will take
19 place.

20 **THE COURT:** And then the other matter, also,
21 Mr. Dunn, I believe, you and Mr. Scott were going to discuss
22 the -- what's going to be presented -- the offer of proof, I
23 guess --

24 **MR. DUNN:** Yes, Judge, and --

25 **THE COURT:** -- right?

1 **MR. DUNN:** -- they've provided that to me, and I've
2 looked at it. Obviously, we preserve our objections, but it's
3 a legitimate offer of proof.

4 **THE COURT:** Okay. So --

5 **MR. SCOTT:** It is made to the Court -- or accepted to
6 be placed in under seal as part of the agreement with
7 Ms. London on behalf of the Democratic senators.

8 **THE COURT:** And you're giving that to Brandy, or she
9 already has it?

10 **MR. SCOTT:** I believe she --

11 **THE COURT:** Okay.

12 **MR. SCOTT:** -- already has that.

13 **THE COURT:** Okay. Okay.

14 **MR. SCOTT:** Yes, your Honor.

15 **THE COURT:** So we're good on that.

16 **MS. WOLF:** And then one additional matter, your
17 Honor, the deposition designations that haven't been read into
18 the record.

19 My understanding is we're going to -- there's been
20 some discussion on things that need to be eliminated from those
21 with the Plaintiffs, so that's also going to come in. We'll
22 get the final package on Thursday of everything that's -- which
23 eliminates what we've agreed to take out.

24 And I believe there are two depositions that were
25 very recently that we may be doing some counter-designations

1 for.

2 **THE COURT:** Okay. Wait.

3 **MS. WOLF:** Sure.

4 **THE COURT:** What are you talking about?

5 **MS. WOLF:** Okay.

6 **THE COURT:** Because what I've been considering is
7 what you all have been reading. You all gave me two under
8 seal. So what else? You all are going to give me some more to
9 just read?

10 **MS. WOLF:** Well, I think --

11 **MR. ROSENBERG:** Well, I can talk on the Plaintiffs'
12 side.

13 **THE COURT:** Okay.

14 **MR. ROSENBERG:** To the extent that deposition
15 designations were not read and we still --

16 **THE COURT:** Okay.

17 **MR. ROSENBERG:** -- feel it's important, either they
18 will be specifically referenced in the findings of fact or
19 perhaps addressed in closing.

20 We -- on Saturday by agreement, we have -- we have
21 until Saturday to put in our counters and objections to the
22 Section 5 designations that were made last week -- that sort of
23 thing.

24 But, again, we --

25 **THE COURT:** Okay.

1 **MR. ROSENBERG:** -- will not just say, "Your Honor,
2 read this." It will --

3 **THE COURT:** No, you will not --

4 **MR. ROSENBERG:** You will be specifically --

5 **THE COURT:** -- say that. You will not say that.

6 **MR. ROSENBERG:** And our goal, quite frankly, your
7 Honor, is by Thursday to make sure there's no loose ends
8 between --

9 **THE COURT:** Uh-huh.

10 **MR. ROSENBERG:** -- the Defendants and the Plaintiffs
11 for your Honor. That --

12 **THE COURT:** Okay.

13 **MR. ROSENBERG:** We have -- the exhibits are the
14 exhibits. The designations are the designations.

15 **THE COURT:** Okay.

16 **MR. SHAPIRO:** And, your Honor, I'm --

17 **MS. WOLF:** Great.

18 **MR. SHAPIRO:** -- just looking for loose ends -- just
19 as promised before lunch, these are the excerpts from the
20 depositions of Debra Frary and Michelle Flusher --

21 **THE COURT:** Okay.

22 **MR. SHAPIRO:** -- which we now have marked as
23 Plaintiffs' Exhibit 1160. We would like to --

24 **THE COURT:** Okay. You can give it to Brandy.

25 **MR. SHAPIRO:** -- move --

1 **MR. ROSENBERG:** And just one more thing before --

2 **MS. WOLF:** Go ahead.

3 **MR. ROSENBERG:** In that regard, I think both the --
4 both Plaintiffs and the Defendants will be -- I guess now are
5 -- we will be moving into evidence the -- all the deposition
6 designations, again, subject to the prior agreement.

7 **THE COURT:** Okay.

8 **MS. WOLF:** And Defendants as well, your Honor, will
9 be seeking to move the deposition designations in, subject to
10 the prior agreement.

11 **MS. SIMSON:** Your Honor, one quick note. Yesterday,
12 we talked about some of the expert reports getting amended in
13 light of information about the 183,000 people --

14 **THE COURT:** Uh-huh.

15 **MS. SIMSON:** -- that had been added. We just wanted
16 to note from the Veasey-LULAC point of -- perspective,
17 Dr. Herron's report will not be updated, because he presented
18 data both with those numbers and without.

19 **THE COURT:** Okay.

20 **MS. SIMSON:** So the sections of his report that are
21 no longer going to be relied upon are Pages 50 to Pages 55,
22 Line 3. That's where he had included the additional 183,000,
23 but the remainder of his report relies on the data that is now
24 going to be correct.

25 And then the other thing is in the main summary of

1 findings, he has summary of findings related to the 183,000,
2 and those are Page 8, Line 16 --

3 **THE COURT:** But when you all amend your findings, are
4 you just going to supplement what you've already given the
5 Court, or are you providing something entirely -- a new
6 document that stands by itself?

7 **MR. ROSENBERG:** We're going to be doing a new
8 document that stands by itself.

9 **MR. SCOTT:** But we will --

10 **THE COURT:** With designations --

11 **MR. SCOTT:** -- also be providing a redline version,
12 as we understood the Court's rule. So to the extent we had
13 proposed findings of facts and conclusions of law --

14 **THE COURT:** Uh-huh.

15 **MR. SCOTT:** -- the changes from that document -- it's
16 our understanding the Court wants us to provide a redline
17 document on those, or you don't?

18 **THE COURT:** I --

19 **MR. ROSENBERG:** He has different --

20 **THE COURT:** -- don't need that, because are you all
21 -- I'm assuming you all are going to be citing -- we talked
22 about this yesterday -- to the trial testimony at this point
23 and the --

24 **MR. ROSENBERG:** Yes.

25 **THE COURT:** -- evidence in the trial, right? So --

1 **MR. SCOTT:** So don't?

2 **THE COURT:** I don't think so.

3 **MR. SCOTT:** Okay.

4 **MR. ROSENBERG:** Okay.

5 **THE COURT:** Let me think about that one; but, no, I
6 don't think so.

7 **MR. SPEAKER:** Did you tell her what exhibit number
8 that was?

9 **MS. SIMSON:** And that's exhibit --

10 **THE COURT:** And --

11 **MS. SIMSON:** Plaintiffs' Exhibit --

12 **THE COURT:** And did Brandy tell you all maybe we
13 should start at 8:30 on the 22nd?

14 **MR. ROSENBERG:** 8:30. Okay. Thank you, your Honor.

15 **MS. WOLF:** Your Honor, one additional housekeeping
16 matter. Mr. Scott tells me we can unseal Dr. Milyo and
17 Dr. Hood's reports.

18 **MR. SCOTT:** With the permission of the Court.

19 **MS. WOLF:** With the permission of the Court.

20 **THE COURT:** Okay. So we'll unseal those.

21 Now -- and I guess we'll address this when the
22 Defendants finish. A lot of experts were offered, and I
23 believe the agreement had been, you know, qualification-wise,
24 we were kind of waiting, and then I've never actually ruled on
25 those.

1 and responsibilities are as the Assistant Director
2 for Data and Information -- for the Data and
3 Information Service at DVA?

4 "ANSWER: Sure. I'm responsible for operating and
5 maintaining DVA's enterprise data warehouse, which is
6 the source for all benefits information and reporting
7 for the Administration.

8 "QUESTION: Okay. So in your role as Assistant
9 Director for the Data and Information Service at the
10 VBA, does your work regularly require you to work
11 with information databases?

12 "ANSWER: Yes.

13 "QUESTION: Mr. Smith, were you asked to conduct a
14 match between databases of the Department of Veterans
15 Affairs and a database from the State of Texas in
16 this case?

17 "ANSWER: Yes.

18 "QUESTION: And can you briefly summarize the match
19 that you conducted?

20 "ANSWER: Certainly. We received an input file from
21 the Department of Justice that was represented as a
22 complete set of data from the TEAM database that you
23 described earlier. We loaded that data into a secure
24 schema in the data warehouse. We matched it against
25 data compiled from our database consisting of

1 veterans, living veterans who are 50 percent or
2 greater disabled, and then we conducted a number of
3 matching algorithms once we -- through this process.
4 There were a series of matches that we ran.

5 "QUESTION: It says here in Paragraph 3, 'VBA was
6 able to load what looks to be less than the original
7 -- was able to load a number that is less than the
8 original number of records that it received; is that
9 correct?

10 "ANSWER: Yes.

11 "QUESTION: It then states that, 'The 8,763 voter
12 records that the VBA was not able to load and analyze
13 as part of the database comparison process contained
14 embedded commas in an address or in details.' Is
15 that correct?

16 "ANSWER: Yes.

17 "QUESTION: So from that statement, can you describe
18 for me why the VBA was not able to load and analyze
19 those 8,763 voter records?

20 "ANSWER: Certainly. So the database input file
21 contained a number of fields. We told our database
22 that say there -- I can't remember the exact number.
23 Say there were 50. We had to tell the database that
24 there would be 50 fields, and that these fields would
25 be separated by commas, meaning the database would

1 look -- would be looking for 59 commas separating
2 those 60 fields. Every time the database reads a
3 comma it moves to a different field. If there are
4 commas in the middle of the field, the database does
5 not know not to use them. In other words, it loaded
6 the first 59 segments of data separated by commas,
7 and there was still data left over at the end. The
8 database does not know what to do with it, so it
9 rejected them.

10 "QUESTION: And that's the 8,763 voter records
11 referred to there?

12 "ANSWER: Correct.

13 "QUESTION: Those were rejected by the database?

14 "ANSWER: Correct.

15 "QUESTION: Were those records, the rejected records,
16 were they ever properly inputted or analyzed?

17 "ANSWER: We did nothing further with those records.

18 I think we provided them back to DOJ.

19 "QUESTION: And did DOJ ever resubmit the file
20 formatted correctly or differently so that those
21 8,763 voter records would not be rejected by your
22 database?

23 "ANSWER: No.

24 "QUESTION: Okay. So those 8,763 voter records that
25 were on file originally -- that were on the file

1 originally given to you were ultimately never
2 analyzed in this matching process; is that correct?

3 "ANSWER: Correct.

4 "QUESTION: Do you have any idea what was contained
5 in those 8,763 voter records?

6 "ANSWER: No.

7 "QUESTION: I'm sorry. You may have already
8 mentioned this. I believe you said you brought it to
9 DOJ's attention that those records were rejected,
10 correct?

11 "ANSWER: Yes.

12 "QUESTION: And how did you let them know that?

13 "ANSWER: I think we sent them an e-mail.

14 "QUESTION: Do you remember who you sent it to?

15 "ANSWER: Not offhand, not based on my recollection.

16 "QUESTION: Did you send that e-mail?

17 "ANSWER: I can't remember if it was me or one of my
18 technical staff.

19 "QUESTION: And did the DOJ ever respond to that
20 e-mail?

21 "ANSWER: I can't recall, actually."

22 **MR. TATUM:** (Indiscernible).

23 **THE COURT:** Okay. Anything from the Plaintiff on
24 this witness? Plaintiffs?

25 **MS. BALDWIN:** We have a binder just of our federal

1 agency designations, but we're not going to be reading from
2 them.

3 **THE COURT:** Okay.

4 **MR. TATUM:** And I'll be reading from the deposition
5 of Michelle Rudolph.

6 **EXAMINATION OF MICHELLE RUDOLPH**

7 **BY EXCERPTS OF DEPOSITION TESTIMONY**

8 **(QUESTIONS READ BY MR. TATUM; ANSWERS READ BY COUNSEL)**

9 "QUESTION: Michelle, would you please state and
10 spell your full name, please?

11 "ANSWER: Michelle Saunders Rudolph, M-I-C-H-E-L-L-E,
12 S-A-U-N-D-E-R-S, R-U-D-O-L-P-H.

13 "QUESTION: Michelle, are you currently employed?

14 "ANSWER: Yes.

15 "QUESTION: Where are you employed?

16 "ANSWER: In Seaside, California.

17 "QUESTION: And who is your employer?

18 "ANSWER: The Department of Defense.

19 "QUESTION: What is your official title at the
20 Department of Defense?

21 "ANSWER: I'm the acting Director for Data Analysis
22 and Programs Division at the DMDC.

23 "QUESTION: Could you tell me what your -- as
24 director of the Data Analysis Programs Division, can
25 you tell me what your official duties and

1 responsibilities are?

2 "ANSWER: I have approximately 147 employees that I
3 ensure are trained to accurately receive, process,
4 and deliver data and information to agencies within
5 the federal government and Department of Defense.

6 "QUESTION: Thank you. Michelle, do you know what
7 this case is about?

8 "ANSWER: What I know is -- I don't know what this
9 case is about. I know what I needed to do.

10 "QUESTION: And when you say 'what you needed to do,'
11 what do you mean by that?

12 "ANSWER: The work that I needed to perform as
13 requested by the Department of Justice.

14 "QUESTION: And what was that work that they
15 requested you to perform?

16 "ANSWER: As described in my deposition, it was a
17 match of a TEAM database to a database at DMDC that
18 had valid ID cards with photographs.

19 "QUESTION: Michelle, what was your involvement in
20 the matching process conducted in this case?

21 "ANSWER: I read the directions from DOJ for
22 matching, as described in my declaration, and worked
23 with an analyst and computer programmer to ensure we
24 all understood the rules that were requested for
25 running it, and then oversaw the job happening.

1 "QUESTION: Okay. But you didn't -- you didn't
2 actually conduct the match yourself?

3 "ANSWER: No.

4 "QUESTION: That was done by Mr. Zach Simpson,
5 correct?

6 "ANSWER: Yes.

7 "QUESTION: So you all went -- so you all went over
8 the matching protocol provided by the Department of
9 Justice, which was included in your declaration,
10 correct?

11 "ANSWER: Yes.

12 "QUESTION: And then Mr. Zach Simpson ran the match.
13 Did you supervise or oversee his execution of the
14 match in this case?

15 "ANSWER: Yes."

16 **MR. TATUM:** Okay. And we can end it right there.

17 Thank you very much, Your Honor.

18 **THE COURT:** All right. Anything from the Plaintiffs
19 on that?

20 **MS. BALDWIN:** No, your Honor.

21 **THE COURT:** Okay.

22 **MR. TATUM:** And, your Honor, one final submission.

23 This is depo cuts for some of the Veasey-LULAC Plaintiffs.

24 Counsel for those Plaintiffs submitted to you a packet of

25 certain cuts related to standing --

1 **THE COURT:** Uh-huh.

2 **MR. TATUM:** -- and we'd just like to respond in kind
3 with other depo cuts.

4 **THE COURT:** Okay.

5 **MR. TATUM:** We're prepared to read them if you like,
6 but I have them here --

7 **THE COURT:** No.

8 **MR. TATUM:** -- also that --

9 **THE COURT:** I'm going to miss you all when you all
10 are gone. All right.

11 **MR. SCOTT:** I have some bad news. Subject to the
12 agreements we've already gone into, your Honor, the Defense
13 rests.

14 **THE COURT:** All right. Anything further from the
15 Plaintiffs?

16 **MR. ROSENBERG:** Nothing further. I think there's one
17 issue, your Honor --

18 **MR. CLAY:** The -- over lunch, we filed a motion to
19 take judicial notice of the Solis and Saldivar indictments that
20 were testified about in the case. And I think Mr. Rosenberg
21 had some objections he wanted to put on the record.

22 **THE COURT:** Okay. And I haven't -- it was just
23 handed to me when I took the bench, so I --

24 **MR. ROSENBERG:** Yeah, and I --

25 **MR. CLAY:** That's --

1 **MR. ROSENBERG:** I haven't opened it, but I'm assuming
2 it's the politiqueras --

3 **MR. CLAY:** Yes --

4 **MR. ROSENBERG:** -- indictments. And our position is,
5 your Honor, your Honor can take notice of the fact that those
6 indictments were issued.

7 However, we object on the basis of included hearsay
8 -- that that -- so long as it's not there for the truth of the
9 matter asserted.

10 We also have an objection on relevance, because it's
11 post-enactment activity, not pre-enactment of SB 14.

12 But, again, we'll -- we think those should be treated
13 the same way the rest of the evidence that objections have been
14 made, but your Honor can look at it for whatever weight it's
15 worth.

16 **THE COURT:** Okay. I'll review it.

17 **MR. CLAY:** Thank you.

18 **MR. ROSENBERG:** Thank you.

19 **THE COURT:** Thank you. Do we need to address the
20 experts', then, qualifications? And I can --

21 **MR. SCOTT:** I think it was the understanding, though,
22 that they were going to be done at the conclusion of the
23 direct --

24 **MR. SPEAKER:** Of the testimony.

25 **MR. SCOTT:** -- of the testimony of the experts. So I

1 think to the extent anyone had an opportunity to assert it, if
2 they weren't asserted, they're in.

3 **MR. ROSENBERG:** I think that's true.

4 **THE COURT:** So no expert I need to address, then,
5 correct?

6 **MR. SPEAKER:** That's correct.

7 **MR. SPEAKER:** No, your Honor.

8 **MS. SPEAKER:** No, your Honor.

9 **THE COURT:** So the Court --

10 **MR. SPEAKER:** Correct.

11 **MR. SPEAKER:** Correct.

12 **MR. SPEAKER:** Correct.

13 **MR. SPEAKER:** Yes, your Honor.

14 **THE COURT:** I'm sorry?

15 **MR. SPEAKER:** Correct.

16 **THE COURT:** Correct. So then the Court accepts the
17 experts -- finds they're qualified to testify about the matters
18 they testified to.

19 You all are going to continue working on the
20 exhibits.

21 We will reconvene, then, on September 22nd at 8:30
22 for closing arguments.

23 And you all have already given me the schedule on the
24 supplementation regarding the experts, except for Herron -- I
25 guess will no longer be a part of that.

1 Findings of fact, conclusions of law to be done by
2 Thursday at midnight --

3 **MR. ROSENBERG:** Yep.

4 **THE COURT:** -- a week from today?

5 **MR. ROSENBERG:** Yes, your Honor.

6 **THE COURT:** And was there anything else we need to
7 address?

8 **MR. ROSENBERG:** I think that's it. And we actually
9 have an hour left of our time, which we won't use.

10 **THE COURT:** Wow. You all cut it close. I would like
11 to keep your tech guys. They were all really amazing, both of
12 them. So I could just sit here, "Can you pull up, you know,
13 whatever exhibit for me while I sit here and work through the
14 case?"

15 But I thank you all very much. You all behaved very
16 well and I appreciate --

17 **MS. SPEAKER:** Thank you.

18 **THE COURT:** -- the way you've handled the case, the
19 way you've tried the case, your courtesy and respect to each
20 other and to the Court. And I know you all have done -- you
21 all have worked really hard on this case, both sides.

22 **MR. DERFNER:** And I know I speak for everybody, your
23 Honor. We say it's been a pleasure to try this case before
24 you --

25 **THE COURT:** Thank you.

1 **MR. DERFNER:** -- and your staff here.

2 **THE COURT:** Thank you.

3 **MR. DERFNER:** And I think I speak for everybody
4 there.

5 **MR. SPEAKER:** Thank you.

6 **MS. SPEAKER:** Thank you.

7 **MR. SPEAKER:** Thank you, your Honor.

8 **THE COURT:** All right.

9 **MS. SPEAKER:** Thank you.

10 **MR. SPEAKER:** Thank you very much.

11 **THE COURT:** So you're excused.

12 **MS. SPEAKER:** Thank you, your Honor.

13 **MR. SPEAKER:** Thank you, Judge.

14 **(This proceeding was adjourned at 1:47 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

September 12, 2014

Signed

Dated

TONI HUDSON, TRANSCRIBER