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

4 DONNA CURLING, ET AL., :  
5 :  
6 PLAINTIFFS, :  
7 vs. : DOCKET NUMBER  
8 : 1:17-CV-2989-AT  
9 BRAD RAFFENSPERGER, ET AL., :  
10 :  
11 DEFENDANTS. :  
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10 **TRANSCRIPT OF BENCH TRIAL - VOLUME 11 PROCEEDINGS**

11 **BEFORE THE HONORABLE AMY TOTENBERG**

12 **UNITED STATES DISTRICT SENIOR JUDGE**

13 **JANUARY 24, 2024**

21 ***MECHANICAL STENOGRAPHY OF PROCEEDINGS AND COMPUTER-AIDED***

22 ***TRANSCRIPT PRODUCED BY:***

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**P R O C E E D I N G S**

**(Atlanta, Fulton County, Georgia; January 24, 2024.)**

THE COURT: Morning. Have a seat.

Where are we at, folks?

MR. BELINFANTE: Your Honor, we had a slight housekeeping measure we were going to take up before we called Mr. Evans. But it appears that Mr. Miller has stepped outside, and he was the one prepared to do it, so I'm happy to get started with Mr. Evans.

It dealt with scheduling for the week upon learning the news from Mr. Martin this morning. I will give a brief overview and then allow Mr. Miller to kind of work through it.

THE COURT: Here he is.

MR. BELINFANTE: Sorry, I was filibustering for you.

THE COURT: Listen, it is a crazy morning.

MR. MILLER: I took the opportunity to run to the restroom. I apologize.

THE COURT: You're allowed. It is a crazy morning. When it takes -- when it takes 45 minutes to go five miles, there is a problem.

MR. MILLER: I heard about that. There were a couple of wrecks on top of fog already. It is wild out there.

So just as far as logistics, Mr. Martin mentioned to us, you know, the time frame on Friday. And I thought it might be helpful to kind of run through the Court what we are

1 anticipating to get through the end of trial --

2 THE COURT: Okay.

3 MR. MILLER: -- or at least the end of our case.

4 So we have got up or we anticipate today to hear from  
5 Mr. Evans, who we'll start with, who is outside right now.

6 Oh, I'm sorry. He is in here. I missed that too.

7 THE COURT: You got here. Very good for you.

8 MR. MILLER: And then we'll have Mr. Hamilton and  
9 Mr. Barnes. The order on those -- that is the order we  
10 anticipate, but it could be flipped. Mr. Barnes had a medical  
11 appointment this morning. So we're working those logistics.

12 THE COURT: I'm sorry. Which Barnes?

13 MR. MILLER: Michael Barnes.

14 THE COURT: All right.

15 MR. MILLER: And then tomorrow, this has been a  
16 little bit of our challenge is working out our experts'  
17 availability. They have to travel. And so tomorrow we'll  
18 start with Dr. Adida, and we'll also be calling -- I anticipate  
19 calling Joseph Kirk who is --

20 THE COURT: Remind me.

21 MR. MILLER: I'm sorry?

22 THE COURT: Remind me who Mr. Kirk is.

23 MR. MILLER: Mr. Kirk is a nonparty. He is the  
24 elections director in Bartow County. He was deposed in this  
25 case back in 2019.

1 THE COURT: Right.

2 MR. MILLER: But I don't believe he testified in the  
3 2019 hearing.

4 THE COURT: I don't remember him. That is why I --

5 MR. MILLER: And we also anticipate calling  
6 Mr. Davis, which may be today, if we have time, or otherwise it  
7 will be tomorrow afternoon. I have discussed that with  
8 Mr. Oles about his client's availability.

9 And then Friday will be Dr. Gilbert. With the  
10 appointment and so forth, Dr. Gilbert is traveling. He is  
11 giving a keynote speech at Kansas State University for an event  
12 they are having for MLK observance.

13 And the one difficulty will be, Dr. Gilbert will need  
14 to get back to Gainesville, Florida. And so with respect to  
15 the break and how we work that, I anticipated his testimony to  
16 probably be a half day, maybe slightly longer than a half day.

17 THE COURT: I can cancel the appointment if I have  
18 to. Why don't we see how we're going. I can -- it is not one  
19 of these things that you can't modify. I have one the next  
20 Friday too, so ...

21 MR. MILLER: Your Honor, the other thing I would  
22 point out is that we will then anticipate going -- calling  
23 Ms. Marks and Mr. Sterling. Given those witnesses, we are  
24 anticipating we will have a full day on Monday, regardless if  
25 we go Friday. It may be a partial day. I was going to raise

1 to the Court, you know, if logistically it would work better if  
2 we could take a day off on Friday and be done on Monday still.  
3 Otherwise it will likely be --

4 THE COURT: Tuesday.

5 MR. MILLER: -- Friday, partial Monday. I think if  
6 we take the day off Friday, there is a possibility we're done  
7 Monday or go into partial Tuesday.

8 So that is our anticipated order of witnesses. The  
9 kind of logistical challenges we're dealing with --

10 THE COURT: That is a lot.

11 MR. MILLER: -- but wanted to be clear with the Court.

12 THE COURT: Of course, I don't know how long it will  
13 take or tomorrow will take either.

14 MR. MILLER: Right.

15 THE COURT: So I'm going to -- and of course I don't  
16 know how long the cross-examination is going to take. So -- or  
17 what happens after that.

18 So have you -- did you share that schedule with the  
19 plaintiffs' counsel before?

20 MR. MILLER: Your Honor, I have not. We were working  
21 it out this morning. We shared our witnesses for today.

22 And I was just told by my colleague, I may have  
23 missed Mr. Hamilton. We are planning to have him here today.  
24 So we are anticipating Evans, Hamilton, Barnes. Likely that  
25 may take up the full day.

1           THE COURT: All right. Well, why don't we let the  
2 plaintiffs ' counsel absorb that and they can discuss that.  
3 When we have another break or after lunch or something, we'll  
4 talk about it.

5           And I have some flexibility about -- I mean, I  
6 realize it is a crazy thing to have to go in the middle of the  
7 day. There is nothing else that apparently I could do. But it  
8 doesn't mean -- I'm not wedded to it at the moment. I'm  
9 feeling all right. So ...

10          MR. CROSS: Your Honor, could we get a sense of the  
11 relevance of Mr. Kirk? Because he has not had any role in this  
12 case since the DRE system, and so it is not clear what he is  
13 going to testify about.

14          THE COURT: Can you respond to that?

15          MR. MILLER: Well, Your Honor, he is a county  
16 elections director. If anybody is going to have to deal with  
17 what is proposed to be ordered in this Court, Mr. Kirk will.

18          Mr. Kirk is also an individual that's -- county  
19 elections director that conducts additional risk-limiting  
20 audits on top of the minimum statewide risk-limiting audit that  
21 is required by the statute.

22          So Mr. Kirk will be here to talk a lot about that  
23 process, why he does it, what he is doing and so forth.

24          THE COURT: And are there others who are -- many  
25 others who are following his process, or are you saying that

1 his process is one that the State is considering requiring for  
2 others?

3 MR. MILLER: Well, so right now the State -- before I  
4 draw an objection, I'm not trying to testify here. But right  
5 now, obviously the State requires the risk-limiting audit for  
6 every November general election. On top of that, the State  
7 encourages counties to conduct additional audits and things of  
8 that nature.

9 Mr. Kirk will have some unique testimony and  
10 information as to why he does that voluntarily, why he does all  
11 these additional audits himself, his experience doing it, and  
12 so forth.

13 MR. CROSS: Okay.

14 THE COURT: To the extent you want to discuss this,  
15 why don't we do that after we have this --

16 MR. CROSS: Exactly. I was just going to say we're  
17 going to reserve our objection because none of that has been  
18 disclosed in discovery, but we'll take it up with them, Your  
19 Honor.

20 THE COURT: You take it up later between yourselves  
21 and then you can --

22 MR. MILLER: I'll note one thing. Mr. Kirk has been  
23 on our witness list from the beginning, so -- and I don't know  
24 that there was an objection at the pretrial conference.

25 MR. CROSS: There was.

1 THE COURT: All right. Well, let's discuss it in a  
2 break later when we don't have a witness standing right here.

3 MR. TYSON: Your Honor, the only thing, before we get  
4 started with Mr. Evans, just to remind the Court, he does have  
5 that federal program at 1:40 I believe it starts. He will need  
6 some time to prepare himself. We have brought computers. He  
7 has his own.

8 But if we get to the point where he would need to  
9 take the -- it is a Zoom presentation where he is a presenter.  
10 You'll hear more about that in a minute. We have found that  
11 the wireless access in the break room is a bit spotty  
12 sometimes. If there is a place that he could go.

13 And then, Mr. Martin, if we could get just a brief  
14 order, if need be, to allow him to bring in his own computer to  
15 participate in that, if we get to the point where it is running  
16 into time. I just wanted to flag it.

17 COURTROOM DEPUTY CLERK: We'll get it taken care of.

18 THE COURT: We'll find a better spot if we need to.

19 COURTROOM DEPUTY CLERK: We'll figure it out.

20 MR. BELINFANTE: Thank you.

21 COURTROOM DEPUTY CLERK: Do you want to call your  
22 witness?

23 **THE DEFENDANT'S CASE (Continued).**

24 MR. BELINFANTE: We call Blake Evans.

25 COURTROOM DEPUTY CLERK: Raise your right hand.

1                                   **(Witness sworn)**

2                   COURTROOM DEPUTY CLERK:   Please have a seat.

3                   If you would state your name into the microphone  
4                   there and spell your complete name for the record.

5                   THE WITNESS:   My name is Blake Evans.   That is  
6                   B-L-A-K-E, E-V-A-N-S.

7                   Whereupon,

8   BLAKE EVANS,

9                   after having been first duly sworn, testified as follows:

10   DIRECT EXAMINATION

11                   BY MR. BELINFANTE:

12                   **Q.**   Mr. Evans, good morning.

13                               Are you currently employed?

14                   **A.**   Yes.

15                   **Q.**   What is your current employment?

16                   **A.**   I am the elections director in the Secretary of State's  
17                   office.

18                   **Q.**   Who did you succeed in that office?

19                   **A.**   Before me, it was Chris Harvey.

20                   **Q.**   All right.   Could you tell the Court briefly about your  
21                   education, starting in college.   You don't need to get much  
22                   further than that.

23                   **A.**   Sure.   So I have a bachelor's in communication and a minor  
24                   in community and civic engagement.   Following that I received a  
25                   master's in public administration from Auburn University.   And

1 the bachelor's was also from Auburn. And then the master's in  
2 public administration and a graduate certificate in election  
3 administration.

4 **Q.** Okay. Is the graduate certificate independent of the  
5 master's in public education?

6 **A.** The election administration program was one track that you  
7 could choose to specialize in when pursuing the master's.

8 **Q.** I see.

9 Okay. And are you familiar with the Election Center at  
10 Auburn University?

11 **A.** I am.

12 **Q.** What is the Election Center?

13 **A.** The Election Center is the Association of National  
14 Election Officials. They hold conferences around the country  
15 and also offer training classes, certification classes.

16 **Q.** While you were a student at Auburn, did you participate in  
17 any of the programming from the Election Center?

18 **A.** I did.

19 **Q.** Okay. And in your role either -- well, since graduating,  
20 have you attended conferences -- professional education  
21 conferences on election administration?

22 **A.** I have.

23 **Q.** At those conference, have you ever seen Dr. Halderman give  
24 a presentation?

25 **A.** Not that I can recall.

1 Q. Okay. How about Mr. Stark?

2 A. Not that I can recall.

3 Q. How about Mr. Skoglund?

4 A. Not that I can recall.

5 Q. Okay. After you received your degrees from Auburn  
6 University, what did you do next?

7 A. So following that, I worked shortly for about three months  
8 with a nonprofit called the David Mathews Center for Civic Life  
9 in Alabama. Following that, I got a job in election  
10 administration.

11 Q. Where -- go ahead. Sorry.

12 A. So that was in Pensacola, Florida, working for the  
13 Escambia County Supervisor of Elections office.

14 Q. Okay. And how long were you employed in Escambia County?

15 A. I was employed there for about three and a half years from  
16 around August of 2015 to late April, early March of 2019.

17 Q. Did you have a title while you were in Escambia County?

18 A. Initially an election analyst and then elections  
19 coordinator when I left.

20 Q. An election what? I'm sorry. I couldn't --

21 A. Coordinator.

22 Q. I see.

23 And what were your duties as election coordinator and  
24 election analyst?

25 A. So I started out with more data entry --

1           THE COURT: I'm sorry. Escambia County. What is the  
2 major city in Escambia County?

3           THE WITNESS: Pensacola.

4           THE COURT: Pensacola. Okay.

5           THE WITNESS: And as far as duties, started out doing  
6 a lot of data entry-type stuff, processing registration  
7 applications, processing absentee ballot requests, processing  
8 other mail. Worked my way up to having more of an involvement  
9 in warehouse and logistics, helping oversee preparing equipment  
10 for election day and early voting locations.

11           Also participated in special projects like improving  
12 our streets database in the voter registration system, for  
13 example.

14 BY MR. BELINFANTE:

15 **Q.** Okay. And on election day in Florida or in Escambia  
16 County, what was the methods of voting that a voter could  
17 choose to exercise the franchise?

18 **A.** So for a voter who showed up in person, they would vote a  
19 hand-marked paper ballot. And then for voters with  
20 disabilities, when I first got there, the machine that we used  
21 was an ES&S AutoMARK. And then when I left, it was the ES&S  
22 ExpressVote.

23 **Q.** Okay. Were others besides disabled voters able to use the  
24 electronic machines, if they preferred?

25 **A.** It was provided for voters with disabilities. If somebody

1 requested to use it, then they would generally be allowed to  
2 use it.

3 **Q.** Okay. Were there -- in your experience in Escambia  
4 County, did you find that there were any issues with voters  
5 filling out hand-marked paper ballots and whether those ballots  
6 were actually counted?

7 **A.** We did see mismarks at times.

8 **Q.** Okay. Could you explain what you mean by mismarks.

9 **A.** Sure. So marks that cannot be read by scanner.

10 **Q.** What would an example of a mismark be in a hand-marked  
11 paper ballot?

12 **A.** It can be -- come in lots of forms. One example, because  
13 the machine is looking for a mark in the oval beside a  
14 candidate's name, and so one example could be -- saw cases  
15 where a voter might circle a candidate's name. Saw cases where  
16 it might scribble on the party affiliation to the right of a  
17 candidate's name instead of the oval to the left. Saw one case  
18 where the instructions were to bubble in the oval and they  
19 bubbled in the D in the party affiliation column.

20 So it comes in lots of shapes. Sometimes checkmarks which  
21 may or may not be able to be picked up by a scanner.

22 **Q.** And if a vote was not picked up by a scanner, were there  
23 ways to count the vote in such circumstances?

24 **A.** So it would depend on -- essentially, the margin of the  
25 contest would determine whether or not there might be further

1 re-counts to look at the overvotes and undervotes to try to  
2 determine voter intent.

3 **Q.** Understood.

4 What did you do after Escambia County?

5 **A.** So after Escambia County, I went to the Fulton County  
6 Registration & Elections Office. And that was 2019, March of  
7 2019.

8 **Q.** And for the record, was that Fulton County, Georgia?

9 **A.** Fulton County, Georgia, yes.

10 **Q.** And what was your title in the Fulton County office of  
11 elections?

12 **A.** Elections chief.

13 **Q.** Okay. What were your duties as election chief in Fulton  
14 County?

15 **A.** The elections chief was, essentially, a deputy director to  
16 the director. And that division of the office oversaw election  
17 day and advanced voting.

18 **Q.** Who was the election director while you served in Fulton  
19 County?

20 **A.** Mr. Richard Barron.

21 **Q.** Okay. And how long were you employed by Fulton County?

22 **A.** I was employed by Fulton County from March of 2019 to July  
23 of 2020.

24 **Q.** All right. And just for the record, for clarity's sake,  
25 where did you go to after or in July of 2020 for employment?

1     **A.**    The Georgia Secretary of State's office.

2     **Q.**    Okay.  And have you maintained the same position at the  
3     Secretary of State's office since joining it?

4     **A.**    I have not.

5     **Q.**    Okay.  Tell us about your other positions.

6     **A.**    So I initially was deputy director.  Chris Harvey, who I  
7     mentioned earlier, was the director.  And then when he left in  
8     2021, I became elections director a couple months later in  
9     August of 2021.

10    **Q.**    All right.  In your experience in Fulton County and in the  
11    Secretary of State's office, roughly how many general  
12    elections, November elections, have you been involved in?

13    **A.**    In just the Secretary of State's office?

14    **Q.**    In Fulton and in the Secretary of State's office.

15    **A.**    So federal general elections, it would be the 2020 and the  
16    2022 general elections.

17    **Q.**    Okay.  And have there been primary elections you have been  
18    involved in as well?

19    **A.**    Have been primary elections, and then also municipal --  
20    municipal general elections and special elections.

21    **Q.**    Okay.  How about runoff elections?

22    **A.**    Yes.

23    **Q.**    Okay.  Are you familiar with an organization known as the  
24    National Association of State Election Directors?

25    **A.**    Yes.

1 Q. What is the purpose of the National Association?

2 A. So the National Association of State Election Directors,  
3 it is the election directors -- as the title suggests, the  
4 election directors from all the states. We have conferences.  
5 We use it as a community to learn best practices from one  
6 another.

7 Q. Do you currently hold a position with the National  
8 Association?

9 A. I am the -- the representative for the south region.

10 Q. All right. And you said there were conferences hosted by  
11 the National Association.

12 Do you attend those conferences?

13 A. I do.

14 Q. Okay. Have there been presentations on cybersecurity at  
15 the conferences of the National Association?

16 A. There have.

17 Q. And did you attend those?

18 A. I have.

19 Q. Are you familiar with an organization known as Electronic  
20 Registration Information Center or ERIC?

21 A. Yes.

22 Q. What is ERIC?

23 A. So ERIC is an organization that -- that about 24 states,  
24 plus the District of Columbia, are a part of. Those entities  
25 hash voter registration data. ERIC conducts analysis on that

1 to identify cross state movers and also people who vote in  
2 multiple states, potentially.

3 So their mission is to -- it is, essentially, to  
4 maintain -- help states maintain accurate voter rolls and to  
5 detect fraud.

6 **Q.** All right. Do you hold any leadership positions within  
7 ERIC?

8 **A.** I am the vice chair of the ERIC executive committee.

9 **Q.** All right. Are you familiar with the Cybersecurity and  
10 Infrastructure Security Agency or CISA?

11 **A.** Yes.

12 **Q.** Okay. What is your -- please describe briefly for the  
13 Court what CISA is and how you interact with it as an elections  
14 director.

15 **A.** Sure. The cybersecurity information -- or the  
16 cybersecurity agency provides services to states and to local  
17 jurisdictions. We utilize them. We partnered with them last  
18 year and also the Georgia Emergency Management and Homeland  
19 Security Agency to conduct surveys of all 159 counties to  
20 assess their readiness in terms of physical security. We  
21 worked with CISA on that.

22 And then also this afternoon I'm on a panel with them  
23 where I'll be sharing best practices from my experience of how  
24 we maintain and ensure physical security of people and  
25 equipment. And I benefit from that as well when I participate

1 in panels that CISA offers.

2 Q. Did CISA invite you to participate in this panel?

3 A. A representative from CISA invited me to participate in  
4 the panel.

5 Q. To your knowledge, is CISA aware of this litigation?

6 A. Yes.

7 Q. Okay. And yet they invited you to speak on what topic  
8 again?

9 A. Physical security.

10 Q. Okay. Does CISA have regional advisers?

11 A. They have election security advisers that are regional,  
12 yes.

13 Q. All right. And who is the regional adviser for the region  
14 that Georgia is in?

15 A. It is David Stafford.

16 Q. And do you know Mr. Stafford prior to him being -- working  
17 with CISA, excuse me, as a regional adviser?

18 A. I do. He was the supervisor of elections in Escambia  
19 County when I was there. So he was our supervisor.

20 Q. All right.

21 THE COURT: Could you spell his last name?

22 THE WITNESS: Yes, Your Honor. Stafford,  
23 S-T-A-F-F-O-R-D.

24 BY MR. BELINFANTE:

25 Q. Director Evans, we're going to switch gears a minute and

1 talk about voting in Georgia.

2 Are you familiar with the methods that registered voters  
3 in Georgia can exercise the franchise?

4 **A.** Yes.

5 **Q.** How are Georgia voters able to vote on election day?

6 **A.** So on election day when a voter goes to the polls, they  
7 check in to vote. They get a voter access card. They go over  
8 to a ballot-marking device. They make their selections. It  
9 prints out. They take their paper ballot. They review it.  
10 And then they put that ballot through a scanner.

11 **Q.** Okay. And what about the DREs from Diebold? Are they  
12 here any more?

13 **A.** They are not. They are not in use.

14 **Q.** All right. Don't have to settle that score. We can move  
15 on then.

16 The voters -- are voters able to vote before election day  
17 in Georgia?

18 **A.** They are.

19 **Q.** What are the methods that voters can vote prior to  
20 election day in Georgia?

21 **A.** Absentee and also advanced in-person voting.

22 **Q.** Okay. Let's talk about early in-person voting, as you  
23 described it.

24 How does a voter vote in early in-person voting in  
25 Georgia?

1     **A.**    Early in-person voting is much like election day where a  
2     voter shows up.  They present their ID.  They check in, get a  
3     voter access card, go over to a ballot-marking device, pull up  
4     their ballot, make their selections, print their ballot, review  
5     their selections, and cast their ballot through a scanner.

6     **Q.**    Okay.  To your knowledge, can a voter who is voting either  
7     on election day or in an early in-person voting situation --  
8     are they able to bring sample ballots to the polling place?

9     **A.**    They are.

10    **Q.**    Okay.  Does the Secretary of State's office provide any  
11    kind of signs or posters for county officials regarding sample  
12    ballots?

13    **A.**    We do.

14    **Q.**    Okay.  And to your knowledge, are counties required to  
15    have sample ballots at polling locations?

16    **A.**    Yes.

17    **Q.**    Okay.  And would that be on -- for early in-person voting  
18    and election day voting?

19    **A.**    Yes.

20    **Q.**    To your knowledge, is that -- well, I think you have  
21    answered that.

22           How long is the early voting process in Georgia?  And by  
23    that, I mean early in-person voting.

24    **A.**    It is three weeks long for general elections.

25           For runoffs, minimum of a week.  But counties are required

1 by law to start as soon as possible for a runoff.

2 Q. Okay. Based on your experience, is that a -- compared to  
3 other states, is that a relatively long period of time or a  
4 short period of time, as it relates to other states in the  
5 nation?

6 A. Relatively long.

7 Q. Okay. Let's talk about absentee ballot.

8 THE COURT: Could we just stop for a second.

9 I just want to go back to the question you asked,  
10 because I may lose it, about sample ballots. And maybe I just  
11 didn't hear it correctly.

12 But counties are required to have sample ballots.  
13 Does that mean that every precinct is supposed to be posting  
14 the ballots and have them available for people to take into the  
15 ballot booth with them?

16 THE WITNESS: So every voting location, when a voter  
17 shows up to vote, there should be sample ballots available.

18 We also --

19 THE COURT: I'm just trying to find out what the  
20 meaning of sample ballots should be available. You are saying  
21 there is a pile of sample ballots or you can ask for -- I mean,  
22 I have just never seen that in all my years of voting in  
23 Georgia. That is why I'm trying to understand it  
24 pragmatically.

25 THE WITNESS: Sure. I have seen some instances where

1 counties will keep a binder for advanced voting.

2 On election day, it is generally easier to post them.  
3 Because when you show up at your voting location, everybody is  
4 getting either the same ballot or very close and so there is  
5 not many ballots. And so it is easier to post them. So that  
6 is what most counties that I have seen will do.

7 In advanced voting, I have seen instances where  
8 counties will come up with a creative way to post all the  
9 ballots. But because you have to have all the ballots  
10 available for anybody in the county that shows up, and there  
11 could be a lot of them -- I also know that counties sometimes  
12 will keep, you know, a folder or binder available to offer a  
13 voter if they want to find their exact ballot.

14 And then there is signage as well that lets voters  
15 know that sample ballots are available.

16 One of the --

17 THE COURT: I guess available to look at or available  
18 to take into your -- that you have an extra copy that you can  
19 bring into the -- the booth?

20 I mean, I'm just -- of course, my experience means  
21 nothing if it's one out of millions of people. But since I'm  
22 an avid voter, I'm just trying to get that to correspond to --  
23 understand that. I have certainly seen them posted but never  
24 an extra one.

25 In fact, they discourage people from taking anything

1 into your -- into the poll with you.

2 THE WITNESS: So they shouldn't be -- for sample  
3 ballots, two things. One is the requirement is that they are  
4 available for a voter to review, not necessarily that the  
5 county has to have, you know, a stack of copies to be able to  
6 provide.

7 Now, one thing that is available and any voter --  
8 this will be available in a few days when we get all the  
9 ballots up for the presidential preference -- can go to their  
10 My Voter page. They can log in and click sample ballot.

11 And we have built in a feature where they can make  
12 their selections and then go ahead and print their ballot out  
13 with their selections so they can take that to the polls with  
14 them. Or they can print out, you know, a regular sample ballot  
15 and just leave it blank and take it with them. And that can be  
16 taken to the voting booth with the voter.

17 THE COURT: All right.

18 BY MR. BELINFANTE:

19 Q. Just for clarity's sake, Director Evans, you said our  
20 website. You mean the Secretary's website?

21 A. Yeah. Secretary of State's website. We offer the  
22 My Voter page.

23 Q. Okay. And how would a voter utilize the My Voter page to  
24 find their sample ballot?

25 A. So once sample ballots are available, the voter can go to

1 mvp.sos.ga.gov, put first initial, last name, date of birth,  
2 select the county, log in, and there is an option to view a  
3 sample ballot.

4 **Q.** Okay. Let's talk about absentee ballots for a little bit.  
5 You mentioned them before.

6 What reasons would a Georgia voter need in order to cast  
7 an absentee ballot?

8 **A.** There is no excuse required.

9 **Q.** Okay. And what is the method by which a voter utilizes  
10 and casts an absentee ballot?

11 **A.** So once they request the ballot, they fill it out. They  
12 can mail it. They can use a drop box, or they can take it in  
13 person to their elections office.

14 **Q.** All right. And is the absentee ballot a hand-marked paper  
15 ballot?

16 **A.** Yes.

17 **Q.** And how is an absentee ballot counted or tabulated?

18 **A.** With a central scanner.

19 **Q.** And can you walk the Court through just how that process  
20 works when the county receives the absentee ballot to its  
21 tabulation?

22 **A.** Yes.

23 So as a county election official, when you receive a  
24 ballot back, you're going to get the envelope back. There is  
25 going to be a perforated portion of the absentee ballot

1 envelope that they can open up. And that is going to reveal  
2 some information for the voter.

3 So as the person who is processing the returned absentee  
4 ballot, they -- the county user will pull up the voter's  
5 information in the voter registration system and verify that  
6 the information on the ballot matches the information for the  
7 person in the voter registration system.

8 First thing is they'll make sure that, okay, we have  
9 record this voter was issued the ballot. And then also they  
10 will check the voter's name and in most instances the driver's  
11 license number, confirm accuracy, and then accept the ballot  
12 back.

13 Once it is accepted back, it will be put into a batch.  
14 And then at the time for processing of those absentee ballots,  
15 that is when individuals designated by the election  
16 superintendent will begin early processing, so opening the  
17 ballot, separating it out so that you have a stack of ballots  
18 to be scanned for that batch.

19 And then that batch gets ran through a high-speed scanner.

20 **Q.** Okay. Who sends absentee ballots to voters in Georgia  
21 between the counties and the State?

22 **A.** The counties send absentee by mail ballots to voters.

23 **Q.** Okay. And does the State have any role in counting  
24 absentee ballots?

25 **A.** No.

1 Q. Okay. If a voter doesn't trust the United States mail for  
2 whatever reason or, you know, they want -- they went late, does  
3 a voter have other options to return an absentee ballot besides  
4 the U.S. mail?

5 A. Yes.

6 Q. And what are those?

7 A. Drop box or returning in person to an elections office.

8 Q. What is the deadline for a voter to have an absentee  
9 ballot returned to their county election office?

10 A. Generally 7:00 P.M. on election day. There is a carve-out  
11 in the law for uniform and overseas military voters called  
12 UOCAVA where they can have their ballot postmarked by election  
13 day, and then the ballot has until three days after the  
14 election for federal elections to arrive at the elections  
15 office.

16 Q. Okay. If a voter requested an absentee ballot and for  
17 whatever reason did not receive it and decides they want to  
18 vote in person either on election day or in early in-person  
19 voting, what options would that voter have?

20 A. If a voter receives an absentee ballot, then decides they  
21 would prefer to vote in person, then they can take the ballot  
22 to the polls and they can surrender the ballot at the polls and  
23 vote a ballot in person -- a regular ballot in person.

24 If they don't have the ballot with them to spoil but they  
25 have not returned it yet, then they can go -- there is a

1 process that the poll workers can cancel the ballot and then  
2 allow that person to sign an affidavit saying, you know, they  
3 are not going to try to vote their ballot and then allow them  
4 to vote a regular ballot.

5 **Q.** Okay. What about a situation -- and you may have answered  
6 this, but just for clarity's sake -- where a voter requested an  
7 absentee ballot, let's say it is election day, they haven't  
8 received it yet. Does that same process work for that voter  
9 who never received the absentee ballot?

10 **A.** Yes.

11 **Q.** Okay. Let's talk about some recent elections in Georgia.

12 MR. BELINFANTE: Your Honor, this is the point where  
13 I was to going to ask the Court to take judicial notice. I'm  
14 going to show the witness some documents. They have been  
15 shared with opposing counsel a couple days ago.

16 THE COURT: Do they agree?

17 MR. BELINFANTE: I'm not sure. I can -- I can do  
18 this the old-fashioned way and approach and ask the witness,  
19 and then I can move to enter it.

20 THE COURT: Why don't you show it to plaintiffs'  
21 counsel and find out whether they agree or not.

22 MR. CROSS: Yeah. The only thing that was raised  
23 with me, Your Honor, because I'm not an expert in the stuff, is  
24 these are not the official results. These are like summaries  
25 from the website, and they are missing certain things like

1 write-ins. It seems like it is probably better to use the  
2 official results.

3 MR. BELINFANTE: Your Honor, I will -- well, let me  
4 start by doing this. I'll work through it with the witness.  
5 And then at the appropriate time, I can present it to the Court  
6 for consideration on entering it as an exhibit, if that please  
7 the Court.

8 THE COURT: Okay.

9 MR. BELINFANTE: May I approach the witness, Your  
10 Honor?

11 THE COURT: Yes.

12 BY MR. BELINFANTE:

13 Q. Director Evans, I'm showing you what has been marked as  
14 Defendants' Trial Exhibit 1234.

15 MR. BELINFANTE: Y'all still have it from the other  
16 day.

17 MR. BROWN: Okay. Thank you.

18 MR. BELINFANTE: Mr. Oles, do you have it?

19 MR. OLES: Yes.

20 BY MR. BELINFANTE:

21 Q. Director, do you recognize this document?

22 A. Yes.

23 Q. What is it?

24 A. So this is a printout of our election night resulting --  
25 results page for the president of the United States contest.

1 Q. Okay. Which year?

2 A. 2020.

3 Q. And how do you recognize the document?

4 A. So the -- at the top it says election night reporting, and  
5 it looks exactly like our election night results page.

6 Q. When you say our, again do you mean the Secretary of  
7 State?

8 A. Yes.

9 Q. Okay. And what does it say -- are these -- well, does it  
10 appear to be a true and accurate copy of the election results  
11 from the November 20 -- November 2020 election for president of  
12 the United States?

13 A. It appears to be the results from the first certification  
14 of that contest.

15 Q. Okay.

16 MR. BELINFANTE: Then, Your Honor, at this point I  
17 would move to enter into evidence Defendants' Trial  
18 Exhibit 1234.

19 I'm happy to approach the Court if you would like to  
20 see a copy at this point.

21 THE COURT: Yes.

22 MR. CROSS: Your Honor, again, I think the official  
23 results make more sense. But it is fine for Your Honor to take  
24 this for whatever it is worth. I do have a relevance objection  
25 to where we're going.

1           Again, I don't -- well, I can't speak for all the  
2     plaintiffs at this point. But certainly for our group and I  
3     think the Coalition, no one is disputing -- no one is alleging  
4     there was any kind of fraud or anything that affected the  
5     outcome of the 2020 election. So I'm not sure where we're  
6     going.

7           MR. BELINFANTE: I would say a couple things, Your  
8     Honor. It does say at the top official results. It is from  
9     the Secretary of State's website. The Northern -- this court,  
10    Judge Jones in *Alpha Phi Alpha v. Raffensperger*, August 23rd  
11    of 2023, citing the Middle District of Alabama in July of 2019,  
12    also the Middle District of Florida, Northern District of  
13    Florida, Southern District of Florida, all have taken judicial  
14    notice to accept similar printouts of election results, as have  
15    the Eighth, Ninth, and Tenth Circuits.

16           I'm happy to get that authority. We're not using --

17           THE COURT: I didn't -- the thing is I didn't hear.

18           MR. CROSS: We're not objecting to it coming in, Your  
19    Honor, other than relevance.

20           THE COURT: They just object on relevance, which is  
21    not --

22           MR. BELINFANTE: The relevance, Your Honor, is you  
23    can see at the bottom that it lists how people in Georgia are  
24    voting.

25           THE COURT: Okay.

1 MR. BELINFANTE: And so we're going to use, I  
2 believe, six election turnout results -- or excuse me, two --  
3 three elections. We intend to use this one, which is the  
4 president in 2020; the -- what I will call the Loeffler  
5 election, the general election in November 2020; what I will  
6 call the Perdue general election in 2020.

7 And again, these have all been provided. As well as  
8 2022 early in-person voting election day total and total  
9 turnout to show how Georgians are voting.

10 THE COURT: I guess what I'm trying to find out, how  
11 Georgians are voting as to each of these seats or how they --  
12 as to number of absentee votes, advanced voting, election day  
13 votes. I mean, I guess which of these categories --

14 MR. BELINFANTE: Methods of voting, Your Honor.

15 THE COURT: Methods of voting.

16 MR. BELINFANTE: So you can see, yeah, election day,  
17 absentee by mail, absentee voting. And we also will have  
18 advanced voting, excuse me.

19 THE COURT: All right. So basically the only -- is  
20 the information you're really focused on the very bottom row  
21 that says the number of election day votes, absentee, advanced  
22 votes, provisional votes?

23 MR. BELINFANTE: That's correct, Your Honor.

24 THE COURT: Well, are there any objections to my  
25 review of this document for that purpose?

1           MR. CROSS: I confess I still don't understand the  
2           relevance. But, Your Honor, I have no objection to you  
3           reviewing it. But I just don't -- I don't understand why that  
4           matters.

5           THE COURT: All right. Well, you can renew that  
6           objection after I hear the testimony. I want to -- because it  
7           seems like Mr. Oles' client has some concerns that are broader  
8           and relate to actual election results, I want to make sure he  
9           is given an opportunity to note his objection if he has any.

10          MR. BELINFANTE: Sure. And --

11          THE COURT: Wait a second. Let me just --

12          MR. BELINFANTE: Yes, Your Honor. I'm sorry. I  
13          thought you were done.

14          THE COURT: Let me see if Mr. Oles has any objection  
15          so we can address everything at once, if he does.

16          MR. OLES: We do not have an objection, Your Honor.

17          THE COURT: All right. Thank you.

18          MR. BELINFANTE: Then we would move to enter  
19          Defendants' Trial Exhibit 1230 into evidence.

20          THE COURT: Did any of the other plaintiffs' counsel  
21          have objections?

22          MR. McGUIRE: We do not object, Your Honor.

23          MR. CROSS: Josh, do you want to just offer all of  
24          them right now, if you have more?

25          MR. BELINFANTE: If I could.

1 MR. CROSS: Yeah. That's fine, subject to the  
2 discussion we just had.

3 MR. BELINFANTE: That will speed things along  
4 greatly.

5 Do y'all need more copies? I have them.

6 MR. CROSS: I would, if you have them.

7 **(There was a brief pause in the proceedings.)**

8 MR. BELINFANTE: May I approach the witness, Your  
9 Honor?

10 THE COURT: Yes.

11 MR. BELINFANTE: I'm going to give you now just a  
12 series of these.

13 **(There was a brief pause in the proceedings.)**

14 BY MR. BELINFANTE:

15 Q. Mr. Evans, we'll try to short circuit this. I have now  
16 handed you -- if you will take a look at what has been marked  
17 Defendants' Exhibit 1232, which is the Loeffler election  
18 results.

19 A. Okay.

20 Q. Is that also a true and accurate copy of the Secretary of  
21 State's information from the website?

22 A. Yes. Yes.

23 Q. And how about 1233, the Perdue election results?

24 A. Yes.

25 Q. Is that a true and accurate copy as well --

1     **A.**    Yes.

2     **Q.**    -- from the 2020?   Okay.

3           Next, what has been marked Trial Exhibit -- Defendants'  
4   Exhibit 1237, do you have that in front of you?

5     **A.**    Yes.

6     **Q.**    Okay.   And because the format changed a little bit, I just  
7   want to ask you a couple of questions.

8           What does that document show?

9     **A.**    So 1237 shows -- this is -- shows turnout for early voting  
10   or advanced voting in person.   It shows at the top, in the top  
11   left, the number of ballots accepted during advanced in-person  
12   voting.   This is for the November 8, 2022, general election.  
13   It shows the number of ballots accepted at 2,289,951.   It shows  
14   the county by county breakdown.

15    **Q.**    And 1236, what does that document show?

16    **A.**    1236, this is also for turnout for the November --  
17   November 8th, 2022, general election.   It shows election day  
18   turnout, which was 1,420,303 with -- so a turnout percentage of  
19   20.4 percent.

20    **Q.**    All right.   And do you have document Defendants'  
21   Exhibit 1235 in front of you?

22    **A.**    I do.

23    **Q.**    And what does that document show?

24    **A.**    It shows turnout statistics for the November 8th, 2022,  
25   general election absentee voting.   It shows number of ballots

1 requested, number of ballots issued, ballots that were  
2 returned, and then ballots that were accepted.

3 **Q.** All right. And last Exhibit 1238, what does that document  
4 show?

5 **A.** It is for the November 8th, 2022, general election. This  
6 is showing total turnout of 3,962,030 for a turnout percentage  
7 of 56.9 percent.

8 MR. BELINFANTE: All right. Your Honor, then at this  
9 point, I would move to enter into evidence Defendants' Trial  
10 Exhibits 1232, the Loeffler election; 1233, the Perdue senate  
11 election from 2020; Defendants' Exhibit 1237, early in-person  
12 voting from the 2022 general election; Defendants'  
13 Exhibit 1236, election day turnout from the 2022 general  
14 election; Defendants' Exhibit 1235, which is absentee voting  
15 for the November 8, 2022, general election; and finally 1237 --  
16 excuse me, 1238, which is total turnout for the November 20 --  
17 excuse me, November 8, 2022, general election.

18 THE COURT: Okay. Any objections?

19 MR. McGUIRE: Do you mean to omit 1234 or is that --

20 MR. BELINFANTE: I did. I thought we had already  
21 admitted that one subject to the usage.

22 MR. McGUIRE: No objection.

23 MR. CROSS: We don't see the relevance. But no  
24 objection, Your Honor.

25 THE COURT: Okay.

1 BY MR. BELINFANTE:

2 Q. Director Evans, based on these documents, what would you  
3 say is the preferred methods of Georgians in voting in terms of  
4 the means of exercising the franchise?

5 MR. CROSS: Objection. I now see the relevance.  
6 That would be speculation.

7 MR. BELINFANTE: Objection because it is relevant?

8 THE COURT: No.

9 MR. CROSS: I see where he is going with it.  
10 Well-played, sir.

11 The -- he can't speculate. I mean, they can argue in  
12 closing the inference they want to draw from this, but he can't  
13 speculate as to what people prefer. I mean, people vote in all  
14 kinds of reasons and people aren't available on election day.  
15 They can't leave their homes.

16 THE COURT: All right. Why don't you reframe the  
17 question so you are not talking about it being preferred --

18 MR. BELINFANTE: Sure.

19 THE COURT: -- and it is a less grand question.

20 MR. BELINFANTE: That is fine.

21 BY MR. BELINFANTE:

22 Q. Director Evans, based on the election data in front of  
23 you, at least as it relates to general elections -- well, let  
24 me back up and ask this.

25 In terms of voter turnout historically, in general

1 elections -- statewide general elections, is turnout typically  
2 higher or less than in primaries?

3 **A.** For general elections, generally higher.

4 **Q.** Okay. And how about general -- statewide general  
5 elections versus county elections? Is it higher in a statewide  
6 general or higher in a county only election?

7 **A.** Higher in a statewide general.

8 **Q.** And same question, statewide general election, is it  
9 higher than you typically see in municipal elections?

10 **A.** Yes.

11 **Q.** Okay. In -- what is the majority method that Georgians  
12 are voting in the general elections of 2020 and 2022?

13 **A.** So in 2022, most of the people that showed up to vote  
14 showed up to vote advanced in-person voting.

15 In 2020, most of the people that showed up to vote voted  
16 advanced in-person voting as well.

17 **Q.** All right.

18 MR. BELINFANTE: May I approach, Your Honor, the  
19 witness?

20 THE COURT: Yes.

21 BY MR. BELINFANTE:

22 **Q.** Director Evans, I'm going to show you what has been marked  
23 at the top Defendants' Demonstrative Exhibit 1.

24 THE COURT: I'm sorry. I think the question and the  
25 answer were a little bit confusing, actually, when I read it.

1           So you asked what is the majority method that -- that  
2       voting in general elections in 2020 and 2022.

3           And the witness said so in 2022 most of the people  
4       that showed up to vote showed up to advanced for in-person  
5       voting. And the witness said the similar thing as to '20.

6           But the thing that is confusing about your answer,  
7       though I understand what -- I think I understand what you are  
8       saying, is it is one thing to say most of the people that show  
9       up to vote cast that vote by advanced in-person voting.

10          That is different than saying advanced -- that most  
11       people, in which it may -- the data may show, but that most  
12       people who vote in Georgia in '20 and '22 voted using advanced  
13       in-person voting.

14          What you have described as a subset -- advanced  
15       in-person voting is a subset of the people who showed up to  
16       vote; is that right?

17               THE WITNESS: Yes.

18          THE COURT: And is that subset of people who cast  
19       votes by advanced in-person voting the largest block of people  
20       who are voting in each -- each -- compared to any other type of  
21       voting?

22               THE WITNESS: Yes, in these two elections.

23          THE COURT: All right. Thank you.

24       BY MR. BELINFANTE:

25       **Q.** And to clarify, I think the Court raised a good point.

1 Between absentee hand-marked paper ballots, early in-person  
2 voting, and election day voting, which in the November 2020  
3 election was the method of voting used most?

4 **A.** Advanced in-person voting.

5 **Q.** Okay. And how did advanced in-person voters vote in  
6 November of 2020's general election?

7 **A.** In person. They made their selections on a ballot-marking  
8 device, printed out their ballot, reviewed their selections,  
9 and cast it.

10 COURT REPORTER: Your answer, again, for me.

11 THE WITNESS: So in person, they showed up to vote,  
12 made their selections on a ballot-marking device, printed their  
13 ballot, reviewed their selections, and then cast their ballot  
14 through a --

15 MR. CROSS: Objection, Your Honor. I would move to  
16 strike the reviewed. He can't speak to that. All he can speak  
17 to is people showed up, presumably they cast a ballot on a BMD,  
18 and that is all he can say.

19 MR. BELINFANTE: Your Honor, I think -- I mean, I'm  
20 fine if the Court wants to take out whether Georgians review  
21 their ballots or not for the purpose of that question. We can  
22 get into that later.

23 THE COURT: All right. Well, let's -- let's limit  
24 the answer to the cast -- the actual casting of the ballot,  
25 having appeared to vote in this manner.

1 All right. And we'll disregard the rest of the  
2 answer.

3 MR. BELINFANTE: Okay.

4 BY MR. BELINFANTE:

5 Q. Director Evans, you have got in front of you a  
6 Demonstrative Exhibit 1.

7 MR. BELINFANTE: Could we go ahead and put that up on  
8 the screen.

9 BY MR. BELINFANTE:

10 Q. Have you seen this document before?

11 It is the same one that you've got in front of you.

12 A. Yes.

13 Q. Okay. And -- and so does this reflect the numbers as you  
14 understand them in terms of the percentage of method of how  
15 voters cast ballots in the 2020 presidential, Perdue, and  
16 Loeffler elections?

17 A. It does.

18 Q. Okay. And so again looking at this demonstrative, would  
19 you -- what number of voters cast their ballot on a  
20 ballot-marking device -- let's just go with the presidential  
21 election from 2022. What percentage of voters?

22 A. 74 percent.

23 Q. And is that generally the same for the two senate --  
24 United States senate seats?

25 A. Yes.

1 Q. Okay.

2 MR. BELINFANTE: If we could go to the next page.

3 BY MR. BELINFANTE:

4 Q. Have you seen this document before or this chart before?

5 A. Yes.

6 Q. Okay. In the 2022 general election, how did the majority  
7 of Georgia voters cast their ballots in that general election?

8 A. Advanced voting.

9 Q. Okay. And between voters choosing or between voters  
10 voting on a ballot-marking device and voters using a  
11 hand-marked paper absentee ballot, what do the numbers show you  
12 as it relates to the 2022 general election?

13 A. That 94 percent of voters voted in person on a  
14 ballot-marking device, six percent voted absentee by mail using  
15 hand-marked paper ballot.

16 Q. Okay.

17 MR. BELINFANTE: Thank you. We can take it down.

18 THE COURT: Have you provided those to the Court?

19 MR. BELINFANTE: Yes.

20 THE COURT: Thank you.

21 BY MR. BELINFANTE:

22 Q. All right. Let's switch topics again and talk about  
23 GARViS.

24 Are you familiar with GARViS, Director Evans?

25 A. Yes. GARViS is the Georgia Registered Voter Information

1 System that is our current voter registration system.

2 **Q.** Okay. And just for clarity, how does one spell GARViS?

3 **A.** G-A-R-V-i-S.

4 **Q.** All right. When did the Secretary of State's office begin  
5 using GARViS?

6 **A.** So I began building GARViS in late 2021. There are a lot  
7 of components to GARViS. The earliest component started to be  
8 used in March of -- in production in March, April of 2022. But  
9 the -- as we think of a voter registration system and what  
10 counties use to maintain the voter registration database, that  
11 has been used since February the 6th of 2023.

12 **Q.** Okay. And you were elections director in February 6 of  
13 2023?

14 **A.** Yes.

15 **Q.** Okay. What is eNet?

16 **A.** ENet is short for ElectionNet, which is the legacy voter  
17 registration system.

18 **Q.** Okay. Is eNet still used today by the Secretary's office?

19 **A.** It is used just as legacy system for reference purposes  
20 and archives.

21 **Q.** Okay. Did information migrate from eNet to GARViS?

22 **A.** It did.

23 **Q.** And how did that happen?

24 **A.** Our IT team worked with our vendor's technical team to use  
25 industry standard methodology to be able to migrate all the

1 data on voters from one system to the other.

2 Q. Okay.

3 THE COURT: Could you just stop for one so I can -- I  
4 just wanted to go back to the dates you provided as to the use  
5 of GARViS.

6 You said the earliest component started to be used in  
7 March and in production in May and April of '22. But as we --  
8 there's some confusion in the transcript. But as we think of a  
9 voter registration system and what counties use to maintain  
10 their voter registration database that has been used since  
11 February the 6th of '23, which is a little less than -- about a  
12 year difference.

13 So what is the difference between the '22 and '23  
14 dates? What -- does that mean the eNet started to be -- was  
15 not used after February of '23 and was in use before that time?

16 THE WITNESS: So good question. I did say that  
17 confusing.

18 So in March -- I believe late March of 2022, we  
19 rolled out and then kept some components of GARViS rolled out.

20 For example, the My Voter page that I mentioned  
21 earlier, that -- we were able to use that because of GARViS.  
22 So the voter information that is in GARViS is shown to the  
23 voter on My Voter page. So that functionality was up and  
24 available for a voter to go see their information, see their  
25 polling location information since late March, early April of

1 2022.

2 Also, we had an absentee ballot request portal where  
3 a voter can go submit an absentee ballot application. That,  
4 when they submitted it, it would go to the GARViS dashboard to  
5 where a county can log in and retrieve it. That was rolled out  
6 around that same time in 2022 in use for the public.

7 But as far as -- and then as far as processing voter  
8 moves, processing new applications for voters, that was done  
9 with eNet. Counties continued to use eNet through 2022 and  
10 into 2023. Until February the 6th, they completely  
11 transitioned over to GARViS. And that is when they began using  
12 GARViS for processing voter registration applications.

13 THE COURT: So the data from -- if I had moved in  
14 2022, my data would -- my correct data would show up on My  
15 Voter page but might not show up on -- on GARViS?

16 THE WITNESS: So the way that we -- the way that we  
17 worked that was counties would process the information on eNet.  
18 So a voter moves from Roswell to Sandy Springs. The address  
19 gets updated in ElectionNet. And then on a nightly basis, there  
20 would be a pull of that information out of --

21 THE COURT: From eNet?

22 THE WITNESS: -- out of ElectionNet into GARViS. And  
23 then the correct information would display for the voter on the  
24 My Voter page.

25 THE COURT: So the My Voter page data would be

1 corrected you are saying --

2 THE WITNESS: Yes.

3 THE COURT: -- by that transfer?

4 THE WITNESS: Yes.

5 THE COURT: Okay. All right.

6 Go ahead.

7 BY MR. BELINFANTE:

8 Q. All right. Are you familiar -- switching subjects again.

9 Are you familiar with the Election Assistance Commission?

10 A. Yes.

11 Q. What is the Election Assistance Commission or the EAC as  
12 it has been called in this case?

13 A. Yeah. So the Election Assistance Commission is part of  
14 the federal government. They provide -- they do multiple  
15 things. They have resources that they provide to state and to  
16 local election officials. They also facilitate the HAVA grant  
17 where they can distribute funding to state and local election  
18 officials.

19 Q. All right. To your knowledge, did the EAC review the  
20 Dominion election equipment selected as part of the procurement  
21 process for the state of Georgia?

22 A. Yes. So one of the things that the EAC does as well is  
23 they do review or they have voting system testing laboratories  
24 that they have certified that review voting equipment against a  
25 set of certification voluntary voting system guidelines.

1           And the Dominion system that we procured, that the State  
2           procured, was -- was certified through the EAC.

3           **Q.**    Okay.  And what if the EAC did not certify the Dominion  
4           equipment selected by the procurement process?  Would that have  
5           an impact on what is used in Georgia?

6           **A.**    Yes.  State law would dictate that we would not have been  
7           able to procure it.

8           **Q.**    All right.  Do you know if CISA made any recommendations  
9           regarding the mitigating potential security risks with the  
10          Dominion equipment used in Georgia?

11          **A.**    The Cybersecurity and Infrastructure Security Agency did  
12          put out a -- central information regarding the coordinated  
13          vulnerability disclosure.

14                   MR. BELINFANTE:  May I approach the witness, Your  
15          Honor?

16                   THE COURT:  Yes.

17          BY MR. BELINFANTE:

18          **Q.**    Director Evans, I'm going to show you what has already  
19          been entered into evidence as Curling Plaintiffs' Exhibit 89.

20                   Director, have you seen this document before?

21          **A.**    I have.

22          **Q.**    Okay.  Is this the CISA mitigation document you were just  
23          speaking of?

24          **A.**    Yes.

25          **Q.**    Okay.  Let's go to the second page, Page 2 of 3.  The

1 title down there is Mitigations.

2 Do you see that?

3 **A.** I do.

4 **Q.** Okay. And is this the recommendations that you were  
5 referring to?

6 **A.** Yes.

7 **Q.** All right. We'll go to the third page, and I'm just going  
8 to walk through some of these with you and ask what, if  
9 anything, has been done regarding CISA's mitigation  
10 recommendations.

11 The first one is to contact Dominion Voting Systems to  
12 determine which software and/or firmware updates need to be  
13 applied. Dominion Voting Systems reports to CISA that the  
14 above vulnerabilities have been addressed in subsequent  
15 software versions.

16 Did the State of Georgia contact Dominion Voting Systems  
17 to determine which software and/or firmware updates need to be  
18 applied?

19 **MR. CROSS:** Your Honor, we're going to object to this  
20 on a couple of grounds. One, it is calling for hearsay. As  
21 you just heard the question, the only way anybody can speak to  
22 this is they would have to parrot what Dominion potentially has  
23 said.

24 Second, this is clearly expert testimony. Only an  
25 expert could talk about whether these specific cybersecurity

1 vulnerabilities have been mitigated.

2 Third, Your Honor, we served an interrogatory on --  
3 summer of 2021 to which we got a response on October 1st of  
4 2021. And I can provide a copy if we need to. But the  
5 question was identify and describe with specificity all  
6 measures taken to investigate, evaluate, remedy, mitigate, or  
7 otherwise address each of the security vulnerabilities and  
8 problems with the current election system identified in Dr. J.  
9 Alex Halderman's declarations, reports, and testimony in this  
10 matter.

11 As we have heard, the CISA advisory is simply a  
12 validation of his report. Dr. Halderman's explained that.  
13 This is the answer we got. It still stands today.

14 State defendants respond that because Dr. Halderman's  
15 expert report in this case is designated attorneys' eyes  
16 only -- they omit that it was designated that way by them --  
17 State defendants are not authorized to review Dr. Halderman's  
18 expert report. Accordingly, State defendants do not have  
19 knowledge of the security vulnerabilities and problems with the  
20 current election system identified in the report.

21 And they indicate they have taken no measures. We  
22 followed up with them in the end of '22. We have an email on  
23 this where we said, are you going to supplement any of your  
24 discovery disclosures under Rule 26(e)?

25 This, of course, is well after the CISA advisory.

1           Mr. Belinfante politely responded they would take a  
2 look and let us know if they had anything to disclose. We have  
3 never gotten anything. This is the record. They are not  
4 permitted to put on any evidence on any mitigations of any  
5 kind.

6           MR. BELINFANTE: All right. I'll address those, if I  
7 may, one by one. First, the hearsay is --

8           THE COURT: I really don't think, frankly, in terms  
9 of the argument it is appropriate to have the witness here  
10 having -- in case you're going to be providing information that  
11 then he would use or parrot.

12          MR. BELINFANTE: I don't think so.

13          THE COURT: All right.

14          MR. BELINFANTE: But I'm happy to excuse him in  
15 case -- that is probably a better practice.

16          THE COURT: Let me just excuse you for a moment, if  
17 you would just sit outside.

18                   **(Witness exited the courtroom.)**

19          MR. BELINFANTE: Your Honor, first to the hearsay  
20 objection. The question was did anyone from the State contact  
21 Dominion. That is not seeking hearsay. He is the director.  
22 And I think if given -- if that is the issue, I can pare it --  
23 that down. I don't think that that is a hearsay objection.

24                 Second, as it relates to expert testimony, I don't  
25 see a basis on any of these for which expert testimony would be

1 required, number one.

2 Number two, I would offer a couple of things. One,  
3 it would be at most or at worst lay opinion testimony just as  
4 Ms. Nakamura provided on day two of the hearing, Page 54 and  
5 55, over objection, Page 77, Page 99, in terms of using her  
6 computer science background to testify about particular methods  
7 of how things worked.

8 Also Federal Rule of Evidence 701 would permit it.

9 The Eleventh Circuit has adopted a flexible approach,  
10 that is *United States v. Estrada*, 969 F.3d 1245 at 1270 to 71,  
11 a 2020 case. A witness can testify about particularized  
12 knowledge gained from experience.

13 The advisory committee itself says you can testify  
14 about particularized knowledge that the witness has by virtue  
15 of his or her position in the business.

16 The Eleventh Circuit under this has allowed  
17 bookmakers to testify about pricing. That is *Tampa Bay*  
18 *Shipping* --

19 THE COURT: I'm familiar with the case law. I'm  
20 familiar -- I am really almost more concerned about -- but, you  
21 know, I don't want to interrupt your flow here.

22 MR. BELINFANTE: No, no, no.

23 THE COURT: We can return to it. But I'm most  
24 concerned about the fact that this has never been responded to,  
25 that there are lots of questions that have been asked about the

1 familiarity already in the course of this case and in this  
2 trial regarding re- -- these identified vulnerabilities and  
3 what actions have been taken.

4 And people who were supposedly qualified by virtue of  
5 their positions to address this issue have not addressed it at  
6 all -- have been unable to or profess lack of knowledge of  
7 anything relating to identification of these vulnerabilities or  
8 what measures needed to be taken.

9 MR. BELINFANTE: And to that point, Your Honor, I  
10 would say this. We have with us the elections director of the  
11 Secretary of State's office. The date of the CISA -- and we  
12 can pull it up. The original release date is June 3rd, 2022.  
13 So the import of the date of Dr. Halderman in October 1 of 2020  
14 is, frankly, irrelevant.

15 THE COURT: Well, it is not irrelevant to asking you  
16 to supplement your answers to interrogatories.

17 MR. BELINFANTE: I believe what Mr. Cross referred to  
18 was an informal email sent to me asking what the status was.  
19 And, frankly, I don't recall the email. I don't doubt that it  
20 happened. I'm not suggesting that.

21 THE COURT: Was there an interrogatory about this or  
22 not?

23 MR. CROSS: Yes.

24 MR. BELINFANTE: There was an interrogatory, as I  
25 understand, about Dr. Halderman.

1 THE COURT: No. But Dr. Halderman there was -- I  
2 mean, I think that is dancing on the head of a pin because, of  
3 course, it is about Dr. Halderman. But it is about the  
4 report -- what they identified as the vulnerability in his  
5 report in which -- that then CISA goes through.

6 So we've got a chain of issues. And their review --  
7 you don't just read the CISA advisory without reading what they  
8 are referencing.

9 MR. BELINFANTE: Your Honor, the State is not  
10 obligated to respond to an expert witness hired by a plaintiff  
11 in a case involving the State. And so to the extent --

12 THE COURT: Wait. Is this an interrogatory or not?  
13 I mean, if you would --

14 MR. BELINFANTE: About the CISA? I don't know.

15 THE COURT: I'm just jumping back and forth.

16 Is what you read an interrogatory, Counsel, or not?  
17 Or was it just simply an informal letter? Or maybe I  
18 misunderstood.

19 MR. CROSS: It is our third set of interrogatories,  
20 Your Honor. They were signed. They were verified under oath.  
21 I believe the verification is by Gabe Sterling.

22 And just to add, it was not an informal request  
23 either on the Rule 26(e). I have the email. I can hand both  
24 up to the Court.

25 I mean, it was a formal request on whether they were

1 going to supplement -- we're nearing the close of discovery, we  
2 want to be sure that your clients comply with their obligations  
3 under Rule 26(e) to supplement their discovery responses and  
4 document productions with responsive information and materials  
5 not yet produced.

6 We mention specifically the Coffee County breach, the  
7 CISA advisories, multiple elections, the upcoming audit, and  
8 made clear that we wanted whatever they were going to rely on.

9 And the response from Mr. Belinfante, again perfectly  
10 polite, we will look through the pending requests and see if  
11 there is anything to supplement.

12 THE COURT: All right. So I guess the request --  
13 this is what I'm trying to get clarified from you, Mr. Cross.  
14 There is the general -- you know, there is, on one hand, the  
15 general duty to provide relevant information. But then there  
16 is also a more specific duty to update your answers to -- to  
17 previously served discovery. And that is a lot more specific.

18 So I'm just trying to find out: Was there a specific  
19 interrogatory or request that covers what you are focused on  
20 here?

21 MR. CROSS: Yes. It is Interrogatory Number -- it is  
22 the third set of interrogatories. It is the one I just read.  
23 So it was a formal discovery request. It is  
24 Interrogatory Number 27.

25 We also had a document request -- which one is that,

1 Ramsey?

2 MR. FISHER: 53.

3 MR. CROSS: We also had a document request that  
4 state -- that asked documents reflecting any actual,  
5 anticipated, or completed plans to replace Georgia's current  
6 voting software or equipment with different voting software or  
7 equipment, such as BMDs that do not generate barcodes for  
8 tabulation, and any communications regarding any such plans.

9 And I suspect what we're going to hear is that the  
10 introduction of 5.17 is part of what, they are going to say,  
11 mitigates CISA. We did not get any such documents.

12 So we did everything we could to protect ourselves.

13 The last point I'll make, Your Honor: We have dealt  
14 with a lot of discovery issues with Dr. Halderman. And under  
15 their argument on Rule 26, by their own argument, this is a  
16 much bigger thing here than what we were talking about with  
17 Dr. Halderman where he actually said he didn't even rely on  
18 what they asked for.

19 They are relying on this witness to come in with a  
20 whole new defense that no one has ever seen.

21 MR. BELINFANTE: Your Honor, I would suggest that  
22 that is not accurate. Number one, I'm not going be making an  
23 argument about using the updated software 5.17 or whatever  
24 else. That is not going to be -- and he is not going to  
25 testify -- if I may proffer -- that the State has done that.

1 So let's get that piece out of the way.

2 Mr. Sterling testified, I was reminded, in his  
3 30(b)(6) testimony about CISA's recommendations. I don't have  
4 the cite with me, and I can certainly find it at a break.

5 And so this is not a surprise. If you walk through  
6 this, none of it is about changing the voting equipment. And  
7 to the extent that it is, then that would be an objection based  
8 on that specific question.

9 But to make the objection globally now about all of  
10 it is both premature, would be overly broad, particularly if  
11 the Court were to say that the State has not reacted to CISA  
12 and then enjoin the State for that. That is --

13 THE COURT: Well, I'm not -- that is -- I understand  
14 the concern. That is why -- I understand the concern. But it  
15 would also be a major problem if you say -- if the State says  
16 it has reacted to CISA and the CISA recommendation that is made  
17 in connection with this specific report and you never updated  
18 that information.

19 That is a pretty major gap on your part, if that is  
20 so. And I'm not saying it is so. I just simply am trying to  
21 understand.

22 MR. BELINFANTE: Understood.

23 THE COURT: I have had one witness after the next in  
24 this hearing -- you know, there have been some excellent  
25 testimony that the government has provided that has been --

1 helped to clarify issues. But it has been surprising the scope  
2 to which one witness after the next has said I have never  
3 looked at that report. I never read that report.

4 MR. BELINFANTE: I think therein, Your Honor, lies  
5 the distinction between CISA and Dr. Halderman's report. And,  
6 frankly, the different -- the status of Dr. Halderman's report  
7 at various points throughout the litigation is what I think you  
8 have heard.

9 I also think the Court -- you know, we have not had  
10 our witnesses up on direct. We have not had the opportunity  
11 for them to testify and explain these matters. But I do think  
12 if Mr. Cross wants to lodge an objection, it would be  
13 appropriate to do it perhaps on each of the individual  
14 measures.

15 Because as Gabe Sterling testified --

16 THE COURT: Well, that is what I think -- that is why  
17 number one was the broadest one. That is why I'm -- that is  
18 why I'm paying attention to it. There may be other ones, but  
19 the number one is obviously they are identifying the --  
20 referencing the vulnerabilities that he identified.

21 MR. BELINFANTE: But from --

22 THE COURT: You would have to basically -- and this  
23 was meant to basically trigger obviously that agencies go back  
24 and reevaluate and look at these issues.

25 And I am happy -- I mean, let me just say, though,

1     there is -- if you're using this witness -- and I'm prepared to  
2     hear the witness about this -- but only on a conditional basis.  
3     I am not -- because that is the best way for me to proceed.

4             I do need to see the interrogatories and the  
5     responses and whatever follow-up was given.

6             But, you know, we've had a series of perfectly well  
7     qualified people who -- in the agency who are representatives  
8     of the State, from high to not so high, and people who have  
9     expertise in -- supposedly in -- some degree of expertise with  
10    this software and any exposures. And none of them have  
11    professed engagement with these issues at all. So it is --

12            MR. BELINFANTE: I --

13            THE COURT: And you can -- I understand the  
14    difference also between, you know, they are calling somebody as  
15    an adverse witness and what you might elicit. But I hope that  
16    people, in fact, are not dancing around with this so that they  
17    give you one answer that should have been given on -- while  
18    they were examined on adverse.

19            MR. BELINFANTE: And I'll be very clear on that  
20    point, Your Honor. That is certainly not our intent. And I  
21    don't believe that is going to be the case.

22            THE COURT: Right.

23            MR. BELINFANTE: I do think, as the Court has seen,  
24    you have situations where, you know, Mr. Beaver was there for  
25    a -- and then left at a certain period of time.

1           You'll hear the same from Mr. Hamilton as well.

2           And you also heard testimony from Gabe Sterling in  
3 terms of the multitude of people involved in looking at these  
4 issues, which is why we called the elections director to  
5 provide specific testimony specifically about CISA.

6           THE COURT: Right. And -- but it -- you know,  
7 listen --

8           MR. CROSS: Your Honor, could I add one factual point  
9 for you?

10          THE COURT: Yes.

11          MR. CROSS: Mr. Belinfante is right. Mr. Sterling  
12 did testify about this. But here is why that doesn't help him.  
13 They designated Mr. Sterling as their corporate rep. If they  
14 want to bring Mr. Sterling to testify, that is fine.

15          And to Mr. Belinfante's defense, sure they could have  
16 Blake Evans testify. But he is bound by the testimony as a  
17 corporate rep. The only thing that any witness can testify to  
18 in this courtroom on behalf of the Secretary's office or about  
19 any of this is what Gabe Sterling has said.

20          And we can provide it. I think it is a paragraph out  
21 of the entire deposition. The person they prepped and  
22 designated did not know what, if any, measures they had taken.

23          So that is why -- that is why you do discovery.

24          MR. BELINFANTE: Well -- and, Your Honor, to that  
25 point, Mr. Sterling was deposed in February of 2022. That is

1 when the --

2 MR. CROSS: Josh, just to correct you, that  
3 deposition was in October.

4 MR. BELINFANTE: Okay. I was going to say the  
5 October.

6 MR. CROSS: It is the October. And --

7 THE COURT: October of --

8 MR. BELINFANTE: October of 2022, Your Honor.

9 THE COURT: So after CISA issued its advisory?

10 MR. BELINFANTE: It was a few months after the  
11 advisory, yes.

12 And at that point -- and this is the challenge. And  
13 I know the Court has seen it. We have seen it in other courts.  
14 Government moves on. And government is still enacting changes.

15 And as Judge Jones ruled in Fair Fight, there comes a  
16 point where the discovery obligations to update has to end  
17 because we could, you know, theoretically update something  
18 today on what government is doing.

19 And to prevent the government from testifying as to  
20 what it has done in this matter, which the Court ruled in  
21 summary judgment was important, would be highly prejudicial,  
22 particularly based on the opportunities to ask Mr. Sterling,  
23 the questions were asked, the follow-ups were available.

24 If the Court wants us to have Gabriel Sterling  
25 testify to this, that is fine. We can do that. But I would

1 suggest to the Court that we have a more qualified person to do  
2 it now in terms of direct hands-on.

3 And so I don't want to get into the hearsay issues  
4 that we may with Mr. Sterling. But in addition to that, this  
5 is -- that deposition was October. This was June of 2022. You  
6 know --

7 THE COURT: What was?

8 MR. BELINFANTE: I'm sorry?

9 THE COURT: What are you referring to?

10 MR. BELINFANTE: This is the CISA vulnerabilities  
11 report, June 3rd of 2022.

12 You know, I think it is a fair question on cross as  
13 to when these things were done. Maybe that would be relevant  
14 to the other issues as well.

15 MR. CROSS: Your Honor, we can't even assess what has  
16 actually been done or when.

17 And, look, in fairness to Mr. Belinfante, things  
18 progress. But that is why the rules are enforced in particular  
19 ways. Right. So when we reached out to them in November of  
20 2022, about a month after Mr. Sterling was deposed, where he  
21 brought up CISA advisory and wasn't -- didn't really have any  
22 information on it as the corporate rep.

23 The right way to respond to that is to say yes, we're  
24 going to need to supplement. There is a CISA advisory. There  
25 is new software. There are things that are happening. And

1 let's have a conversation about when we would do that.

2           They said they would let us know if they had anything  
3 to disclose. And that was the end of it. And we didn't get  
4 this in summary judgment. It is the absolute worst kind of  
5 surprise, Your Honor. Because this goes to the core of the  
6 case. Are there mitigation measures in response to CISA? And  
7 this is the first time we're hearing that there are other than  
8 some very vague speculation on behalf of their corporate rep  
9 that there might be something but he really didn't know. They  
10 are bound by that.

11           MR. BELINFANTE: Your Honor, we would be bound by  
12 that -- well, I am not even -- at most the government would be  
13 bound by that as true in October of 2022. But looking through  
14 this, again there is not -- it is not -- in fact most of it is  
15 not software-related at all. It is use -- close background  
16 application windows, encourage voters to verify the human  
17 readable votes on the printout, conduct rigorous post election  
18 tabulation audits.

19           THE COURT: There is a particular software issue that  
20 was at -- that was identified. So ...

21           All right. Why don't you give me a copy of what  
22 you're relying on as your request as well as -- and the answers  
23 and -- so I at least can know what we're walking into.

24           MR. CROSS: Your Honor, we -- Your Honor, what I can  
25 hand the Court -- and we also have a copy for opposing counsel.

1 Because of the brief mention of this before, we were worried  
2 this was coming.

3 We have a motion to exclude evidence on the 5.17  
4 software, which it certainly sounds like it would be part of  
5 this. Although this particular issue is broader. We can file  
6 that on the record, and we can hand Your Honor and opposing  
7 counsel a courtesy copy.

8 It has the exhibits in it that I was just referencing  
9 on the interrogatory requests, the document requests, and the  
10 emails.

11 THE COURT: Okay. Give me a 15-minute break. I  
12 mean, when is the -- when is the witness' --

13 MR. BELINFANTE: 1:40 is when it commences.

14 THE COURT: All right. Let's take a 15-minute break  
15 then.

16 COURTROOM SECURITY OFFICER: All rise.

17 Court will stand in recess for 15 minutes.

18 THE COURT: Can we get the materials from you before  
19 you disappear so we can look at them?

20 MR. CROSS: Yes.

21 **(A brief break was taken at 11:30 AM.)**

22 THE COURT: All right. Counsel --

23 **(There was a brief pause in the proceedings.)**

24 THE COURT: Of course, I don't know the full -- I  
25 think probably you should just go ahead and sit down for a

1 second.

2 MR. BELINFANTE: All right.

3 THE COURT: I don't know, of course, every detail of  
4 what has happened here. But I'm just going to go through the  
5 sequence in terms of the time frame and the concern.

6 And, of course, I don't know everything that  
7 Mr. Evans may -- you may be seeking Mr. Evans to testify about  
8 either.

9 But just in terms of going over the sequence of  
10 events, Dr. Halderman's report was issued on July 1st, 2021.  
11 Mr. Evans took office as the director in replacing his  
12 predecessor in August of '21, one month later. In that same  
13 time frame -- technically I think it was July 28th, '21.

14 Interrogatories were -- in that same time frame of  
15 July 28th, '21, was -- the Curling Plaintiffs served an  
16 interrogatory, Number 27, which asks the State to identify and  
17 describe with specificity all measures taken to investigate,  
18 evaluate, remedy, mitigate, or otherwise address each of the  
19 security vulnerabilities and problems with the current election  
20 system identified in Dr. J. Alex Halderman's declarations,  
21 reports, and testimony in this matter.

22 As all counsel were certainly aware, because of the  
23 extensive discussions about this as well as volume of paper,  
24 the CISA advisory -- CISA was conducting an advisory in light  
25 of this. And the Court had been in communication with CISA

1 about this requesting an advisory to sort of get some bearings  
2 from the federal agency responsible for these high-level  
3 cybersecurity issues. And the CISA advisory issue was  
4 ultimately issued on June 3rd, 2022.

5 And the advisory also referenced within it, by  
6 number, each of the sections of their guidelines that they also  
7 viewed as relevant.

8 Mr. Sterling then gave his 30(b)(6) deposition on  
9 October of '22, several months after the CISA advisory.

10 And then in November of '22, Mr. Cross asked for an  
11 update by email to counsel -- defense counsel of their  
12 discovery responses and said, among other things, on  
13 November 15th, 2022, in an email, given we received your  
14 discovery responses and document productions last year, apart  
15 from some additional documents from the Secretary's office  
16 recently regarding certain investigations, and given  
17 developments since we received those, such as the Coffee County  
18 breach coming to light, the CISA advisories, multiple  
19 elections, the upcoming audit, et cetera, your clients must  
20 have additional information and documents responsive to our  
21 requests.

22 These -- those should have been promptly produced on  
23 a rolling basis as they were created as Rule 26(e) requires.  
24 But in any event, they need to be produced promptly now before  
25 the close of discovery. Please let us know when we can expect

1 the supplementary discovery.

2           You know, I don't know what the response to that was.  
3 So I'm just referencing it, but maybe there was a response.  
4 Maybe there was not.

5           But I will say it is troubling to be hearing for the  
6 first time after -- that while there was a 30(b)(6) witness  
7 that -- and given the outstanding discovery requests, that  
8 there was -- that we're suddenly going to have Mr. Evans  
9 discuss what measures he took on behalf of the agency to  
10 respond to the CISA advisory or any -- which really obviously  
11 is based on Dr. Halderman's report, which everyone understood.  
12 And he was in a position to understand as well.

13           I want every party here to feel that they had full  
14 opportunity to present their evidence in a fair and reasonable  
15 way and to respond in a fair and reasonable way. And that --  
16 you know, whether that is the plaintiffs or the defendants.  
17 But this really is troubling.

18           And, of course, I don't know what Mr. Evans is going  
19 to say. But it is very -- it is very troubling for this to be  
20 presented for the first time in this fashion without there  
21 having been an update as to what measures the defendants  
22 maintain they took and how they -- and who might testify about  
23 them or to update whatever Mr. -- to discuss at least, well, we  
24 have -- obviously there are measures taken.

25           But I haven't seen any of that. And I'm struggling

1 with trying to give the State defendants an opportunity to  
2 present what they did. And at the same time it is really not  
3 fair game not to have -- to present a witness who you have  
4 never -- never been referenced as a person implementing  
5 anything regarding changes or -- and with no other updates to  
6 the outstanding interrogatories.

7 So, I mean, this is a central part of the case as, in  
8 fact, Mr. Belinfante recognizes. What did the State do?

9 And, of course, I want to decide the case on the  
10 merits. But I don't know what, frankly -- this is a -- truly  
11 troubling. Now, of course, it may be that you want to make a  
12 proffer as to what Mr. Evans would say or -- if allowed to  
13 testify on this subject. And then it would allow me to at  
14 least assess that and plaintiffs to assess that.

15 But there has been -- as of this point there has been  
16 a seeming profound lack of interest in -- in addressing some of  
17 the -- you know, the specific concerns identified other than  
18 saying, yeah -- by some of -- at least some of the officials in  
19 the agency.

20 And I don't mean that in a necessarily negative or  
21 derogatory way. I'm just saying this was -- you know, appears  
22 to be that they just did not take it with the same seriousness  
23 that I would have hoped for. But what I would have hoped for  
24 is irrelevant. It is really what would be required under the  
25 circumstances.

1           And I'm not sure also what Mr. -- Mr. Evans is  
2 obviously a very fine election administrator. But that doesn't  
3 mean that he knows all about the different vulnerabilities that  
4 have been assessed and referenced, the standards in the  
5 underlying regulations and standards of the CISA that -- and  
6 each of these vulnerabilities and they identify the type of --  
7 by code number the type of vulnerability it is. And I think we  
8 have heard that testimony.

9           And I think it is very helpful to understanding that  
10 you had to go back and go look at that -- the nature of that  
11 vulnerability. And I don't know -- and if he is going to  
12 profess knowledge of all that, that is a -- in the scope of his  
13 answer that is a whole other issue.

14           But anyway, I'm going to give you an opportunity to  
15 make a proffer of what his testimony would be, and then I can  
16 assess at this juncture what -- how we should proceed.

17           MR. CROSS: Your Honor, could I -- can I offer a  
18 different path that might actually be easier for everyone?

19           THE COURT: All right, sir.

20           MR. CROSS: So we talked. It seemed like your  
21 initial instinct, when we first raised the objection, was to  
22 let him testify within some scope conditionally.

23           For a variety of reasons, we think that is probably  
24 the most prudent course. So what we propose is, rather than a  
25 proffer, let Mr. Evans testify. We obviously have our broader

1 objection on the record. There is a motion. They can respond  
2 to the motion. Your Honor can rule on that once you have the  
3 benefit of the full record and reach whatever fact findings.

4 THE COURT: If you-all agreed on that --

5 MR. CROSS: We haven't discussed it, but we discussed  
6 it on this side is what I meant.

7 THE COURT: I thought that meant --

8 MR. CROSS: I wasn't clear.

9 We discussed it as plaintiffs, and I think that is  
10 probably more efficient. Your Honor will reach fact findings  
11 and rule on the admissibility later.

12 MR. BELINFANTE: I think that is an appropriate  
13 thing, but I do want to -- if I may, just because -- I mean, we  
14 take very seriously what the Court has said. And certainly the  
15 last thing we want is the Court to be troubled on anything the  
16 State has done.

17 I think that for a couple things we're approaching  
18 this a little bit differently. And I don't want to stand here  
19 and testify. But I do want to explain.

20 I have gone through the information I just received.  
21 You know, there is, like many of the issues before this Court  
22 in this case, a discovery dispute and probably on both sides  
23 things that could and should have been worked out better. No  
24 question.

25 That said, I think the issues that we're going to

1 talk about with Mr. Evans -- and this gets into a bit of the  
2 proffer, but I want to explain where we were going with this --  
3 from the State's perspective, what the State does in -- and I  
4 know that I have said this -- in response to Dr. Halderman may  
5 be different from what it does in response to CISA and it may  
6 be different from what the State is doing anyway.

7           And so a lot of what he was going to walk through in  
8 here, candidly I can't tell the Court when some of this  
9 information was done. But a lot of it is stuff that I think  
10 the State would take the position -- and I think in Gabe  
11 Sterling's deposition you see this, at least in the portion  
12 cited as an exception to -- or an exhibit to the motion -- is  
13 focused on Dr. Halderman and cybersecurity and how the State  
14 views that.

15           I think that is the kind of stuff that will come out  
16 during testimony.

17           But at the appropriate time, because we spent time at  
18 the break trying to walk through the timeline ourselves, we  
19 would like to provide that to the Court so that the Court does  
20 not think that the State has purposefully withheld information  
21 or that there was not a reasonable basis for the responses  
22 which go, frankly, to October of 2021 and -- October 7 of 2021  
23 in a conference we had with the Court in narrowing discovery  
24 responses.

25           I don't need to get into it now. But at the

1 appropriate time -- and it may be something we just submit in  
2 writing -- we would like to do so. Just so -- you know,  
3 because we're seeing this for the first time, and I was not  
4 expecting the objection, candidly. And so we just would like  
5 to be able to provide that to the Court.

6 THE COURT: All right. That is fine.

7 And obviously anything I have done in the space of  
8 30 minutes looking at this is just that. And I think it  
9 probably -- I'm glad to know my first reaction was better than  
10 my second reaction as to how we should proceed.

11 But I do agree that it may -- if we take it -- this  
12 conditionally and almost -- deem it, it may just be nothing  
13 more than a proffer ultimately that you will -- then I'm fine  
14 with this.

15 MR. BELINFANTE: Okay.

16 THE COURT: I mean, there has been a difficulty in  
17 obtaining information at points from the State regarding the  
18 issues relating to how the CISA report was being handled. And  
19 I feel like I have asked questions before. And so, you know, I  
20 am sensitive to this, I realize, because I think that I have  
21 never gotten a very clear response.

22 But I'm hopeful, you know, we can -- this might work.  
23 If it doesn't, so be it. The record is whatever it is.

24 MR. BELINFANTE: All right. Thank you, Your Honor.

25 With that, we can call back Director Evans, if the

1 Court so please.

2 THE COURT: Sure.

3 Remind me again what the dead moment for the witness  
4 to attend his program.

5 MR. BELINFANTE: You're speaking at 1:40. So we need  
6 to give you some time to prepare.

7 THE WITNESS: So it is at 1:40. So I would say 1:20  
8 would give me enough time to --

9 THE COURT: Okay. And have we found any other room  
10 for him to participate that has a better connection?

11 COURTROOM DEPUTY CLERK: I'll get his laptop. I will  
12 take him to IT to get him closer to WiFi.

13 THE WITNESS: Maybe say 1:15, just to be safe.

14 THE COURT: If you could just connect them, write  
15 somebody in IT so they are expecting him.

16 BY MR. BELINFANTE:

17 **Q.** All right. Mr. Evans, first, most important question that  
18 we have come as we were trying to determine is it in Georgia  
19 advanced voting with a D or advanced voting without a D?

20 **A.** It depends on who you ask.

21 THE COURT: These are important issues in life?

22 MR. CROSS: Only to Shannon.

23 THE WITNESS: With a D. The -- you know, the code  
24 looks at it in many ways as absentee voting because it is  
25 separate from election day. THE typical voter will think of it

1 as advanced in-person voting or early voting.

2 MR. BELINFANTE: Got it. All right.

3 THE COURT: I thought you were talking about spelling  
4 totally.

5 MR. BELINFANTE: We were. Whether advance or  
6 advanced. I think the code says one thing and maybe there's  
7 another --

8 THE COURT: That is amazing.

9 MR. BELINFANTE: If Your Honor will give me a moment,  
10 I'm trying to figure out ways to address some of the issues.

11 THE COURT: Sure.

12 BY MR. BELINFANTE:

13 Q. At any time since June 3rd of 2022, to your knowledge, did  
14 you -- well, let me ask you this way: Did you contact Dominion  
15 Voting Systems to determine anything about software upgrades  
16 for the BMD devices in Georgia?

17 A. Yes.

18 Q. Okay. And has the -- are there upgrades currently  
19 available for the Dominion voting equipment in Georgia?

20 A. Yes.

21 Q. Will those upgrades be implemented or applied, whatever  
22 the right term is, to the BMDs in Georgia prior to the  
23 November 2024 election?

24 A. No.

25 Q. Why?

1     **A.**     So to back up and provide full context, shortly after June  
2     of 2022, I knew that Dominion was working towards a software  
3     version at the time that was -- I believe it was 5.13 was the  
4     version. And that is what they were looking to put through  
5     certification.

6             So as part of that, we were preparing to pilot 5.13 in the  
7     November 2022 general election to confirm compatibility.

8             They decided not to try to push that through, the EAC  
9     certification. So we backed off that pilot. And we continued  
10    to look ahead.

11            THE COURT: When you say they decided, you mean  
12    Dominion decided not to push for approval of that, of 5.13?

13            THE WITNESS: That is correct, Your Honor.

14            And so we were not going to pilot that in November of  
15    2022.

16            I continued to stay in contact with Dominion to see  
17    when they were going to push through a software update and  
18    provide that to one of the EAC-approved testing laboratories so  
19    they could take a look at it.

20            They ended up -- one of the testing laboratories  
21    certified 5.17, Dominion version 5.17, which was available in,  
22    I want to say, March of 2023, if my memory serves me correctly.

23            And the -- following that, once -- once software  
24    version is certified, it then has to go through a State  
25    certification process here in Georgia. And -- because at a

1 federal level, the testing laboratories are looking to see,  
2 okay, does this software -- how does it compare against these  
3 voluntary voting system guidelines that the EAC says we have to  
4 compare it to.

5 At a State certification level, we have to make sure  
6 that it is compatible with our entire voting system so that  
7 when we roll it out there is operability there.

8 So we started to look at Dominion 5.17 as -- to put  
9 it through State certification. As part of that, we conducted  
10 a pilot of 5.17 in the November 2023 municipal elections in  
11 five counties. And after that, because of the -- and we're  
12 still assessing that. But with the elections that we're  
13 conducting this year, there is no time to be able to update or  
14 reinstall the new application on all of the ballot-marking  
15 devices, the scanners, the election management systems in the  
16 State of Georgia.

17 BY MR. BELINFANTE:

18 **Q.** Why is that? What would the process be to go in and  
19 update and install new operating software, if operating  
20 software is the right thing to call it, the 5.17? What would  
21 that take?

22 **A.** Yeah. So my deputy director of voting systems, Michael  
23 Barnes, has -- began to kind of detail pretty -- in a pretty  
24 granular fashion the steps that it would take to upgrade an  
25 election management server.

1           So an election -- to upgrade an election management server  
2           to the new software --

3           MR. CROSS: Your Honor, I'll just object. It sounds  
4           like he's conveying what Mr. Barnes has said. Mr. Barnes is  
5           going to testify. I would say we should hear it from him  
6           directly.

7           MR. BELINFANTE: If he -- if there is no objection to  
8           Mr. Barnes testifying to that, that is fine.

9           THE COURT: All right.

10          MR. CROSS: Well, subject to the objection on this  
11          whole line of questioning. Here it is a lack of personal  
12          knowledge.

13          MR. BELINFANTE: I'm going to take this from you, by  
14          the way, Director Evans.

15          THE COURT: I think, though, that he can, in terms  
16          of -- he can explain his course of action, though, by reference  
17          to having reliance on Mr. -- what Mr. Barnes has advised him.  
18          It doesn't mean that he necessarily is an expert on all of  
19          that. But he can say this is why we did this.

20          MR. BELINFANTE: And I was going to make that point.

21          And not to belabor another issue, Your Honor, but I  
22          think we're outside what the plaintiffs' concerns were in this  
23          line of questioning. Because he is affirmatively stating --  
24          and I'm happy to remove the witness -- that they are not  
25          implementing 5.17 at this time, which is consistent with the

1 exhibits that they have attached. He's explained why, which my  
2 understanding is not a basis of the objection.

3 So this is kind of the inverse of I think where  
4 plaintiffs thought we might be going. So I just want to get  
5 that on the record given that Mr. Cross has raised the method  
6 by which we were proceeding with this portion of the director's  
7 testimony.

8 THE COURT: You just shook your head up and down. Is  
9 that -- is there something you want me to --

10 MR. CROSS: No. If that is where we're going, that  
11 is fine. It was a narrow objection on foundation and personal  
12 knowledge on that one question.

13 MR. BELINFANTE: Okay. But to the larger point, I  
14 think this is, again, I think the inverse of what their concern  
15 was. This is --

16 THE COURT: All right.

17 BY MR. BELINFANTE:

18 **Q.** All right. So, sorry. You were saying why or what the  
19 process would take to upload the machines.

20 Could you continue with that explanation.

21 **A.** Sure. So election management server, there is a number --  
22 the amount of time, it takes several hours in a larger county  
23 with larger files. You're looking at, you know, possibly a day  
24 or more. Ballot-marking devices you're looking at 15 to  
25 20 minutes per device. Scanners looking at about 20 minutes.

1           And so just when you add up all these elements and  
2           considering things like we began building ballots for the  
3           presidential preference primary in December, we're about to  
4           begin working on ballots for the May general primary and  
5           looking for when there is an opening to be able to upgrade the  
6           quantity of equipment that we have in Georgia, that time is  
7           just not available.

8       **Q.**    You said that you would have to do it for each device in a  
9           county.  Let's take a large county like Fulton.

10           How many ballot-marking devices are there made available  
11           to voters in Fulton County, if you know?  And an estimate if  
12           that --

13       **A.**    It is going to be around a little over 3,000  
14           ballot-marking devices.

15       **Q.**    All right.  Are you familiar with the term unify --

16                   MR. BELINFANTE:  Oh, and for the record, Your Honor,  
17           I have removed Plaintiffs' Exhibit 89 from the witness, which  
18           is the CISA recommendation.  He no longer has that to refer to.  
19           BY MR. BELINFANTE:

20       **Q.**    For the record -- or excuse me.

21           Are you familiar with the term unify tabulator security  
22           keys?

23       **A.**    Yes.

24       **Q.**    And what are those?

25       **A.**    So my understanding of that is you can set each tabulator

1 in an election project to essentially have its own unique  
2 password that is available. So if a poll worker uses a  
3 security key to try to access a scanner or a tabulator, you can  
4 set it so --

5 THE COURT: You are using tabulator and scanner as  
6 interchangeable words?

7 THE WITNESS: Yes, in this instance.

8 And they use that to try to access it. You can set  
9 the scanner in the system to have its own unique password,  
10 using that function.

11 BY MR. BELINFANTE:

12 Q. And does Georgia do anything regarding -- well, let me ask  
13 it this way.

14 It is based on the scanner you said?

15 A. Yes.

16 Q. Okay. Are ballots scanned at the county level or the  
17 state level?

18 A. Ballots are scanned at the county level.

19 Q. And in a county -- again, let's just take a large one like  
20 Fulton. How many scanners do they have for tabulation  
21 purposes?

22 A. They will have over a thousand most likely. Somewhere in  
23 that ballpark.

24 Q. And does the State require unify tabulator security keys?

25 A. We do not require that function. The passwords are unique

1 per county.

2 Q. Okay. Why?

3 A. The risk of utilizing that function and making it such  
4 that each scanner has its own unique password -- the risk of  
5 poll workers not being able to get into the device and causing  
6 delays in the voting process or potentially the inability to  
7 count a ballot because a scanner is not turned on, and the  
8 logistics around communicating those unique passwords in a  
9 secure fashion, the risk associated with that are too high.

10 Also in talking with other election officials, the way  
11 that we go about it is not uncommon.

12 Q. Okay.

13 THE COURT: I'm not sure I understood your answer,  
14 candidly. Not because there was anything wrong with the words.  
15 But I just substantively didn't understand it.

16 So there is a -- you were asked does the State  
17 require a unify tabulator -- unify tabulator security keys.  
18 And are you -- in your understanding is counsel asking you is  
19 there just always one security set of keys? Is that what he is  
20 asking you?

21 THE WITNESS: So think of it in terms of -- in terms  
22 of passwords. They are unique per county and they change every  
23 election. But for a single county, every scanner, say in  
24 Fulton, for an election, the poll workers are going to utilize  
25 the same passwords for each scanner.

1           The concern would be if we tried to -- if Fulton  
2 County was deploying 900 of their scanners and we tried to come  
3 up with 900 unique passwords, to get those passwords from us to  
4 Fulton and then Fulton to their poll workers that are using the  
5 machine that they may not even know who their poll workers are  
6 yet at the time that the election project is built, the  
7 logistics of that are concerning.

8           And in my view present too much risk that you would  
9 have something lost in the translation and the machine not  
10 being able to turn on.

11           THE COURT: I understand that. But -- and maybe  
12 counsel is just going to ask this as a follow-up. But does  
13 that mean that you're trusting the county to use one password  
14 for all of their 1,000 or whatever number of scanners they have  
15 or a different one per scanner?

16           Do you -- is that a guideline or not that the State  
17 provides?

18           THE WITNESS: So it is, for that county, for the  
19 scanners and the poll worker security key is one password for  
20 the --

21           THE COURT: For everything that was used in Fulton or  
22 anything that was used in DeKalb, they each have their own --  
23 one --

24           THE WITNESS: Yes.

25           THE COURT: -- scanner number?

1 THE WITNESS: It changes every election.

2 THE COURT: By scanner number I meant password.

3 THE WITNESS: Yes.

4 BY MR. BELINFANTE:

5 Q. Are counties able to change the password if they wanted  
6 to?

7 A. I do not know.

8 Q. Okay. Let's talk about counties for a moment and in  
9 particular one that we've spent some time on, Coffee County.

10 Are you aware of any criminal indictments involving  
11 activities in the 2020 general election in Coffee County,  
12 Georgia?

13 A. Yes.

14 Q. Okay. Has the State undertaken or replaced any voting  
15 equipment in Coffee County since the 2020 general election?

16 A. Yes.

17 Q. Okay. What equipment has changed in Coffee County?

18 A. So the server and the central scanner has changed, along  
19 with the ballot-marking devices and the scanners.

20 Q. Okay. If a scanner -- or excuse me.

21 If a ballot-marking device were infected with malware in  
22 Coffee County or wherever else, do you have an understanding as  
23 to whether that malware could infect the county election  
24 management system or EMS?

25 MR. CROSS: Objection, Your Honor. This calls for

1 expert testimony.

2 MR. BELINFANTE: Just asked if he had an  
3 understanding. But certainly I think -- so the objection may  
4 be premature. But I would reraise the testimony from  
5 Ms. Nakamura, also the Eleventh Circuit, on things that are  
6 within his particularized knowledge by virtue of his position  
7 in the business under Rule 701.

8 I'm happy to go through a litany of cases if the  
9 Court wants.

10 THE COURT: I'm aware of them, but I'm not -- I mean  
11 if -- you're asking him whether he has an understanding as to  
12 whether the malware could infect the county election management  
13 system or EMS. I mean, I'm willing to let him testify about  
14 that. But it is definitely lay knowledge and not  
15 necessarily -- you haven't laid the foundation for his having  
16 any expertise in this.

17 MR. BELINFANTE: That's fine.

18 THE COURT: I mean, you could have somebody who had  
19 that expertise who is working in lay capacity. But you haven't  
20 laid a foundation for that.

21 MR. BELINFANTE: All right. Let me back up a second.

22 Well, let me put it -- this is directed to the Court  
23 as a response to the objection.

24 Virtually every witness the State has -- that the  
25 plaintiffs have had and called from the State they have asked

1 at what point in time did you read Dr. Halderman's report.

2 They have opened the door to the State being able to  
3 explain their response to Dr. Halderman's report based on their  
4 understanding. And so --

5 THE COURT: I don't have any problem, but he -- but  
6 you've asked a more technical question.

7 MR. BELINFANTE: Okay.

8 BY MR. BELINFANTE:

9 Q. Are you aware that there are allegations that the State  
10 voting equipment can be hacked with malware, Director Evans?

11 A. Yes.

12 Q. Okay. If malware were to be --

13 THE COURT: Now I'm really confused. You had another  
14 question I was responding to that was objections. Are you  
15 just -- you're moving on, you're not asking --

16 MR. BELINFANTE: I'm laying a different foundation,  
17 and I'm going from there.

18 THE COURT: All right.

19 BY MR. BELINFANTE:

20 Q. Let me ask again.

21 Are you aware that there have been allegations that the  
22 State voting equipment is subject to infection by malware?

23 A. I'm aware.

24 Q. Okay. If malware were to be found or infected into a  
25 ballot-marking device, is it your understanding based on your

1 experience with the machines --

2 THE COURT: You have to ask him a direct question,  
3 not a -- not a leading question. You can ask him is it your  
4 understanding and have him explain the understanding that  
5 you're suggesting.

6 BY MR. BELINFANTE:

7 Q. Is it your understanding that the malware would be limited  
8 to that ballot-marking device?

9 MR. CROSS: That is leading, and it calls for an  
10 expert opinion.

11 MR. BELINFANTE: It is not suggesting an answer. It  
12 is not leading. It is asking if he has an understanding as to  
13 what it is.

14 THE COURT: All right. It is leading, but I'm not  
15 going to spend more time on it. Just try to avoid it after  
16 this.

17 MR. BELINFANTE: Understood.

18 BY MR. BELINFANTE:

19 Q. If malware were on a BMD, what would -- what could happen?

20 MR. BELINFANTE: I can do an open one if you want.  
21 It is not leading. Take your pick.

22 MR. CROSS: It still -- let me just say it this way.  
23 As long as it is clear that this is not coming in for an expert  
24 opinion --

25 THE COURT: No.

1 MR. BELINFANTE: It is not an expert opinion.

2 MR. CROSS: That's fine. All right.

3 MR. BELINFANTE: We agree on that.

4 BY MR. BELINFANTE:

5 Q. If a BMD were infected with malware, what could happen?

6 A. In my -- I don't know how it could spread from that  
7 machine to anything else.

8 Q. Okay. Let's talk about county roles in Georgia elections  
9 generally.

10 What are poll managers? And by that, I'm drawing a  
11 distinction from poll workers.

12 A. So poll managers are essentially the manager of their  
13 location. So each voting location will have a poll worker  
14 team. And the poll manager is the person who is in charge of  
15 that team.

16 Q. Okay. Do poll managers take an oath before they can  
17 perform their duties?

18 A. Yes.

19 Q. Do you have an understanding of what that oath provides or  
20 requires?

21 A. Essentially, in many words, that they will uphold the  
22 integrity of the election and do their best to prevent fraud  
23 and deceit.

24 Q. Okay. Who is responsible for providing election day  
25 voting supplies -- and I'm not talking about machines. I'm

1 talking about the other things -- to county polling locations?

2 **A.** The county election officials.

3 **Q.** Okay. Are counties required to have emergency hand-marked  
4 paper ballots on-site during election day voting?

5 **A.** Yes.

6 **Q.** Are they required to do that for early in-person voting?

7 **A.** Yes.

8 **Q.** Okay. Is there a number or a minimum that they are  
9 required to have in terms of actual ballots?

10 **A.** Ten percent required by State Election Board rule.

11 **Q.** Ten percent of what?

12 **A.** Ten percent of their numbered voters.

13 **Q.** All right. And who pays for those hand-marked paper  
14 ballots? Counties or the State?

15 **A.** Counties.

16 **Q.** In your role as election director for the State of  
17 Georgia, are you familiar with any efforts by the State to  
18 train election superintendents?

19 **A.** Yes.

20 **Q.** And tell the Court what, in terms of training, is the role  
21 of the State and particularly as it relates -- as it may differ  
22 from the role of election superintendents.

23 **A.** So at the state level, we conduct statewide webinars and  
24 also some in-person trainings including at the Georgia  
25 Association of Voter Registration Officials about laws and

1 the -- about laws and the State Election Board rules and  
2 essentially general, you know, guidelines around those laws and  
3 those rules.

4 The counties will then come in and they will discuss best  
5 practices with each other. Then the election superintendents  
6 take the information that we train them on and then they train  
7 their staff on how to do the day-to-day work.

8 They also train their poll workers on how to run advanced  
9 voting and election day operations.

10 **Q.** Okay. If there were to be a change in election day  
11 operations or election day requirements as a result of this  
12 litigation or otherwise, who would be responsible for providing  
13 the training on that order?

14 **A.** We would provide training to election superintendents.  
15 They would provide the training to their staff and polling --  
16 poll workers.

17 **Q.** All right. Does the Secretary or has the Secretary  
18 provided a poll worker manual in the past?

19 **A.** We have.

20 **Q.** Okay. Is it binding for counties to use it?

21 **A.** I think of it as the floor that sets for the election  
22 officials the laws that they need to train their poll workers  
23 on. And then it is their duty to construct additional poll  
24 worker training to train their poll workers on those laws and  
25 to also provide equipment, training, and other things.

1 Q. To your knowledge, does the State provide training to  
2 election superintendents on the physical security of  
3 ballot-marking devices?

4 A. Yes.

5 Q. Okay. Who is responsible for maintaining the physical  
6 security of ballot-marking devices whether in between the State  
7 and counties?

8 A. County election officials.

9 Q. Okay. To your knowledge, is that written down or in law  
10 or anything like that?

11 A. The -- yes.

12 Q. Okay. You testified a moment ago that counties have  
13 experience in administering hand-marked paper ballots in a  
14 couple capacities.

15 To your knowledge, in your experience in Georgia, has any  
16 county in Georgia used hand-marked paper ballots as the primary  
17 method of voting in a general election?

18 A. No.

19 Q. Okay. How about a runoff election?

20 A. No.

21 Q. You talked about building ballots as well.

22 In any given county, is it -- well, let's ask a more  
23 specific question.

24 In a large county like Fulton, in a general election,  
25 let's take November 2020, do you have an idea of how many

1 ballots must be made available?

2 **A.** Are you asking specifically to ballot styles?

3 **Q.** Yes.

4 **A.** Okay.

5 **Q.** Before you answer that question, why don't you explain  
6 what you mean by ballot styles.

7 **A.** Yeah. So ballot styles would be essentially how many  
8 unique combinations of contests that are on a particular  
9 ballot. So if -- if you have one voter that has a race on  
10 their ballot for county commission one and another voter that  
11 has a race on their ballot for county commission three, those  
12 are going to be two different ballot styles.

13 And so for Fulton County with as many districts as they  
14 have, I would estimate that they would have had over a thousand  
15 ballot styles on November 2020.

16 **Q.** In terms of absentee ballots and ballot styles, in the  
17 2020 primary elections, if you could go back to that, remind me  
18 again where were you in the summer of 2020.

19 **A.** So up until first part of July of 2020 I was in Fulton  
20 County.

21 **Q.** Until July?

22 **A.** In the elections office.

23 **Q.** Okay. Is there anything unusual that impacted the  
24 elections in the primaries of 2020?

25 **A.** Yes.

1 Q. What was that?

2 A. COVID.

3 Q. And how did COVID impact the elections in 2020? Primary  
4 elections I'm focused on right now.

5 THE COURT: You're saying based on his experience in  
6 Fulton or was he -- or --

7 MR. BELINFANTE: I think he can -- I'm just asking  
8 how did it impact. It is more open than just Fulton, but ...

9 THE COURT: I'm just trying to remember when did you  
10 go to the State.

11 THE WITNESS: Went to the State in July of 2020.

12 THE COURT: Okay.

13 BY MR. BELINFANTE:

14 Q. How did COVID impact the 2020 primary elections?

15 A. Sure.

16 So when -- to start kind of generally, when COVID first  
17 began to shut down things, advanced voting in person had just  
18 started for the presidential preference primary. And it was  
19 around the second or so week. And so that presidential  
20 preference primary ended up getting delayed until May, which  
21 ended up then getting delayed until June.

22 One of the things that we saw was that there was -- there  
23 was a lot more people applying for an absentee ballot. And so  
24 the number of absentee ballot requests was much higher than in  
25 previous years.

1 Q. Okay. And when you say much higher, was that in Fulton  
2 County while you were there?

3 A. That was across the state and I believe the country.

4 Q. Okay. Were there mistakes made in terms of the  
5 administration of absentee ballot delivery and/or receipt in  
6 the 2020 primaries?

7 A. Yes.

8 Q. Okay. Were those -- have you seen similar volume of  
9 mistakes since the COVID elections of 2020?

10 A. No.

11 Q. All right.

12 MR. BELINFANTE: Your Honor, may I approach the  
13 witness?

14 THE COURT: Yes.

15 BY MR. BELINFANTE:

16 Q. I'll show you what we haven't marked -- because I'm not  
17 sure if we're going to use it as a demonstrative yet, so we  
18 won't mark it yet.

19 And I'll just ask you -- at certain points, I may ask you  
20 to refer to that.

21 To your knowledge, the document I put in front of you,  
22 what is it?

23 A. It is the poll worker manual produced by the Secretary of  
24 State's office latest update May 2021.

25 Q. Okay. I'm going to ask you a series of questions about

1 kind of election day operations and what is happening on the  
2 line so to speak.

3 Let me know if any question I ask is different for  
4 election day in-person early voting.

5 We talked about -- let's see. We have already answered  
6 some of these already.

7 Do you know if on election day -- you testified about  
8 signs that are supposed to be put up.

9 Are there any signs asking voters to do anything with  
10 their ballot once it is printed from the BMD?

11 **A.** There are signs informing voters to review their ballots.

12 **Q.** Okay. Is there any training provided by the Secretary to  
13 election superintendents to perhaps increase efforts to get  
14 voters to review their ballots before they turn them in?

15 **A.** Yes.

16 **Q.** Okay. And what does that training focus on?

17 **A.** It emphasizes the importance in the State Election Board  
18 rule that requires them to have a person at the scanner that is  
19 reminding voters to review their ballots.

20 **Q.** Okay. If a -- and in that, if a voter gets their ballot  
21 and they decide that it does not reflect their choice, what  
22 happens then?

23 **A.** So --

24 THE COURT: I'm sorry. Did you say it was the -- it  
25 was the poll worker who was at the scanner is supposed to

1 remind them?

2 THE WITNESS: Correct.

3 THE COURT: So after they have already voted and the  
4 BMD is through with their -- has already --

5 THE WITNESS: Well, so the --

6 THE COURT: -- printed their ballot?

7 THE WITNESS: So their ballot gets printed, and then  
8 before they scan it, they can still change their mind. They  
9 can go back and say they need to spoil that ballot and get a  
10 new one because they haven't voted until the ballot goes  
11 through the scanner.

12 BY MR. BELINFANTE:

13 **Q.** So if a voter concludes that their ballot, as printed from  
14 a BMD, does not reflect their choices, what is supposed to  
15 happen? What can happen at that point?

16 **A.** So if a voter prints their ballot and they change their  
17 mind on their selections, then they can tell a poll worker,  
18 hey, I need -- I made a mistake. Changed my mind. And the  
19 poll worker will spoil the ballot that they have. And then  
20 they can be issued another voter access card. Go to a BMD and  
21 they will mark a second ballot.

22 **Q.** Okay. When you say spoil the ballot, what do you mean by  
23 that?

24 **A.** So they will write spoil -- the poll manager will write  
25 spoiled across the face of the ballot or the -- the voter or

1 the poll worker will. And -- to indicate that this is a  
2 spoiled ballot. It is not to be scanned. And then it will be  
3 put in a spoiled ballot envelope to be maintained for  
4 recordkeeping purposes to be able to keep track of the number  
5 of ballots that were -- or the number of sheets of ballot stock  
6 that were printed.

7 MR. BELINFANTE: Your Honor, if I may just for a  
8 moment. I think I'm at a point where I've got -- I'm moving to  
9 a different line of questioning.

10 THE COURT: Okay.

11 MR. BELINFANTE: And so in terms of allowing -- we've  
12 got lunch for the witness. If he could eat before the 1:15  
13 time he has requested. I could stop now or I can keep going.  
14 I just wanted to see --

15 THE COURT: So how long is your program?

16 THE WITNESS: It is scheduled to go until 2:15.

17 THE COURT: Okay. Do you have another subject?  
18 Because we could stop at 1:00 and then --

19 MR. BELINFANTE: I think.

20 THE COURT: -- I think he will still have enough time  
21 to eat.

22 MR. BELINFANTE: I could keep going and then we will  
23 stop at 1:00.

24 THE COURT: Looking at his materials, I assume that  
25 he can eat at the same time.

1 MR. BELINFANTE: It is a government specialty.

2 BY MR. BELINFANTE:

3 Q. All right. What time -- let's talk about when polls  
4 actually open on election day. What time do they open?

5 A. Polls open at 7:00 A.M.

6 Q. Okay. What time are election -- county election officials  
7 supposed to be at the polling location?

8 A. Poll workers have to be there no later than 6:00 A.M.

9 Q. Okay. And is there a means to identify poll workers, poll  
10 managers, and others who are working at the polling location?

11 A. Yes. The poll managers will have a roster that they will  
12 use to make sure that they -- that the people that are working  
13 for them are working for them. So yes.

14 Q. And is there a way for the public to be able to  
15 distinguish any person being there and someone who is  
16 authorized to be there as a poll worker or poll manager?

17 A. Generally poll workers will have a badge in many cases  
18 that will identify them as a poll worker.

19 Q. Okay. Before the polls open at 7:00, what is happening  
20 between 6:00 A.M. and 7:00 A.M.?

21 A. The poll workers are working on getting things set up. So  
22 they are verifying seals on equipment. And then they are  
23 getting the equipment set up so the polls are ready to open.

24 Q. Okay. Is the public able to see this work that is going  
25 on between 6:00 and 7:00 A.M.?

1     **A.**    Yes.

2     **Q.**    Okay.  Let's talk about Poll Pads.

3           How are the -- are there opening procedures for setting up  
4     the Poll Pads on election day?

5     **A.**    Yes.

6     **Q.**    Okay.  What are those procedures?

7     **A.**    So the Poll Pad is the electronic pollbook which will  
8     contain the information for the registered voters who might be  
9     coming in to check in to vote that day.

10           And the first step is verifying the seals that are on the  
11     outside of the case.  So poll workers will work together to  
12     verify the seals.  If they match, then they will remove the  
13     seals.  If the seals match what they are supposed to on the  
14     Poll Pad recap sheet, they will remove the seals, open up the  
15     case, and begin to set up the device that is the Poll Pad.

16           So they will put the stand together, put it altogether,  
17     and then they will begin to boot it up, which will include  
18     putting in a password to get to the screen where they can make  
19     sure that the check-in count at the beginning of the day is  
20     zero and that they are, at that point, prepared for the first  
21     voter.

22     **Q.**    All right.  And do the county election superintendents  
23     receive training on this?

24     **A.**    Yes.

25     **Q.**    Okay.  You said that there are seals there.  What happens

1 if an election worker finds that the voting equipment -- and we  
2 were talking about the Poll Pads, so we'll stick to that -- did  
3 not have a seal on it?

4 **A.** If they find that it did not have a seal at all on it,  
5 then they will notify the election superintendent to identify  
6 next steps.

7 **Q.** Is there training --

8 MR. CROSS: Your Honor, sorry. Could we get  
9 clarification? Does he mean the county or the State  
10 superintendent?

11 MR. BELINFANTE: Yes. That's fine.

12 THE WITNESS: So the county superintendent. So the  
13 poll worker, the poll manager will notify the county  
14 superintendent.

15 BY MR. BELINFANTE:

16 **Q.** Okay. Is there training provided to the county  
17 superintendent on what they are supposed to do upon receipt of  
18 such information?

19 **A.** They use their discretion to proceed in a way that they  
20 deem is secure and appropriate given the information -- all the  
21 information that they have available.

22 **Q.** All right.

23 **A.** There is also -- in the event that they need to not use  
24 that Poll Pad, then they can prepare -- they may already have  
25 Poll Pads to prepare to issue a new one to the voting location

1 that can be used. And then there is also an emergency electors  
2 list that are a fall-back option to where they can check voters  
3 in using paper.

4 **Q.** All right. Let's talk briefly just about the BMDs  
5 themselves.

6 Are the election superintendents trained on how to set up  
7 BMDs on election day?

8 **A.** Yes.

9 **Q.** Okay. And what are they trained to do?

10 **A.** So whatever -- counties have different casings for the  
11 BMDs. Some counties use kind of the larger -- larger carriers  
12 that are metal and they will have a seal on the doors. Some  
13 counties use the softer cases. But regardless you verify the  
14 seal that is on the outside of the case.

15 If it matches, proceed with opening it up; extracting the  
16 BMD from it; setting it on a table; plugging it in to the  
17 printer and the backup battery supply; and verify the seals,  
18 the four seals that are on the outside of the ballot-marking  
19 device.

20 And then if all those match, then they can break the seal  
21 that is for the power button and begin to turn on the machine.

22 The machine turns on and takes you to kind of like a home  
23 screen. They can put in a poll worker card. And from that  
24 point, they can verify that the opening count is zero. They  
25 can verify the date and the time on the ballot-marking device

1 is accurate. And they can open the polls on the device.

2 **Q.** You once again talked about seals. Is there any  
3 difference in what happens if there is not a seal for the  
4 ballot-marking device as opposed to the Poll Pad?

5 **A.** No.

6 **Q.** How is the ballot parking device connected to the printer?

7 **A.** There is a cable that runs from the ballot-marking device  
8 to the printer.

9 THE COURT: Could we just stop for a second?

10 MR. BELINFANTE: Sure.

11 THE COURT: Of course I'm limited to my own  
12 experience, but -- at one level. But you talked about that  
13 there were both large metal carriers that -- for some BMDs and  
14 other counties use soft -- some type of soft case.

15 But where -- are the seals in any -- is that in any  
16 way relevant to whether there are seals on the BMD itself or is  
17 it the seals are only on the cases?

18 THE WITNESS: So in all cases, the BMDs have seals on  
19 the device itself.

20 THE COURT: All right. So the question of the cases  
21 is not really relevant to this issue; right?

22 THE WITNESS: Correct.

23 THE COURT: All right. Thank you.

24 MR. BELINFANTE: Your Honor, would you like me to  
25 proceed or --

1 THE COURT: Do you have a new subject?

2 MR. BELINFANTE: Well, we're going to get into more  
3 details on this subject. So again, I --

4 THE COURT: That's all right. I don't want to  
5 torture the witness without lunch.

6 So -- all right. We'll have you -- we're going to  
7 excuse the witness. Please don't discuss your testimony  
8 with -- did you need something?

9 MR. TYSON: I'm sorry, Your Honor.

10 MR. BELINFANTE: Continue, Your Honor. I'll explain  
11 when you are done.

12 THE COURT: Please don't discuss your testimony with  
13 anyone else. We're going to -- you'll be recalled.

14 I have to discuss the order how you want to proceed  
15 on that.

16 But just please be sure that your attention is  
17 focused on what you need to be doing --

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: -- as I understand it.

20 And, Harry, do you have somebody to take him to in  
21 terms of the -- our side?

22 **(There was a brief pause in the proceedings.)**

23 MR. BELINFANTE: Your Honor, given his presentation,  
24 we realize it is a bit unorthodox, but Mr. Hamilton is here.  
25 We're happy to put him up after the lunch break and then

1 continue with Mr. Evans after his presentation, if the Court  
2 and opposing counsel don't object. We're happy to do whatever  
3 the Court prefers.

4 MR. CROSS: Fine with us to keep going.

5 THE COURT: When is the -- again, when is the program  
6 through?

7 THE WITNESS: Scheduled to be done at 2:15.

8 THE COURT: 2:15.

9 All right. Well, it is 1:00 now. So we'll -- if you  
10 really think you might be through, we might just take more  
11 time.

12 How long is Mr. Hamilton?

13 MR. TYSON: He is relatively short, Your Honor.

14 THE COURT: If he is short, we can go ahead.

15 All right. Thank you very much.

16 So do you know -- do you need him to come with you so  
17 he can identify the computer.

18 **(There was a brief pause in the proceedings.)**

19 THE COURT: Is there anything else we need to address  
20 now, or should we take a lunch break now?

21 MR. BELINFANTE: I don't believe we have anything,  
22 Your Honor.

23 THE COURT: Is 45 minutes enough for lunch for  
24 everybody? I think no other disasters, surprises, fights.

25 **(A lunch break was taken.)**

1 THE COURT: Have a seat.

2 Who is your next witness?

3 MR. TYSON: Your Honor, pursuant to our discussion  
4 before lunch, the defendants call David Hamilton.

5 THE COURT: Okay.

6 **(There was a brief pause in the proceedings.)**

7 COURTROOM DEPUTY CLERK: If you would, please raise  
8 your right hand.

9 **(Witness sworn)**

10 COURTROOM DEPUTY CLERK: Please have a seat. Into  
11 the microphone, please state your name and spell your complete  
12 name for the record.

13 THE WITNESS: David Hamilton.

14 MR. TYSON: And can you spell your name as well,  
15 Mr. Hamilton?

16 THE WITNESS: H-A-M-I-L-T-O-N.

17 Whereupon,

18 DAVID HAMILTON,

19 after having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. TYSON:

22 **Q.** Good afternoon, Mr. Hamilton.

23 **A.** How are you?

24 **Q.** Could you please provide the Court with just briefly your  
25 educational background.

1     **A.**     Started off the U.S. Navy in the late '70s, worked for  
2     security services intelligence. Came out, did some DOD,  
3     Department of Defense, work, space systems, and then kind of  
4     launched the career in infrastructure, IT security over the  
5     last 40 years.

6     **Q.**     And what is your current employment?

7     **A.**     I work at Shepherd Center. It is a catastrophic care  
8     hospital here in Atlanta. They deal mostly in brain injury and  
9     catastrophic spinal injury. It's a 165-bed hospital.

10    **Q.**     And what is your current role at the Shepherd Center?

11    **A.**     I'm the information security officer and the director of  
12    all IT services. So that's infrastructure, networking,  
13    cybersecurity, basically anything that plugs in the wall.

14    **Q.**     Does your role include assessing risks and making  
15    recommendations on remediating those risks?

16    **A.**     Yes, sir.

17    **Q.**     Did you previously work with the Secretary of State's  
18    office?

19    **A.**     Yes, sir.

20    **Q.**     And what was your role with the Secretary's office?

21    **A.**     I was actually a consultant. I worked for a company  
22    called TrustPoint Solutions, and I went there initially to help  
23    kind of coach up and see if I could help mature their  
24    program -- security program with the current ISO that was  
25    there.

1 Q. And do you recall information from when to when you worked  
2 with the Secretary's office?

3 A. It was the tail end of then-Secretary of State Kemp and  
4 then through the first part of Secretary Raffensperger's.

5 Q. And how long have you worked in the cybersecurity --

6 THE COURT: What does that mean? Is that a year,  
7 two years, what --

8 THE WITNESS: Total of about four on and off, I  
9 guess, over a four-year period.

10 THE COURT: When did you stop? Let me put it that  
11 way.

12 THE WITNESS: May of '21.

13 THE COURT: May of '21 was your last year -- last  
14 point --

15 THE WITNESS: Last time I was there in person.

16 THE COURT: All right.

17 THE WITNESS: True.

18 BY MR. TYSON:

19 Q. Mr. Hamilton, how long have you worked in the  
20 cybersecurity industry?

21 A. All total, 40 years; specifically in cybersecurity,  
22 20 years.

23 Q. And do you train others on issues involving cybersecurity?

24 A. I do.

25 Q. What role do you have in cybersecurity certifications, if

1 any?

2 **A.** I participate as a volunteer through a subject matter  
3 expert program to help with the construction of questions for  
4 the certification exam to apply the rigor that we need to make  
5 sure that the folks that get the certification actually deserve  
6 it.

7 **Q.** And what types of secure computer systems have you worked  
8 with in your experience?

9 **A.** Federal systems, obviously, when I was in the service. I  
10 was a compartmented clearance, which is a fragment of top  
11 secret, and I continued that into the DOD realm and then just  
12 kind of branched out from there.

13 And then just basic computer security. I kind of got the  
14 bug that, you know, we needed to protect something. I think  
15 that was the basis of my interest in it is just being able to  
16 protect.

17 **Q.** And I believe I heard you say at some point during the  
18 course of this case, which I know has been lengthy, that  
19 security is a journey.

20 Is that something you have said before?

21 **A.** Correct. Yeah, it is not like an assessment. An  
22 assessment is a snapshot in time, but the actual process of  
23 risk mitigation and taking care and maturing a security program  
24 is truly a journey. It never ends. It is not -- it is like  
25 the U.S. mail. It comes every day.

1 Q. So I want to turn to your work with the Secretary, first  
2 with the ballot-building system at the Center for Election  
3 Systems.

4 A. Okay.

5 Q. Can you explain to the Court what the ballot-building  
6 system at CES is?

7 MS. KAISER: Objection, Your Honor. Lack of  
8 foundation.

9 MR. TYSON: I'm happy to lay a foundation, Your  
10 Honor.

11 THE COURT: Okay. Just make sure I get directed  
12 towards the time frame that he actually personally is familiar  
13 with rather than just being generalized.

14 MR. TYSON: Certainly.

15 BY MR. TYSON:

16 Q. Mr. Hamilton, are you aware of different systems that were  
17 used at the Center for Election Systems during the time you  
18 worked for the Secretary's office?

19 A. Yes, sir. Some of them were specifically excluded by my  
20 statement of work, such as the voting systems themselves. But  
21 all of the in-house business systems and the voter registration  
22 system was in my framework.

23 Q. Was one of those systems the ballot-building system at  
24 CES?

25 A. Yes.

1 Q. Did you conduct an initial assessment of the  
2 ballot-building system when you first began work for the  
3 Secretary's office?

4 A. I did.

5 Q. And what did you conclude at that point?

6 A. There were just some suggestions that were made to help  
7 harden things and make it a little more crisp. Nothing  
8 fundamentally was wrong with it. It just needed a little TLC.

9 At that point the vendor was wholly responsible for the  
10 maintenance -- the ongoing maintenance as per their contract.  
11 And I found some deficiencies in that. It is just I didn't  
12 feel like they were responding fast enough.

13 So we brought it to the attention of Merritt Beaver, who I  
14 reported to as a contractor, and also Gabriel Sterling. And  
15 they kind of took it from there, and that kind of started the  
16 ball rolling. And we ended up releasing them from that  
17 responsibility and bringing that responsibility back in-house,  
18 which was a better idea, I think.

19 Q. What are -- do you know what the security measures are for  
20 the ballot-building system during your time at the Secretary's  
21 office?

22 MS. KAISER: Objection. Lacks foundation.

23 MR. TYSON: I'm asking if he knows, Your Honor. I  
24 think he can say whether he knows or not. That lays the  
25 foundation for additional questions.

1 THE COURT: Well, why wouldn't it?

2 MS. KAISER: Your Honor, I thought the question was  
3 more to do with what the actual security measures were.

4 THE COURT: Lay the foundation and go ahead then.

5 BY MR. TYSON:

6 Q. Mr. Hamilton, do you know what security measures were  
7 utilized by the ballot-building system at CES during your time  
8 there?

9 A. Yes, sir.

10 Q. And what were some of those?

11 A. It was a separate --

12 MS. KAISER: Your Honor, he has to say how he has  
13 that knowledge.

14 MR. TYSON: Okay.

15 THE COURT: Go ahead.

16 BY MR. TYSON:

17 Q. Mr. Hamilton, how did you come to be aware of the security  
18 measures that were utilized by the ballot-building system at  
19 CES?

20 A. A physical inspection and also a risk assessment, a normal  
21 risk assessment which I had performed several times in my  
22 previous engagement.

23 MS. KAISER: Your Honor, you know, I think the  
24 difficulty here is that Mr. Hamilton gave us some answers in  
25 his deposition that suggested he did not have familiarity with

1 the subject.

2 I'm happy to do a short voir dire of the witness if  
3 that would be helpful.

4 MR. TYSON: Your Honor, I believe that is an  
5 appropriate subject for Ms. Kaiser to explore on cross.

6 THE COURT: I think so as well, but I think that --  
7 when did you do a risk assessment?

8 THE WITNESS: It was shortly after we started with  
9 the -- at then -- I guess probably within three months of my  
10 arrival.

11 THE COURT: And your arrival was around 2017?

12 THE WITNESS: I think that is right. Sorry.

13 THE COURT: And the -- so that is when you did the  
14 risk assessment? Around 2017?

15 THE WITNESS: That is when I was first engaged by  
16 TrustPoint.

17 THE COURT: And the physical assessment was done  
18 when?

19 THE WITNESS: Shortly -- as part of that. I kind of  
20 toured the offices of the Secretary of State. I went to Macon  
21 and looked at that facility as well because part of information  
22 security is kind of understanding what you have to protect, and  
23 laying eyes on it is really the best way to do that.

24 THE COURT: And then -- so when you are talking  
25 about -- were you working full time as a consultant for the

1 State -- or for the Secretary of State's office?

2 THE WITNESS: Full time for TrustPoint Solutions and  
3 it was a -- what they likened to a bucket of hours, agreement  
4 with Secretary of State, statement of work on an as-needed  
5 basis.

6 But initially, there was a pretty heavy workload  
7 where it was every single week, and then it scaled back. Then  
8 it would ramp back up, flexed totally at the behest of Merritt  
9 Beaver and crew there.

10 THE COURT: So you reported to Mr. Beaver?

11 THE WITNESS: Yes, ma'am. Yes, Your Honor. I'm  
12 sorry.

13 THE COURT: That's all right.

14 So was it typically anywhere from zero to 40 hours or  
15 zero to 20 hours a week, or --

16 THE WITNESS: It was mostly a 40-hour work week or  
17 even more, just depending on what we had to do after-hours. A  
18 lot of times when we were making changes to systems or updating  
19 systems, it needed to be outside of the business day to lower  
20 the impact on the users.

21 THE COURT: So I take it from what you're saying,  
22 though, that your familiarity was through the DRE system  
23 because that is what was in effect in 2017?

24 THE WITNESS: Right. And it was not just that  
25 system. It was all of the Secretary of State's -- the

1 corporations, the licensing board, all of those business  
2 systems. You know, they were all present in those facilities.

3 THE COURT: And so just to clarify -- and then you  
4 can -- later on, plaintiffs' counsel can address the  
5 cross-examination issues you have. And maybe I'm touching on  
6 them, and maybe I'm not. I'm just trying to understand what  
7 you did.

8 You said you didn't deal with the voting system, so  
9 you dealt with all the business systems --

10 THE WITNESS: Right.

11 THE COURT: -- but not the voting systems?

12 THE WITNESS: Well, the one voting system that was  
13 considered a business system that was within my scope was the  
14 voter registration system.

15 THE COURT: Was the voter registration system?

16 THE WITNESS: Right. And then they asked me to  
17 physically look at the Marietta location and do a mini  
18 assessment of that.

19 THE COURT: At the Marietta location for the voter  
20 registration system, or for what?

21 THE WITNESS: That is where the ballot system was --

22 THE COURT: The ballot system.

23 THE WITNESS: -- physically. That is where the  
24 off-net servers were.

25 THE COURT: So that was separate from the voter

1 registration system --

2 THE WITNESS: Yes.

3 THE COURT: -- your review of that?

4 And that was around 2017 also?

5 THE WITNESS: Yeah. I'm sorry. I'm not good with  
6 dates. But it has been a minute. Sorry.

7 THE COURT: Okay.

8 BY MR. TYSON:

9 Q. Mr. Hamilton, did you have familiarity with the off-net  
10 system at the Marietta location following the transition to  
11 Dominion ballot-marking devices in 2020, 2021?

12 A. I don't know if it had already been moved over to that  
13 platform or not. I remember archiving, you know, all hard  
14 drives, shrink-wrapping them, that kind of thing to preserve  
15 them. So that may have been the change that went around at  
16 that time.

17 Q. Let's talk about the voter registration system. You said  
18 that was within your scope of work.

19 Did you say that was within your scope of work for the  
20 Secretary's office?

21 A. Yes, sir.

22 Q. Which vendor hosted the voter registration system?

23 A. PCC. I'm not entirely sure what those initials mean,  
24 but --

25 Q. Do you recall if Fortalice found vulnerabilities with PCC

1 and the voter registration system?

2 **A.** I do.

3 **Q.** And did they?

4 **A.** We -- yes. We definitely underlined some things, some  
5 deficiencies that they needed to address, and part of the issue  
6 was, is their -- they weren't as excited about it as we were.  
7 We wanted to get them turned around in a big hurry, and I think  
8 that was really the antithesis of making the change to another  
9 vendor, taking that in-house because we kind of got tired of  
10 having to worry about it. It is something we could have done.

11 **Q.** Did you recommend replacing PCC as the vendor for the  
12 voter registration system?

13 **A.** I did.

14 **Q.** And did the Secretary's office accept your recommendation  
15 on that point?

16 **A.** I'm not sure what went into the actual decision. I'm sure  
17 it just was -- added fuel to the fire.

18 **Q.** Do you know if the Secretary's office had transitioned  
19 away from PCC by the time you concluded your time there?

20 **A.** Yes. That was -- they were on their way out because they  
21 were the service provider. They were reduced to just the  
22 developer. And then they had something go on within their  
23 corporation that split off into factions or whatever that made  
24 things difficult, and I think that was about the time that the  
25 staff there kind of had it. And we made arrangements to

1 rearrange the server farms, move the servers to what we thought  
2 was a better environment through QTS instead of zColo, which is  
3 here in Atlanta.

4 So we moved them to two different facilities, so -- and  
5 that was part of the uplift of the underpinning hardware.  
6 There was a lot of things changing at the same time.

7 **Q.** And those movements of the server were part of the process  
8 to address vulnerabilities in the voter registration system?

9 **A.** It certainly helped; right. Yep.

10 **Q.** Do you recall an incident while you were serving with the  
11 Secretary's office involving a laptop from Fulton County?

12 **A.** I do.

13 **Q.** And do you recall -- can you tell the Court what that  
14 situation was?

15 **A.** I received a call from one of the investigators -- I can't  
16 recall who exactly it was -- for the Secretary of State and  
17 said, hey, we've got this laptop in Fulton County, and the user  
18 said that they believed that the mouse was moving without their  
19 input and kind of freaked out and shut down the notebook. What  
20 do we do?

21 I said, box it up, wrap it up, take control of it, and  
22 we'll send it to Fortalice and let them do a forensic analysis.

23 **Q.** Do you recall what the result of that analysis was?

24 **A.** Yes. It did come back to us. It took two or three weeks,  
25 but it did come back to us that there were no issues found.

1 They didn't find any remnants of any malware or anything else.  
2 Indicators of compromise is what it is referred to.

3 **Q.** Mr. Hamilton, I believe you said earlier, did you address  
4 the security of the Dominion voting equipment itself during  
5 your time with the Secretary's office?

6 **A.** No, sir.

7 **Q.** Which entity was responsible for the security of the  
8 Dominion equipment?

9 **A.** The vendor.

10 **Q.** In your experience, is it normal to rely on a vendor for  
11 security of a particular system?

12 **A.** They are primarily responsible for the security. It is  
13 their code line. But yes, it is not unusual.

14 **Q.** Mr. Hamilton, what was your personal assessment of  
15 cybersecurity in the Secretary's office at the time you left?

16 **A.** I believe I left it better than I found it, but then  
17 again, the next person in line would say the same thing. That  
18 is what we're supposed to do.

19 You know, it wasn't bad by any means. I mean, everybody  
20 at the Secretary of State was very interested in making things  
21 secure and accessible. You know, they did a great job. And  
22 frankly, the folks that were identified that weren't pulling  
23 their weight didn't last long. You know, Merritt and team  
24 weeded those out pretty -- so for the smaller teams that we  
25 had, they were pretty dedicated. A lot of late nights, a lot

1 of overnights. You know, that was -- they were in for the long  
2 haul.

3 Q. Are you proud of the work you did with the Secretary's  
4 office?

5 A. Yes, sir.

6 Q. Mr. Hamilton, are you a Georgia voter?

7 A. Yes, sir.

8 Q. Do you vote on the Dominion ballot-marking devices?

9 A. I do.

10 Q. Do you have any concerns about election results in  
11 Georgia?

12 A. No.

13 MR. TYSON: Your Honor, if I could consult briefly, I  
14 think that's all the questions I have.

15 THE COURT: Okay.

16 **(There was a brief pause in the proceedings.)**

17 MR. TYSON: Mr. Hamilton, thank you. I know you've  
18 had to make several trips down here. I appreciate your time.

19 THE WITNESS: I appreciate the flexibility of my  
20 schedule at the hospital.

21 MR. TYSON: Thank you.

22 THE WITNESS: Thanks very much.

23 CROSS-EXAMINATION

24 BY MS. KAISER:

25 Q. Good afternoon, Mr. Hamilton. I'm Mary Kaiser. I

1 represent the plaintiffs. It is nice to see you in person. I  
2 think we met over Zoom.

3 **A.** In person. That's awesome. Thank you.

4 **Q.** I think -- believe the judge asked you if you worked full  
5 time as the CISO for the Secretary of State.

6 Do you recall that?

7 **A.** Yes.

8 **Q.** And did you, sir?

9 **A.** It was a contract, so actually not a direct employee. I  
10 was a consultant that was hired under contract with a specific  
11 statement of work. The statement of works -- actually, there  
12 were four -- as I remember, there were four different ones as  
13 we went along that changed scope a little bit as we progressed.

14 Once they decided to release the other information  
15 security officer, what I thought was we were going to go ahead  
16 and go to market, hire a new one. That is usually my mantra  
17 when I engage with customers is I teach them how to fish, teach  
18 them how to be more resilient.

19 I don't want to make a career out of it because I've got a  
20 real job, but I want to imbue that knowledge to them so they  
21 can be better, so --

22 **Q.** And I believe you spent approximately half your time  
23 working on security issues for the Georgia Secretary of State's  
24 office during your tenure; is that right?

25 **A.** All total if -- it was probably more than half if you look

1 back at the actual time sheets.

2 Q. Do you recall being deposed in this matter, Mr. Hamilton?

3 A. I do.

4 Q. And you were under oath?

5 A. Yes.

6 Q. Okay. Do you recall being asked the following question:

7 And so from roughly summer of 2018 --

8 MR. TYSON: Your Honor, I'm sorry. I'll object here.

9 If Ms. Kaiser is attempting to refresh Mr. Hamilton's  
10 recollection, I think she can do that with the deposition. I  
11 don't think this is proper impeachment for her to read the  
12 question and the answer to him.

13 MS. KAISER: That is exactly how impeachment works,  
14 Your Honor. I'm happy to put a copy of it in front of him, but  
15 I'm not refreshing his recollection.

16 THE COURT: Well, you can put a copy in front of him,  
17 but just ask him whether he -- this is what his testimony was.

18 THE WITNESS: That would be great. I appreciate it.  
19 Thank you.

20 BY MS. KAISER:

21 Q. I'm on Page 25, Mr. Hamilton, starting with Line 19.

22 A. 25. Got it.

23 Q. You were asked, question: And so from roughly summer of  
24 2018 until June of 2021, you spent approximately half your time  
25 working on security issues for the Georgia Secretary of State's

1 office; is that correct?

2 **A.** Yes.

3 **Q.** Answer: Yes, ma'am.

4 **A.** Yes.

5 **Q.** Did I read that correctly?

6 **A.** You did.

7 THE COURT: So you actually came in 2018 and not  
8 2017?

9 THE WITNESS: Yeah. I guess it was off. Yeah,  
10 that's a little bit -- but half time, approximately, yeah.

11 THE COURT: Thank you.

12 BY MS. KAISER:

13 **Q.** You recommended to the Secretary of State's office that  
14 they should have a full-time CISO; correct?

15 **A.** Correct.

16 **Q.** But they did not do that?

17 **A.** Not -- I don't know what happened after I left. But not  
18 while I was there. They decided to use me, you know, as a  
19 consultant during that time. I think it was a comfort. That  
20 was it.

21 I think they probably went to market. And I don't know if  
22 they could have hit the mark as far as a salary requirement.  
23 At that time CISOs were kind of in demand, so it might have  
24 just been a problem of trying to find it for that rate.

25 **Q.** Mr. Hamilton, I don't want you to speculate.

1 Do you have any personal knowledge of the Secretary of  
2 State's office trying to hire a full-time CISO?

3 **A.** Well, they engaged an outside firm. It was the same firm  
4 that we used for network engineers and system engineers. I  
5 don't recall the name of it. Somebody here local in Atlanta,  
6 I'm sure that is who they engaged. It was kind of their  
7 in-house go-to person for finding employees.

8 **Q.** Okay. But at the time that you left the Secretary of  
9 State's office, the arrangement for the CISO position was still  
10 fractional arrangement; is that right?

11 **A.** Correct. Yeah.

12 **Q.** But you thought that it would have been better for the  
13 Secretary of State's office to have a full-time CISO; correct?

14 **A.** I believe that they were -- they were at the apex of  
15 having a mature enough security program that warranted it. But  
16 yeah, in fact, on my, you know, way out the door, they were  
17 trying to figure out a way to make it so I could stay  
18 full-time. The only reason I left TrustPoint is they were  
19 acquired by a company, and the company that acquired them, the  
20 health benefits changed so much, it affected my spouse.

21 So I kind of was in a hard place. I had to go to  
22 someplace that had the benefits that supported her. She has a  
23 disability. So I kind of chased a job that had that.  
24 Shepherd, of course, dealing in brain injury, obviously a good  
25 place to go for insurance. So that is where I ended up.

1 Q. I'm glad to hear that, sir, for you and your wife.

2 You reported to the CIO, Merritt Beaver; is that right?

3 A. I did.

4 Q. In your experience working with Mr. Beaver for several  
5 years, did you form a view on whether he shared your level of  
6 expertise when it comes to information security?

7 A. No. I was much more of a specialist, you know, as far as  
8 information security. I think Merritt was a great generalist,  
9 and he understood -- I mean, we could have an intelligent  
10 conversation about things. He understood risk and mitigation  
11 and how risk treatments work within it, and frankly was very  
12 supportive of things I came up with. And I don't ever remember  
13 anybody on the staff just out and out telling me, no, we're not  
14 going to do that.

15 You know, there was always a timing or a budget  
16 constraint. But yeah, they were very supportive of it, so --

17 THE COURT: I think the question was not whether he  
18 was supportive but what his knowledge level was.

19 THE WITNESS: Yeah. He was not a specialist. He was  
20 more of a generalist, as a CIO should be.

21 BY MS. KAISER:

22 Q. And I just wanted to discuss the scope of your  
23 responsibilities, you know, just to clarify, Mr. Hamilton.

24 Georgia's voting equipment fell outside the scope of your  
25 work for the Secretary of State's office; correct?

1     **A.**     Correct.

2     **Q.**     The security of Georgia's voting equipment fell outside  
3     the scope of your work?

4     **A.**     Correct.

5     **Q.**     And the counties did not report to you regarding election  
6     security; correct?

7     **A.**     No.

8     **Q.**     And your role did not have anything to do with the  
9     tabulation of votes or the voting machines themselves; correct?

10    **A.**     Correct.

11    **Q.**     All of that was handled by the vendor Dominion; is that  
12    right?

13    **A.**     Correct.

14    **Q.**     You have never examined Georgia's ballot-marking devices,  
15    sir?

16    **A.**     No. I mean, other than being a voter, not from a  
17    technical standpoint.

18    **Q.**     At the time you were deposed in January of 2022, you had  
19    never been inside the election center; is that right?

20    **A.**     Is that the Marietta facility?

21    **Q.**     I'm asking you what your testimony was during your  
22    deposition, sir. We can take a look at it if that would be  
23    helpful.

24    **A.**     I don't know what they referred to as the -- if it is  
25    Marietta, I definitely went there, or Macon, I definitely went

1 there. There was a facility that was used as kind of the nerve  
2 center during elections. I wasn't able to go there. That  
3 wasn't our premise, so --

4 Q. Okay. If you could, please look at Page 108 of your  
5 deposition, sir.

6 A. 108?

7 Q. 108.

8 A. Okay.

9 Q. Starting at Line 8, you were asked, what is the election  
10 center?

11 Answer: --

12 MR. TYSON: Your Honor, again, objection. I don't  
13 think we can just read his answer into the record. He's -- he  
14 can look and see if it refreshes his recollection and go from  
15 there, but if we are going to impeach him, we need to ask the  
16 exact question and get the answer.

17 MS. KAISER: I just asked the question, Your Honor.  
18 I referred him to the deposition transcript because that is  
19 what Your Honor asked me to do.

20 THE COURT: Just ask him the question.

21 THE WITNESS: Yeah, that kind of mirrors what I was  
22 just saying. If they are talking about the war room thing, I  
23 had never been there, but I have been to the Marietta facility.  
24 That is where Michael Barnes works, for instance. I have been  
25 there.

1 BY MS. KAISER:

2 Q. What is the terminology that you would use for that  
3 location, the Marietta center, sir?

4 A. Marietta. Just like we call Macon, Macon. Physical  
5 sites.

6 Q. You wouldn't call that Center for Election Services or the  
7 election center?

8 A. I don't know what other people do, but I didn't.

9 THE COURT: So is this where a server data center --  
10 are these server -- data centers or not?

11 THE WITNESS: The servers that are directly connected  
12 to that off-net system are located there, but all of the other  
13 systems are in hardened data centers elsewhere. Started off  
14 when I first got there, it was Atlanta and Dallas, Texas, and  
15 then as we moved off that, we went to a different provider. We  
16 moved them to a different facility here in Atlanta and Ashburn,  
17 Virginia, through a different provider called QTS. Quality  
18 Technical Services, I think, is what the acronym is.

19 BY MS. KAISER:

20 Q. At the time that you were asked what is the election  
21 center during your deposition, you did not ask for  
22 clarification; right, sir?

23 A. Maybe not. It has been a minute.

24 Q. Okay. So you --

25 A. Maybe I've assumed that that is what they were talking

1 about.

2 Q. Okay. At the time you were deposed in January of 2022,  
3 you could not speak to where the server for the new BMD  
4 election system was hosted; is that right?

5 A. Which page is that on? I'm sorry.

6 Q. I'm asking you if you recall.

7 A. Oh, I mean, I -- the ballot-marking and the ballot  
8 development is all done in Marietta.

9 Q. You said during your deposition, do you recall -- do you  
10 recall, sir, telling us during your deposition, when it came to  
11 elections, you could only speak to the registration side?

12 A. Yeah, and that was mostly from the statement of work, but  
13 I think that extended out as I was there because they asked me  
14 to do physical reviews of the -- because it wasn't -- you know,  
15 there was business systems people that existed at those  
16 facilities, so I needed to be able to go there and see what was  
17 being used because the off-net system, it is an A and B; right?

18 So there is off-net system in that facility. There is  
19 also the business system that is connected to the Secretary of  
20 State's network. So it is kind of duplicative. There are two  
21 systems overlaying, totally separate physically, but the same  
22 people use them, so --

23 Q. When you were asked during your deposition, sir, about the  
24 scope of your responsibilities with respect to elections, that  
25 is not something you disclosed, is it?

1     **A.**     I can't recall.

2               THE COURT:   What is the off-net system that you  
3     reference?

4               THE WITNESS:   The off-net system is the ballot  
5     development.   It is where Michael Barnes' group develops the  
6     ballots and constructs all of those, and that is the one that  
7     is not connected to the internet.

8               THE COURT:   Or not supposed to be.

9               THE WITNESS:   Yeah, we hardened that and made some  
10    changes to it that made it a little more crisp, but --

11              THE COURT:   When did you do that?

12              THE WITNESS:   It was probably during my second  
13    statement of work.   It wasn't during that first 90 days because  
14    really that was really focused on James and kind of coaching  
15    that part of the business up.

16              After the assessments, we created a thing called a  
17    risk register which is a standard document that is used within  
18    information security that allows you to kind of rate risks  
19    across the enterprise.   And the physical sites are on there  
20    about, you know, we have to go to them and see how they --  
21    simple things like physical controls.   Like are the doors  
22    locked?   Do they have cameras?   Do they -- you know, the  
23    technical controls, you know, what is available as firewalls?

24              All the different things that go into a security  
25    program.   So yeah, I definitely went to Marietta to validate

1 that. One of the changes that was made to that BMD system was  
2 the timing -- every computer in the world needs to know what  
3 time it is.

4 THE COURT: Okay. I think you're veering off what  
5 the question was, and I'm sorry if I had any responsibility for  
6 that.

7 THE WITNESS: I'm sorry. That's fine. Just trying  
8 to help.

9 BY MS. KAISER:

10 Q. And I just want to clarify, Mr. Hamilton, the visit that  
11 you are talking about to the Marietta center, was that a single  
12 visit?

13 A. No. I went multiple times.

14 Q. And when did you go visit the Marietta center?

15 A. Over the period of my engagement with Secretary of State,  
16 probably half a dozen times.

17 Q. And you didn't think that was relevant to disclose during  
18 your deposition, sir, when you were asked about -- when you  
19 were asked about servers that hosted the elections, that was  
20 not something you cared to disclose?

21 A. No. I didn't mean to omit it at all. It was a Secretary  
22 of State site, and I went to that one and the one in Macon. We  
23 talked about that, so --

24 Q. Do you have any reason to believe that either -- any of  
25 these visits occurred after the transition from the old

1 DRE-based voting system to the new BMD-based voting system?

2 **A.** Yeah, I think probably because I was there for so long.

3 Probably, yeah.

4 **Q.** During your deposition when you were asked about the  
5 election management system, do you recall saying that that was  
6 something that we should ask Michael Barnes about?

7 **A.** Because he was the leader of that site, sure.

8 **Q.** Do you recall that your attorney objected that you lacked  
9 foundation to ask -- to answer questions about the election  
10 management system?

11 **A.** Well, I don't know the internals of it; I only know the  
12 systems it runs on, the hardware.

13 THE COURT: You only know what?

14 THE WITNESS: The hardware, the underpinnings, the  
15 infrastructure.

16 About the individual application that runs on it, I  
17 really don't have much knowledge about that. That would be a  
18 Michael Barnes question.

19 BY MS. KAISER:

20 **Q.** Mr. Barnes [sic], would it refresh your recollection to  
21 look at your deposition testimony on this topic?

22 **A.** Sure. Where --

23 **Q.** If you could look at Page 108, Line 17.

24 **A.** Okay.

25 **Q.** To Line -- to Page 109, Line 1.

1     **A.**    Right.  QTS.  Right.  I remember.

2     **Q.**    Does that refresh your recollection, sir, that you could  
3   not speak to where the servers for the BMD election system was  
4   hosted as of January 20, 2022?

5     **A.**    I don't know.  I mean, I -- obviously, I knew where  
6   Marietta was.  I was there.

7     **Q.**    But you chose not to provide that answer during your  
8   deposition, sir?

9             MR. TYSON:  And, Your Honor, I'll just object.  I'm  
10   looking at the question.  It is referencing the election  
11   management system.

12            THE WITNESS:  Yeah.

13            MR. TYSON:  It has a particular meaning in this  
14   context.

15   BY MS. KAISER:

16     **Q.**    Again, you did not ask for clarification when asked this  
17   question; is that right?

18     **A.**    I guess I didn't, no.  I should have.

19     **Q.**    Or you understood what we were asking you, sir.

20     **A.**    Was that a question?  I'm sorry.

21            I missed -- what was the last --

22            THE COURT:  All I -- I think, just trying to clarify  
23   the scope of your working knowledge, I guess the question  
24   really is, for me at least, at the bottom of Page 108 you  
25   say -- in response to question, okay.  What is -- the question

1 was: What server is the election management system for the new  
2 BMD election system? Where is that currently hosted?

3 And you said, yeah, I can only -- I can only speak to  
4 the stuff for the election side of the house for the  
5 registration side, and those are housed in -- here in Atlanta.

6 THE WITNESS: I got you. Right.

7 THE COURT: I think that is what --

8 THE WITNESS: Not the ballot-marking, but actual  
9 registration; correct.

10 THE COURT: Yes. And you said that was the only  
11 thing you could actually speak to, so I guess that is what the  
12 question is, as to what -- was that really the area you focused  
13 on, not the election management system?

14 THE WITNESS: Correct. I did focus primarily on the  
15 registration system.

16 THE COURT: Okay. And that was the older system.

17 What is it called? I'm sorry.

18 THE WITNESS: The PCC developed?

19 THE COURT: The PCC system that you were focused on;  
20 is that right?

21 THE WITNESS: Right.

22 BY MS. KAISER:

23 **Q.** Mr. Hamilton, I believe you testified that you would view  
24 security as a journey; is that right?

25 **A.** Uh-huh (affirmative).

1 Q. And you would agree that threat landscapes -- the threat  
2 landscape changes every day?

3 A. Every hour, yep.

4 Q. And just to be clear, you left the Secretary of State's  
5 office in May of 2021 or June of 2021?

6 A. Yes.

7 Q. Over two and a half years ago?

8 A. It has been a while; right.

9 Q. And so you cannot speak to the security of any part of  
10 Georgia's election system today, can you, sir?

11 A. I wouldn't -- yeah, I wouldn't try to guess.

12 Q. I believe you testified about some recommendations that  
13 you made to the Secretary of State's office.

14 Do you recall that in terms of security?

15 A. Sure.

16 Q. It was common practice for the Center for Election  
17 Securities [sic] to share data with the counties in Georgia via  
18 USB; is that right?

19 A. Correct.

20 MR. TYSON: Your Honor, I'll object in terms of scope  
21 of direct. We didn't ask about any transmission of data to  
22 counties from State.

23 MS. KAISER: Your Honor, they asked Mr. Hamilton  
24 about recommendations that he made as CISO, and this is -- I  
25 will proffer something that he recommended and it was not

1 adopted, and we think that is responsive and within the scope  
2 of his direct examination.

3 THE COURT: All right. Well, I don't remember  
4 exactly, but assuming that you heard him ask about his  
5 recommendations, then I have no reason to disbelieve you as to  
6 that. You can ask the question.

7 MS. KAISER: Thank you.

8 BY MS. KAISER:

9 Q. Mr. Hamilton, the Center for Election Services would FedEx  
10 a USB drive to counties with election data; is that right?

11 A. For the ballot, I believe, yes, I think that is true.

12 Q. And counties would mark up changes to the election files,  
13 save them to USBs, and mail the USBs back to the Secretary of  
14 State's office; right?

15 A. Sounds correct.

16 Q. But you thought that the Secretary of State needed a more  
17 secure managed solution for USB drives; correct?

18 A. I did.

19 Q. The Secretary of State was using commodity-based USB  
20 drives; right?

21 A. Correct.

22 Q. And your view was that was not a best practice, from a  
23 security perspective, because the commodity USB could have all  
24 kinds of things on it that you wouldn't know about; right?

25 A. Correct.

1 Q. And so you recommended that the Secretary of State  
2 implement a more -- a managed USB solution; correct?

3 A. Correct.

4 Q. Specifically from a vendor called DataLocker; is that  
5 right?

6 A. Correct. I gave them two options, but DataLocker was one.

7 MS. KAISER: May I approach, Your Honor?

8 THE COURT: Yes.

9 BY MS. KAISER:

10 Q. If you could, please turn to Tab 5 in the binder,  
11 Mr. Hamilton.

12 A. Okay.

13 Q. Plaintiffs' Exhibit 36.

14 Do you see that?

15 A. I guess I didn't go far enough.

16 THE COURT: It says 299 or 07.

17 THE WITNESS: It is Exhibit 7 under Tab 5. Sorry.

18 BY MS. KAISER:

19 Q. I'm sorry. It is Tab 3 in your version. Apologies.  
20 Plaintiffs' Exhibit 36.

21 MS. KAISER: This is already in evidence, Your Honor.

22 THE COURT: Okay.

23 THE WITNESS: Yep. I recall this email.

24 BY MS. KAISER:

25 Q. This is an email that you sent to Michael Smith at

1 DataLocker around -- on July 1st 2020?

2 **A.** Uh-huh (affirmative).

3 **Q.** And you were CISO at the Secretary of State's office at  
4 this time?

5 **A.** Right.

6 **Q.** Under Item 1 you wrote, we have a group in the election  
7 center that uses consumer-grade USB flash drives and software  
8 encryption to move data regarding ballots and poll information  
9 (not votes) to and from the 159 counties in Georgia.

10 Do you see that?

11 **A.** Uh-huh (affirmative).

12 **Q.** That is referring to the practice that you just explained  
13 of the Secretary of State sending data to the counties by  
14 mailing them consumer-grade USB drives; is that right?

15 **A.** With encryption; right.

16 **Q.** And you wrote, I would like to create a program for them  
17 to be able to use fully encrypted drives that are able to be  
18 tracked.

19 Do you see that?

20 **A.** Correct.

21 **Q.** To your knowledge, at the time you left the Secretary of  
22 State in 2021, that recommendation had not been implemented;  
23 correct?

24 **A.** Not by the time I left.

25 **Q.** Mr. Hamilton, Mr. Tyson asked you some questions about a

1 Fulton County laptop.

2 Do you recall that?

3 **A.** Yes, ma'am.

4 MS. KAISER: Tony, could you please pull up  
5 Plaintiffs' Exhibit 294.

6 BY MS. KAISER:

7 **Q.** Do you recognize this document, sir?

8 **A.** If he could page forward.

9 I don't know if I -- yeah, I think so. Yep.

10 **Q.** What is this document?

11 **A.** That is the review of the laptop that we sent.

12 **Q.** And this is a review by Fortalice; is that right?

13 **A.** Correct. They were our contracted people to do that kind  
14 of forensic work.

15 **Q.** And do you recall reviewing this report?

16 MS. KAISER: Your Honor, we would move for admission  
17 of Plaintiffs' Exhibit 294.

18 COURT REPORTER: I didn't hear an answer.

19 THE WITNESS: I did. I'm sorry.

20 Yes.

21 MR. TYSON: No objection, Your Honor, to the  
22 admission of the exhibit.

23 THE COURT: Okay. It is admitted.

24 BY MS. KAISER:

25 **Q.** Mr. Hamilton, if you could turn to the second page of text

1 in this, and it has got a chart at the top with three rows.

2 Do you see that?

3 **A.** Okay.

4 **Q.** The third row, it is under area of focus. It says malware  
5 review.

6 Do you see that?

7 **A.** Correct.

8 **Q.** And under the description it says, scanned forensic image  
9 for signs of malware with multiple malware detection agents.

10 Do you see that?

11 **A.** Correct.

12 **Q.** And the finding is no malware observed?

13 **A.** Correct.

14 **Q.** So it is your understanding that Fortalice tested this  
15 laptop for malware; is that right?

16 **A.** Well, as part of the forensic review, they snapshot the  
17 hard drive of the unit and then work on that. They don't work  
18 on the original, so they did the forensic review of a copy.

19 **Q.** And that is the capability that Fortalice had, to review  
20 for malware?

21 **A.** Absolutely, yeah. That is a normal process. That is to  
22 preserve the original, so if they have to do any destructive  
23 testing, it doesn't mess with the original.

24 **Q.** Just bear with me one moment, Mr. Hamilton.

25 **A.** No problem.

1 Q. As CISO at the Secretary of State's office, did you  
2 undertake any threat modeling, sir?

3 A. We engaged an outside firm for some threat modeling,  
4 Fortalice.

5 Q. Fortalice did that for you?

6 A. Well, we use a bunch of different inputs; right? The ISAC  
7 for the election center, Homeland Security, FBI, the  
8 vulnerability list. There is a bunch of different inputs that  
9 go into threat modeling, and that is how we come up with a  
10 qualitative and a quantitative look at risks. And that way, we  
11 can gauge it correctly and prioritize things that we think  
12 would have impact or, you know, for that individual  
13 organization, that is how we tailor the program based on the  
14 risk profile.

15 You know, Secretary of State was a low-risk candidate.  
16 They didn't want to put up with a lot of risk, but at the same  
17 time, they didn't want to get in the way of the average voter,  
18 so there was kind of a balancing act there.

19 Q. Did Fortalice ever provide you any written reports about  
20 threat modeling?

21 A. I don't recall if they were written. I know we had tons  
22 of conversations on the phone.

23 Q. What threats did you consider important to the Secretary  
24 of State's office?

25 A. Malware, ransomware probably was the most prevalent. I

1 was concerned -- you know, there really was a shift in that it  
2 used to be that information security programs were put together  
3 to kind of protect the castle; right? That has kind of moved  
4 now, to the castle is okay, but we also need a way to get back  
5 if something bad happens.

6 So that is why we, you know, came up with the incident  
7 response plan, that we had a way to get back to where we were.  
8 It is kind of a shift of thought over time. Just we evolved  
9 based on the threats, so --

10 Q. Mr. Hamilton, I'm going to ask you, could you please turn  
11 to Tab 10 in your binder.

12 A. This one. Okay.

13 Q. Plaintiffs' Exhibit 127.

14 A. Got you.

15 Q. I'll give you a moment to review that.

16 A. Okay.

17 Q. Do you recognize this document, sir?

18 A. Not directly, but you have it, so yeah, it exists.

19 Q. Is this something that you think you would have reviewed  
20 as the CISO?

21 A. Yes, I would think so. I just don't recall this specific  
22 document.

23 Q. You don't recall if you requested this document from  
24 Fortalice?

25 A. No. It might have been something that was just

1 downloaded. It looks kind of like a boilerplate.

2 **Q.** Do you recall downloading it?

3 **A.** Not specifically, no. It has been a minute.

4 **Q.** Okay. But this looks like a report from Fortalice, much  
5 like many of the other reports that you reviewed from  
6 Fortalice?

7 **A.** Not really a report. This is basically the instruction of  
8 how to gather evidence. You know, it is for folks on our end  
9 of the pipe to be able to gather what they need to do forensic  
10 analysis.

11 **Q.** And that is the type of information that you would  
12 routinely get from Fortalice as a CISO; is that right?

13 **A.** In the same way that I was brought on to help kind of  
14 coach James, I mean, Fortalice did the same thing with our  
15 group. So yep, best practices.

16 MS. KAISER: Your Honor, we would move to admit  
17 Plaintiffs' Exhibit 127.

18 MR. TYSON: And, Your Honor, we would just object on  
19 the basis of relevance and authentication here. Mr. Hamilton  
20 has testified he doesn't remember seeing this document, he  
21 doesn't remember requesting this document. He is only assuming  
22 that he would have seen it in the scope of his work.

23 In addition, the only Fortalice vulnerability  
24 discussions we had during direct involved the voter  
25 registration system and the Fulton laptops. We also think this

1 would be beyond the scope of direct, and further that it would  
2 be hearsay as to what Fortalice said if it is coming in for the  
3 truth.

4 MS. KAISER: Your Honor, the only objection that  
5 defendants asserted to this document in the PPO was a relevance  
6 objection for 403, so I believe their hearsay and  
7 authentication objections are waived.

8 MR. TYSON: Your Honor, I'm looking at the pretrial  
9 order. We objected on the relevance 403 and confidentiality.  
10 The authentication objection only arises when the witness is  
11 not able to authenticate it.

12 THE COURT: Could I see the document?

13 MS. KAISER: Yes, Your Honor. It is at Tab 10 in the  
14 binder, Your Honor.

15 THE COURT: Okay.

16 MS. KAISER: And, Your Honor, I would just point out  
17 that in the PPO, defendants raised authentication objections to  
18 many documents; they did not with respect to this document.

19 THE COURT: Do you agree as to that statement?

20 MR. TYSON: Your Honor, I confess I don't have an  
21 encyclopedic recollection of all of our -- I don't see an  
22 authentication objection as to this exhibit, but again, the  
23 witness has testified he doesn't know where this came from. It  
24 is not a Secretary document. It was produced by Fortalice.  
25 There is no one from Fortalice here to authenticate it. I

1 don't think we have a basis. Some of these things only arise  
2 as the party offers a document, including with hearsay.

3 MS. KAISER: And, Your Honor, we know that Fortalice  
4 produced documents in the course of litigation at the direction  
5 of the Secretary of State and the Court. He has testified that  
6 he recognizes this as the kind of document that Fortalice would  
7 have provided, and he believes that Fortalice did, so I really  
8 don't think there is any real authentication issue here.

9 THE COURT: All right. Have you had -- if you would  
10 just -- review the document so that we can understand really  
11 whether you're familiar with it at all in the context of it  
12 since you were providing instruction to leadership and staff  
13 regarding --

14 THE WITNESS: Yeah, it certainly looks like --

15 THE COURT: -- USB drives and how to track malware,  
16 et cetera.

17 THE WITNESS: Right. It does look like a document  
18 that they would have provided us as part of a playbook. You  
19 know, we conversed with Fortalice a lot when we came to  
20 policies and things like that, what should be, what is best  
21 practice.

22 So I am sure this might have been part of the  
23 playbooks that were given to us. I just don't specifically  
24 remember this single document. But it is written as a very  
25 instructional, here is how to do this for us, kind of thing.

1           So not reflective of anything specific to the  
2   Secretary of State, but it is just how to do process X. That  
3   seems like a playbook item to me.

4           THE COURT: And when you say playbook, what do you  
5   mean exactly?

6           THE WITNESS: So an engagement with anybody in  
7   information security, they usually have preformatted  
8   boilerplate type playbooks that they instead of, you know,  
9   coming up and writing it specifically for the customer, they  
10   just say, well, here is how we engage, and here is what we  
11   expect. When you send us a request for X, here is what we will  
12   need us to do.

13          So we refer to those as playbooks, just the  
14   engagement -- rules of engagement, for lack of a better term.

15          THE COURT: So -- and that is why it gives  
16   information on how to review and pull out --

17          THE WITNESS: Yeah.

18          THE COURT: -- information from the USB ports, memory  
19   images --

20          THE WITNESS: Correct.

21          THE COURT: -- look for malware, disc images?

22          THE WITNESS: It is just what they would want if we  
23   came into a situation where we needed to corral that kind of  
24   information on their behalf.

25          THE COURT: And you were still working for the

1 Secretary of State February 26, 2021?

2 THE WITNESS: Yeah. I left in May, I believe.

3 THE COURT: And would this be the type of document  
4 you would at least be -- look at, even if you don't recall it  
5 now specifically, when it was provided by Fortalice?

6 THE WITNESS: Sure. Probably as a book; right.

7 MS. KAISER: And, Your Honor, I would just add that  
8 under Federal Rule 901(b)(4) can authenticate with  
9 circumstantial evidence, which I believe we have gotten from  
10 the witness.

11 THE COURT: It would appear to be so because besides  
12 everything else, it was produced, I gather, by the State.

13 Was it produced by the State, or was it produced by  
14 Fortalice?

15 MS. KAISER: It was produced by Fortalice, Your  
16 Honor.

17 THE COURT: And did the subpoena request or the  
18 request ask for all of the information produced to -- on behalf  
19 of the defendants in this case?

20 MS. KAISER: Yes, Your Honor.

21 MR. CROSS: Unfortunately, poor Jenna and I are the  
22 only ones who have been on this case from the beginning, Your  
23 Honor.

24 So the quick background -- we talked about this the  
25 other day. My memory is Your Honor ordered the State to have

1 Fortalice produce documents, and that is how we got these  
2 documents. That is my memory of it.

3 THE COURT: Well, I'm sure --

4 MR. CROSS: They came from Fortalice.

5 THE COURT: -- it didn't say just produce generic  
6 documents from any variety.

7 MR. CROSS: Right. We had served a subpoena on  
8 Fortalice, I think, for a deposition and a documents. There  
9 was an objection over that, and you directed the State to have  
10 Fortalice produce those documents on -- the position was those  
11 documents were within the possession, custody, and control of  
12 the State. And the State complied with that by some  
13 communication, I assume with Fortalice, because Fortalice then  
14 produced those documents.

15 Part of that, as I remember, was there was also, I  
16 think, a state secret issue which was raised, and they reviewed  
17 some of them and had some privilege issues.

18 But the short of it is, it came from Fortalice in  
19 response to the response to a subpoena, but that was directed  
20 to the State.

21 And if I am misremembering, please somebody jump up.  
22 Because there is a lot of water under the bridge.

23 MR. TYSON: And, Your Honor, I will just confess as  
24 to standing here not remembering the specific circumstances  
25 surrounding this. I think we still do have the relevance

1 problem, though. This is -- Mr. Hamilton said it is a generic  
2 document. It is for a Windows system. It is not for a voting  
3 system or anything else. Again, we just stand on our  
4 objections for that.

5 THE COURT: All right. Well, I think it is relevant,  
6 but how significant it is, is a whole other question.

7 So I do recall once you reminded me of that whole  
8 chain of events having ordered that because you didn't want --  
9 the State didn't want to have to do that and deal with it, so  
10 this was a resolution. But I think it has the indicia of  
11 reliability that they produced it as a document they made  
12 available to the Secretary of State's office for purposes of  
13 addressing security issues or assisting in the education of  
14 staff as to that, so -- and the witness has said it was typical  
15 of the type of documents that they would receive.

16 So I will admit it with that reservation.

17 MS. KAISER: Thank you, Your Honor.

18 THE COURT: And I don't know, it may well be relevant  
19 because it is dealing with how do you -- how do you look for  
20 various scripts and functions and check on things.

21 But that is just -- so it has limited value, but it  
22 has some value.

23 MS. KAISER: Thank you, Your Honor.

24 BY MS. KAISER:

25 Q. Mr. Hamilton, if you turn to the first full page of text,

1 Page Number 3 at the bottom right-hand corner, middle of the  
2 page, it says, this document outlines the various steps  
3 necessary to properly acquire digital evidence related to an  
4 incident.

5 Do you see that?

6 **A.** Yes.

7 **Q.** And I believe if you look back at the front page, this  
8 document is dated February 26th; 2021; is that right?

9 **A.** Okay.

10 **Q.** To your knowledge, did the Secretary of State request  
11 Fortalice's assistance in collecting digital evidence related  
12 to a security incident in February 2021?

13 **A.** Not that I remember, no.

14 **Q.** You don't recall?

15 To your knowledge, did the Secretary of State ever request  
16 Fortalice's assistance in collecting digital evidence related  
17 to a security incident related to the voting system?

18 **A.** No, not related -- not that I have had knowledge of, no.

19 **Q.** If you look back on Page 3, there is a heading that says  
20 Triage Zip File.

21 Do you see that?

22 **A.** Triage Zip File; right.

23 **Q.** Yes. It states that Fortalice Solutions has created a  
24 simple Windows batch script that extracts and aggregates key  
25 evidence from Windows systems.

1 Do you see that?

2 **A.** Right.

3 **Q.** To your knowledge, did anyone from the Secretary of  
4 State's office ever request that -- from Fortalice this batch  
5 script?

6 **A.** It may have been in our portal, but I can't speak to that.  
7 I mean, one of the -- one of the analysts or one of the  
8 engineers might have seen it. We have a SharePoint site, for  
9 lack of a better term, that we share stuff securely back and  
10 forth. It was kind of a in-and-out box for both sides. And  
11 this could have been something --

12 THE COURT: Both sides, meaning you and Fortalice?

13 THE WITNESS: That's correct, yeah.

14 And the idea there would be to -- you know, if we had  
15 something that we wanted to send them, a snapshot of something,  
16 we could do that securely without email. So if they sent us  
17 this zip file, it might have been contained on that site, but I  
18 never downloaded it. I didn't have anything to do -- just like  
19 when the issue came about with the Fulton County laptop, that  
20 is why it immediately was sent to them.

21 But we don't -- I just wanted the chain of custody to  
22 remain as small as possible and get the experts. I consider  
23 myself a blue teamer, which is the protection of assets. A red  
24 teamer is more about, you know, infiltrating, trying to figure  
25 stuff out, much more investigative-type stuff. And Fortalice

1 is all about the red team, so let the experts do what they do  
2 best.

3 BY MS. KAISER:

4 Q. Thank you, Mr. Hamilton. You can get rid of that document  
5 if you would like.

6 A. Okay.

7 Q. You testified that you are currently the information  
8 security officer for the Shepherd Center; correct?

9 A. Yes, ma'am.

10 Q. And the Shepherd Center is a hospital that specializes in  
11 treatments for patients with spinal cord and brain injuries; is  
12 that right?

13 A. Yes, ma'am.

14 Q. If a federal agency recommended that your hospital take  
15 specific measures as soon as possible to mitigate serious  
16 security failings, would you work to implement those measures  
17 as soon as possible?

18 A. Of course.

19 MR. TYSON: Your Honor, I'll object on the basis of  
20 speculation and outside the scope of direct.

21 MS. KAISER: They asked him about his  
22 responsibilities at the Shepherd Center, Your Honor. I think  
23 this is within the scope.

24 THE COURT: I'll let his answer be on the record, but  
25 I don't think you should go further.

1 MS. KAISER: Thank you, Your Honor.

2 BY MS. KAISER:

3 Q. Mr. Hamilton, you agree that Georgia's voting system is  
4 considered critical infrastructure; right?

5 A. Yes, I understand that.

6 Q. And you agree that all reasonable measures should be made  
7 to secure critical systems?

8 A. Of course.

9 Q. And you do not believe that it is appropriate to leave  
10 significant vulnerabilities unmitigated when you are dealing  
11 with critical infrastructure; is that right?

12 A. Based on the fact that a risk assessment is made and it  
13 doesn't affect the performance. In other words, somebody can't  
14 come down and say, you know, we want you to take that  
15 completely offline because that would negatively affect our  
16 citizens and their ability to do things.

17 So there is a balance there about what -- whenever any  
18 assessment comes back to a CISO -- and this is just a general  
19 term -- what they do is they look at the assessment and then  
20 they either accept or decline what has been the premise of,  
21 we've got a problem, because they know more about the internal  
22 systems than the assessor does.

23 If there are different risk treatments that are given to  
24 each individual items, in the end, it is up to the business to  
25 decide, the organization, you know, where things lay. As CISO,

1 as anybody in information security, we make the recommendations  
2 to the business and we tell them the risk profiles.

3 Q. Mr. Hamilton, I don't mean to interrupt you, but I think  
4 you are straying pretty far afield from what the question was.

5 A. My apologies.

6 Q. You do not believe that it is appropriate to leave  
7 significant vulnerabilities unmitigated when you are dealing  
8 with critical infrastructure; right?

9 MR. TYSON: And, Your Honor, I'll object. Asked and  
10 answered. Mr. Hamilton answered the question and then was cut  
11 off in his answer.

12 THE COURT: Well, then if he was cut off, he can  
13 provide the full answer again so that we have it in one place.

14 MS. KAISER: Excuse me.

15 Do you want me to ask the question?

16 THE COURT: Did you hear the question?

17 I mean, I think you are saying your objection is he  
18 was cut off before, so he should answer completely the -- and  
19 don't cut him off. All right?

20 THE WITNESS: All I was trying to say is just that  
21 everything has to be taken on a case-by-case basis. Just  
22 because somebody else says there is a vulnerability, that  
23 doesn't make it true. It has to be weighed, so that is all.

24 BY MS. KAISER:

25 Q. Mr. Hamilton, do you recall being asked at your

1 deposition, question: So you were not suggesting that it is  
2 appropriate to leave significant vulnerabilities unmitigated  
3 when you are dealing with critical infrastructure?

4 There was an objection by your attorney.

5 Answer: Not at all --

6 MR. TYSON: Objection, Your Honor. We can't keep  
7 impeaching him this way. If she needs to refresh his  
8 recollection or impeach him, she needs to put the document in  
9 front of him and let him see it.

10 MS. KAISER: Impeachment and refreshing recollection  
11 are two separate things, Your Honor. I'm happy to let him look  
12 at the testimony.

13 THE COURT: Right. Let him look at the testimony.

14 BY MS. KAISER:

15 Q. Can you please turn to Page 97, the binder with your  
16 deposition, sir? Yes.

17 Starting at Line 21 and going on to the next page, 98 at  
18 Line 4, you were asked, question: So you were not suggesting  
19 that it is appropriate to leave significant vulnerabilities  
20 unmitigated when you are dealing with --

21 Answer: Not at all.

22 A. Right.

23 Q. Question: -- critical infrastructure?

24 There is an objection.

25 And you answered, not at all; is that right?

1     **A.**     It is.

2     **Q.**     Thank you, sir.

3             Mr. Hamilton, just one more question -- well, before I  
4     consult with my colleagues.

5             I believe that you testified that it is standard practice  
6     to rely on an outside vendor for security -- for security of IT  
7     systems; is that right?

8     **A.**     The applications, yes.

9     **Q.**     In your role at the Shepherd hospital, do you rely on the  
10    outside vendor for the security of your IT systems?

11    **A.**     We do.

12    **Q.**     Thank you.

13             MS. KAISER:  If you'll just give me one moment.

14                     **(There was a brief pause in the proceedings.)**

15             MS. KAISER:  Thank you, Mr. Hamilton.  I don't have  
16    any further questions.

17             THE WITNESS:  You're welcome.

18             MS. KAISER:  Thank you for your time today.

19             THE WITNESS:  You bet.

20             MR. BROWN:  Your Honor, no further questions from us.

21             MR. TYSON:  Your Honor, I have no further questions  
22    for Mr. Hamilton as well.

23             Thank you for your time, Mr. Hamilton.

24             THE WITNESS:  You bet.

25             THE COURT:  Is this witness excused, or might he be

1 on recall at some other time?

2 MR. TYSON: Not for our case, Your Honor.

3 MS. KAISER: We don't anticipate recalling  
4 Mr. Hamilton at this time, Your Honor.

5 THE COURT: All right. Well, you're excused. It  
6 sounds like they are not going to recall you, but I can't  
7 promise you anything here.

8 THE WITNESS: I totally understand.

9 THE COURT: Because of that, please don't discuss  
10 your testimony with anyone else -- all right?

11 THE WITNESS: Understood. Thank you, Your Honor.

12 THE COURT: -- until this matter is concluded. Thank  
13 you very much for coming and for your patience and waiting for  
14 the moment of being called.

15 THE WITNESS: You bet. Okay. I appreciate y'all's  
16 flexibility with my schedule.

17 THE COURT: Good work with Shepherd.

18 THE WITNESS: Great place to work.

19 MR. BELINFANTE: Your Honor, our next witness we  
20 will -- we plan to call Mr. Evans back up. We just need to  
21 find him. I know his matter has concluded.

22 He is right there? Okay.

23 THE COURT: Do you want to take down -- if there is  
24 material up here, why don't we remove it.

25 **(There was a brief pause in the proceedings.)**

1 THE COURT: Have a seat.

2 Tell me where we were at.

3 MR. BELINFANTE: Sure. Where we were at, I just  
4 asked him about setting up BMDs on election day, and after  
5 conference with opposing counsel, we are going to move to enter  
6 into evidence the poll worker manual, so that would be the next  
7 thing I would do.

8 THE COURT: All right.

9 MR. BELINFANTE: I'm happy to proceed when the  
10 Court --

11 THE COURT: Go ahead. I'll send a note.

12 **(There was a brief pause in the proceedings.)**

13 Whereupon,

14 BLAKE EVANS,

15 after having been previously duly sworn, testified as  
16 follows:

17 DIRECT EXAMINATION (Continued)

18 BY MR. BELINFANTE:

19 **Q.** Director Evans, you have a document in front of you  
20 entitled poll worker manual from May 2021.

21 Have you seen that document before?

22 **A.** I have.

23 **Q.** How do you recognize it?

24 **A.** It is the poll worker manual produced by the Secretary of  
25 State's office, and we keep the document on Firefly, which is a

1 medium through which county election officials can access  
2 documents. And so I recognize it from there.

3 **Q.** Do you know if it is also publicly available through an  
4 internet search?

5 **A.** It might be, but I know we've got an open records request  
6 for it before, and so --

7 **Q.** Does it appear to be -- and feel free to flip through  
8 it -- a true and accurate copy of the poll worker manual dated  
9 May 2021?

10 **A.** It does.

11 MR. BELINFANTE: Your Honor, at this point -- and  
12 we're working on getting stickers because I honestly thought we  
13 might have to use it as a demonstrative.

14 We will move to enter into evidence the poll worker  
15 manual as Defendants' Exhibit 1242. We will also have tomorrow  
16 hard copies available that are the Bates-labeled where this was  
17 produced in discovery at State Defendants' 00130421 [sic].

18 THE COURT: One, zero --

19 MR. BELINFANTE: Sorry. 100130421.

20 THE COURT: Okay.

21 MR. BELINFANTE: May I approach, Your Honor?

22 THE COURT: Yes.

23 MR. BELINFANTE: Sorry. I was just waiting. I don't  
24 believe there was an objection. We had talked to opposing  
25 counsel. I was just wondering --

1 THE COURT: I assume that.

2 MR. BELINFANTE: -- the status, Your Honor.

3 MR. CROSS: Nothing from us.

4 THE COURT: It is admitted.

5 MR. BELINFANTE: Thank you.

6 BY MR. BELINFANTE:

7 Q. All right. Let's see where we were.

8 If you could go to Page 19 of the poll worker manual. I  
9 had asked you some questions earlier about when the polling  
10 place opened. You said 6:00 A.M.

11 Is that reflected here on this document on Page 19?

12 A. So 6:00 A.M. would be the time poll managers and poll  
13 workers can arrive, and then from 6:00 to 7:00, they are  
14 preparing and that is open to the public. They are preparing  
15 to open the polls at 7:00.

16 Q. If you could go to Page 22 of the document. I know you  
17 testified a moment ago about opening the polls and Poll Pads,  
18 and I believe you testified as to about all of this.

19 But is this -- this is the information that is provided as  
20 part of the poll worker manual; is that correct?

21 A. Yes.

22 Q. All right. Let me ask this, and feel free to -- on the  
23 Poll Pads themselves, feel free to go to Page 71.

24 And my question is, what would happen if a Poll Pad does  
25 not encode a voter card? First off, do you know what that

1 means, would not --

2 **A.** Yes.

3 **Q.** What would that mean?

4 **A.** So when a voter checks in to vote, they present their ID.  
5 The poll worker can scan -- if it is a driver's license, scan  
6 the driver's license, pull the record up, make sure that it is  
7 the correct person based on the information presented. And  
8 then to check them in, the voter signs, and then once the voter  
9 is checked in, the Poll Pad will encode a voter access card  
10 that can be taken to the BMD to bring up a ballot on the  
11 screen.

12 So if the card encoder is not working, that means that  
13 that functionality is not -- that the card is not getting  
14 encoded, so there needs to be an alternative method to be able  
15 to give the ballot to the voter.

16 **Q.** And what is that alternative method in terms of how  
17 election superintendents are trained?

18 **A.** So there's a couple of alternative methods. One would be  
19 continue to check the voter in on the Poll Pad, and then the  
20 poll worker could manually, using a manual activation code,  
21 bring up a ballot, the voter's ballot on the ballot-marking  
22 device for the voter to be able to mark the ballot, print it  
23 out.

24 And then the second option is to use the emergency ballots  
25 that are available.

1   **Q.**   All right. I think right before we broke for lunch, we  
2   had asked you about physically setting up the BMD and  
3   connecting it to the printer. In terms of -- that was the  
4   physical setup, as I recall.

5           How does one who is a poll worker or poll manager actually  
6   open the BMD so that it is turned on and ready for someone to  
7   vote?

8           You can look to Page 24 of the poll worker manual if that  
9   would help.

10   **A.**   So once the poll worker hit the power button, the screen  
11   comes up. They are -- they can put in their poll worker card.  
12   Insert a poll worker card, insert a password, and then they are  
13   brought to an administrative screen. From the administrative  
14   screen, they can, number one, make sure that the count on the  
15   BMD at the beginning of the day is zero.

16           Number two, they can check the date and time to make sure  
17   that it is accurate. They can change it if they need to.

18           And then Number three, they can open the polls so that the  
19   machine is ready for voting.

20   **Q.**   You talked about a poll worker card.

21           Who programs, if that is the right term, the poll worker  
22   card?

23   **A.**   County election officials.

24   **Q.**   You also said, check to make sure that the public counter  
25   is zero.

1           What happens if the counter is not zero?

2     **A.**    If the counter is not zero, then they need to contact  
3     their election superintendent at the county, so the county  
4     elections director, to get next steps.

5     **Q.**    All right. We can --

6           THE COURT: Before you get to the next page, let me  
7     ask: Enter the poll worker PIN and then press in log-in  
8     button.

9           Is that PIN different than what the county's PIN is  
10    that we have heard some information about that everyone has the  
11    same -- that the same number -- one number is assigned to each  
12    county?

13          THE WITNESS: So the -- it is -- for the BMDs, the  
14    password that is used for that poll worker card for them to be  
15    able to get to that screen, it is one password per county for  
16    those BMDs.

17          THE COURT: All right. So that is what they would be  
18    putting in to number two?

19          THE WITNESS: Yes.

20          THE COURT: So it is not -- it is a poll worker PIN  
21    number, but it is the county's number?

22          THE WITNESS: Yes.

23          THE COURT: All right.

24    BY MR. BELINFANTE:

25     **Q.**    Looking similarly at Number 5, you testified a moment ago

1     that if the counter was not at zero, they should notify their  
2     election director.

3             Here in B, it says, check that the counter is zero; if  
4     not, press the reset button.

5             Why would one press the reset button?

6     **A.**     Yeah, you would press the reset button so that at the  
7     beginning of the day the count on it is zero.

8     **Q.**     I see. Okay. And -- okay.

9             What happens now --

10            MR. CROSS: Could I just ask a question?

11            What page is this screen from?

12            MR. BELINFANTE: That screen is Page 24.

13            MR. CROSS: Oh, I'm sorry. I thought you were on 23.  
14     I'm sorry. Go ahead.

15     BY MR. BELINFANTE:

16     **Q.**     All right. Let's -- if a -- I think we have already  
17     answered what happens if the BMD malfunctions.

18            What if the BMD, though -- we have talked about  
19     malfunctions, generally.

20            What if the BMD is not actually marking ballots?

21            So in other words, either a document doesn't come out.  
22     Let's start there.

23     **A.**     So there is a form for the poll worker to complete that  
24     documents the issue and the particular BMD that is having the  
25     issue. But if it is not functioning in that way, then they

1 would still notify their county election superintendent, but it  
2 would need to be taken out of service.

3 **Q.** Talking about the scanners, is a scanner what is referred  
4 to sometimes as the ICP?

5 **A.** Yes. That is the ImageCast Precinct, or ICP for short.

6 **Q.** All right. Could we look at Page 25 of the poll worker  
7 manual.

8 Is this an accurate reflection of the scanner as it comes  
9 to a poll location?

10 **A.** Yes.

11 **Q.** All right. Walk the Court through -- we're still at  
12 election day sometime between 6:00 and 7:00 A.M. They are  
13 opening the polls.

14 What is the procedure for opening the scanners?

15 **A.** So the scanners would be sealed in their case. Those  
16 seals will be verified, assuming they match. Then the seal is  
17 broken and the -- in this case, the lid will be taken off the  
18 scanner so that it reveals the scanner. When that occurs,  
19 there is going to be additional seals to be verified. Those  
20 seals are checked.

21 At that point, the poll worker can plug the machine in.  
22 When the machine is plugged in, the scanner begins to boot up,  
23 and it is going to get to a screen where it is going to ask  
24 for -- where it is going to ask for a security key. And the  
25 poll worker will be able to take their security key, put it on

1 a little spot on the scanner, and then they will be prompted to  
2 put in another password.

3 When that password is put in, at that point the -- this is  
4 also shown on Page 27 -- the poll worker will be asked if they  
5 want to print a zeros tape or a status report. The poll worker  
6 always prints the zero tape because what that will show that  
7 will document that at the beginning of the day the machine did  
8 not have any ballots run through it yet. They will print out  
9 that tape.

10 And then once they have done that, they will be taken to  
11 the screen where they can open the polls and so they can open  
12 the polls, and at that point, the machine is prepared for  
13 voting.

14 **Q.** Who creates the security keys?

15 **A.** The counties program the security key.

16 **Q.** They program them.

17 And where would one get a security key?

18 **A.** Dominion Voting Systems.

19 **Q.** All right. Are the security key -- is this process, just  
20 so I understand it to be clear, it is two steps? You need a  
21 security key and a password; is that right?

22 **A.** Yes.

23 **Q.** Okay.

24 THE COURT: All right. I didn't understand your  
25 testimony, though, then.

1           Dominion makes the key?

2           THE WITNESS: The physical key, yes.

3           THE COURT: So -- but then you said it is created by  
4 the county's programming.

5           THE WITNESS: So as part of programming equipment,  
6 the county will take the physical key, the physical hardware,  
7 and then they will program the key for that election, so -- and  
8 then they will use that key for logic and accuracy testing and  
9 for the election.

10          THE COURT: And are we talking about physical key, or  
11 are we talking about a card?

12          THE WITNESS: It is a physical key, but it is really  
13 like -- it is like a little button. It presses against the  
14 metal -- a metal piece on the --

15          THE COURT: Because I'm looking at Item 2 in this  
16 picture, opening up the poll on the ICP. Please insert -- if  
17 you turn around -- you know what it looks like.

18          THE WITNESS: It is just like a little iButton.

19          THE COURT: iButton.

20          All right. And so you're telling me that the  
21 counties actually create the iButton, or they simply -- the  
22 security -- the election file information is somehow encrypted  
23 onto it?

24          THE WITNESS: Correct. So they program the key for  
25 that election.

1 THE COURT: I'm sorry.

2 But where do they put the key to get encrypted? Are  
3 they putting it -- the three-dimensional part of it is what is  
4 getting me --

5 THE WITNESS: Sure, sure, sure.

6 THE COURT: -- confusing me from what you are saying.

7 THE WITNESS: So when the county gets from the State  
8 the elections project and they are ready to begin testing their  
9 equipment, one of the first steps that they will do is they  
10 will create the technician cards --

11 THE COURT: Right.

12 THE WITNESS: -- and the poll worker cards and then  
13 also the iButton security keys. And so those keys and those  
14 cards get programmed at that point with the election-specific  
15 information so that they can be used on the equipment.

16 THE COURT: Okay.

17 BY MR. BELINFANTE:

18 **Q.** And just to clear up for the record, is the security key a  
19 separate device or thing, I mean, like this clip?

20 **A.** It is separate from the cards in a completely separate  
21 piece of hardware.

22 **Q.** Is it separate from the scanner itself?

23 **A.** Yes.

24 **Q.** Okay. What happens if the scanner malfunctions?

25 **A.** The emergency procedure for that would be to use the

1 emergency backup compartment until the scanner can be put back  
2 into service.

3 **Q.** Let's go to Page 69 of the poll worker training manual.

4 Does this reflect the Secretary's advice in terms of  
5 backup procedures if the scanner is not scanning ballots?

6 **A.** Yes, it does.

7 **Q.** It references in the second full paragraph an emergency  
8 bin which is connected to the ballot box.

9 Can you explain what the emergency bin is?

10 **A.** Yes. So it is a separate compartment. It gets checked at  
11 the beginning of the day to make sure that it is completely  
12 empty and then closed back up and locked. And then in the  
13 event that it has to be used, it can be unlocked. There is a  
14 flap. And then voters have the option of depositing their  
15 ballot through the -- through the slot into the locked  
16 emergency bin.

17 **Q.** We talked earlier about a voter's experience, both in  
18 in-person early advanced voting and then on election day  
19 voting, and you mentioned that the voter gets a card.

20 After the voter uses the card, what happens to that card?

21 **A.** So the voter will take their ballot and the card to the  
22 scanner, and typically, there is a poll worker standing at the  
23 scanner who will remind them to review their ballot and who  
24 will take the poll worker card from them. And then that poll  
25 worker card will make its way back to the -- back to the table

1 where the Poll Pads and the electronic pollbooks are.

2 MR. CROSS: Your Honor, if I can -- as long as he is  
3 testifying only to what is supposed to happen, I have no  
4 objection. It sounds like he is testifying to what he thinks  
5 actually happens, but he can't speak to what happens at any  
6 given moment across 159 counties.

7 But as long as it is the State's expectation, I have  
8 no objection.

9 MR. BELINFANTE: Your Honor, I think that is what the  
10 purpose of the testimony is.

11 THE COURT: All right.

12 MR. BELINFANTE: If we could get a witness to testify  
13 what happens in every situation, we would love to find them,  
14 but we haven't found --

15 THE COURT: But this is the -- this is the procedure,  
16 that what you --

17 MR. BELINFANTE: That's right.

18 THE COURT: -- what he is anticipating the procedure  
19 is as identified in this manual?

20 MR. BELINFANTE: That's it.

21 BY MR. BELINFANTE:

22 **Q.** And so the card you talked about that comes back to the  
23 poll workers, what do they do with that card once it has been  
24 used by a voter?

25 **A.** So it will get put back into the stack to be used again.

1 Q. All right.

2 A. And it can be encoded again and given to another voter to  
3 be taken back to the BMD.

4 Q. In your time as election director for the State of Georgia  
5 and deputy director for the State of Georgia prior to that, are  
6 you aware of any attempts to manipulate the BMD voting software  
7 on election day?

8 A. No.

9 Q. How about during the in-person early voting or advanced  
10 voting period?

11 A. No.

12 Q. Are you aware of that happening in other states that also  
13 use electronic voting equipment where someone on election day  
14 tried to manipulate voting equipment?

15 A. Not that I can recall.

16 Q. All right. We've gotten through polling opens, generally  
17 what happens during the polling day. Let's talk about what  
18 happens when polling locations close.

19 What time in Georgia do polling locations close on  
20 election day?

21 A. Typically, 7:00 P.M.

22 Q. Is there a uniform time for early advanced voting in  
23 person?

24 A. No. On the last day of advanced in person, they can close  
25 anywhere from 5:00 to 7:00 P.M.

1 Q. Are there procedures around end of election day and  
2 procedures with what to do with the Poll Pads themselves?

3 A. Yes.

4 Q. Okay.

5 MR. BELINFANTE: Could we pull up Page 90 of the poll  
6 worker training manual.

7 BY MR. BELINFANTE:

8 Q. Does this reflect what is expected in terms of closing the  
9 polls and the procedure with Poll Pads?

10 A. Yes.

11 Q. And if you could, just look at Pages 91 and 92 as well.

12 Given what is in front of you, can you just summarize for  
13 the Court what the procedure is for closing the polls in the  
14 Poll Pad issues or Poll Pad procedure?

15 A. Sure. So as part of end-of-night reconciliation, the poll  
16 workers will record numbers from off the Poll Pad that indicate  
17 the number of voters that checked in that day, and then they  
18 will begin the process of disassembling and packing up and  
19 resealing -- recording the new seal numbers after that.

20 Q. How about the ballot-marking devices? Is there a process  
21 for what to do with them at the end of election day?

22 A. Yes.

23 Q. And could you summarize that process for the Court.

24 A. So the poll workers will go to each ballot-marking device.  
25 They will record on the touch screen recap sheet the number of

1 ballots that have been printed from each ballot-marking device  
2 on that touch screen recap sheet, and then once that has been  
3 done, they can insert their poll worker cards, put in their  
4 PIN, and they can then close the polls on the BMDs, and from  
5 there, shut down the BMDs. At that point the hardware, the BMD  
6 will get sealed up completely, put in a case, case sealed, seal  
7 numbers recorded, and prepared. At that point, everything is  
8 sealed.

9 THE COURT: Could I just ask you, you said after they  
10 have done the recap report, they use their card, their poll  
11 worker card; is that right?

12 THE WITNESS: So the -- poll worker card will go in  
13 first, the PIN put in. At that point, the next screen will  
14 show the number of ballots that are printed, and that number  
15 gets written on the touch screen recap sheet.

16 THE COURT: Poll worker card number, again, is the  
17 number for the county at large so everyone has the same one?

18 THE WITNESS: Yes.

19 THE COURT: And is that also so for the fob? The fob  
20 also has the same -- it has been imprinted.

21 It also has the county's same number; is that right?

22 THE WITNESS: Yes.

23 THE COURT: Okay. Thank you.

24 BY MR. BELINFANTE:

25 Q. Is there a process -- and is that process that you

1 described -- we're looking at Page 93 of the poll worker  
2 manual -- is that what is reflected there?

3 I wanted to see if you could do it without looking at it,  
4 but is that it on 93?

5 **A.** That is it.

6 **Q.** How about the process? Is there a process for putting  
7 away or addressing the scanners at the close of election day?

8 **A.** Yes.

9 **Q.** And I won't do that to you again.

10 MR. BELINFANTE: Could we go to Page 94 of the poll  
11 worker manual.

12 BY MR. BELINFANTE:

13 **Q.** Can you just summarize for the Court what that process is  
14 for closing up the scanners at the end of an election day?

15 **A.** Sure. So the iButton will -- will get used again. The  
16 password gets put in. The poll worker is presented with the  
17 option to close the polls, and they will close the polls.

18 As part of that, they will print multiple copies of  
19 results tapes, and they will use that results tape or the  
20 information -- they will use the information on the results  
21 tape to complete their ballot recap sheet to record how many  
22 ballots were cast. And at that point, they can power down the  
23 scanner, seal it up, and prepare it to come back to the  
24 elections office.

25 **Q.** All right. What happens with the results tapes?

1     **A.**    So one results tape will get posted on the door or window  
2     of the voting location, and then one will come back to the  
3     elections office.

4     **Q.**    County election office?

5     **A.**    Yes, county elections office.

6     **Q.**    You talked about a couple of sheets before.

7            Are you familiar with a touch screen recap sheet?

8     **A.**    Yes.

9     **Q.**    What is a touch screen recap sheet?

10    **A.**    So the touch screen recap sheet is used to report  
11    information from the ballot-marking devices, so it will list  
12    out each of the ballot-marking devices that have been deployed  
13    to a location, and then it will have a spot for the seal  
14    numbers that are put on the ballot-marking devices. That --  
15    the poll workers will use that touch screen recap sheet at the  
16    beginning of the morning to verify the seal numbers; then at  
17    the end of the night, they will use the touch screen recap  
18    sheet to record the new serial -- seal numbers that they put  
19    on.

20    **Q.**    Go ahead. Sorry.

21    **A.**    Well, the only other thing I was going to mention is, as I  
22    said a little earlier, that touch screen recap sheet will  
23    contain information about the ballots that were printed from  
24    the ballot-marking devices.

25    **Q.**    Could we turn to Page 30 of the poll worker manual.

1           And looking at the bottom there, is that what you're  
2           referring to as a touch screen recap sheet?

3           **A.**    Yes.

4           **Q.**    Okay.  There is one there, a scanner recap sheet.

5           Are you familiar with those?

6           **A.**    Yes.

7           **Q.**    What is a scanner recap sheet?

8           **A.**    So the scanner recap sheet will list the scanners that  
9           were deployed to a location.  It will list the seals that were  
10          put on the piece of equipment to be deployed to the location.  
11          The poll workers will use that form to verify the seal numbers  
12          in the morning, and then for any seals they have to be put back  
13          on in the evening, they will use this sheet to record the seals  
14          there.  They also use it to confirm that the opening count is  
15          zero and to write the closing count from the scanner.

16          **Q.**    Okay.  Is -- does the Secretary of State's office provide  
17          training to election superintendents on touch screen recap  
18          sheets and scanner recap sheets?

19          **A.**    Yes.

20          **Q.**    Is there an expectation regarding whether or how these  
21          will be used?

22          **A.**    Yes.

23          **Q.**    What is that expectation?

24          **A.**    That they will be used, and that they will be -- that the  
25          election superintendents will train their poll workers on how

1 to use them, train their warehouse staff on how to use them so  
2 that the warehouse staff, if they are the ones that are  
3 completing the first half of the report when they seal up the  
4 equipment, that they do it properly, and the expectation is the  
5 poll workers know how to use the form to put the information  
6 that is needed on them during the day and the evening of  
7 election day.

8 **Q.** All right. Are you familiar with a ballot recap sheet?

9 **A.** Yes.

10 **Q.** What is that?

11 **A.** A ballot recap sheet is used to reconcile that the number  
12 of ballots or the number of voters that checked in -- it should  
13 list the number of voters that checked in. It should also  
14 record the number of ballots that were cast. It should record  
15 the number of spoiled ballots that were there. And all that  
16 information should be on the ballot recap sheet to be able to  
17 reconcile at the end of the night that you have one ballot cast  
18 for every voter that showed up. And if there's a discrepancy  
19 there, it should be able to explain why on this sheet.

20 **Q.** And how about a Poll Pad recap sheet? Are you familiar  
21 with those?

22 **A.** Yes.

23 **Q.** What are those?

24 **A.** Poll Pad recap sheet is used to record the seal numbers  
25 that are on the Poll Pad when it goes out. Also, the poll

1 workers uses them to record the seal numbers in the evening.

2 And the counts from the Poll Pad get put on there as well.

3 There is also a spot on the Poll Pad --

4 THE COURT: It counts the people who checked in?

5 THE WITNESS: Correct. The counts of the people that  
6 check in on the Poll Pad are recorded on the Poll Pad recap  
7 sheet.

8 The other thing that gets written on there is three  
9 times a day, poll workers record wait times.

10 BY MR. BELINFANTE:

11 Q. When the Secretary of State's -- or does the Secretary of  
12 State's office provide training on ballot recap sheets and Poll  
13 Pad recap sheets?

14 A. Yes.

15 Q. Who is to complete those forms at the close of election  
16 day?

17 A. At the close of election day, the poll workers complete  
18 the forms.

19 Q. All right. If we could pull up Page 31 of the poll worker  
20 manual.

21 Are these documents down here in the manual -- are these  
22 the ballot recap sheet and Poll Pad recap sheet that you were  
23 describing or examples of them, at least?

24 A. Yes. Those are correct.

25 Q. Just a few more.

1           Are you familiar with what is known as a chain of custody  
2 form?

3     **A.**    Yes.

4     **Q.**    Okay. What is the chain of custody form?

5     **A.**    So the chain of custody form is used for memory cards and  
6 ballots, and it is used to record the seal numbers that are  
7 used along with who is transporting either the memory cards or  
8 the ballots and then the time that they are transporting those  
9 materials from the polls. And then when that information gets  
10 received at the elections office, that person should verify the  
11 seal numbers that were written on the chain of custody form  
12 with the information on the seal and record the time received  
13 and sign for it.

14    **Q.**    And again, more for the record, when you say received at  
15 the election office, do you mean the county election office?

16    **A.**    Correct, county elections office.

17    **Q.**    Could we look at Page 33 of the poll worker manual.

18           There at the -- if you look in that chain of custody, that  
19 middle area there, it says see SEB rule at the bottom.

20           I'm sure everyone in the room knows, but just for the  
21 record, what is an SEB rule?

22    **A.**    It is a State Elections Board rule that they have passed.

23    **Q.**    Okay. And is the document there at the bottom -- it looks  
24 like on the right on Page 33. Is that the chain of custody  
25 form or at least an example of one that you were describing?

1     **A.**     Yes.

2                     MR. BELINFANTE:  We can take this down.

3     BY MR. BELINFANTE:

4     **Q.**     Starting to wrap up now, Director Evans.

5                     Are you familiar with the term vote dilution?

6     **A.**     Yes.

7     **Q.**     What is vote dilution?

8                     MR. CROSS:  Your Honor, is this -- we're getting a  
9     legal opinion or what is the purpose?

10                    MR. BELINFANTE:  The purpose is he will -- it speaks  
11     to some of the elements that the plaintiffs have to  
12     demonstrate.  I'm happy to -- it will take two seconds.

13                    But if we're talking about comparing hand-marked  
14     paper ballots and electronic ballots, to the extent that there  
15     are illegal ballots that could come in, that speaks to vote  
16     dilution.  I was just going to have him explain what the  
17     concept is, but I'm happy for the Court to take judicial notice  
18     of it as well.

19                    MR. CROSS:  We can see where it goes.

20     BY MR. BELINFANTE:

21     **Q.**     What is vote dilution, Director Evans?

22     **A.**     So vote dilution is essentially if you have unlawful or  
23     fraudulent ballots that are cast.  They negate the ballot -- or  
24     negate lawful ballots that were cast.

25     **Q.**     And vote dilution doesn't distinguish as a theory -- well,

1 it could happen if those unlawful or illegal ballots are cast  
2 electronically and with a hand-marked paper ballot, or does it  
3 require one or the other?

4 **A.** Can you repeat the question?

5 **Q.** Sure. Could vote dilution happen with an illegal vote  
6 cast on a ballot-marking device?

7 We'll start there.

8 **A.** Yes.

9 **Q.** Okay. And could vote dilution happen with an illegal  
10 ballot cast with a hand-marked paper ballot?

11 **A.** Yes.

12 THE COURT: Did you say legal or illegal?

13 MR. BELINFANTE: Illegal. I'm sorry.

14 BY MR. BELINFANTE:

15 **Q.** An illegally submitted hand-marked paper ballot, could  
16 that result in a vote dilution?

17 **A.** Yes.

18 **Q.** Okay. In your time in elections, do you have any personal  
19 knowledge of any vote being cast on an electronic marking -- or  
20 electronic ballot-marking device where a voter's vote was not  
21 counted as cast?

22 **A.** No.

23 **Q.** Are you aware in your experience in elections of cases  
24 where individuals were prosecuted for illegal conduct involving  
25 hand-marked paper ballots?

1     **A.**     Generally, yes.

2     **Q.**     Based on your experience with other entities, ERIC, we  
3     talked about the National Association -- is it your position  
4     that the State takes reasonable precautions to mitigate known  
5     risks involving electronic ballot-marking devices?

6     **A.**     Yes.

7     **Q.**     How about with hand-marked paper ballots?

8     **A.**     Yes.

9     **Q.**     Do you conduct your professional obligations in good  
10    faith?

11    **A.**     Yes.

12    **Q.**     You've administered elections in Florida using hand-marked  
13    paper ballots.  You've been a director in Georgia where  
14    ballot-marking devices are used.

15            Do you have a preference as to which one for election  
16    administration?

17    **A.**     So what I would say is that they are both good systems.  
18    You've got colleagues that run -- of course, we run BMDs here.  
19    Similar in South Carolina.  Other places, they run hand-marked  
20    paper.  I did in Florida.

21            They are both good systems.  They both have pros and cons.  
22    I think, you know, with a BMD system one of the harder aspects  
23    of it is the initial rollout where you're having to adjust the  
24    logistics of having additional pieces of equipment, like BMD,  
25    the printer, and the scanner.

1 I think once you've -- once you've done that, I think for  
2 the voter experience, I prefer the BMD system, and I think, you  
3 know, from the purposes of the ballot, I prefer the BMD ballot  
4 because you don't have the -- as many mismarks, like we talked  
5 about earlier. And then I think, you know, once the ballot has  
6 been cast and to preserve the ballot, I think the BMD ballot is  
7 very obvious to tell what voter intent was.

8 MR. BELINFANTE: No more questions at this time,  
9 reserving for rebuttal.

10 Thank you, Director.

11 THE COURT: Okay. Let's take five minutes. I  
12 just -- I would like to take five minutes to stand up.

13 COURTROOM SECURITY OFFICER: All rise.

14 **(A brief break was taken at 3:41 PM.)**

15 MR. BELINFANTE: We have one housekeeping measure.  
16 Michael Barnes was here. He has professional obligations that  
17 are time-sensitive, so we sent him back. We talked to at  
18 least -- Mr. Cross, it is coming up on 4:00. It may be close  
19 if it is 5:30 or not. We don't expect this witness to go  
20 tomorrow.

21 So we can have Mr. Barnes come back --

22 THE COURT: No, that is all right.

23 MR. BELINFANTE: Thank you.

24 THE COURT: That's all right.

25 MR. BELINFANTE: It may just be even half an hour

1 early.

2 THE COURT: I'm sure some of you are tired.

3 I did have one -- before Mr. Cross begins, I just  
4 want to circle back to make sure I ask the same question again  
5 about these county passwords to make sure I haven't  
6 misunderstood.

7 So the same county password is used, you indicated,  
8 for the fob, for the poll worker password, and for the county  
9 scanner password.

10 THE WITNESS: So each of those is countywide.

11 THE COURT: All right.

12 THE WITNESS: And Deputy Director Barnes will be able  
13 to go into a lot more detail on those, but each of those is  
14 countywide.

15 THE COURT: All right. So is it the same overall for  
16 each of those, or is it, for instance, 123 for the county  
17 scanner password and 125 for the poll worker password, or is it  
18 always the same number? County -- if it is the county, it is  
19 always the exact same number or configuration?

20 THE WITNESS: I would want to defer to Mr. Barnes to  
21 confirm.

22 THE COURT: Thank you.

23 CROSS-EXAMINATION

24 BY MR. CROSS:

25 Q. Good afternoon, Mr. Evans.

1     **A.**     Good afternoon.

2     **Q.**     I'm David Cross.  I represent three of the plaintiffs in  
3     this case.  I don't think you and I have met before.  Let me  
4     start.

5             You talked a little bit about your experience in Florida  
6     dealing with hand-marked paper ballots.

7             Do you recall that?

8     **A.**     I do.

9     **Q.**     And you're not suggesting in any way that the use of  
10    hand-marked paper ballots in Florida was in any way  
11    inappropriate?

12    **A.**     No.

13    **Q.**     Not suggesting that any election that occurred there was  
14    unreliable?

15    **A.**     No.

16    **Q.**     Not suggesting that any outcome there was wrongly decided?

17    **A.**     No.

18    **Q.**     And you're not suggesting that any voter who cast a  
19    hand-marked paper ballot in Florida did not have their vote  
20    counted; right?  Or does this get into the mismarks?

21    **A.**     It gets a little bit into the mismarks.

22    **Q.**     And mismarks on a hand-marked paper ballot tend to be made  
23    by the voter.

24             Is that what you meant by mismark?

25    **A.**     Yes.

1 Q. I believe you said in Florida, voters with disabilities  
2 who couldn't vote on a hand-marked paper ballot voted on  
3 equipment provided by ES&S; is that right?

4 A. That's correct.

5 Q. And sorry.

6 Remind me, what kind of device is that?

7 A. So when I was initially there, the first piece of  
8 equipment was the AutoMARK, and then by the time that I left,  
9 we had moved to the ExpressVote.

10 Q. And while you were there, you didn't object to anyone at  
11 the State that this was somehow inappropriate to make voters  
12 with disabilities vote on different equipment; right?

13 A. No.

14 Q. And you're not suggesting today that that is  
15 inappropriate; right?

16 A. No.

17 Q. And I believe you testified that the ES&S machine was  
18 available to voters who requested it; is that right?

19 A. It was. If somebody requested it, we didn't ask any  
20 questions.

21 Q. They didn't have to demonstrate a disability, for example?

22 A. No.

23 Q. And fair to say very few voters in your experience in  
24 Florida requested that; right?

25 A. Correct.

1   **Q.**   You testified at the end of your testimony that once a BMD  
2   system is rolled out, sort of the hard work has been done up  
3   front with rolling it out.

4           Did I get that right?

5   **A.**   What I -- with adjusting to a ballot-marking device  
6   system, there are logistical things that you have to -- that  
7   you have to determine on the front end to make sure you're  
8   prepared to administer it. Things like, you know, the  
9   electrical current that it is going to pull. You know, how are  
10   you going to ship the equipment, being that it is a  
11   ballot-marking device, a printer, a backup battery supply?

12           So those kind of concerns are an extra dynamic that you  
13   have to take into consideration on the implementation, so that  
14   was my intent there.

15   **Q.**   And we have walked through the poll worker manual that  
16   we'll come back to.

17           One of the things this does is explain the steps that the  
18   counties are supposed to take to set up an election using the  
19   BMDs; right?

20   **A.**   Correct. It has suggested layouts and that kind of thing.

21   **Q.**   Right. And right now in the current system, poll workers  
22   have to set up somewhere in the neighborhood of about 40,000  
23   ballot-marking devices across the State?

24   **A.**   It seems a little bit high. It is probably closer to  
25   30,000 or so.

1 Q. 30,000 BMDs, and then how many printers, roughly?

2 A. One printer per each.

3 Q. So 30,000 BMDs, 30,000 printers.

4 And when you were in Florida when the poll workers were  
5 setting up an election, they set up -- was it just one ES&S  
6 machine at each polling site or how many?

7 A. It was one device, one ballot-marking device per voting  
8 location.

9 Q. And in Georgia today, you also have to have enough paper  
10 on hand to print a ballot for every single voter who votes;  
11 right?

12 A. You do.

13 Q. Okay. In Florida, instead of having to set up 30,000 BMDs  
14 and 30,000 printers, you just had to have enough paper ballots  
15 and pens for voters to vote by hand; right?

16 A. The preprinted paper ballots, the pens, and voting booths,  
17 yes.

18 Q. And since they are -- when the voter cast their -- strike  
19 that again.

20 In Florida when the voter was making their selections on a  
21 ballot, putting aside someone voting on the ES&S machine, when  
22 the voter was voting on a paper ballot, there's no risk of  
23 their selections being manipulated in some way by a computer.

24 We're agreed on that; right?

25 A. The ballot gets scanned and read by a tabulator that looks

1 at the oval position in relation to the timing marks.

2 Q. And I'm not talking about the scanning.

3 The point at which the voter is making their selections on  
4 the ballot in Florida --

5 A. Sure.

6 Q. -- right, there is no computer that can alter what they  
7 are doing on the paper ballot; right?

8 A. Correct.

9 Q. And are you aware that when a voter is voting in Georgia  
10 that Dr. Halderman in this case has actually shown that a BMD  
11 can be manipulated to change votes using just a pen? Have you  
12 heard that before?

13 A. I am not aware of any demonstration -- I'm aware there may  
14 have been a demonstration. I have not seen that demonstration  
15 and how exactly he did that.

16 Q. Have you read Dr. Halderman's report produced in this  
17 case?

18 A. I have.

19 Q. And do you recall in his report, he walks through the  
20 steps of how a voter could vote in the voting booth with the  
21 secrecy of -- ballot secrecy that is required with all the  
22 screens and reboot a voting machine with just a pen?

23 MR. BELINFANTE: Objection, Your Honor. Outside the  
24 scope of direct in terms of Dr. Halderman's report.

25 MR. CROSS: They brought him in to talk at length

1 about the security of the voting system. That was a huge topic  
2 that he walked through.

3 MR. BELINFANTE: If that's okay, Your Honor, then we  
4 can talk about CISA too.

5 MR. CROSS: I'm not sure what that means.

6 MR. BELINFANTE: That means if the door is open and  
7 he is going to testify about Dr. Halderman, then he ought to be  
8 able to testify about CISA.

9 MR. CROSS: I'm not asking -- I thought we had  
10 covered that.

11 THE COURT: I thought we had too.

12 MR. BELINFANTE: I thought we had, but we have a  
13 conditional record as to at least some questions. And so if I  
14 need to go back in while the witness is here and correct the --

15 THE COURT: Well, I think I let you do those  
16 questions. It was conditional, but then you decided how you  
17 were -- what questions you were going to ask.

18 And just to the extent the record needs  
19 clarification, they are all fine. They didn't object to any of  
20 them in the end, the ones that you actually asked.

21 MR. BELINFANTE: All right. That works, Your Honor.  
22 Thank you.

23 THE COURT: So I think in the limited way in the  
24 same -- you didn't go that deeply, but you asked questions  
25 about it, and some amount of questions without spending lots of

1 time on this, Mr. Cross --

2 MR. CROSS: I'm not going to spend a lot of time on  
3 it.

4 BY MR. CROSS:

5 Q. Do you recall reading in the report that the BMD in  
6 Georgia can be manipulated with a ballpoint pen?

7 A. I don't recall only a ballpoint pen being used to  
8 manipulate a BMD.

9 Q. Were you aware that a ballpoint pen can be used to reboot  
10 the BMD in the polling site?

11 A. Yes.

12 Q. And did you understand from reading the report that once  
13 you reboot it, all that is needed at that point is for the  
14 voter on the touch screen to get superuser access? Do you  
15 recall that?

16 A. All that is needed on the touch screen is to get superuser  
17 access?

18 I'm not sure I understand the question.

19 Q. Do you know what superuser access is in the Android  
20 operating system that is used on the BMD?

21 A. I am not fully aware of what all of that means.

22 Q. Suffice to say that as the state election director, you  
23 have not provided the Court any mitigation measure that is  
24 meant to eliminate that risk for future elections; right, sir?

25 A. I would not agree with that.

1 Q. So you testified earlier to a mitigation measure that  
2 keeps someone from putting a ballpoint pen in the back of a  
3 machine and rebooting it?

4 A. I testified earlier about seals that poll workers have in  
5 place to make sure that the equipment is not tampered with.

6 Q. Do you know where the seals go?

7 A. The seals go on all four doors of the ballot-marking  
8 device.

9 Q. Do you know based on your read of Dr. Halderman's report,  
10 if a voter were to reboot the system, do you know where the pen  
11 goes to do that?

12 A. My understanding is he would get to the power button with  
13 the pen, but I have not seen that actual demonstration.

14 Q. So as you sit here as the state election director, are you  
15 aware that a voter can reboot the system without breaking any  
16 seals?

17 It goes through a hole in the back of the machine.

18 Were you aware of that before now?

19 A. I have heard that.

20 Q. So, again, we're agreed that seals are not going to  
21 mitigate this because the seals don't get broken.

22 Do you understand that?

23 A. I understand.

24 Q. Is there another mitigation measure you've provided to the  
25 Court today that would prevent just this one simple hack from

1     happening in a future election?

2     **A.**    As far as somebody being able to reboot it, I'm not sure  
3     if I want to call a reboot in and of itself a hack, but I have  
4     not introduced a mitigation, I suppose, that would keep  
5     somebody from being able to use a pen to reboot the machine.

6     **Q.**    And as you sit here, you are just -- you don't have enough  
7     familiarity with what the voter can do once it is rebooted?

8     **A.**    Correct.

9     **Q.**    You talked about your work with CISA and how you worked  
10    with them on election security in the State.

11           Do you recall that?

12    **A.**    I do.

13    **Q.**    One of the things CISA does is physical inspections of  
14    election sites in Georgia; is that right?

15    **A.**    Correct.

16    **Q.**    Do they prepare reports of those inspections?

17    **A.**    They do.

18    **Q.**    Are those written reports that are provided to the State?

19    **A.**    The counties -- the counties receive written reports  
20    following each inspection, and then we get a -- we will be  
21    getting a finalized election -- or executive summary report,  
22    but we don't get the county-specific reports.

23    **Q.**    Is this an annual thing? How often is this?

24    **A.**    So it was done once, I think, around the time the system  
25    was rolled out, if I remember correctly. But it was done the

1 second time that I was more heavily involved with beginning  
2 around July, August of last year and went through the calendar  
3 year. There may have been a small number of counties finished  
4 in January.

5 **Q.** So when this has been done in the past, it sounds like  
6 once maybe around 2020 and then again in July, August of last  
7 year, there's some kind of -- is it like a summary report that  
8 the Secretary's office gets on CISA's findings?

9 **A.** I'm not sure what we got the first time around, but this  
10 time around, we have gotten a draft executive summary report,  
11 but it has not been finalized yet.

12 **Q.** And is the Secretary's office -- the county-level reports  
13 that are more specific, that is not important for the Secretary  
14 to understand what risks may be happening there?

15 **A.** It is very important, but those reports are specifically  
16 directed and targeted towards county election officials and the  
17 officials at the county level.

18 **Q.** And the Secretary does not ask for them?

19 **A.** We have not asked for those. The reason for that would be  
20 that we want counties to feel comfortable in speaking with  
21 Department of Homeland Security and GEMA when taking the  
22 survey.

23 **Q.** Is your concern that if the county officials were aware  
24 the Secretary's office would get the more granular report, the  
25 counties might be less forthcoming about deficiencies they have

1 when they are talking with CISA?

2 **A.** That is a consideration.

3 **Q.** You mentioned you spoke on a panel for -- or with CISA  
4 today; right? For a CISA conference or something?

5 **A.** Right. It was a Region 4 round table that they conducted;  
6 correct.

7 **Q.** I believe Mr. Belinfante pointed out that CISA invited you  
8 to speak on that panel; right?

9 **A.** A representative from CISA, yes.

10 **Q.** And you're familiar with the breaches that occurred in  
11 Georgia's voting system in Coffee County in January of 2021;  
12 right?

13 **A.** Yes.

14 **Q.** And you're not aware of any comparable breach of any  
15 electronic voting system in U.S. history; right, sir?

16 **A.** I'm aware that things have happened in other states. You  
17 know, as far as comparing that to the Coffee County incident,  
18 you know, I don't want to sit and do that necessarily.

19 **Q.** Can you point us to an example where a dozen or so  
20 individuals were able to get access to all of the voting  
21 equipment in a county elections office over the span of  
22 eight days? Can you point to us anything else that seems even  
23 close to that?

24 And they copied all the data and they put it on the  
25 internet.

1     **A.**   Not necessarily. I know that, again, things have happened  
2     in other states, but as far as getting in and comparing those  
3     things to this, I don't necessarily want to do that.

4     **Q.**   And you were the deputy state election director at the  
5     time; is that right?

6     **A.**   At the time, yes.

7     **Q.**   Fair to say you have pretty unique insight to offer folks  
8     at a CISA conference, for example, on how things can go  
9     sideways when physical security measures and others break down?

10    **A.**   I have the insights that I have from local and state  
11    experience.

12    **Q.**   You talked about sample ballots that are available at  
13    polling sites.

14           Do you recall that?

15    **A.**   I do.

16    **Q.**   There are 159 counties in Georgia; right?

17    **A.**   Correct.

18    **Q.**   Roughly, how many polling sites are there?

19    **A.**   It is around 2,400, so close to 2,500.

20    **Q.**   And as you sit here, you don't actually know whether  
21    sample ballots are provided at each of these polling sites in  
22    any election; right?

23    **A.**   Counties are required to. We have investigators that go  
24    and inspect, but we don't get to every single location.

25    **Q.**   And fair to say that even if a sample ballot is provided

1 at the polling site, the voter is not allowed to take that  
2 sample ballot with him into the voting booth; right?

3 **A.** Generally correct. There may be some counties that print  
4 out copies and stuff, but generally, there needs to be one on  
5 display.

6 **Q.** You also mentioned that voters could bring a sample ballot  
7 with them.

8 Do you recall that?

9 **A.** Yes.

10 **Q.** You are aware that many voters in Georgia don't have  
11 access to printers; right?

12 **A.** Sure. Yes.

13 **Q.** In fact, there are some voters in Georgia that don't have  
14 internet access at all; right?

15 MR. BELINFANTE: Objection. This is a case about the  
16 standing of individuals, and I believe at least the only  
17 individual asked about the printer said he did have one. This  
18 isn't a class action.

19 MR. CROSS: It is directly responsive to the  
20 questions they asked. If he wants to withdraw the testimony --

21 THE COURT: I'll allow it, for whatever it is worth.

22 MR. CROSS: That was the only question I had.

23 THE COURT: All right.

24 BY MR. CROSS:

25 **Q.** You also emphasized that absentee ballot is considered

1 no-excuse voting?

2 **A.** Correct.

3 **Q.** And that means that right now a voter can vote in Georgia  
4 absentee without having to provide a reason?

5 **A.** Correct.

6 **Q.** And do I understand correctly that the State Election  
7 Board has recommended eliminating that?

8 **A.** You would have to ask the State Elections Board.

9 **Q.** As the state election director, you don't know?

10 **A.** I have heard that they are looking -- or that at least a  
11 board member has mentioned that, but how heavily the chairman  
12 and entire board is looking at it, I don't know.

13 **Q.** You also talked about absentee voting as a way to avoid  
14 BMDs.

15 Did I understand that right?

16 **A.** I did not say that.

17 **Q.** In fact, absentee voting is not necessarily a way to avoid  
18 BMDs because oftentimes an absentee ballot will be duplicated  
19 on a BMD; right, sir?

20 **A.** There are some counties that will duplicate absentee  
21 ballots using BMDs.

22 **Q.** And there is no way -- that is not conveyed to the voter  
23 who voted by absentee; right?

24 **A.** No.

25 **Q.** What -- sorry.

1           What is the deadline by which early voting has to be done  
2 before election day?

3   **A.**    Early voting ends the Friday before election day.

4   **Q.**    So roughly four to five days before election day?

5   **A.**    Yes.   Four days before.

6   **Q.**    And so anyone who is not available on election day and  
7 votes in early voting, whatever information might affect their  
8 vote between Friday and Tuesday is not available to them;  
9 right?

10   **A.**    Do you mean like campaign information?

11   **Q.**    Campaign information, Secretary of State.

12   **A.**    Once they cast a ballot in the election, they cannot vote  
13 again.

14   **Q.**    And same with absentee, someone who votes absentee in  
15 advance of election day, there is information that would not be  
16 available to them when they vote; right?

17   **A.**    They will not be able to vote again.

18   **Q.**    Do you have the demonstrative, the pie charts?

19   **A.**    I do.

20   **Q.**    The pie charts are only for Georgia; right?

21   **A.**    Correct.

22   **Q.**    Are you aware that there are only seven counties across  
23 the entire United States that require voters to vote in person  
24 on an ICX machine as Georgia does?

25   **A.**    Can you repeat the question?

1 Q. Sure. Are you aware that there are only seven counties  
2 across the entire United States that require voters voting in  
3 person to vote on a Dominion ICX?

4 A. I was not aware of that.

5 Q. And the only other state I believe you mentioned that has  
6 a BMD at all as a primary form of voting is South Carolina; is  
7 that right?

8 A. I know they do. I don't know that they are -- I don't  
9 know that they are the only.

10 Q. So if the idea was for the Court to draw an inference on  
11 the preference of voters on how they vote, fair to say that a  
12 very small number of voters across the United States vote the  
13 way they do in Georgia; right?

14 MR. BELINFANTE: Objection. I'm not sure the witness  
15 can testify to as to what inference the Court was supposed to  
16 draw in explaining a --

17 MR. CROSS: As long as we're agreed on that, I'll  
18 withdraw it.

19 MR. BELINFANTE: Yeah, the data speaks for itself.

20 THE COURT: Well, you said you were not aware of -- I  
21 just want to talk about -- I don't have the demonstrative in  
22 front of me right now, but you were at -- I just want to make  
23 sure that we're not talking apples and oranges when you --  
24 Mr. Cross, you were pointing to some information on the State's  
25 pie charts, and you asked, I think -- he answered something

1     that he was not aware of the data. And I just -- if I don't --  
2     I need to have it in front of me so I can understand the  
3     question again.

4             MR. CROSS: Did you get a copy of this, Your Honor,  
5     the pie chart?

6             THE COURT: I assume I did, but I don't have it here  
7     right now.

8             MR. BELINFANTE: He can pull it up, if that helps.

9             MR. CROSS: Sure.

10            THE COURT: I think I looked at it this way. That's  
11     all.

12            MR. CROSS: The questions that were asked earlier  
13     seem to be emphasizing that the vast majority of Georgia voters  
14     vote on either election day or in person, meaning they vote on  
15     BMDs. And there seemed to be an inference that Mr. Belinfante  
16     wanted the Court to draw from that.

17            So the only point I was making is if we're going to  
18     look at how voters vote --

19            THE COURT: All right. Well, that's a good argument,  
20     but that is -- I mean, if he doesn't know anything about it  
21     that is --

22            MR. CROSS: Exactly.

23            THE COURT: -- that's all.

24            MR. BELINFANTE: Your Honor, just to clarify, my  
25     objection is that the data speaks for itself. The witness

1 doesn't -- the witness wasn't conveying anything other than  
2 providing the data itself.

3 THE COURT: I understand.

4 MR. BELINFANTE: We'll make legal arguments as to  
5 what it means.

6 THE COURT: I guess the question that flows from this  
7 is something different, which is what I think you were trying  
8 to get at.

9 But are you aware of any other state where there is  
10 such a high percentage of voters who are voting on electronic  
11 voting machines, or are you just not aware of the data?

12 THE WITNESS: I think the question was aware of other  
13 jurisdictions voting on this exact electronic voting machine.

14 BY MR. CROSS:

15 **Q.** Or a BMD as the primary form of voting; right? So it  
16 is -- South Carolina is one.

17 But it is ES&S; right?

18 **A.** Sure. Correct.

19 THE COURT: And any other place besides Georgia and  
20 South Carolina, just based on your experience as somebody who  
21 has been involved in elections?

22 THE WITNESS: Sure. I think, you know, Louisiana has  
23 jurisdictions that do, and I would guess there are others, but  
24 I don't have them readily available.

25

1 BY MR. CROSS:

2 Q. All right. Are you aware that the Republican party of  
3 Georgia as part of its platform has called for replacing all  
4 Dominion voting systems with secure hand-marked paper ballots?

5 MR. BELINFANTE: Objection. Hearsay. Relevance.

6 MR. CROSS: Your Honor, again, the whole point of  
7 this pie chart was to suggest to the Court that voters across  
8 Georgia prefer to vote on a BMD. This is directly responsive.  
9 We have more direct evidence that they don't. And he is either  
10 aware of it or he is not. If we want to start getting --

11 THE COURT: I mean, the thing is, I understand what  
12 the point is, but I don't -- I don't know that -- you know, to  
13 cite something that the Republican party has done absent some  
14 sort of at least record of that, it seems like it is not  
15 proper.

16 So I'll allow you a very limited amount to be asking  
17 about this because it was -- the information was sought by  
18 defense counsel in the direct. But very limited.

19 BY MR. CROSS:

20 Q. And I'm just asking Mr. Blake if you're aware of that.

21 A. I'm aware.

22 Q. You talked about a software upgrade that you guys  
23 contemplated -- the Secretary contemplated installing, 5.13.

24 Do you see that -- or do you remember that?

25 A. I do.

1 Q. But, ultimately, the Secretary abandoned that with  
2 Dominion.

3 Did I understand that right?

4 A. The -- once we learned that Dominion was not going to move  
5 forward with the EAC certification with that software version,  
6 then we decided to not pursue piloting that software version.

7 Q. And did I understand right that 5.13 was meant to mitigate  
8 vulnerabilities that had been identified in the current 5.5-A?

9 A. My understanding is that was going to be essentially  
10 Dominion's response to that, and then they decided not to push  
11 it through EAC certification.

12 Q. When you say response to that, do you mean the CISA  
13 advisory from June of 2022?

14 A. Yes. That's my understanding.

15 Q. And you talked about 5.17 as a new Dominion software, and  
16 you mentioned pilots of that.

17 Was that piloted in five counties?

18 A. Five counties, yes, sir.

19 Q. Three of those counties went quite poorly; right?

20 A. I wouldn't say poorly, but we learned things from the  
21 pilot.

22 Q. You had significant challenges?

23 A. There were challenges. All three -- or all five counties,  
24 the elections were run successfully. But there were things  
25 that we learned, and there were challenges.

1 Q. One of the challenges also is that 5.17 is not compatible  
2 with the KNOWiNK software that you use on the Poll Pads; right?

3 A. It is now. When they initially got it through EAC  
4 certification and we began state certification, we realized  
5 that it was at that time not compatible.

6 Q. When it was EAC-certified?

7 A. Correct.

8 THE COURT: Are you saying they went through another  
9 process to make it certified, or it is certified now?

10 THE WITNESS: So when 5.17 was certified by the EAC,  
11 they compared that software to the guidelines that they have --  
12 the testing lab does. And they said, okay, this meets those  
13 guidelines, so we're going to certify it.

14 When we take it as part of our state certification  
15 and we begin to take it through state certification, we  
16 realized that the Poll Pads could not encode cards that would  
17 work with 5.17 on the BMD, and so that is something that the  
18 Poll Pad vendor had to work through.

19 MR. CROSS: Your Honor, can we hand him a binder and  
20 also for Your Honor?

21 THE COURT: Okay.

22 BY MR. CROSS:

23 Q. Mr. Barnes -- I'm sorry.

24 Mr. Evans, if you would grab -- if you would flip to Tab 1  
25 in the binder that you were just handed.

1 MR. BELINFANTE: I'm sorry. Could you just hang on  
2 one second. We're trying to get me a binder.

3 MR. CROSS: Do we have one?

4 MR. BELINFANTE: You're at Tab 1?

5 MR. CROSS: Tab 1.

6 BY MR. CROSS:

7 Q. Do you recognize Tab 1 as a document from the EAC  
8 concerning the certification of Democracy Suite 5.17?

9 A. I do.

10 Q. And do you see that the testing standard there is VVSG 1.0  
11 that was established in 2005?

12 A. Yes.

13 Q. And, in fact, the testing standard that was used for 5.17  
14 is that standard; right?

15 A. Correct.

16 Q. That is not the current standard, is it, sir?

17 A. That is the highest standard that any election equipment  
18 is certified to.

19 Q. That wasn't my question.

20 A. There is a -- there is a newer VVSG 2.0 that has no  
21 election equipment certified to it.

22 Q. And that is the current standard that the EAC is using;  
23 right?

24 THE COURT: Which one?

25 MR. CROSS: VVSG 2.0.

1           THE WITNESS: My understanding is that if a voting  
2 system at this point decides to submit something to  
3 certification that it will undergo 2.0, but nothing has made it  
4 through that process yet.

5 BY MR. CROSS:

6 **Q.** Okay. Flip to Tab 4, if you would, please.

7           Do you see here a document from the EAC, voluntary voting  
8 system guidelines? Do you see that?

9 **A.** I do.

10 **Q.** And the acronym VVSG is voluntary voting system  
11 guidelines; right?

12 **A.** Correct.

13 **Q.** If you come to the second paragraph, you see where the EAC  
14 indicates that on February 10 of 2021, the EAC commissioners  
15 unanimously adopted the newest VVSG standard 2.0. In November  
16 and December of 2022, the VVSG 2.0 was fully ready to be used  
17 for testing with the accreditation of both voting system labs,  
18 or VSTL, by the EAC to test this new standard.

19           Do you see that?

20 **A.** I do.

21 **Q.** And if you come down to the bottom of the page --

22           THE COURT: What document is this?

23           MR. CROSS: Oh, I'm sorry. It is Tab 4 in the  
24 binder, Your Honor. Tab 4.

25

1 BY MR. CROSS:

2 Q. The bottom of this page from the EAC, do you see that it  
3 says, following this, VVSG 1.0 and 1.1 is now no longer to be  
4 used by the EAC to vote -- to certify voting systems?

5 A. I'm sorry.

6 What page are you on again?

7 Q. The bottom of Page 1 under Tab 4, the last sentence  
8 following this.

9 Do you see that?

10 A. Correct.

11 Q. VVSG 1.0 and 1.1 is now no longer used by the EAC to  
12 certify voting systems.

13 Do you see that?

14 A. Correct. And my understanding of that would mean from  
15 that point forward, equipment submitted to be certified would  
16 go against the 2.0 standard.

17 Q. If you flip back to Tab 1, the certification document for  
18 5.17, do you see that when we go to the second page?

19 A. I do.

20 Q. The testing application date, this was submitted for  
21 testing on October 4th of 2022; right?

22 A. Yes.

23 Q. If we flip back to Tab 4, again, just a reminder, the EAC  
24 unanimously adopted VVSG 2.0 almost two years earlier on  
25 February 10th of 2021; right?

1     **A.**    Yes.

2     **Q.**    And one of the key differences between VVSG 1 and 2 is  
3     that 2 requires penetration testing; right?

4     **A.**    I would have to review the standards.  That sounds right.

5     **Q.**    But you're aware in getting VVSG 1 certification for 5.17,  
6     there was no requirement for penetration testing; right?

7     **A.**    I would have to look at the standards.

8     **Q.**    As you sit here, you just don't recall?

9     **A.**    Say again.

10    **Q.**    As you sit here, you don't recall?

11    **A.**    Correct.

12    **Q.**    Do you know whether the installation procedures for 5.17  
13    are the same basic steps as what was involved to install 5.5-A?

14    **A.**    I would be hard to speak to that since I wasn't with the  
15    Secretary of State's office at the time of the rollout.

16    **Q.**    You were deputy state election director in September,  
17    October of 2020; right?

18    **A.**    Correct.

19    **Q.**    Do you recall at that time the Secretary's office had a  
20    mandatory software update on the BMDs that was version  
21    5.5.10.32?

22    **A.**    Correct.

23    **Q.**    And the installation of that software had to be installed  
24    on every BMD across the state; right?

25    **A.**    That is what I recall, yes.

1 Q. And that took about 20 minutes per BMD or so?

2 A. No. That one was a much faster update.

3 Q. How long is it -- what is your understanding of how long  
4 that took?

5 A. It was much quicker. Mr. Barnes would have intimate  
6 details of that.

7 Q. Fair to say that the State got that done on every BMD in a  
8 matter of about a couple of weeks; right?

9 A. It was about that time frame.

10 Q. You talked about unify tabulator security keys.  
11 And that is the key to the scanner; is that right?

12 A. Correct.

13 Q. And do I understand correctly that there's only one  
14 security key that -- sorry. Let me ask it a different way.  
15 The security key is physical; right?

16 A. The -- yeah, you have the iButton, which is sometimes  
17 called a security key.

18 Q. Okay. And the iButton is encoded for each election; is  
19 that right?

20 A. Correct.

21 Q. But it is encoded the same way for every security key  
22 across the entire county; right?

23 A. Yes.

24 MR. CROSS: Can you play the video, Tony?

25 **(Playing of the videotape.)**

1 MR. CROSS: And just to pause here for a second.

2 Sorry. Go back one second.

3 BY MR. CROSS:

4 Q. This is a page from the manual Mr. Belinfante asked you  
5 about, and it is about opening the polls on the ICP, the  
6 precinct scanner; right?

7 A. Correct.

8 Q. If you look at the third picture in the middle across the  
9 top, that is someone using the security key on the scanner;  
10 right?

11 A. Correct.

12 Q. You said this is an iButton.

13 It is secured by iButton; right?

14 A. I don't know the technical specs, but this is a security  
15 key.

16 Q. And it is iButton?

17 A. That is my understanding, yeah.

18 MR. CROSS: Can you play the video?

19 BY MR. CROSS:

20 Q. I've just got a really short video here for you.

21 MR. BELINFANTE: Well --

22 THE COURT: Have you shown this video before?

23 MR. BELINFANTE: I have not seen the video, Your  
24 Honor.

25 MR. CROSS: It is a demonstrative, just like we got

1 demonstratives for the first time today, Your Honor. It is  
2 only going to take a moment.

3 **(Playing of the videotape.)**

4 BY MR. CROSS:

5 **Q.** Let me ask you this way: Do you know if you or anyone  
6 else at the Secretary's office has ever done a Google search to  
7 figure out how easy it is to hack iButton?

8 **A.** I don't believe I have ever done that Google search.

9 **Q.** And you are not aware of anyone who has?

10 **A.** Correct.

11 **Q.** The video I just showed you, you have never seen that  
12 before?

13 **A.** No.

14 MR. CROSS: Tony, can you pull up the Dominion  
15 manual?

16 Not that one. Sorry. Hang on. Here it is.

17 BY MR. CROSS:

18 **Q.** I'll just hand you a hard copy.

19 Mr. Barnes -- I don't know why I keep calling you that.  
20 I'm so sorry. There are so many Barneses in this case, it is  
21 just the name I default to.

22 Mr. Evans, take a look at what is going to be Exhibit 605  
23 and tell me, do you recognize this as an excerpt from the  
24 Dominion voting manual for the EMS election event designer user  
25 guide?

1     **A.**    I don't know.  I mean, it looks like that.  I don't know  
2     that I have ever looked at this exact document.

3     **Q.**    But you're familiar that there is a user guide Dominion  
4     provides on how to use the voting equipment that is used in  
5     Georgia; right?

6     **A.**    Yes.

7     **Q.**    And you can see on the cover -- it is a little hard to  
8     read, but it is version 5.5.

9             Do you see that in the middle of the cover?

10    **A.**    I see it.

11    **Q.**    And if you come, do you see that there is a table of  
12    contents on the second page?

13    **A.**    Yes.

14    **Q.**    And do you see under 4.7, Project Parameters, at the  
15    bottom?

16    **A.**    Yes.

17    **Q.**    And then there's 4.7.2, general tabulation options at  
18    Page 27.

19             Do you see that?

20    **A.**    Yes.

21    **Q.**    Okay.  So if you flip in, we have got that section,  
22    Page 27 in Exhibit 605.

23             You see at the top, 4.7 Project Parameters, the heading?

24    **A.**    Yes.

25             You said Page 27; right?  Project Parameters?

1 Q. Yes.

2 A. Yep.

3 Q. Again, on the topic of unify tabulator security keys,  
4 which you spoke about at some length, if you look in the middle  
5 of Page 27, you will see there is a box, Number 3, with a  
6 heading Unify Tabulator Security Keys.

7 Do you see that?

8 A. Yes.

9 Q. And here what Dominion states is, when this check box is  
10 selected, all tabulators share a single iButton security key.  
11 This mode is very useful in a testing environment when using  
12 many tabulators at once.

13 Do you see that?

14 A. I do.

15 Q. And it goes on, if the check box is not selected, each  
16 tabulator is assigned a unique key; right?

17 A. I do.

18 Q. And then what Dominion advises the Secretary's office here  
19 is, for security reasons, it is not recommended to use unified  
20 security keys in a real election.

21 Do you see that?

22 A. I do.

23 I would like to add a little context to my --

24 Q. I'm just asking, you understand that is what is advised by  
25 Dominion; right?

1     **A.**    I understand.

2     **Q.**    And Georgia does exactly what Dominion advises against in  
3     a real election for security reasons; right, sir?

4     **A.**    I would say that we weigh the risks and discuss with other  
5     election officials outside of Georgia to figure out what best  
6     practices are to mitigate risks when it comes to something like  
7     this.

8     **Q.**    That is not at all responsive.  Let's try it again.

9             You understand -- you agree that in the State of Georgia  
10    with respect to unified tabulator security keys, the  
11    Secretary's office does exactly what Dominion says not to do in  
12    a real election, yes?

13    **A.**    I'm aware that we do something different --

14    **Q.**    Can you answer?

15    **A.**    -- than this document does.

16    **Q.**    Is the answer yes?

17             THE COURT:  That's -- I think that he has given you a  
18    sufficient answer.

19    BY MR. CROSS:

20    **Q.**    As long as we understand that is what you do.

21             And you understand, as we have heard from numerous  
22    witnesses, that the Secretary's office depends on Dominion for  
23    the security of the system.

24             Do you agree with that?

25    **A.**    We depend on -- it is a collective effort.  We depend on

1 Dominion, county election officials for the security of the  
2 equipment.

3 Q. And, of course, the Secretary's office as well; right?

4 A. We have a role.

5 Q. Dominion has a significant role in the security of the  
6 State election equipment?

7 A. Dominion has a significant role, yes.

8 THE COURT: Well, is it, in fact, in charge of  
9 security for the operation of the Dominion -- the State's  
10 implementation of the software and hardware?

11 THE WITNESS: Your Honor --

12 THE COURT: As I understood it from another witness  
13 that he regarded Dominion as essentially the cybersecurity  
14 agent responsible for the system.

15 THE WITNESS: In my view, they are the developer of  
16 the system, and so they play a huge role in doing that.

17 From a physical security perspective, I think that's  
18 where in large part the county election officials come into  
19 play.

20 THE COURT: Well, I think that is a different -- I  
21 guess I'm still trying to understand this is that I don't know  
22 who any longer is responsible for cybersecurity within the  
23 system and -- based on the testimony presented here. And I  
24 realize multiple different people may be responsible, but one  
25 of the witnesses unequivocally said it was -- that it was

1 Dominion that was responsible for all of the cybersecurity, as  
2 if they -- so this is the recommendation -- and do you agree  
3 with that or not?

4 It is no judgment, but I'm just trying to understand  
5 because we have a lot of different players here, and it is a  
6 little bit confusing to me when different people say, I'm not  
7 responsible; somebody else is responsible.

8 And that may be true, so I'm just trying to pursue  
9 that.

10 THE WITNESS: So I think the way that I view it is  
11 from the -- Dominion has the largest role in making sure that  
12 the software and the solutions that they develop are adequate  
13 from a security perspective. They then have to train our staff  
14 on how to maintain security standards, and we have IT personnel  
15 that make sure that the environment that we build election  
16 projects in is protected and that the environment that we're  
17 working on the Dominion system is in isn't connected to  
18 internet or anything like that.

19 And so their job is to make sure the product they  
20 give us is adequate and to train us. At that point, we do have  
21 a responsibility in making sure that we don't connect it to  
22 internet, that we're doing what we need to do. And then  
23 counties have, once it is in their hands, responsibility to  
24 make sure that they aren't allowing unauthorized access to the  
25 equipment and that they are following State law and State

1 Election Board rule to protect the equipment.

2 That is the way that I view it.

3 THE COURT: Thank you.

4 If they, in fact, say here also, Dominion expressly  
5 says for security reasons it is not recommended to use unified  
6 security keys in a real election -- I mean, have you consulted  
7 with Dominion about that recommendation?

8 THE WITNESS: So the context that I was wanting to  
9 add is, from my experience in the local jurisdictions that I  
10 have been in, it is common to have the same password across the  
11 entire county because the risk of losing a password in  
12 translation in trying to get it to the hundreds of poll workers  
13 that you have in your county -- that risk is high that you are  
14 not going to be able to open the equipment in time for election  
15 morning or that you make it so complicated that they are  
16 writing passwords down.

17 So that is -- I don't believe from my experience that  
18 is an uncommon practice that it is done. I know that in some  
19 research that I have conducted that Colorado, I believe, tells  
20 their clerks, make sure you have this function on.

21 But one of the differences in Colorado is -- I was  
22 talking with their state elections director -- I believe in  
23 their entire state, they have about 220 scanners because their  
24 system is different than ours. They central scan everything.  
25 They don't have precinct scanners. So there, you are talking

1 about having to maintain passwords for 220 scanners instead of  
2 10,000 scanners, like here. So it is apples and oranges.

3 So I think -- again, this is a little bit me drawing  
4 inferences, but Dominion's writing a user guide to use across  
5 all their customers that run elections in different ways. And  
6 then we as election officials have to take them, put them in  
7 the environment that we are operating in, and then mitigate  
8 risks -- all the risks involved as best we can.

9 THE COURT: Thank you.

10 BY MR. CROSS:

11 Q. You talk about what other states do.

12 Are you aware that California requires disabling unified  
13 tabulator security keys exactly as Dominion recommends?

14 A. I'm not aware.

15 Q. People sometimes write passwords down on, like, sticky  
16 notes to remember them; right?

17 A. I have heard.

18 Q. And so because of the way you guys have approached the  
19 password, if a poll worker, for example, dropped or left a  
20 single Post-it note with a password on it and it became  
21 publicly available, it would be accessible for the entire  
22 county; right?

23 A. That would be a -- that would be a security vulnerability,  
24 yes.

25 Q. You mentioned briefly the breaches in Coffee County.

1           In the summer of 2021, the ICC and the EMS server were  
2 replaced by the Secretary's office; right?

3   **A.**    Correct.

4   **Q.**    Were you involved in that decision?

5   **A.**    I was not intimately involved in that decision.

6   **Q.**    Were you involved at all?

7   **A.**    I was aware, yes.

8   **Q.**    Were you aware at the time, as Ms. Watson and others  
9 testified, that the Secretary's office had an open  
10 investigation into whether there was unauthorized access to the  
11 EMS server and other equipment?

12   **A.**    I don't recall when the investigation was opened.

13   **Q.**    But do you recall there was an investigation in the summer  
14 of 2021 by the Secretary's office into whether there was  
15 unauthorized access to the EMS server about other voting  
16 equipment?

17   **A.**    That sounds right.

18   **Q.**    Do you know who made the decision at the Secretary's  
19 office in light of that investigation to replace only the EMS  
20 server and the ICC?

21   **A.**    I don't recall.

22   **Q.**    Was that a Dominion decision, or you just don't know one  
23 way or the other?

24   **A.**    I don't recall.

25   **Q.**    Do you recall that in late September of 2022, the

1 Secretary's office replaced additional equipment in Coffee  
2 County, including the BMDs?

3 **A.** I do remember.

4 **Q.** And do you recall at that time the Secretary made the  
5 decision to leave the EMS server and the ICC that were being  
6 used in the county?

7 **A.** I remember.

8 **Q.** Do you know who made the decision to do that?

9 **A.** It was a collective decision.

10 **Q.** With the Secretary?

11 **A.** It was a collective decision with -- I remember  
12 specifically the people that were involved in making the  
13 decision. I was a part of that decision. Ryan Germany was a  
14 part of that decision. Gabriel Sterling was a part of that  
15 decision. We consulted with a security expert and  
16 Deputy Director Barnes and made the decision to complete the  
17 replacement of the equipment with the replacing the BMDs and  
18 the ICPs.

19 **Q.** But you're not suggesting a decision of that magnitude was  
20 made without the Secretary's approval; right?

21 **A.** I don't know to the extent that he was involved. I know  
22 to the extent that I was involved.

23 **Q.** Okay. Was Dominion involved in that decision?

24 **A.** I believe we did reach out to Dominion. I spoke directly  
25 with Ryan Germany, and then Ben Adida, our expert on it, and

1 also Deputy Director Barnes.

2 **Q.** So the expert you said you guys consulted was Ben Adida?

3 **A.** Yes.

4 **Q.** And you said Dominion was consulted, but the decision was  
5 made by the Secretary's office; right?

6 **A.** The decision was made by us, yes.

7 **Q.** You said you've read Dr. Halderman's report.

8 Do you know whether anyone at the Secretary's office has  
9 ever discussed the findings of Dr. Halderman with anyone at  
10 Dominion?

11 **A.** Yes.

12 **Q.** Do you know whether anyone in the Secretary's office has  
13 ever discussed the CISA advisory with anyone at Dominion?

14 **A.** Yes.

15 **Q.** Who? Who has been in those discussions, both in the  
16 Secretary's side and Dominion?

17 **A.** So I have been in some of those discussions; Gabriel  
18 Sterling, Ryan Germany, Michael Barnes. Then from the Dominion  
19 side, the folks that we would normally speak with would be  
20 Nicole Nollette, also Tom Feehan, Jerry Wagoner, three of the  
21 primary ones.

22 **Q.** And the communications between the Secretary's office and  
23 Dominion concerning the CISA advisory or Dr. Halderman's  
24 report, have those been emails, phone calls, kind of all of the  
25 above?

1     **A.**     Probably a combination of everything.

2     **Q.**     Would it surprise you to learn that the Secretary's office  
3     has not produced a single written communication between anyone  
4     in the office and anyone at Dominion concerning either of those  
5     topics?

6     **A.**     I would have to do a search to confirm.

7     **Q.**     But certainly you've had emails on that topic with  
8     individuals at Dominion?

9     **A.**     I would have to do a search to confirm.

10    **Q.**     You've had internal emails discussing that topic; right?

11    **A.**     So it is a lot of phone conversations. I would have to do  
12    a search to confirm.

13    **Q.**     Did the Secretary's office at some point alert Dominion  
14    that its proprietary software had been stolen in Coffee County?

15    **A.**     I believe that Gabriel Sterling had some of those  
16    conversations. I don't recall having those initial  
17    conversations with Dominion.

18    **Q.**     Do you have any knowledge as to when the Secretary's  
19    office alerted Dominion that its proprietary software had been  
20    stolen from the Georgia voting system?

21    **A.**     I don't remember exactly.

22    **Q.**     Do you know the year?

23    **A.**     I don't recall.

24    **Q.**     Do you know whether it was in 2021 or 2022?

25    **A.**     I don't recall.

1 Q. So it could have been either year? You're just not sure?

2 A. Correct.

3 Q. All right. You testified on direct -- you were asked the  
4 question, are you aware of any allegation that any voting  
5 machine in Georgia has ever been subjected -- subject to an  
6 infection of malware?

7 Do you remember that?

8 A. I do.

9 Q. And you were asked the question, if that were to happen,  
10 what could happen with the malware?

11 And you said, well, I don't know how it could spread to  
12 other devices.

13 Do you recall that testimony?

14 A. I do.

15 MR. CROSS: Tony, could we pull up Exhibit 89,  
16 please, Curling Plaintiffs' Exhibit.

17 BY MR. CROSS:

18 Q. So I believe you said you have seen the CISA advisory from  
19 June of 2023; right?

20 A. Yes.

21 Q. If you come down to the bottom of the first page -- it is  
22 on the screen in front of you -- do you see where there is the  
23 heading Vulnerability Overview Section 2.2?

24 A. Yes.

25 Q. And then there is a Section 2.2.1.

1 Do you see that?

2 **A.** Yes.

3 **Q.** And then if we come up to the top of the next page it  
4 reads, an attacker could leverage this vulnerability to install  
5 malicious code which could also be spread to other  
6 vulnerability ImageCast X devices via removable media.

7 Do you see that?

8 **A.** Yes.

9 **Q.** So I gather when you said you didn't know how this could  
10 happen, did you -- you don't recall this? You weren't familiar  
11 with this finding from CISA?

12 **A.** I did not recall this particular sentence.

13 **Q.** You talked about how the emergency backup voting system in  
14 the State is for hand-marked paper ballots; is that right?

15 **A.** Correct.

16 **Q.** And right now, states are required to have ten percent of  
17 voters -- have to have -- they are required to have on hand  
18 enough paper ballots that ten percent of voters could vote on a  
19 paper ballot; right?

20 **A.** Correct.

21 **Q.** And I believe you said that is a rule that is set by the  
22 SEB; is that right?

23 **A.** Yes.

24 **Q.** So the State Election Board decides what the minimum  
25 number of ballots is -- hand-marked paper ballots that a county

1 has to have on hand as a backup; right?

2 **A.** Yes.

3 **Q.** You also testified that you're not aware of any Georgia  
4 county using hand-marked paper ballots in a general election.

5 Do you recall that?

6 **A.** I believe the question was as the primary voting method.

7 **Q.** Oh, yeah. That is a good correction.

8 You said you weren't aware of any Georgia county having  
9 used hand-marked paper ballots as the primary form of voting in  
10 person in a general election.

11 **A.** Correct. Correct.

12 One correction I'll make, at least going back to, you  
13 know, the DRE system. Before that, I can't really speak.

14 **Q.** Were you the deputy state election director in the fall of  
15 2019?

16 **A.** I was not.

17 **Q.** Where were you then?

18 **A.** Fulton County.

19 **Q.** So you were election chief for Fulton County?

20 **A.** Yes.

21 **Q.** And I gather you're not aware that in the fall of 2019,  
22 Cobb County used hand-marked paper ballots as the primary form  
23 of in-person voting as a pilot for the State?

24 **A.** I'm not aware.

25 **Q.** So I gather you are also not aware that the election

1 superintendent at the time said that Cobb County would have  
2 been, quote, dead in the water if they had to use BMDs like  
3 other counties? Never heard that before?

4 **A.** Not aware.

5 **Q.** You testified quite a bit about seals on the voting  
6 equipment and how they are used to secure the equipment.

7 Do you recall that?

8 **A.** I do.

9 **Q.** And why are seals so important on the voting equipment for  
10 security purposes?

11 **A.** So good chain of custody and make sure that seals are on  
12 equipment can help prevent and detect if you know there's some  
13 kind of tampering with the equipment.

14 **Q.** Under the rules, if a BMD, for example, has a broken or  
15 missing seal, it is not supposed to be used in an election; is  
16 that fair?

17 **A.** I believe -- and I would have to look back in the rules,  
18 but I believe if a seal is broken on election morning, then the  
19 poll worker would contact the election superintendent for them  
20 to determine -- for them to investigate the situation.

21 **Q.** Is it your understanding that despite finding a BMD with a  
22 broken or missing seal on the morning of election day or in  
23 early voting that the county could just decide to use it in the  
24 election?

25 **A.** They need -- they would need to make sure that it is still

1 operating correctly.

2 Q. How would they do that?

3 A. They could run it through testing again, but the county  
4 election superintendent would need to use their discretion to  
5 make sure that it can be used.

6 Q. Is it your testimony that the Secretary's office is not  
7 involved in that situation?

8 A. I don't recall the exact -- I don't recall the exact  
9 training that we've given on that.

10 MR. CROSS: Tony, can you pull up Plaintiffs'  
11 Exhibit 104, please?

12 BY MR. CROSS:

13 Q. Mr. Evans, if you look down here, you'll see that there is  
14 an email in July of 2020 from the Clinch County election  
15 supervisor.

16 Do you see that?

17 A. Yes.

18 Q. And the election supervisor here is emailing Michael  
19 Barnes at CES.

20 Do you see that?

21 A. I do.

22 Q. And she reports that they discovered that two of the BMDs'  
23 election data seals were missing. She indicates poll workers  
24 found that.

25 Do you see that?

1     **A.**     I do.

2     **Q.**     And then she asked Mr. Barnes, do we need to send these  
3     back to be resealed?

4             Do you see that?

5     **A.**     I do.

6     **Q.**     And Mr. Barnes responds to her.

7             Do you see his response?

8             MR. CROSS:   If we go up, Tony.

9     BY MR. CROSS:

10    **Q.**     There is nothing here from Mr. Barnes saying this is a  
11    decision for the county; right?

12    **A.**     Please repeat the question.

13    **Q.**     There is nothing here -- Mr. Barnes doesn't say, why are  
14    you emailing me?   This is a decision for the county; right?

15    **A.**     No.

16             MR. BELINFANTE:  Objection, Your Honor.  Only to the  
17    extent that I believe the document has -- the bottom portion of  
18    the document from the Clinch County G-A government email was  
19    not admitted for the truth of the matter asserted.

20             MR. CROSS:  Right.  We're still not using it for the  
21    truth.

22             THE WITNESS:  One thing I will note is in the  
23    original email is she was saying it was discovered during logic  
24    and accuracy testing, so not after deployment to the polling  
25    location.

1 BY MR. CROSS:

2 Q. On July 9th of 2020; right?

3 A. Yes.

4 Q. And do I recall correctly that was a primary day?

5 A. June 9th was the primary, so this was probably logic and  
6 accuracy for the runoff.

7 Q. Okay. And then Mr. Barnes responds, just please put your  
8 own seal on the equipment and document the seal number  
9 attached.

10 Do you see that?

11 A. I do.

12 Q. And it is your view that that is consistent with -- that  
13 instruction is consistent with Georgia State election security  
14 policy?

15 A. Can you go back to the original email --

16 Q. Sure.

17 A. -- from Clinch?

18 MR. CROSS: Just leave the whole thing up, Tony.

19 THE WITNESS: I think the one thing I would want to  
20 clarify there is, I think it would be acceptable to put the new  
21 seal on, but I would want the equipment to go back through  
22 logic and accuracy testing again.

23 BY MR. CROSS:

24 Q. And we don't see that instruction from Mr. Barnes; right?

25 A. Not in this particular email thread.

1 Q. Okay. All right.

2 MR. CROSS: Let's pull up Exhibit 100, Tony, please.

3 BY MR. CROSS:

4 Q. And this one again, it is in evidence, but to  
5 Mr. Belinfante's point, the original email from Laura Jones is  
6 not in for the truth, it is just in the statement that was made  
7 to the Secretary's office, so still using it with that  
8 limitation.

9 If you look at the bottom, do you see that there is an  
10 email that Frances Watson forwards on to yourself, Ryan  
11 Germany, and Chris Harvey on November 5th of 2020?

12 A. I see that.

13 Q. And it comes from Laura Jones.

14 Do you see that?

15 A. Yes.

16 Q. Do you understand -- do you recognize Laura Jones as a  
17 county election official or a poll worker?

18 A. I do not recognize the name.

19 Q. Okay. Well, let's look at what she reported.

20 Do you see a description of violation?

21 A. I do.

22 Q. And do I understand correctly that there is an email  
23 address that poll workers and county officials or others can  
24 make reports like this to the Secretary's office?

25 A. Yes.

1 Q. And if you look at the description of the violation, this  
2 is the day after the general election in November 2020; right?  
3 General election was November 4?

4 A. Yes, that's correct -- yeah, two days after.

5 Q. And here, what at least was reported, is that when they  
6 opened the large cabinets containing the voting machines, we  
7 discovered that most of the voting machines' election database  
8 doors were wide open and not secured with a zip tie with a  
9 serial number. Seals were already broken or a zip tie was put  
10 on but was not put through the door.

11 Do you see that?

12 A. I see that.

13 Q. It then goes on in the middle, also, all of the machines  
14 are supposed to show zero ballots cast upon opening. One of  
15 our machines did show one ballot having cast on it. We did not  
16 use this machine, but we did use all of the other machines that  
17 had the election database door open.

18 Do you see that?

19 A. I see that.

20 Q. Also, it goes on, we did not follow the protocol for  
21 opening the large cabinets and starting up the machines. In  
22 training, I was instructed that all serial numbers on zip ties  
23 on the doors were to be compared with the serial numbers  
24 written down on a form. We did not do this.

25 Do you see that?

1     **A.**    Yes.

2     **Q.**    It goes on, and if we go to the top of the second page, it  
3   ends, it is disheartening not to see the security measures  
4   followed.

5            Do you see that?

6     **A.**    Yes.

7     **Q.**    And Mr. Harvey responds to Ms. Watson, 10-4, I assume  
8   you're investigating?

9            Do you see that?

10    **A.**    I see that.

11    **Q.**    Are we agreed that what is reported here, if it were true,  
12   if this actually happened, that would not be consistent with  
13   State policy; right?

14    **A.**    Correct.

15    **Q.**    And you were copied on the original email.

16            Do you know whether this was investigated?

17    **A.**    Based on how Frances dealt with things, I would assume  
18   that it is -- that it was.

19    **Q.**    But as you sit here, you yourself as a State election  
20   director, you don't have any knowledge to be able to tell the  
21   Court that what is reported here is in any way inaccurate; is  
22   that right?

23    **A.**    Correct.

24    **Q.**    You also testified that you are not aware of any attempt  
25   to manipulate a BMD -- to manipulate BMD voting software on

1 election day.

2 Do you see that?

3 **A.** Yes.

4 **Q.** I'm sorry.

5 And do you recall that you were asked the same question  
6 about early voting and you said you weren't aware of that  
7 either?

8 **A.** Correct.

9 **Q.** But, to your knowledge, no one in the Secretary's office  
10 has ever engaged for this case a cybersecurity or forensic  
11 expert who has examined BMDs to determine whether there is  
12 malware; right?

13 **A.** We have not as of yet.

14 So following 2020, we did go to a couple of counties or --  
15 not we -- but I believe it was Pro V&V to a couple of counties  
16 and examine machines. We had plans to do parallel monitoring  
17 to some extent going forward. But we did not do parallel  
18 monitoring. We have not yet done parallel monitoring.

19 **Q.** And what Pro V&V did was it did hash testing on some  
20 randomly identified BMDs in a handful of counties?

21 **A.** I don't have the details to be able to speak in detail on  
22 those.

23 **Q.** But fair to say that Pro V&V did not go examine any BMDs  
24 in the state to see if there was malware on them; right?

25 **A.** They examined BMDs from a couple of counties after --

1 after the election. I'm sure we can get the details of what  
2 they did.

3 **Q.** Let me ask it this way: As the state election director,  
4 is it your belief that what Pro V&V did was capable of  
5 detecting malware on a BMD, or you just don't know one way or  
6 the other?

7 **A.** I would think that it would, but I wouldn't be -- I can't  
8 give a firm yes or no.

9 **Q.** You don't know?

10 **A.** Correct.

11 THE COURT: You're talking after the 2020 election  
12 they did this? They went to a few counties?

13 THE WITNESS: It was two counties following the  
14 November 2020 election.

15 THE COURT: What counties were those?

16 THE WITNESS: I believe one was Spalding, and I do  
17 not -- maybe Morgan, but I don't remember for sure.

18 THE COURT: Did they give you a report -- a written  
19 report about what they did?

20 THE WITNESS: I know they reported it out. I don't  
21 remember seeing an artifact from it. It might exist, but I  
22 don't recall.

23 THE COURT: Okay.

24 MR. CROSS: We have that report, Your Honor. We can  
25 get to it if we need to. And that's the only -- sorry.

1 THE COURT: How much more do you have just so we --

2 MR. CROSS: Probably at least until 5:30.

3 THE COURT: And will you have follow-up?

4 MR. BELINFANTE: Yes, Your Honor.

5 And we can take this up later. I think Mr. Evans has  
6 to be in Perry tomorrow morning, so I don't --

7 THE COURT: He has to be where tomorrow morning?

8 MR. BELINFANTE: Perry.

9 THE COURT: Perry.

10 MR. BELINFANTE: I think for a security matter, of  
11 all things.

12 THE COURT: What time?

13 THE WITNESS: It is at 9:00.

14 THE COURT: Okay.

15 MR. BELINFANTE: Perhaps we could work it if the  
16 Court was going to -- if you were going to take a break, we  
17 would try to work and see how long -- because my questions are  
18 very pointed to where Mr. Cross is going.

19 MR. CROSS: If it is okay --

20 THE COURT: I can stick it out. I mean, I just  
21 was -- I mean, I'm just trying to figure out how much more time  
22 we have. That is all. I mean --

23 MR. CROSS: I'm going to try to get done today if we  
24 keep going.

25 THE COURT: And I think you have co-counsel who --

1           MR. MCGUIRE: Your Honor, I should flag, we have some  
2 non-duplicative cross-examination as well.

3           MR. BELINFANTE: Okay. I think if it -- if it  
4 pleased the Court, we would like him to be able to pursue what  
5 he needed to do in Perry, and then I think we might have him be  
6 available tomorrow afternoon as opposed to --

7           THE COURT: Perry is a distance. Doesn't it take a  
8 few hours to get to Perry, from my recollection?

9           MR. BELINFANTE: Couple of hours. With a stop at  
10 Buc-ee's may add half an hour.

11          THE COURT: What is he going to bring to the rest of  
12 you?

13          MR. CROSS: That's an hour.

14                   **(There was a brief pause in the proceedings.)**

15          MR. BELINFANTE: I think -- and at least previously,  
16 he was available to come back tomorrow afternoon.

17          THE COURT: Is that still so, or not?

18          THE WITNESS: I expect it would take me about  
19 two hours or so to get back.

20          THE COURT: You think the meeting will last  
21 approximately --

22          THE WITNESS: I should be able to leave around noon  
23 from Perry.

24          THE COURT: All right. Well, let's keep on going.

25                   Do you need a restroom break?

1 THE WITNESS: I'm okay.

2 THE COURT: Lucky you.

3 THE WITNESS: Thank you, Your Honor. The benefit of  
4 youth.

5 THE COURT: The benefit of youth, yes, that's right.

6 MR. OLES: Your Honor, we would also have a few  
7 questions.

8 THE COURT: Naturally. I don't mean that --

9 MR. CROSS: Tony, can you pull up Defendants'  
10 Exhibit 1224?

11 BY MR. CROSS:

12 Q. All right. Mr. Evans, do you recognize Exhibit 1224,  
13 which is in evidence as the appendices to a report that was  
14 prepared by the SAFE Commission? Have you ever seen that  
15 report?

16 A. So I don't think I have ever seen this before, but I'm  
17 generally aware of the contents.

18 Q. Okay.

19 MR. CROSS: So, Tony, can you go to about ten pages  
20 in or so?

21 BY MR. CROSS:

22 Q. There's a cybersecurity presentation by Dr. Wenke Lee.  
23 Just a couple of questions on this for you.

24 Are you familiar with Dr. Lee?

25 A. I'm not.

1 Q. Never heard of him?

2 A. No.

3 Q. So -- but you're familiar with the SAFE Commission?

4 A. Yes.

5 Q. You're aware that they put out a report with  
6 recommendations on a new system to replace the DRE system;  
7 right?

8 A. Yes.

9 Q. Were you aware that there was one cybersecurity expert on  
10 that commission?

11 A. I was not.

12 Q. Well, take a look -- it has already been established in  
13 evidence that Dr. Lee served on this commission, and this is a  
14 presentation he made to the SAFE Commission.

15 MR. CROSS: And if we come to the seventh page, Tony.

16 BY MR. CROSS:

17 Q. Let me just see if you're familiar with the concept.  
18 Although you're not familiar with the presentation.

19 Do you see at the top --

20 MR. BELINFANTE: Objection, Your Honor. Two grounds  
21 of objection. One, this has been admitted before not for  
22 opinion testimony, but for notice to the State. He's already  
23 testified he is not familiar with Dr. Lee or many aspects of  
24 the SAFE Commission, so I don't see what the relevance of this  
25 would be. It also seems cumulative given the other testimony

1 about Dr. Lee's report.

2 MR. CROSS: I just want to see if he's familiar with  
3 the concept here. If he's not, we'll move on.

4 THE COURT: All right. Please move with due speed.  
5 BY MR. CROSS:

6 Q. Mr. Evans, do you see at the top it refers to advanced  
7 persistent threats?

8 A. I do.

9 Q. If we come down three lines from the bottom, do you see  
10 APT, referring to advanced persistent threats?

11 A. Yes.

12 Q. Do you see here Dr. Lee warned SAFE Commission that APT  
13 malware is designed to carry out activities below the detection  
14 threshold? Do you see that?

15 A. Yes.

16 Q. As the state election director, is that something that you  
17 have ever been engaged in any discussions at the Secretary's  
18 office, the concern that the malicious code that CISA warned  
19 could be uploaded through one of the vulnerabilities, that that  
20 malicious code could avoid detection as Dr. Lee warned? Are  
21 you aware of that risk?

22 A. I've been aware or been a part of many conversations about  
23 CISA mitigations but can't say that I've heard advanced  
24 persistent threats as a terminology much.

25 Q. And you haven't participated in and you're not aware of

1 any discussions about how the malicious code that CISA warned  
2 about could go undetected, it could literally delete itself as  
3 Dr. Lee warned? You just haven't heard any discussion like  
4 that?

5 **A.** I'm not aware.

6 **Q.** It was Defense Exhibit 1242.

7 Do you still have the poll worker manual?

8 **A.** I do.

9 **Q.** And this was a document that was prepared by the  
10 Secretary's office; is that right?

11 **A.** Correct.

12 **Q.** So that the Secretary's office determines the processes  
13 and practices that counties and poll workers are expected to  
14 follow in elections; right?

15 **A.** Generally, we'll explain -- explain the laws set forth,  
16 State Election Board rules, and then the counties will take it  
17 and train their poll workers.

18 **Q.** Right. This is a 104-page document that walks, as we saw  
19 with Mr. Belinfante, step by step for how the county election  
20 officials and poll workers are supposed to handle elections;  
21 right?

22 **A.** Correct.

23 **Q.** And this was prepared by the State; right?

24 **A.** Yes.

25 **Q.** You also mentioned Firefly.

1           That is a system that the Secretary's office uses to  
2     communicate with counties about State election issues; is that  
3     right?

4     **A.**    It is a variety of topics, but it is a SharePoint platform  
5     we use to get messages out and also county election officials  
6     can post on it.

7     **Q.**    And if the Secretary's office were to decide that the  
8     emergency hand-marked paper system needed to be invoked in an  
9     election, might it rely on Firefly to convey that to the  
10    counties?

11    **A.**    I mean, something -- depending on the magnitude of what a  
12    decision is, sometimes we'll post something and say, hey, we  
13    want to have a statewide call and have a statewide call to be  
14    able to articulate things. I don't think anything -- I would  
15    be shocked if anything of some magnitude like that would be  
16    articulated in a buzzPost.

17    **Q.**    Got it.

18           So if that decision were made by the Secretary, how would  
19    you expect that to get conveyed?

20    **A.**    Likely in posting information about a statewide webinar  
21    and then getting on a statewide webinar and articulating it in  
22    a presentation.

23    **Q.**    Okay. All right. Flip to Page 5, if you would.

24           Do you see there is a list of offenses here, election  
25    offenses?

1     **A.**    I do.

2     **Q.**    And the third one, the offense here is intentionally  
3     observing an elector while casting a ballot.

4             Do you see that?

5     **A.**    Yes.

6     **Q.**    And then if we come to Page 7 under the heading of polling  
7     place, do you see in the first paragraph there is a statute  
8     here OCGA 21-2-267(a)?

9             Do you see that?

10    **A.**    I do.

11    **Q.**    And here what we see is that the polling places are  
12    required to have a sufficient number of voting compartments or  
13    booths with proper supplies in which the electors may  
14    conveniently mark their ballots with a curtain, screen, or  
15    door.

16             Do you see that, first four lines of the paragraph?

17    **A.**    I do.

18    **Q.**    And what is explained here is the -- these privacy  
19    requirements, the curtain, the screen, the door are intended so  
20    that there can't be observation of the elector when the elector  
21    is marking their ballot; right?

22    **A.**    Yes.

23    **Q.**    And you certainly expect -- as the state election  
24    director, you certainly expect counties to comply with that  
25    requirement; right?

1     **A.**    Yes.

2                 THE COURT:  Counsel, it also says something different  
3     in the next sentence, so --

4     BY MR. CROSS:

5     **Q.**    So the next sentence -- let me just make sure we have the  
6     right context.

7                 It says a curtain, screen, or door shall not be required,  
8     however, for the self-contained units used as a voting booth in  
9     which the DREs or electronic ballot markers are located if such  
10    booths have been designed so as to ensure the privacy of the  
11    elector.

12                So what the next sentence is saying, Mr. Barnes, you don't  
13    need a curtain, screen, or door if the booth itself is already  
14    designed to provide privacy; right?

15    **A.**    Correct.

16    **Q.**    Okay.  And if we come down to the last of the three lines,  
17    just to be clear here, again what is explained in the final  
18    sentence here is that, in the case of direct recording  
19    electronic voting units or electronic ballot markers, the  
20    devices shall be arranged in such a manner as to ensure the  
21    privacy of the elector while voting on such device.

22                Do you see that?

23    **A.**    Correct.

24    **Q.**    And so your understanding as the state election director  
25    is there has to be privacy for the voter so no one could

1 observe them in the voting booth, and that could be a curtain,  
2 a screen, a door, or it could be how the booth is set up?

3 **A.** Correct.

4 **Q.** Okay. Let's jump to Page 9 if we could, please.

5 The sign on the top right here that is required to be  
6 posted reads, do not leave the balloting area with your printed  
7 ballot.

8 Do you see that?

9 **A.** Yes.

10 **Q.** And that sign is required because sometimes voters when  
11 they vote on the BMD actually walk out without scanning their  
12 ballot; right?

13 **A.** It has happened before, yes.

14 **Q.** And you understand the reason for that is because when  
15 voters vote on the BMD, they sometimes get confused and think  
16 that is how they cast their vote? You have heard that before;  
17 right, sir?

18 **A.** I think that is one of the reasons.

19 **Q.** All right. Jump to -- let's go to Page 23, if you would.  
20 There may have been some questions on this.

21 So Mr. Belinfante asked you a lot of questions about sort  
22 of the procedures and opening the polls. This is the  
23 procedures for opening the polls specific to the BMD at the  
24 touch screen and the printer.

25 Do you see that?

1     **A.**    I do.

2     **Q.**    There is no mention of seals, inspecting them, confirming  
3    they are there, validating them on this page; right, sir?

4     **A.**    Correct.

5     **Q.**    And if we go to Page 24, continuing on the steps to open  
6    the polls with the touch screen BMD and the printer, there is  
7    also no mention of seals here as well; right?

8     **A.**    Correct.

9     **Q.**    If we go to Page 25, however, where we get into the  
10   precinct scanner, there are two mentions of seals; right?

11         If you look in the bottom right corner of Page 25.

12     **A.**    Correct.

13     **Q.**    And so the instruction from the Secretary's office on  
14   setting up the polls, the BMD, and the scanner, only the  
15   scanner does the Secretary's office emphasize the need to  
16   confirm the seals in this document; right?

17     **A.**    In the poll worker manual document as a whole, I would say  
18   the seals are also discussed on the BMD on that particular  
19   page -- or two pages, and then I would say they are not  
20   mentioned.

21     **Q.**    Right. The step by step setup for the BMDs does not  
22   mention seals.

23         We're agreed on that?

24     **A.**    Correct.

25     **Q.**    Now, you also mentioned -- you talked about a technician

1 card.

2 Do you recall that?

3 **A.** I do.

4 **Q.** And can you just remind the Court what the technician card  
5 is, briefly?

6 **A.** The technician card will allow for folks to be able to get  
7 into some additional operations of the ballot-marking device.  
8 I'll also say that that is an area that Deputy Director Barnes  
9 will be able to speak more to.

10 **Q.** One of the things you said on direct is that the  
11 technician card used with this system is specifically  
12 programmed or is programmed with election-specific information.

13 Did I hear that right?

14 **A.** I believe so, yes.

15 **Q.** So it is your understanding that a technician card that is  
16 used with the Georgia Dominion system, that that card is  
17 specifically programmed for each election?

18 **A.** That is what I recall, yes.

19 **Q.** What is the basis for that belief?

20 **A.** That is my understanding.

21 **Q.** From where?

22 **A.** I don't recall where I got it from.

23 **Q.** I gather it would surprise you to learn that that actually  
24 is not right, that the technician card is not -- it is generic?  
25 That would surprise you?

1     **A.**     That would be different than my understanding.

2     **Q.**     And it is fair to say that is not something you have  
3     considered from a security perspective as the state election  
4     director because you didn't know it?

5     **A.**     Correct.

6     **Q.**     Were you also aware that technician cards for the Dominion  
7     BMDs in Georgia can be counterfeited with only publicly  
8     available information?

9     **A.**     I'm not aware of that.

10    **Q.**     So you had not considered that from a security perspective  
11    either; right, sir?

12    **A.**     Correct.

13    **Q.**     Were you aware that voter cards and poll worker cards  
14    which you talked about can also be counterfeited?

15    **A.**     I feel like I knew there was some way that you could  
16    counterfeit a card. The methodology to get to that counterfeit  
17    card, you know, I'm not sure of.

18    **Q.**     You don't know what information might be needed and  
19    whether that is only public information; right?

20    **A.**     Correct.

21    **Q.**     Were you aware that voter cards that are used in the  
22    Dominion BMDs in Georgia can be counterfeited so that they  
23    allow unlimited voting?

24            You can use the same voter card to vote as many times as  
25    you want?

1           Were you aware of that?

2   **A.**   Not aware.

3   **Q.**   So that is not something you have considered from a  
4   security perspective; right?

5   **A.**   Not something I have been aware of.

6   **Q.**   All right. I think last on this, if you jump to Pages 58  
7   and 59 -- 58 and 59, if you would.

8           Do you see the photos on Pages 58 and 59 showing the  
9   privacy setup? You can see the way the booth is set up on 58?

10   **A.**   I do.

11   **Q.**   And on 59, you can see that sitting inside that booth, the  
12   BMD sits right next to the printer?

13   **A.**   I see that.

14   **Q.**   And if we go to 61, we can see the same thing, a bit more  
15   visible without the individual standing there.

16           Do you see that?

17   **A.**   Yes.

18   **Q.**   And you can see on 61, the printer and the BMD are sitting  
19   back inside the screen that has three sides and comes around  
20   the printer and the BMD; right, sir?

21   **A.**   Yes.

22   **Q.**   And fair to say since the Secretary's office prepared this  
23   document and uses it for the county workers to follow, that  
24   those are accurate depictions of how the State expects the BMD  
25   and the printer to be set up?

1     **A.**    That is one way.  Some counties do it differently, and  
2     some counties -- and that would -- there are other acceptable  
3     ways to do it also.

4     **Q.**    All of which by law require to have that sort of privacy  
5     setup, though, right, as we saw?

6             MR. BELINFANTE:  Objection to the extent that it  
7     calls for a legal conclusion as opposed to his understanding.

8             MR. CROSS:  That's fair.

9     BY MR. CROSS:

10    **Q.**    Just on your understanding, your understanding is that  
11    while those setups might be some ways, all of them are required  
12    to have the privacy protection; right?

13    **A.**    Some sort of privacy protection for the BMDs.

14    **Q.**    Okay.

15             MR. CROSS:  Tony, can you play Clip 4?

16                     **(Playing of the videotape.)**

17    BY MR. CROSS:

18    **Q.**    Let me just pause it for a second.

19             Mr. Evans, do you see yourself here?

20    **A.**    I do.

21    **Q.**    Is that you on the left?

22    **A.**    Yes.

23    **Q.**    And do you recall where this was?

24    **A.**    This was a Senate Ethics Committee meeting.  I believe it  
25    was November 1st of last year, early November last year.

1 Q. And is that Charlene McGowan seated next to you, the  
2 general counsel of the Secretary's office?

3 A. Correct.

4 MR. CROSS: And can we go back, Tony?

5 BY MR. CROSS:

6 Q. Why were you there to testify?

7 A. The Senate Ethics Committee asked for an update on  
8 election security, and specifically one of the things that they  
9 wanted to mention was the Dominion 5.17 software.

10 MR. CROSS: Can we play this short clip real quick,  
11 Tony?

12 (Playing of the videotape.)

13 BY MR. CROSS:

14 Q. By Alex, you mean Dr. Alex Halderman?

15 A. That's correct.

16 Q. And again, this was in November of 2023 that you said  
17 this?

18 A. Yes.

19 Q. And fair to say that was -- what you said there is not  
20 really an accurate statement, is it, sir?

21 A. What I -- I'm not aware of anybody who has gotten the  
22 level of access that he has gotten to any of the equipment for  
23 the extended period of time. That is what I meant. Because of  
24 the laws and the State Election Board rules that are in place  
25 and the job that county election officials do.

1 Q. You specifically said you can't gain access to the  
2 election management server.

3 You were very precise; right?

4 A. Correct.

5 Q. But you were aware as of November 2023 when you provided  
6 this testimony that several individuals had gotten direct  
7 access to the election management server in its operational  
8 environment in Coffee County day after day after day?

9 MR. BELINFANTE: Objection, Your Honor. If counsel  
10 is going to ask him about a Senate statement and a longer  
11 hearing, then the entire hearing ought to be played, or at  
12 least more of it, to provide the context that is possibly  
13 there.

14 MR. CROSS: He is welcome to do that on his time.  
15 That is not required for cross-examination.

16 BY MR. CROSS:

17 Q. You were aware of that when you made that statement;  
18 right, sir?

19 A. I was aware.

20 Q. You understand --

21 THE COURT: Counsel, you are welcome to present  
22 more -- a better context later.

23 MR. BELINFANTE: Thank you, Your Honor.

24 BY MR. CROSS:

25 Q. Are you aware that the access Dr. Halderman got was not in

1 the operational environment of any election office in the  
2 State; right?

3 **A.** Correct.

4 **Q.** He examined a standalone BMD detached from the election  
5 system.

6 You understand that; right?

7 **A.** I do.

8 **Q.** Are you aware that he did that in a conference room of a  
9 law firm, not even in a laboratory? Did you know that?

10 **A.** I didn't know the exact place that he did it.

11 **Q.** So you understand that -- let me just ask: Do you  
12 disagree -- is it your view that Dr. Halderman with a  
13 standalone BMD in a conference room has greater access than  
14 individuals sitting at an EMS server in the operational  
15 environment of a county election office day after day after  
16 day?

17 **A.** No, I don't disagree with that.

18 **Q.** Right. You agree that the access in Coffee County is much  
19 greater; right?

20 **A.** I don't know the degree to which they got passwords and  
21 other information needed to be able to access the equipment.  
22 The physical access of having access to the machines would be  
23 similar.

24 **Q.** So as the state election director, no one has informed you  
25 the degree to which the individuals who went to Coffee County

1 day after day received all of the passwords they needed from  
2 Misty Hampton? No one has told you that?

3 **A.** Maybe they have.

4 **Q.** Again, you also said that you can't gain access like Alex  
5 had in his report to be able to make adjustments to a  
6 ballot-marking device. You can't gain that level of access.

7 Is it your understanding that in Coffee County no one got  
8 access to any BMD software either?

9 **A.** No. I knew they had.

10 **Q.** As the state election director, what concerns you more, an  
11 expert who got access to a standalone BMD by court order under  
12 security protocols or numerous individuals doing what they did  
13 in Coffee County?

14 **A.** The Coffee County instance.

15 **Q.** All right. Briefly on one quick topic.

16 Do you recall that in or around August of 2021 you learned  
17 about an effort in Spalding County to bring in  
18 SullivanStrickler, the same folks who went to Coffee County in  
19 January of that year, to bring them in to do some sort of  
20 forensic copying of the election system?

21 **A.** I do recall.

22 **Q.** Okay.

23 MR. CROSS: Can we give him this binder, Jenna?

24 BY MR. CROSS:

25 **Q.** While she hands you that, do I understand correctly that

1 the Secretary's office stepped in and shut that down?

2 **A.** I remember generally the back-and-forth, and -- yeah, I  
3 remember that is generally what happened. Yes.

4 **Q.** Okay. Flip to Tab 5, if you would, please, in that  
5 binder, which is Exhibit 194. So Tab 5, Exhibit 194.

6 And do you see that this is an email exchange that you had  
7 with Spalding County on August 18 of 2021?

8 **A.** I do.

9 **Q.** And if you come to the third page -- if you come to the  
10 third page, you see there is an email from Kimberly Slaughter  
11 to you, Michael Barnes -- and Michael Barnes on August 18th of  
12 2021?

13 **A.** I see that.

14 **Q.** And you can take a moment to look at this.

15 But do you recall that this email concerns the event we  
16 were just talking about involving SullivanStrickler about  
17 somebody coming in to copy the voting equipment?

18 **A.** I remember, generally, this was a part of that discussion.

19 **Q.** Okay. If you look at the email that Ms. Slaughter sends  
20 to you on the top of the third page, in the second sentence she  
21 writes --

22 MR. BELINFANTE: Objection. We're not reading  
23 hearsay into the record. Ms. Slaughter's --

24 MR. CROSS: It is not for the truth, if that helps.

25 MR. BELINFANTE: That does help.

1 THE COURT: Wonderful. We'll just press that button.

2 MR. CROSS: We should just --

3 THE COURT: All of your respective tables.

4 MR. CROSS: We need an easy button. Hearsay easy  
5 button.

6 BY MR. CROSS:

7 Q. And it is really more of a question, I think, she's  
8 posing, but let's just read it. She says, I have been and am  
9 presently working with Chris Bellew at the direction of  
10 Mr. Barnes in working out a time for the State to visit  
11 Spalding County to recertify our equipment.

12 So again, whether that is true or not, my question to you  
13 is: Do you have any recollection of whether the Secretary's  
14 office worked with Spalding in light of these events to  
15 recertify their election equipment?

16 A. I would want to consult with Deputy Director Barnes before  
17 coming back with an answer I'm confident in.

18 Q. You just don't know?

19 A. I don't recall the specifics as far as exact actions that  
20 we took.

21 Q. If the equipment had been accessed by -- if there had been  
22 unauthorized access, is it the Secretary's office policy to  
23 require recertification of that equipment before it is used?

24 A. If it was -- if it was accessed -- if there was  
25 unauthorized access, then we would likely replace the

1 equipment.

2 **Q.** Okay. Then if you -- one more question on this. If you  
3 come to the second page --

4 **THE COURT:** Of that correspondence chain?

5 **MR. CROSS:** Yes, ma'am. Still in Exhibit 194.

6 **BY MR. CROSS:**

7 **Q.** And for context, go to the first page because the email  
8 blends over. Go to the very first page.

9 Do you see there is an email from Ben Johnson at Spalding  
10 still on the same day?

11 **A.** I do.

12 **Q.** And there is a question -- well, there is a statement in  
13 the second paragraph that reads, also, for a county to not have  
14 the ability to back up systems critical to performing our  
15 duties and running our elections, if that is indeed the case is  
16 a whole different conversation, but one that needs to happen.

17 Do you see that at the top of the second page?

18 **A.** I see that.

19 **Q.** And my question to you is: Do you know, as the state  
20 election director, whether counties are allowed to perform a  
21 backup of their voting equipment, or do they have to have State  
22 authorization to make a copy?

23 **A.** They do not -- they should not copy -- my understanding --  
24 again, this is something I would want to consult with  
25 Deputy Director Barnes on, but the election project, which is

1 different than the equipment, they can make copies of that.

2 They don't need to make copies of their equipment.

3 **Q.** Okay. In fact, if you -- just to help you out, come to  
4 the -- I'm sorry. I was trying to move a little quick. Come  
5 to the second-to-last page. If you flip in the binder, you'll  
6 see there is an email that you yourself sent on August 18  
7 copying Ryan Germany and others, but you send it to Kimberly  
8 Slaughter, and it is the second-to-last page.

9 You will see that you actually wrote to individuals in  
10 Spalding, I'm attaching to this email State Election Board  
11 rule -- and you've got Rule 183-1-12-.05 -- which states that  
12 election equipment cannot be modified, changed, or upgraded  
13 without authorization from the Secretary of State.

14 Do you see that?

15 **A.** I'm sorry.

16 Where were you again?

17 **Q.** Your email at the top of the second-to-last page.

18 **A.** Yep.

19 **Q.** And do you see the first paragraph that I just read out  
20 loud?

21 **A.** Yes.

22 **Q.** And so is that a correct statement of your understanding  
23 of what State law requires or allows?

24 **A.** Yes.

25 **Q.** Okay.

1     **A.**     I'm getting close to needing a break, like five minutes.

2             MR. CROSS:    Sure.

3             THE COURT:    You can take it now.

4             THE WITNESS:  Thank you, Your Honor.

5             THE COURT:    How much more do you have?

6             MR. CROSS:    That is what I was looking at.  It is a  
7     good time to break because I've cut out a bunch of stuff.  Let  
8     me see what else I can cut.

9             Oh, and I should -- 194, Your Honor.

10            THE COURT:    Well, we're not -- the witness --

11            MR. CROSS:    Well, I was just going to introduce the  
12     exhibit.

13            MR. BELINFANTE: Our objection would be to the  
14     first --

15            THE COURT:    Which exhibit?

16            MR. CROSS:    194.

17            THE COURT:    Okay.  Your objection is what?

18            MR. CROSS:    Again, I might be able to help, Judge.

19            Exhibit 194, we would offer any statements -- other  
20     than the statements from the Secretary's office, like  
21     Mr. Evans', we would not offer those for the truth.

22            MR. BELINFANTE: All right.  With that -- with that  
23     limitation, we don't have an objection.

24            THE COURT:    Okay.  Would you do us this favor when  
25     you submit it that you cross out what you're not offering?

1 MR. CROSS: Well, it is still in. It is just not for  
2 the truth.

3 THE COURT: I see.

4 MR. CROSS: You're going to need the context that  
5 he's -- yeah.

6 THE COURT: All right. That's fine. I'm going to  
7 follow the witness' direction and --

8 COURTROOM SECURITY OFFICER: All rise.

9 **(A brief break was taken at 5:36 PM.)**

10 MR. CROSS: Are we at Exhibit 606? Does that sound  
11 right, Mr. Martin?

12 COURTROOM DEPUTY CLERK: Do what now?

13 MR. CROSS: Exhibit 606.

14 Do you know?

15 I was trying to figure out what exhibit number we  
16 were on. We'll get it.

17 MR. BELINFANTE: You were on 194 was the --

18 MR. CROSS: Yeah, I know. We have to label a new  
19 one.

20 MR. BELINFANTE: Oh, I got you.

21 BY MR. CROSS:

22 **Q.** Mr. Evans, can you flip to Tab 13, please?

23 **A.** I'm there.

24 **Q.** And do you see Tab 13, there is an email here that you  
25 sent on October 22nd of 2020 regarding ENR update?

1     **A.**    I do.

2     **Q.**    And you're emailing -- is it Leigh Combs?

3     **A.**    Yes.

4     **Q.**    Okay.  And what is or was Leigh Combs' responsibility at  
5   the time?  It looks liaison for the elections division; is that  
6   right?

7     **A.**    She was, yes.

8     **Q.**    Ms. Combs reports to you, below is a list of the counties  
9   that have not done L&A uploads.

10           And this is on October 22nd of 2020.

11           Do you see that?

12     **A.**    Yes, I see that.

13     **Q.**    And then you respond to her, copying other individuals at  
14   the Secretary's office, we really, really, really, really,  
15   really, really, really need for all counties to do an L&A  
16   upload.  We don't want to go into election night with any  
17   doubts that the results reporting processing is working  
18   correctly.

19           Do you see that?

20     **A.**    Yes.

21     **Q.**    And she provides a list that looks to be about a little  
22   over a third of the counties in Georgia at that time had not  
23   provided the uploads; right?

24     **A.**    Yes.

25           MR. CROSS:  Your Honor, we move Exhibit 606 into

1 evidence.

2 MR. BELINFANTE: No objection.

3 THE COURT: It is admitted.

4 BY MR. CROSS:

5 Q. Flip to Tab 14, if you would, please.

6 A. Okay.

7 Q. Here, do you see there is an email you sent to Chris  
8 Harvey on March 24 of 2021, with the subject notes for review?

9 A. Okay.

10 Q. And do you see there is an attachment that you included,  
11 challenges to not having a uniformed voting system? Do you see  
12 that?

13 A. Okay. Yes.

14 Q. And if you look at the next page on Tab 14, do I  
15 understand correctly that is the document that you drafted and  
16 sent to Mr. Harvey on what you described as challenges to not  
17 having a uniformed voting system?

18 A. Just to be clear, on mine, it is Tab 15.

19 Q. Tab 14.

20 So Tab 14, you see the email, and then if you flip the  
21 page, do you see the --

22 A. I don't, but if I flip to tab --

23 Q. Oh. Why is your binder different?

24 THE COURT: I think it is under Tab 15 instead.

25 THE WITNESS: Tab 15, I see a document called

1 challenges to not having a uniformed voting system.

2 BY MR. CROSS:

3 **Q.** Okay. This is going to get tough then because you guys  
4 have a different setup. Hopefully, we'll fix that.

5 Take a look at Tab 15.

6 And you see the challenges document?

7 **A.** I do.

8 **Q.** And do I understand right that you prepared that?

9 **A.** This looks like something I prepared. I don't necessarily  
10 recall preparing it, but it looks -- does look like, based on  
11 the email, that I did prepare it.

12 **Q.** As you sit here, you don't have any reason to believe that  
13 you did not prepare that and send it to Mr. Harvey?

14 **A.** Correct.

15 MR. CROSS: Your Honor, we move Exhibit 607 in, which  
16 includes the attachment.

17 MR. BELINFANTE: Just for clarity's sake,  
18 Document 607 -- or Exhibit 607 would include State Defendants'  
19 Bates-labeled 96614 and 96615.

20 MR. CROSS: Yes.

21 MR. BELINFANTE: Okay. No objection.

22 THE COURT: It is admitted.

23 BY MR. CROSS:

24 **Q.** Go to what I'm guessing is going to be Tab 16 for you. It  
25 should have a number at the bottom that ends in 5665.

1 Do you have something different?

2 **A.** The number I have at the bottom is 4578.

3 **Q.** Okay. All right. Then I'm going to come back to this.

4 And that is Tab 16?

5 **A.** Yes.

6 **Q.** All right. So let's take that one.

7 Do you see Tab 16 --

8 MR. BELINFANTE: Hang on one second, Mr. Cross.

9 Your Honor, the only thing I would point out, we're  
10 putting this up on the screen, and it has got an individual's  
11 contact information on it.

12 MR. CROSS: We can take it down.

13 MR. BELINFANTE: Or if we can at least block that  
14 part out.

15 MR. CROSS: Yeah. We'll take it down.

16 BY MR. CROSS:

17 **Q.** Right. This is going to be Exhibit 608.

18 And do you see at the top in the hard copy you've got that  
19 there is an email that you sent to Scott Tucker on January 9 of  
20 2021?

21 **A.** Real quick, what -- are we on Tab 16?

22 **Q.** Tab 16.

23 **A.** Okay. Yep. I do.

24 **Q.** And Scott Tucker, was that someone, at least at the time,  
25 that the Secretary's office relied on at Dominion to help

1 administer the voting system?

2 **A.** Yes.

3 **Q.** And if you look down at the bottom, do you see that the  
4 thread begins with an email that was sent to the  
5 voterfraudemailalerts@sos.ga.gov on January 5th of 2021?

6 **A.** I see that.

7 **Q.** And you'll see there is a report here that two individuals  
8 voted on a BMD and that the only thing they saw on the ballot  
9 was a QR code, no human readable text.

10 Do you see that?

11 **A.** I see that.

12 **Q.** Again, putting aside whether that is true or not, let me  
13 just ask you: Are you familiar that that is a glitch that  
14 sometimes happens when the Dominion BMDs in Georgia, a voter  
15 just gets a QR code?

16 **A.** I've never seen that happen.

17 **Q.** But have you heard reports of that beyond just this one?

18 **A.** I don't recall anything other than this right now.

19 **Q.** Okay. Do you know whether there was an investigation to  
20 confirm whether that actually happened?

21 **A.** I would have to look. I don't know.

22 **Q.** Okay.

23 MR. CROSS: Your Honor, we move Exhibit 608 into  
24 evidence. The statements that were provided by a third party  
25 are not offered for the truth.

1 MR. BELINFANTE: With that limitation, no objection,  
2 Your Honor.

3 THE COURT: It is admitted with that limitation.

4 MR. CROSS: That was 608.

5 COURTROOM DEPUTY CLERK: Yes.

6 BY MR. CROSS:

7 Q. If you would flip to Tab 17, please.

8 A. I'm there.

9 Q. Do you see there is an email here that you sent to Scott  
10 Tucker, Tom Feehan, both at Dominion, and copying Chris Harvey  
11 on January 12th of 2021?

12 A. Yes.

13 Q. And what was Mr. Feehan's role with respect to Georgia  
14 elections at that time?

15 A. He helped for a project management perspective with the  
16 rollout from the Dominion side.

17 MR. CROSS: Your Honor, we move Exhibit 609 into  
18 evidence.

19 MR. BELINFANTE: Just making sure I'm looking at this  
20 correctly, 609 is 184811?

21 MR. CROSS: Yes.

22 MR. BELINFANTE: Okay. Your Honor, we would object  
23 to the extent that it has statements from third parties, and on  
24 this one we would say, even if it were not admitted for the  
25 truth of the matter of asserted, the relevancy of it would

1 presume that it is true, and so we think that it is hearsay.

2 MR. CROSS: Are you talking about the first email,  
3 the description of violation?

4 MR. BELINFANTE: I'm talking about the one from Scott  
5 Tucker to Blake Harvey -- I'm sorry, Blake Evans, Chris Harvey  
6 CC in the middle, not the one from Blake at the bottom.

7 MR. CROSS: Got it.

8 MR. BELINFANTE: And on the back, it looks like we've  
9 got personal identifiable information as to an individual voter  
10 that I would want taken out as well.

11 MR. CROSS: That's fine. The description of  
12 violation is, again, not offered for the truth. The email from  
13 Scott Tucker, again, we believe it is ample evidence that  
14 Dominion operates as an agent for the State, and so it would  
15 come in as a party opponent admission, Your Honor.

16 THE COURT: Where is the one that is causing the  
17 first concern? Is it the one from -- on the flip page that is  
18 a voter with the name -- well, I'm not going to give her name,  
19 but with her initials being JS?

20 MR. CROSS: Right. The description of violation,  
21 that came from a third party. We're not offering that for the  
22 truth.

23 THE COURT: All right. Is that what -- is that the  
24 beginning point of this complaint, though?

25 MR. CROSS: That looks to be what started the thread.

1 THE COURT: Okay.

2 MR. CROSS: And so the relevance we're offering it  
3 for is that report came in. Whether that is true or not, it  
4 sparked discussion within the Secretary's office with Dominion  
5 about implementing a fix because Mr. Evans suggests that this  
6 is something that should be fixed in future --

7 THE COURT: Okay.

8 MR. CROSS: So that is why it is offered.

9 THE COURT: With that qualification, it is admitted.

10 MR. BELINFANTE: Your Honor, I think just at the time  
11 that it is admitted to the Court, again, there is personal  
12 identifying information on the second page.

13 THE COURT: Right. It needs to be -- I think the  
14 county can be left in.

15 MR. BELINFANTE: Sure. Thank you.

16 MR. CROSS: That is 609. We'll redact that when it  
17 goes in.

18 Okay. Almost done here.

19 BY MR. CROSS:

20 Q. Do you still have this other binder that says 5.17?

21 I think it is the other one to your left.

22 A. I do.

23 Q. If you can flip to Tab 5 --

24 A. Okay.

25 Q. -- do you see here there is a document from the EAC

1 entitled EAC issues advisory on Dominion ImageCast X component,  
2 and it is dated June 3rd of 2022?

3 **A.** I see that.

4 **Q.** And if you look at the introduction, it indicates that on  
5 Friday, May 27th, the EAC was made aware that CISA had drafted  
6 an advisory based on a coordinated vulnerability disclosure  
7 provided to them by a security researcher related to the  
8 EAC-certified Dominion ImageCast X component.

9 And it goes on, CISA has noted nine specific  
10 vulnerabilities disclosed by the researcher in its advisory and  
11 included additional steps states and local elections  
12 administrative jurisdictions can take to mitigate these  
13 vulnerabilities.

14 Do you see that?

15 **A.** I do.

16 **Q.** And have you seen this before?

17 **A.** I have.

18 **Q.** And do I understand correctly this is a notice that the  
19 EAC sent out in response to the CISA advisory?

20 **A.** Yes.

21 **Q.** And it is actually -- if you look at the date, this went  
22 out on June 3rd and refers to a May 27 advisory.

23 Do you recall that the EAC actually issued this in  
24 response to a draft embargoed version of the CISA advisory  
25 rather than the final one?

1     **A.**     I don't recall.

2                 MR. CROSS:   Your Honor, we would move Exhibit 610  
3     into evidence.

4                 MR. BELINFANTE:   No objection.

5                 THE COURT:   It is admitted.

6     BY MR. CROSS:

7     **Q.**     Mr. Evans, we spoke earlier about the work that Pro V&V  
8     did when they examined some BMDs in late 2020 in a handful of  
9     counties.

10                Do you remember that?

11     **A.**     Yes.

12     **Q.**     And again, you read Dr. Halderman's report.

13                Do you recall Dr. Halderman explaining that the work Pro  
14     V&V did is nowhere near sufficient to identify whether there is  
15     malware or some sort of compromise on those machines?   Do you  
16     recall that?

17     **A.**     I don't recall.

18     **Q.**     So fair to say that is not something you've considered  
19     from a security perspective as the state election director?

20     **A.**     That is not something I've thought about, so yes.

21     **Q.**     Okay.   All right.   Fair to say that you've been familiar  
22     with this litigation while it has been pending; right?

23     **A.**     This litigation?

24     **Q.**     Yes.

25     **A.**     Yes.

1 Q. And just yes or no -- I don't want to get into specifics.

2 Did anyone ever come to you during the course of this  
3 litigation pending and ask you whether the State was  
4 undertaking any specific steps to respond to the findings of  
5 Dr. Halderman or CISA?

6 MR. BELINFANTE: Object to the extent that it would  
7 require the witness to reveal attorney-client communications.

8 THE COURT: All right. Don't reveal anything that  
9 your attorney and you've communicated about directly.

10 THE WITNESS: So we had -- I've had many  
11 conversations about the mitigations listed in the CISA  
12 advisory.

13 BY MR. CROSS:

14 Q. Just yes or no, did you ever discuss that with counsel for  
15 this litigation? Just yes or no?

16 MR. BELINFANTE: Objection. He can't answer the  
17 question as to whether he has discussed it with counsel.

18 MR. CROSS: Okay.

19 THE COURT: Sustained.

20 MR. CROSS: All right.

21 BY MR. CROSS:

22 Q. Let me hand you -- should be the last document.

23 MR. CROSS: May I approach, Your Honor?

24 THE COURT: Okay.

25

1 BY MR. CROSS:

2 Q. All right. You should have in front of you, Mr. Evans, an  
3 email that you sent to David Greenwalt on April 30 of 2021.

4 Do you see that?

5 A. I do.

6 Q. And you see you're responding to an email that  
7 Mr. Greenwalt sent you on the same day?

8 A. Yes.

9 Q. And Mr. Greenwalt, at least at this time, worked with  
10 KNOWiNK; right?

11 A. Yes.

12 Q. And KNOWiNK is the company that provides the applications  
13 that are used on the Poll Pads; is that right?

14 A. That is right.

15 MR. CROSS: Your Honor, we offer Exhibit 611 into  
16 evidence.

17 MR. BELINFANTE: Objection on the grounds of  
18 relevance. I'm not sure it has been explained what the purpose  
19 of the email is. And we would object to Mr. Greenwalt's  
20 inclusion as hearsay evidence as opposed to Mr. Evans at the  
21 top.

22 MR. CROSS: So Mr. Greenwalt's statements we're not  
23 offering for the truth, but let me ask a couple of questions  
24 and see if we can explain the relevance.

25

1 BY MR. CROSS:

2 Q. If you look at Mr. Greenwalt's email, he indicates,  
3 attached are three documents describing the Poll Pad system  
4 design and security architecture.

5 Do you see that?

6 A. Yes.

7 Q. He goes on, these files contain data which is proprietary,  
8 sensitive, and related to election security.

9 Do you see that?

10 A. Yes.

11 Q. They are to be used by the Secretary of State staff to  
12 evaluate the system's security architecture for potential use  
13 during advanced in-person voting and shall not be disseminated  
14 outside of the Secretary of State's office.

15 Do you see that?

16 A. I do.

17 Q. Did anyone at the Secretary's office, to your knowledge,  
18 ever alert KNOWiNK that their proprietary sensitive software  
19 was stolen in Coffee County in January of 2021?

20 MR. BELINFANTE: Objection. KNOWiNK is not a party.  
21 I'm not sure the relevance of any notification or  
22 non-notification.

23 MR. CROSS: It bears on their security practices,  
24 Your Honor.

25 MR. BELINFANTE: Your Honor, I don't think the

1 question was related to security practices. But otherwise, the  
2 use of proprietary software being used, quoting an email  
3 talking about the trade secret information would not be the  
4 basis of it.

5 THE COURT: So is your contention that this -- all I  
6 can see is that obviously there are security concerns and  
7 privacy concerns that are related to proprietary and sensitive  
8 nature of the information that are expressed by Mr. Greenwalt  
9 at KNOWiNK, and then Mr. Blake says, yes, I'll pass along the  
10 information to our security team.

11 I mean, I understand that you can contend that it has  
12 broader ramifications that KNOWiNK -- the information might  
13 have also been exposed as others start accessing the system,  
14 but I mean, that is a -- and no doubt that probably is true,  
15 but that doesn't -- at the point in April of '21 --

16 MR. CROSS: Your Honor, just to be clear --

17 THE COURT: Do you think that Mr. -- it reflects that  
18 Mr. Evans understood that he was exposing that?

19 MR. CROSS: No. No. No. Your Honor, I'm not  
20 suggesting that Mr. Evans -- no representations about what he  
21 knew in April of 2021. It is merely meant to show two things.  
22 One, whether true or not, KNOWiNK put the State on notice that  
23 they considered their software that was copied from the Poll  
24 Pads in Coffee County as proprietary sensitive election  
25 security and not meant to be disseminated outside.

1           And then the question becomes, given that notice of  
2   sensitivity, did the Secretary's office, once they learned  
3   about Coffee County, inform KNOWiNK, similar to the questions  
4   we asked about Dominion, because it bears on the security  
5   practice that is --

6           THE COURT: Well, it does, arguably, at least. But I  
7   think you ought to think about another way that you could get  
8   at this because this is sort of a little roundabout. I mean,  
9   we know that this is -- this is their warning.

10          So it really is, in fact, being -- there is nothing  
11   that is -- it is an odd situation because this is an advisory  
12   from Mr. Greenwalt. It is not actually being, at the same  
13   time, offered for the truth of anything other than if you argue  
14   that maybe the things that they are saying are proprietary and  
15   sensitive are -- that that is not -- it is true or not true.

16          But at the same time, I don't think it takes you all  
17   the way to where you are contending other than -- I mean, you  
18   could probably do that five other different ways without  
19   messing with this letter, which is a sort of roundabout way.  
20   There are lots of probably other entities that even had  
21   proprietary information, including Dominion, and I don't know  
22   what they did about that.

23          So, you know, you can get the witness to acknowledge  
24   that there were -- others might be impacted by it --

25          MR. CROSS: Right, Your Honor.

1 THE COURT: -- without having this.

2 MR. CROSS: Certainly this is not a document that  
3 makes or breaks the case. Our position, right, is that the  
4 Secretary's office did not take the breach in Coffee County  
5 sufficiently serious once they learned about it, whenever that  
6 was, and so it is just meant to find out, understanding how  
7 sensitive the KNOWiNK software was, according to the notice  
8 they got.

9 THE COURT: Well, ask that question.

10 MR. CROSS: Oh, that was the question. I'm sorry. I  
11 thought -- let me try it again because I thought that is --

12 MR. BELINFANTE: I think it was on introducing the  
13 evidence --

14 MR. CROSS: Okay.

15 MR. BELINFANTE: -- is what led to the objection.

16 MR. CROSS: Okay. That's fair. Let me ask it this  
17 way.

18 BY MR. CROSS:

19 Q. Did you understand that KNOWiNK considered the software  
20 used on the Poll Pads that was taken in Coffee County as --

21 THE COURT: All right. Now you're talking about --

22 MR. CROSS: Let me ask it this way then.

23 BY MR. CROSS:

24 Q. You understand that the software that was taken in Coffee  
25 County included software from the Poll Pads; is that right?

1     **A.**     Yes.

2     **Q.**     Okay.  Do you know whether anyone from the Secretary's  
3     office ever alerted KNOWiNK that their software had been taken?

4             MR. BELINFANTE:  Objection.  Relevance.

5             THE COURT:  I'll allow it.

6             MR. BELINFANTE:  Okay.

7             THE WITNESS:  I know that KNOWiNK knew about it.  Who  
8     notified them, I don't recall.

9     BY MR. CROSS:

10    **Q.**     Okay.  And you don't know when that was?

11    **A.**     No.

12                     **(There was a brief pause in the proceedings.)**

13             MR. CROSS:  No further questions at this time, Your  
14     Honor.  Thank you.

15             Jenna did remind me, I did not move Exhibit 605 in.  
16     It is the Dominion manual.  I thought we did.  Maybe we didn't.

17             THE COURT:  The user guide?

18             MR. CROSS:  Yes, the user guide.

19             MR. BELINFANTE:  Your Honor, we would only ask two  
20     things.  One, I'm not sure what the designation of when it was  
21     made, if it is still relevant.  There is an attorneys' eyes  
22     only on it, but candidly, standing here today, I don't know  
23     that -- if that has been replaced on some other grounds.

24             The other thing we would ask is that if we're going  
25     to introduce a portion, we would introduce the entirety of the

1 document, which seems like there is no objections.

2 MR. CROSS: That's fine. Yeah, we were printing what  
3 we could.

4 But there is no objection?

5 MR. BELINFANTE: Yeah.

6 THE COURT: All right. Well, that is fine.  
7 Exhibit 605 is accepted.

8 But I guess you should both look at whether there is  
9 any of this that needs -- needs to be sealed if you're saying  
10 some part of it was attorneys' eyes only. I don't know whether  
11 it any longer needs that.

12 MR. CROSS: Do you want to right now just admit it  
13 provisionally sealed, and then the State can get back to us on  
14 whether --

15 THE COURT: Yes, that is fine.

16 MR. McGUIRE: Your Honor, I understood we might be  
17 stopping now, but I just want to reiterate, we do have some  
18 non-duplicative follow-up.

19 THE COURT: How much more do you have?

20 MR. McGUIRE: I would estimate maybe 20 minutes or  
21 25 minutes.

22 THE COURT: All right. Well, then we're stopping.

23 MR. BELINFANTE: You've seen what that means in  
24 lawyer time.

25 THE COURT: I think the witness has been in good

1 cheer and despite being on target for a long time.

2 All right. I would like to start at 10:00 tomorrow,  
3 and we'll see you then.

4 MR. TYSON: Your Honor, just to -- so our timing is  
5 clear, we'll start at 10:00 and our plan would be with  
6 Mr. Barnes; is that correct?

7 THE COURT: That's fine.

8 MR. TYSON: Okay.

9 THE COURT: And we'll talk again about schedule  
10 tomorrow, but it seems like I just need to move my appointment  
11 to another universe. So don't consider anything given on  
12 Friday under the circumstances. I'll figure out your schedule  
13 tomorrow, and I will act accordingly.

14 MR. CROSS: Your Honor, one more thing just to maybe  
15 end the day on a bit of good news.

16 Without getting into specifics, I think we're very  
17 close to a compromise on the issues -- some of the issues  
18 raised with Mr. Persinger. Mr. Tyson and I have talked, and  
19 I'll get back to him today, so hopefully, we'll have something  
20 for Your Honor.

21 THE COURT: That would be so pleasant.

22 MR. CROSS: We figured. We figured. We set this up  
23 yesterday. We're working on it.

24 MR. TYSON: We are trying, Your Honor.

25 THE COURT: That is so lovely. I'm sounding older

1 and older, aren't I?

2 Okay. Thank you.

3 And for all of those who are in chairs without pads  
4 of any variety, you have great seat power. I'm very admiring  
5 of your stamina. You are -- you would not be -- as a matter of  
6 security, if you wanted to bring in a tiny pad -- I think if  
7 anyone had to go through it, that would be something else, but,  
8 you know, they do have those that you can bring if you are -- I  
9 don't want to be the source of anyone's backaches or other  
10 aches.

11 So -- all right. We will see you at 10:00 tomorrow,  
12 and I'm excited -- so excited about the possible resolution of  
13 that issue.

14 MR. CROSS: I know. You're going to sleep great  
15 tonight, Judge.

16 THE COURT: Before long, I'm going to be singing  
17 about -- isn't there a song -- one of the songs, I'm so  
18 excited.

19 All right, everyone. Let's go home.

20 COURTROOM SECURITY OFFICER: All rise.

21 **(The proceedings were thereby adjourned at 6:12**  
22 **PM.)**

23

24

25

## C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, SHANNON R. WELCH, RMR, CRR, Official Court Reporter of the United States District Court, for the Northern District of Georgia, Atlanta Division, do hereby certify that the foregoing 279 pages constitute a true transcript of proceedings had before the said Court, held in the City of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 24th day of January, 2024.



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SHANNON R. WELCH, RMR, CRR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT  
OFFICIAL CERTIFIED TRANSCRIPT

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KAISER: [31]</b> 109/7 110/22 111/2 111/12 111/23 121/13 126/17 134/23 135/7 136/7 136/21 138/4 138/16 142/16 143/4 143/13 143/16 144/3 146/7 146/15 146/20 148/17 148/23 151/21 152/1 153/14 154/10 155/13 155/15 155/18 156/3</p> <p><b>THE COURT: [358]</b></p> <p><b>THE WITNESS: [134]</b> 12/5 15/3 15/5 21/22 24/16 24/25 26/2 41/17 41/22 42/11 46/16 47/16 47/22 48/2 48/4 74/7 74/13 74/23 76/13 81/7 82/21 83/18 83/24 84/1 84/3 93/11 96/2 96/5 96/7 97/16 100/12 102/18 102/22 103/18 104/7 105/13 105/16 107/8 107/12 107/15 107/17 112/8 112/12 112/15 112/19 113/2 113/11 113/16 113/24 114/10 114/12 114/16 114/21 114/23 115/2 115/5 119/19 119/22 121/18 122/9 124/19 126/21 127/11 129/4 129/9 129/12 130/7 131/14 132/12 133/6 133/8 133/14 133/18 133/21 136/17 136/23 138/19 144/14 144/17 145/6 145/17 145/20 145/22 146/2</p>	<p>146/6 150/13 153/20 155/17 155/19 155/24 156/8 156/11 156/15 156/18 162/13 162/19 162/22 166/2 166/5 166/12 166/18 166/24 167/5 167/7 167/12 172/12 172/18 172/22 177/5 183/10 183/12 183/20 201/12 201/22 204/10 206/1 215/11 215/15 216/10 217/8 228/22 229/19 234/13 234/16 234/20 235/13 236/18 236/22 237/1 237/3 258/4 261/25 270/10 276/7</p> <p>'<b>20 [2]</b> 41/5 41/12</p> <p>'<b>21 [6]</b> 66/12 66/13 66/15 107/12 107/13 273/15</p> <p>'<b>22 [6]</b> 41/12 46/7 46/13 51/22 67/9 67/10</p> <p>'<b>22 voted [1]</b> 41/12</p> <p>'<b>23 [3]</b> 46/11 46/13 46/15</p> <p>'<b>23 and [1]</b> 46/15</p> <p>'<b>70s [1]</b> 106/1</p> <p>-</p> <p>-- <b>from [1]</b> 37/2</p> <p>-- <b>or [1]</b> 6/3</p> <p>-- <b>physically [1]</b> 114/23</p> <p>...</p> <p>...<b>CONT'D [2]</b> 2/25 3/1</p> <p><b>.05 [1]</b> 257/11</p> <p><b>0</b></p> <p><b>00130421 [1]</b> 158/17</p> <p><b>07 [1]</b> 136/16</p> <p><b>1</b></p> <p><b>1,000 [1]</b> 83/14</p> <p><b>1,420,303 [1]</b> 37/18</p> <p><b>1.0 [3]</b> 205/10 207/3 207/11</p> <p><b>1.1 [2]</b> 207/3 207/11</p> <p><b>10 [3]</b> 141/11 143/13 206/14</p> <p><b>10,000 [1]</b> 218/2</p> <p><b>10-4 [1]</b> 232/7</p> <p><b>100 [1]</b> 230/2</p> <p><b>100130421 [1]</b> 158/19</p> <p><b>104 [1]</b> 227/11</p> <p><b>104-page [1]</b> 240/18</p> <p><b>108 [5]</b> 126/4 126/6 126/7 131/23 132/24</p> <p><b>109 [1]</b> 131/25</p> <p><b>10:00 [1]</b> 278/5</p> <p><b>10:00 tomorrow [2]</b> 278/2 279/11</p> <p><b>10th [1]</b> 207/25</p> <p><b>11 [1]</b> 1/10</p> <p><b>11:30 [1]</b> 65/21</p> <p><b>1224 [2]</b> 237/10 237/12</p> <p><b>123 [1]</b> 183/16</p> <p><b>1230 [1]</b> 35/19</p> <p><b>1232 [2]</b> 36/17 38/10</p> <p><b>1233 [2]</b> 36/23 38/10</p> <p><b>1234 [3]</b> 31/14 32/18 38/19</p> <p><b>1235 [2]</b> 37/21 38/14</p> <p><b>1236 [3]</b> 37/15 37/16 38/13</p> <p><b>1237 [4]</b> 37/4 37/9 38/11 38/15</p> <p><b>1238 [2]</b> 38/3 38/16</p> <p><b>1242 [2]</b> 158/15 240/6</p> <p><b>1245 [1]</b> 53/10</p> <p><b>125 [1]</b> 183/17</p>
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