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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. :

12 **TRANSCRIPT OF BENCH TRIAL - VOLUME 13 PROCEEDINGS**

13 **BEFORE THE HONORABLE AMY TOTENBERG**

14 **UNITED STATES DISTRICT SENIOR JUDGE**

15 **JANUARY 26, 2024**

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

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I N D E X T O P R O C E E D I N G S

THE DEFENDANTS' CASE (Continued)

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P R O C E E D I N G S

(Atlanta, Fulton County, Georgia; January 26, 2024.)

THE COURT: Have a seat, please.

Just as a wrap-up to Mr. Adida's testimony, I know that there were objections at the outset of his testimony regarding the -- from the plaintiffs regarding the failure of the government -- of the State to have supplemented its disclosures regarding Dr. Adida's testimony under 26(e) with -- specifically with respect to matters that he addressed beyond his -- the affidavits he had provided in -- for two affidavits in 2020.

And those pose some -- do pose some concerns given the scope of some additional matters that he addressed particularly in '22 and thereafter. But I think it is more important at this juncture that I just continue to proceed in hearing testimony. It was -- I proceeded with the notion -- with the understanding that that was the request, that it would just be conditionally admissible, and I will look at this more specifically and any issues that are caused by that.

So I just wanted to make that clear.

And at the same time, I think I did allow plaintiffs a very full opportunity to cross-examine Dr. Adida. I think it is unfortunate that some of the additional materials he was relying on weren't provided as far as I understand.

MR. MILLER: Your Honor, if I may. I think that --

1 you know, we obviously had a typical objection with an expert
2 at the outset of the testimony at the point of tendering.

3 I -- frankly, I don't recall drawing an objection of
4 exceeding the scope on my direct examination. What ended up
5 happening is on cross-examination the plaintiffs determined to
6 elicit plenty of testimony that is beyond, you know, what they
7 didn't want me to talk about.

8 That is perfectly fine. And something Your Honor
9 noted yesterday when I got up for my redirect -- or I think at
10 one point I had objected, and you made the note, you're welcome
11 to explore this on redirect.

12 So with that note, I'll note that.

13 Secondly, with respect to timeline of, you know,
14 2022, 2023, you know, Dr. Adida is a hybrid fact witness as
15 well because he is obviously -- as he testified he is assisting
16 with the State on implementing the audits. You know, so that
17 testimony is factual testimony to that extent. And so I'll
18 just make that note.

19 And, Your Honor, too, we discussed yesterday the
20 issue with the Tweets. And I will bring these up. We just had
21 it printed out today.

22 THE COURT: Before we deal with the Tweets, let me
23 just say this. I agree with you there are -- there are subject
24 matters that the plaintiffs brought up in cross-examination
25 that you then were allowed to address. But there were -- the

1 whole -- but there were a number of matters still that came up
2 during his direct examination regarding what he did in '22.

3 And he also relied on -- let me just say this: This
4 is why I'm delaying it, just to be very precise. I need to go
5 back and read everything in the course of it. There seemed to
6 be new matters that should have been disclosed that were not
7 just fact matters.

8 And it is a delicate assessment that can't be done
9 right this moment. But I just wanted to sort of flag it
10 because it requires me to really look at the record again.

11 MR. MILLER: Your Honor, of course, I'll note the
12 time that we've spent on the other matter relative to a sealed
13 proceeding that had to do with Rule 26 disclosures that we did
14 on extremely short notice under an extremely difficult protocol
15 that we're still talking about for some reason.

16 But, nonetheless, Your Honor, that -- you know, it
17 creates a bit of a circular issue. That is the last I'll say
18 on that topic.

19 THE COURT: Fine.

20 MR. MILLER: But we did move for completeness as to
21 these Tweet threads.

22 THE COURT: All right.

23 MR. MILLER: We printed it out. I just hand them up
24 here. The Court can consider it --

25 MR. CROSS: Your Honor, we object to this.

1 MR. MILLER: -- for whatever the Court considers it's
2 worth.

3 MR. CROSS: The Tweets are not in evidence. If he
4 wanted to put them in evidence, he had to do it with the
5 witness on the stand.

6 MR. MILLER: And, Your Honor, the issue there is that
7 with the Tweets -- if the Tweets were not in evidence, they
8 were on the screens for probably about 30 or 45 minutes while
9 we were sitting here continuing this cross-examination.

10 You know, if the Court is considering it because it
11 has been placed into the Court's view, you know, that becomes
12 the issue. I know that is a small font. We can provide it
13 electronically. It is a little easier to read. But we just
14 want to make sure that the complete thread is with Your Honor.

15 And I think -- as I recall, I believe that there was
16 an agreement that Mr. Cross was fine with putting in the
17 complete issue before -- or the complete thread before Your
18 Honor.

19 MR. CROSS: If Your Honor --

20 MR. MILLER: Whether it is substantive evidence or
21 not, I'm providing it to the Court.

22 Thank you.

23 MR. CROSS: Your Honor, if you want to read the
24 Tweets, read the Tweets. This is such a sideshow. They had an
25 opportunity with a witness on the stand to introduce it as an

1 exhibit. They didn't. The rules of evidence matter. You
2 can't show up the next day and say we suddenly have a new
3 document that the witness hasn't authenticated and no one has
4 seen. But if you want to read it, read it.

5 THE COURT: Well, you are not going to actually
6 dispute it. I mean --

7 MR. CROSS: It is totally irrelevant. But have at
8 it. It's fine. I don't know why we are even doing this.

9 The last thing I just want to say is this. We didn't
10 sleep last night, and we are -- I am physically ill about what
11 we talked about this morning. And I don't want to hear any
12 more attacks on us like we somehow have created a distraction.
13 I don't want to hear it anymore.

14 THE COURT: I want to say this. I'll take the --
15 this under advisement. I'll think about it, what was just
16 proffered. I'm not sure that the whole course of testimony
17 doesn't come out, but -- as it is. But we've got to return to
18 getting down to business with the next witness.

19 I don't doubt your -- I mean, everybody in this room
20 is exhausted as it is. And this case has raised a lot of
21 emotions among many people involved as well.

22 And perhaps my efforts to be light at times and even
23 to sing to you or tell you stories is an effort to try to bring
24 down the temperature. Unfortunately, I don't know many lyrics
25 to many songs.

1 MR. BELINFANTE: We can help, Your Honor.

2 THE COURT: But you might get me to that point.

3 But everyone has to survive this. It is a serious
4 case that people feel passionately about. And people feel
5 passionately in the State that they have tried to do what is in
6 the public interest, and that is what the plaintiffs view that
7 as -- that they are trying to function in the public interest.

8 We're at a time in our country where there is great
9 divisions. And so while everyone has to be a good advocate
10 here, we've got to keep some perspective about this. And I
11 know that at various points one person or another feels that
12 their integrity has been challenged.

13 And inevitably that happens during the course of
14 heated litigation. But I truly encourage everyone to keep the
15 temperature down because we've got more to go. And you
16 probably don't want me singing in the middle of your
17 objections. But I could do it. I could do it.

18 So I have sympathy for all of you. I have sympathy
19 for my husband too and for your families. I mean, this is
20 hard. But let's just try our best to keep the temperature down
21 as much as possible, even if you're going to be a strong
22 advocate and not get too personal, because it just is going to
23 make this unbearable.

24 All right. So Mr. Evans is here; right? And we're
25 going to begin with him -- is that right? -- again?

1 Thank you.

2 MR. MILLER: Yes, Your Honor. We're intending today
3 to have Mr. Evans, along with Mr. Kirk and Mr. Davis. That
4 order I anticipate might be the other way around. But it is
5 just depending on both of their availability this afternoon.

6 THE COURT: Of course, I don't have my notes to tell
7 me where you stopped. But could you remind me.

8 MR. MILLER: Your Honor, with Mr. Evans we stopped, I
9 think, at the conclusion of Mr. Cross' cross-examination, and I
10 believe Mr. McGuire might have some noncumulative
11 cross-examination as well.

12 **THE DEFENDANTS' CASE (Continued).**

13 THE COURT: All right.

14 Good morning, Mr. Evans. Remember that you are still
15 under oath.

16 MR. MCGUIRE: And, Your Honor, we took your
17 admonition yesterday to heart and tried to cut this down. So
18 it may be a little shorter than I anticipated yesterday.

19 THE COURT: Very good.

20 Whereupon,

21 BLAKE EVANS,

22 after having been previously duly sworn, testified as
23 follows:

24 CROSS-EXAMINATION

25

1 BY MR. MCGUIRE:

2 Q. Mr. Evans, good morning.

3 A. Good morning.

4 Q. My name is Robert McGuire, and I represent Coalition for
5 Good Governance, which is one of the plaintiffs in the lawsuit.

6 Mr. Evans, the State manages and publishes reporting of
7 early voting on the Secretary's website during federal and
8 state elections, doesn't it?

9 A. Yes. I believe what you are referring to is the absentee
10 voter file report.

11 Q. And the State also manages and publishes reporting of mail
12 ballot voting daily on the website during those elections?

13 A. Yes.

14 Q. The State runs a central portal for absentee ballot
15 applications?

16 A. Yes.

17 Q. The Secretary of State's office creates the data used on
18 electronic pollbooks?

19 A. So we manage the voter registration database that is
20 GARViS. The counties maintain the data within that database.

21 Q. Does the Secretary's office still send printed backups of
22 the electronic pollbooks to the counties?

23 A. Yes.

24 Q. Switching gears a bit, municipal elections happen every
25 two years in Georgia; right?

1 **A.** Generally, yes.

2 **Q.** And based on your understanding and experience, Georgia
3 law does not dictate how municipalities have to run their
4 election, does it?

5 **A.** That's correct.

6 **Q.** So Georgia municipalities can choose to use hand-marked
7 paper ballots or BMDs when they run their own elections?

8 **A.** They can.

9 **Q.** And municipalities that run elections using hand-marked
10 paper ballots can choose either to do a hand count or to use
11 scanners to tabulate the votes; right?

12 **A.** They can.

13 **Q.** Municipalities that want to use scanners may borrow
14 scanners from their county?

15 **A.** They can enter into an IGA to do that.

16 **Q.** And that is the same for municipalities that want to use
17 BMDs; right?

18 **A.** Correct.

19 **Q.** The State doesn't retain records of what pieces of
20 election equipment get borrowed by municipalities, does it?

21 **A.** We would not necessarily receive a copy of that IGA;
22 correct.

23 **Q.** Are you aware that in 2023 11 municipalities in Gwinnett
24 County ran their own municipal elections using hand-marked
25 paper ballots?

1 **A.** That does sound correct.

2 **Q.** Are you aware that one of those 2023 Gwinnett County
3 hand-marked paper ballot municipal elections was held in
4 Peachtree Corners?

5 **A.** That sounds correct.

6 **Q.** Are you aware that another one was held in Snellville?

7 **A.** Sounds correct.

8 **Q.** Peachtree Corners has over 42,000 residents; right?

9 **A.** That sounds accurate.

10 **Q.** And that is bigger than the population of 110 Georgia
11 counties?

12 **A.** That would not surprise me.

13 **Q.** And Snellville has over 21,000 residents?

14 **A.** That sounds accurate.

15 **Q.** Mr. Evans, you said you were the election coordinator in
16 Escambia County, Florida, until April of 2019?

17 **A.** That became my title, and then I was until right around
18 the beginning of April 2019.

19 **Q.** And I believe you testified Escambia County used
20 hand-marked paper ballots cast into scanners for in-person
21 voting?

22 **A.** Correct.

23 **Q.** And did Escambia County have Florida's equivalent of what
24 in Georgia is early in-person voting?

25 **A.** There was early in-person voting.

1 Q. And Escambia County operated vote centers for early voting
2 just like we have here in Georgia; right?

3 A. Where anybody can go to any location in their county;
4 correct.

5 Q. So those vote centers in Escambia County had to stock
6 ballot styles for the whole county?

7 A. The technology that we used for early voting locations
8 there was Ballot on Demand printing.

9 Q. So you would print out ballot styles as they were needed?

10 A. Correct.

11 Q. And what is the population or what was the population of
12 Escambia County when you were there?

13 A. I believe there were right around 215,000 voters
14 registered.

15 Q. Lastly, you testified previously that you prefer
16 ballot-marking devices over hand-marked paper ballots because
17 you don't have as many mismarks and you think that on a BMD it
18 is very obvious to tell what vote intent was.

19 Do you recall that?

20 A. Yes.

21 Q. Now, when in-person voters make overvotes on a hand-marked
22 paper ballot, the Dominion scanners at in-person voting polling
23 places are currently programmed to catch and kick back ballots
24 with overvotes; right?

25 A. I forget if it automatically kicks it back or if it stops

1 and asks the voter if they want to cast it. But there -- it
2 will -- it would -- there would be something there where the
3 voter could either choose to cast it or review it.

4 **Q.** So the voter has a chance to correct that?

5 **A.** Correct.

6 **Q.** And that is when they are voting in person versus voting
7 absentee?

8 **A.** Correct.

9 **Q.** Do ambiguous marks also cause the scanner to give the
10 voter a chance to correct the ballot?

11 **A.** If it is something that is in the oval that is an
12 ambiguous mark, then there is a possibility that the scanner
13 would catch that ambiguous mark and reject the ballot.

14 **Q.** And that would be the same for I guess what you would call
15 stray marks?

16 **A.** It depends if it is -- if it is in the area where the oval
17 is where the scanner is looking, then it could very well kick
18 the ballot back.

19 **Q.** Okay.

20 MR. McGUIRE: Thank you. I have nothing further,
21 Your Honor.

22 Thank you, sir.

23 CROSS-EXAMINATION

24 BY MR. OLES:

25 **Q.** Good morning, Mr. Evans.

1 **A.** Good morning.

2 **Q.** Now, do you recall yesterday when you were here last on
3 this stand you said -- you were asked and I believe that you
4 stated that you had no personal knowledge of any votes not
5 counted as cast?

6 **A.** Correct.

7 **Q.** Okay. Are you -- but you are aware at least that in the
8 2022 DeKalb County District 2 primary the Dominion voting
9 system returned the wrong winner in that race; correct?

10 **A.** I am aware of the event that you're referring to.

11 **Q.** Okay. And you are aware that Coffee County, in the 2020
12 election, that the board voted unanimously to certify the hand
13 count audit instead of the Dominion voting system count because
14 of problems they were reporting with the vote counts?

15 **A.** If I remember correctly in Coffee County -- and I would
16 have to double-check -- I believe their hand audit of the
17 presidential results exactly matched the machine count.

18 **Q.** So you don't recall, but you do recall that they were
19 reporting problems?

20 **A.** I recall them contacting us with issues they were having.

21 **Q.** Thank you.

22 And you are aware that Governor Kemp referred to the State
23 Election Board a 36-point study of discrepancies found in the
24 November 14th Fulton County 2020 hand count audit?

25 MR. BELINFANTE: Object to the question as just

1 mischaracterizes what I think the -- I think what he is talking
2 about is not a study. And I think he can certainly ask the
3 question. I just didn't want it to be deemed some form of
4 academic study was the basis of the objection.

5 THE COURT: All right. So noted.

6 And would you agree it wasn't a study?

7 MR. OLES: It was a letter, yes, Your Honor.

8 THE COURT: It was a letter. Okay.

9 THE WITNESS: I remember the letter.

10 BY MR. OLES:

11 Q. Thank you.

12 So, in fact, there were reports coming in -- despite your
13 lack of personal knowledge, you are aware that there were
14 reports coming in that there were problems with the counts?

15 A. I remember the letter referring to the hand count. And I
16 remember the instances in Coffee County where they were having
17 some technical difficulties.

18 Q. Okay. And you are also aware, are you not, that in the
19 2021 U.S. Senate race that it was reported that there was a
20 20,000 vote reversal, that is reduction, of counted votes for
21 one of the senate candidates?

22 A. Can you elaborate a little bit?

23 Q. Yes. In the -- excuse me.

24 In the 2021 U.S. Senate race for Herschel Walker, there
25 was actually a point in this period of four minutes where his

1 vote count was reduced by approximately 20,000 votes.

2 Do you recall that?

3 THE COURT: Are we talking about the 2020 or 2022?

4 MR. OLES: That is -- I'm sorry. 2022. I misspoke.

5 THE COURT: Okay.

6 THE WITNESS: I think likely -- I think I remember
7 what you are referring to. And I think it was a county
8 uploading an old results file to the election night results
9 reporting page.

10 BY MR. OLES:

11 Q. But you do recall that in the middle of the election that
12 there was being reported a 20,000 vote drop?

13 A. I remember hearing a report of that.

14 Q. Okay. And isn't it true that the media that reported that
15 gets its feed from the same election feed that the Secretary of
16 State gets?

17 In other words, they both get a feed from Clarity?

18 A. I am not sure how the media outlet gets its feed.

19 Q. Now, do you also recall when you were last on the stand
20 that you testified to the effect that vote dilution is when
21 unlawful ballots dilute lawful ballots?

22 A. Yes.

23 Q. Okay. Would you agree with my statement that when there
24 are duplicate votes counted, that is the same ballot or ballots
25 may be counted two or more times, that would have the effect of

1 diluting other lawful votes?

2 **A.** Yes.

3 **Q.** And you said that you are not aware of any possible cases
4 of vote dilution in Georgia?

5 **A.** No. I can think of instances where there has been
6 multiple of the same ballot scanned or something, you know,
7 some form of very limited voter fraud.

8 **Q.** Okay. And you are aware of an active complaint before the
9 State Election Board Number 2023-025 which purports to provide
10 evidence of 3,125 duplicate ballots being included in the
11 certified 2020 Fulton County results?

12 **A.** I remember hearing about the case.

13 **Q.** And you are also aware of an active lawsuit under the name
14 of *Favorito v. Wan* where four senior poll managers and two
15 audit monitors alleged that they found hundreds of duplicate
16 counterfeit mail-in ballots in the November 14, 2020, Fulton
17 County hand count audit?

18 **A.** You are asking if I'm aware of the case?

19 **Q.** Yes.

20 **A.** Yes.

21 **Q.** Okay. And, in fact, the Secretary of State, that is your
22 office, filed an amicus brief in the lawsuit in that case
23 attempting to prevent the plaintiffs from inspecting the
24 ballots to determine how many counterfeit ballots may have
25 included in the election results?

1 You are aware that your own office filed that?

2 **A.** I'm generally aware.

3 **Q.** Okay. So is it fair to say that even though you may not
4 have personal knowledge, as you claim, there are plenty of
5 instances out there where it may turn out that there actually
6 were problems in the counts?

7 **A.** I'm aware that people have alleged that there are problems
8 with the counts and some of those are being investigated.

9 **Q.** Okay. Thank you.

10 MR. OLES: Nothing further, Judge.

11 REDIRECT EXAMINATION

12 BY MR. BELINFANTE:

13 **Q.** Hello, Director. Good to see you again.

14 **A.** Good morning.

15 **Q.** Let's start where we left off, if I can get there.

16 THE COURT: That would be helpful to me to find out
17 where we left off. That's what I --

18 MR. BELINFANTE: And I'm sorry. When I say left off,
19 I meant where -- just today. I'll get into the larger one.

20 BY MR. BELINFANTE:

21 **Q.** So we'll start with the questions that were asked to you
22 by the Coalition counsel.

23 You were asked about printed backups for the poll to
24 identify individuals who are registered to vote.

25 Do you recall that?

1 **A.** I do.

2 **Q.** When are those sent to the counties -- the printed
3 backups?

4 **A.** We'll generally begin sending files to the printers for
5 the printed electors list around two weeks in advance. And
6 then within 24 or 48 hours of election day, sometimes 72 hours,
7 we'll send an electronic copy of what is called an emergency
8 list, which is an updated list that includes credit for people
9 who have voted during advanced vote period, and then it is the
10 county's choice to determine which of those lists to use.

11 **Q.** Okay. So why would you send a list that shows people who
12 voted during early before -- I'm sorry, who voted early
13 advanced voting after something was sent to the printer?

14 **A.** Because we want to send counties a printed copy that they
15 are able to use, but then we also want them to have the
16 electronic list so if they so choose they can print that out or
17 if they want to supply it in Excel file format for their poll
18 workers they have the option to do that. And it is a list that
19 shows people that have shown up to vote.

20 **Q.** So it is up to the county to then use the updated list?
21 Is that what I understand you to say?

22 **A.** Yes. They have the resources, and they can use them.

23 **Q.** Okay. For the record, too, you talked about an IGA, when
24 looking at municipal elections. I don't think you ever defined
25 what an IGA is.

1 Can you just do that for the record?

2 **A.** An IGA is an intergovernmental agreement between the two
3 parties.

4 **Q.** Okay. You were asked about municipal elections and
5 whether municipalities do hand count or scanner.

6 Do you recall that?

7 **A.** I do.

8 **Q.** Okay. Do you know which municipalities in Georgia use
9 hand counts for election results?

10 **A.** I don't have the list.

11 **Q.** Okay. In your experience, have you found hand counts to
12 be more or less accurate than electronic scanned results?

13 **A.** In my experience, generally the machine count is more
14 accurate.

15 **Q.** You were also asked about elections. I'll just pick on
16 Peachtree Corners because I think that was the largest of the
17 municipalities you were asked about being identified.

18 Can you tell the Court just in a general sense when
19 comparing the size of a municipal ballot from municipal
20 election, odd year, Peachtree Corners for example, to that of a
21 statewide general election, is there typically a difference in
22 the size of the ballot?

23 **A.** Typically there would be fewer contests on a municipal
24 ballot.

25 **Q.** Okay. Are statewide constitutional amendments made on

1 odd-year elections?

2 **A.** I don't recall that they are.

3 **Q.** Okay. In terms of -- you were then asked a series of
4 questions about your experience in Escambia County, Florida.

5 Do you know roughly how many precincts -- voting
6 precincts, were in Escambia County, Florida, on election day?

7 **A.** I believe it was low 70s.

8 **Q.** Okay. Do you know roughly how many precincts are in
9 Fulton County on election day?

10 **A.** Between 200, 250, somewhere in there.

11 **Q.** All right. Comparatively, in your experience -- and let's
12 just focus on Fulton County versus Escambia County -- who had
13 longer ballots?

14 **A.** Fulton County.

15 **Q.** You were also asked about -- a series of questions about
16 if a voter using a hand-marked paper ballot were to have an
17 ambiguous ballot for whatever reason, erasure marks, et cetera.

18 If there were a ballot -- and I'll give you this. Let's
19 say they tried to vote for one person, changed their mind,
20 erased it, and the scanner did not kick it out. Or let's not
21 even use a scanner. And it were hand counted, how does a
22 polling officer determine the intent of the voter in a
23 situation like that where you have two marks, one may be
24 stronger than the other?

25 How is -- what is -- the basis of making that

1 determination?

2 THE COURT: I think you've got an objection there.

3 BY MR. BELINFANTE:

4 Q. -- in Georgia?

5 MR. BELINFANTE: I'm sorry.

6 MR. CROSS: Your Honor, object to speculation. One,
7 because it is hypothetical; and, two, because he's asking how a
8 poll worker makes a decision. He can't speak to that.

9 MR. BELINFANTE: That's fair.

10 I'll withdraw the question.

11 BY MR. BELINFANTE:

12 Q. If there is an ambiguous hand-marked paper ballot in
13 Georgia, who determines what the voter intent is?

14 A. It would go to a voter review panel.

15 Q. A voter review panel?

16 A. Yes.

17 Q. Okay. And who makes up the voter review panels?

18 A. I believe it is a member appointed by or a member selected
19 from the Republican party, from the Democratic party, and then
20 also a third person that I don't have in my head right now.

21 Q. Okay. Fair enough.

22 THE COURT: Is it somebody from the -- from the
23 elections office in the county?

24 THE WITNESS: I would have to double-check the code.

25 THE COURT: Okay.

1 BY MR. BELINFANTE:

2 Q. And are there guidelines for how those individuals on the
3 review panel are supposed to determine voter intent?

4 And just to be clear, too, we're still talking about that
5 hand-marked paper ballot.

6 A. Sure. When you say guidelines, you mean like a --

7 Q. Rule, law, anything. Or are they just -- on what is the
8 voter review panel supposed to base its decision when trying to
9 determine what is voter intent?

10 A. They are trying to determine, to the best of their
11 ability, what the voter selected. I'm not recalling any
12 particular guides on how to do that.

13 Q. All right. You were asked about a letter that Governor
14 Kemp referred to, I believe, the State Election Board.

15 Do you recall that? Mr. Oles asked you about that.

16 A. I do.

17 Q. Do you know who wrote the letter?

18 A. I do not recall.

19 Q. You were also asked about what was described as an
20 undercount for Candidate Walker in the 2021 Senate race.

21 What was your understanding of what was the reason for
22 that undercount, if there was one?

23 A. So typically when that happens, there have been cases
24 where counties, on election night, or in the days following --
25 they have to upload to our election night results tool, which,

1 just to clarify, you have the election management system which
2 is not connected to the internet which tabulates the results.
3 And then you have a file that comes out of that.

4 And then that file is taken to a computer. That is how we
5 are able to broadcast results to the world. And that file is
6 uploaded into election night results reporting by county
7 election officials.

8 When that file is uploaded, counties can publish their
9 county level results and then we at the State aggregate
10 everything.

11 And so what we have seen in the past is if a county --
12 they have uploaded a result file and then they come back a few
13 minutes later and they accidentally upload a results file that
14 was earlier than that, it causes their results to lower.

15 And so that is -- if, in fact, there was a drop in the
16 election night results reporting tool, that is initially would
17 be what I have seen cause that.

18 **Q.** Okay. Do you know if the State certified the reelection
19 of Senator Warnock in that 2021 United States Senate race?

20 **A.** The results were certified, yes.

21 **Q.** Do you know the -- you were asked about a case where the
22 Secretary's office filed an amicus ballot.

23 Do you recall that?

24 THE COURT: An amicus ballot?

25 MR. BELINFANTE: I'm sorry. Cross streams.

1 BY MR. BELINFANTE:

2 Q. An amicus brief.

3 Do you recall that question?

4 MR. BELINFANTE: Thank you, Judge.

5 THE COURT: That is all right. It was a new one to
6 me.

7 MR. BELINFANTE: Despite all the accusations, we
8 don't file amicus ballots.

9 THE COURT: Well, people do think they are.

10 BY MR. BELINFANTE:

11 Q. Do you recall being asked about whether -- a case where
12 the Secretary filed an amicus brief?

13 A. I do.

14 Q. Do you know the status of that case today?

15 A. I don't recall.

16 Q. Okay. All right. You were asked, I believe -- well,
17 yeah, I know you were -- about the SAFE Commission during
18 Mr. Cross' cross-examination of you.

19 Were you a member of the SAFE Commission?

20 A. I was not.

21 Q. Did you provide any testimony to the SAFE Commission?

22 A. I did not.

23 Q. Were you a member of any subcommittee of the SAFE
24 Commission?

25 A. I was not.

1 Q. How -- and then you were asked a series of questions about
2 the State of Florida and your experience in Escambia County.

3 How were the hand-marked paper ballots tabulated in
4 Escambia County?

5 A. With machine scanners.

6 Q. You were also asked about whether the current BMDs could
7 be, quote, hacked with a pen.

8 Do you recall that?

9 A. I recall.

10 Q. All right. Let's take a look at the poll worker manual.
11 Do you have a -- we'll pull up a copy or an image up here.

12 MR. BELINFANTE: It is Defendants' Exhibit 1242. I'm
13 not sure if we have a hard copy for you.

14 THE WITNESS: I think I have one up here.

15 BY MR. BELINFANTE:

16 Q. Oh, you do have one up there?

17 You had testified earlier that managers are required --
18 and you can turn to Page 14 where it discusses it. Poll
19 managers are required to take an oath.

20 Do you recall that testimony?

21 A. I do.

22 Q. All right. I don't know how clear we can get it. But do
23 you see where it has the oath of the managers at the top left?

24 A. I do.

25 Q. All right.

1 THE COURT: Just one second. It looks like everyone
2 has this on their screen but me.

3 COURTROOM DEPUTY CLERK: I don't have it either.
4 Just one second.

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

6 THE WITNESS: I do have a hard copy. It is a little
7 small, but ...

8 BY MR. BELINFANTE:

9 Q. All right. The oath of the managers there, do you see
10 that there?

11 A. I do.

12 Q. Okay. And is this a requirement in order for someone to
13 be an actual manager?

14 A. It is.

15 Q. Okay. Could we -- and election supervisors are -- excuse
16 me, superintendents are trained on this; correct?

17 A. Yes.

18 Q. Let's pull up a demonstrative, which is just a statute
19 from the code books, Code Section 21-2-94. It looks like this
20 is the statute addressing the oath.

21 Would you agree with that?

22 A. So I cannot see it.

23 Q. Oh, you don't have it on the screen?

24 THE COURT: Just one moment.

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

1 BY MR. BELINFANTE:

2 Q. Does that look like what the oath is required of managers?

3 COURTROOM DEPUTY CLERK: He still doesn't have it.

4 MR. BELINFANTE: I'm sorry.

5 THE COURT: Try the patience of the manager of the
6 courtroom. Just a second.

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

8 MR. BELINFANTE: What we could do, Your Honor --

9 THE COURT: Why don't you read it to him?

10 MR. BELINFANTE: What's that? I'm sorry.

11 THE COURT: Do you want to read it to him?

12 MR. BELINFANTE: I could do that, but what I --

13 THE COURT: Looks like you have got a --

14 MR. BELINFANTE: We have a code book. Or what I
15 could do, because I wasn't intending to introduce the statutes
16 as exhibits, but we can print them out at a break and I can
17 move on to different questions --

18 THE COURT: Okay.

19 MR. BELINFANTE: -- if that would work.

20 COURTROOM DEPUTY CLERK: We got it.

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

22 BY MR. BELINFANTE:

23 Q. Does this, to your understanding, reflect the oath that
24 the managers must take?

25 A. Yes.

1 Q. Do you see there three lines up from the bottom where a
2 poll manager has to swear under oath that they will use my best
3 endeavors to prevent any fraud, deceit, or abuse in carrying on
4 the same?

5 A. Yes.

6 Q. If someone were to try to manipulate a ballot-marking
7 device with a pen or anything else, would that -- is it your
8 understanding that that would constitute fraud, deceit, or
9 abuse?

10 A. Yes.

11 Q. And if a poll manager, is it your understanding, were to
12 see that happening and allow it to happen, would they be in
13 violation, of their oath?

14 A. Yes.

15 Q. How about the --

16 MR. BELINFANTE: If we could go back to the
17 Defendants' Exhibit 1242, the poll worker manual, Page 14
18 again. I think this one is a little clearer because the font
19 is bigger.

20 Can we look at the oath of clerks?

21 BY MR. BELINFANTE:

22 Q. What is a polling clerk?

23 A. So a polling clerk are poll workers that work under the
24 supervision of the manager and the assistant managers.

25 Q. Okay. Do they -- they have to -- do they have to complete

1 an oath as well in order to serve on -- as a clerk?

2 **A.** They do.

3 **Q.** Okay. And do you see the same language there about
4 preventing fraud, deceit, or abuse?

5 **A.** I do.

6 **Q.** Okay. And any reason that if a clerk saw someone
7 manipulating a ballot-marking device that it would -- is it
8 your understanding that that would also violate their oath that
9 they have sworn to in order to conduct their job?

10 **A.** If they did not intervene, then yes, it would be a
11 violation.

12 **Q.** Okay. What are poll officers?

13 **A.** Can you provide the context?

14 **Q.** Sure. Why don't we look at the poll worker manual again,
15 Page 4. I think you were asked a series of questions -- you
16 may have been -- about this.

17 That first statute 21-2-92(a) says poll officers.

18 Do you know what that refers to?

19 **A.** Poll workers.

20 **Q.** Okay. And what are their qualifications, just looking at
21 this first line, that a poll worker has to satisfy in order to
22 become a poll worker?

23 **A.** So according to the statute, they shall be judicious,
24 intelligent, and upright citizens of the United States. And
25 then it goes on from there.

1 **Q.** That is fine for now.

2 Do poll workers need to receive any type of certification
3 to serve as a poll worker?

4 **A.** They need to undergo training.

5 **Q.** Okay.

6 MR. BELINFANTE: Actually, if you could take that
7 down, and if we could look at the bottom, 21-2-99(b) there.
8 Yeah.

9 BY MR. BELINFANTE:

10 **Q.** What does that first sentence say there or up to the
11 semicolon at least?

12 **A.** No poll officer or poll worker shall serve in any primary
13 or election unless he or she shall have received instruction as
14 described in Subsection (a) of this code section.

15 **Q.** Okay. Are election superintendents -- moving on from
16 this --

17 MR. BELINFANTE: We can take that down.

18 BY MR. BELINFANTE:

19 **Q.** Are election superintendents trained on issues involving
20 cybersecurity, to your knowledge?

21 **A.** Yes.

22 **Q.** Okay. Does that include any kind of training about the
23 physical security of a ballot-marking device?

24 **A.** There is cybersecurity training and also physical security
25 training.

1 Q. So do you distinguish between physical security and
2 cybersecurity?

3 A. Yes.

4 Q. Okay. Can you explain just briefly what differences you
5 see between those?

6 A. So before anybody --

7 MR. CROSS: Your Honor, I just object. This is
8 beyond the scope. We didn't ask him any questions about the
9 cybersecurity training for anyone.

10 MR. BELINFANTE: Your Honor, they did ask about
11 Dr. Halderman's report. They asked him about Wenke Lee and
12 whether he knew about ATI, I think it is called, the malware
13 that is so secretive it-deletes-itself-and-can't-find-it stuff.
14 They asked -- let's see if I can find more.

15 THE COURT: Does that deal with training on -- that
16 is all -- none of that really deals with training issues, if I
17 heard you correctly, or the questions.

18 MR. BELINFANTE: It doesn't deal with training. But
19 it does deal with the -- what the State does in terms of
20 addressing the issues that there was cross-examination about.
21 There were questions about Dominion and its cybersecurity
22 efforts.

23 THE COURT: Yeah. I just -- but you -- I guess it is
24 rather confusing because you started this set of questions
25 because you were asking, are election superintendents -- moving

1 on from this --

2 We can take this down.

3 And are election superintendents trained on issues
4 involving cybersecurity to your knowledge?

5 And then he says yes.

6 Then you say, does that include any kind of training
7 about the physical security of a ballot-marking device?

8 The answer, there is cybersecurity training and also
9 physical security training.

10 And then you asked, do you distinguish between them?

11 But I don't know how -- what -- referring to Wenke
12 Lee, how that really --

13 MR. BELINFANTE: I think it --

14 THE COURT: It may be there are issues arising from
15 Dr. Halderman's report.

16 MR. BELINFANTE: Let me try it this way, Your Honor.

17 THE COURT: It is not that there is something -- I
18 just think you need to -- it is not clear how you are setting
19 this up.

20 MR. BELINFANTE: Sure.

21 THE COURT: So if you want to just ask about the
22 training and the difference between those trainings and who
23 delivers the training, that is what you were asking about, as I
24 understand it. But suddenly we're into Dr. Halderman's report
25 and Wenke Lee when you have been asking about training.

1 MR. BELINFANTE: I think it all comes back to the
2 question of whether someone could use a ball point pen in the
3 back of a machine. He is testifying about training that is on
4 cybersecurity.

5 He drew a line between cybersecurity and physical
6 security. So that is why the question at issue is what is the
7 difference.

8 THE COURT: All right. That is fine. Ask that
9 question then. But it seemed like you were going in five
10 directions at once, and it was unclear.

11 MR. BELINFANTE: I think you have probably helped me
12 clear it up some too.

13 BY MR. BELINFANTE:

14 **Q.** So can you just explain to the Court when you say there is
15 a difference between cybersecurity and physical security what
16 you mean by that?

17 **A.** So when we talk to election superintendents specifically
18 about cybersecurity, generally what we are referring to is that
19 in order to -- for anybody to get access to the voter
20 registration system, so anybody in their office, the election
21 superintendent or otherwise, they have to undergo cybersecurity
22 training.

23 Separate from that when we talk about physical security of
24 the ballot-marking devices, that is where we get into seals,
25 the State Election Board rules about limiting access, and that

1 sort of thing.

2 Q. All right. Do you know if Georgia has a policy whether in
3 statute or rule or anything else that makes it -- that makes it
4 unlawful or otherwise wrong for someone to open and/or tamper
5 with a ballot-marking device without authority?

6 A. Yes.

7 Q. Okay.

8 MR. BELINFANTE: Can you pull up, just as a
9 demonstrative please, Code Section 21-2-580?

10 MR. CROSS: Your Honor, we'll stipulate that it is
11 illegal to do this.

12 MR. BELINFANTE: Okay. We can probably move through
13 a fair amount of these then.

14 In fact, if the Court will give me all of maybe
15 two minutes, I could probably shorten this by 10 or 15.

16 THE COURT: All right.

17 MR. BELINFANTE: If I can just confer with
18 plaintiffs' counsel real quick and maybe offer some
19 stipulations.

20 THE COURT: All right. Fine.

21 MR. BELINFANTE: Thank you.

22 **(A discussion ensued off the record.)**

23 MR. BELINFANTE: Thank you, Your Honor.

24 I think I can -- this has shortened it to some
25 extent. I think the parties agree -- and certainly I'm sure I

1 will be corrected, and invite that if I am wrong -- that
2 Georgia law in Code Section 21-2-581 prohibits the unauthorized
3 possession of voting machine keys.

4 That Georgia law in Code Section 21-2-582 makes it
5 illegal for persons to tamper with or damage BMDs or
6 tabulators.

7 That Code Section 21-2-582.1 makes it illegal to
8 alter, modify, or change any aspect of voting equipment without
9 the prior approval of the Secretary of State.

10 Is that acceptable?

11 MR. CROSS: Your Honor, we haven't studied these
12 statutes, but I take as a given that Mr. Belinfante has them
13 accurately.

14 What I would say is, Your Honor can take judicial
15 notice of any statute and interpret it. I don't have any
16 reason to think what he said is wrong.

17 MR. OLES: We concur.

18 MR. McGUIRE: We also do.

19 THE COURT: All right.

20 BY MR. BELINFANTE:

21 **Q.** Mr. Evans, is it your understanding, based on the
22 stipulation that you just heard me describe, that if someone
23 were to use a pen or any other device and open the back of a
24 BMD machine that that could be unlawful?

25 **A.** Yes.

1 Q. I think Mr. Cross had asked you --

2 MR. BELINFANTE: And if we could pull up on
3 Defendants' Exhibit 1242, the poll worker manual, Page 7.

4 BY MR. BELINFANTE:

5 Q. You were asked a series of questions about this Code
6 Section 21-2-267. Do you recall that? And it was dealing with
7 privacy of voters and so on.

8 A. Yes.

9 Q. All right. You were asked, as I recall, about certainly
10 the first sentence which talks about a curtain, screen, or door
11 in the upper part of each compartment or booth so that in the
12 marking thereof, they, meaning a voter, may be screened from
13 the observation of others.

14 Do you see that first sentence?

15 A. I do.

16 Q. Okay. Can you just read the second sentence that follows
17 that?

18 A. A curtain, screen, or door shall not be required.
19 However, for the self-contained units used as voting booths in
20 which direct recording DRE voting units or electronic ballot
21 markers are located if such booths have been designed so as to
22 ensure the privacy of the elector.

23 Q. Okay. Given that code section, to your knowledge, are
24 there counties that allow a voter to completely enclose
25 themselves off from view when voting on a ballot-marking

1 device?

2 **A.** To my knowledge, no county does that.

3 **Q.** Okay. In fact, if you read the next -- go ahead and read
4 the next sentence.

5 **A.** When practicable, every polling place shall consist of a
6 single room, every part of which is within the unobstructed
7 view of those present therein, and shall be furnished with a
8 guardrail or barrier closing the inner portion of such room,
9 which guardrail or barrier --

10 THE COURT: I think you're going to have to go a
11 little slower. Okay.

12 THE WITNESS: Apologies.

13 When practicable, every polling place shall consist
14 of a single room, every part of which is within the
15 unobstructed view of those present therein, and shall be
16 furnished with a guardrail or barrier closing the inner portion
17 of such room, which guardrail or barrier shall be so
18 constructed and placed that only such persons as are inside
19 such rail or barrier can approach within six feet of the ballot
20 box and voting compartments or booths or voting machines as the
21 case may be.

22 BY MR. BELINFANTE:

23 **Q.** In terms of the unobstructed view, who is supposed to have
24 the unobstructed view, to your understanding?

25 **A.** The -- those present therein.

1 Q. Okay. And what is the significance of the six feet
2 barrier there?

3 A. To allow the voter privacy.

4 Q. Okay. And so is it -- and just to -- because we were --
5 you were asked a series of questions about what it looks like
6 when people vote.

7 Is it -- to your knowledge, is it you have to be measured
8 at six feet from the edge of the BMD?

9 A. According to the code, somebody cannot get within six feet
10 to avoid infringing upon privacy.

11 Q. But someone could be at six-foot, two inches and be
12 consistent, is your understanding, with the law?

13 A. It would not violate this law.

14 Q. Okay. The -- you were also shown --

15 THE COURT: Could you just -- while we are on the
16 topic, because -- could you explain what -- what this really
17 means in practice or if you have actually any information as to
18 that when the first sentence says that the booth in -- the
19 self-contained units used as voting booths in which DRE voting
20 units or electronic ballots are located need to be designed so
21 as to ensure the privacy of the elector.

22 Just talk to me a little bit about what that means,
23 designed to ensure the privacy of the elector.

24 THE WITNESS: So the privacy of the voter has to be
25 maintained. So my personal understanding and opinion of this

1 is that some of this language in here is a little antiquated
2 when it talks about, you know, curtains and different things
3 like that. You used to see that more with older machines or
4 older equipment.

5 But when you get to the six feet portion, the only
6 people that are allowed to be within that voting area -- the
7 true two primary groups are -- or three, poll workers, voters,
8 and then also poll watchers.

9 And poll watchers are able to be within that space,
10 but I would say even for them this would say you can't get more
11 than -- you can't get any less than six feet or any -- you
12 can't get closer than six feet of a voter or do anything else
13 that would infringe upon the voter's privacy.

14 Does that kind of answer your question?

15 THE COURT: That's clear.

16 But I guess, do you have your own professional
17 assessment of what it means to have the booths designed to
18 ensure privacy of the elector or do you have any -- are there
19 any -- is there any guidance given by -- currently by the
20 department or by your office as to what that means?

21 THE WITNESS: So the way that I think about that is
22 essentially design the room such that the voters that are
23 standing in the check-in line to check in don't have a direct
24 view of the screen. So you can kind of design the layout of
25 the room such that you don't infringe upon any privacy.

1 I think it would also entail, you know, designing
2 shields and that kind of thing.

3 THE COURT: Because it says the booths have been
4 designed so as to ensure the privacy of the elector.

5 THE WITNESS: Uh-huh (affirmative).

6 THE COURT: And is there anything you have given --
7 that you know of where the Secretary of State's office has
8 given guidance as to the design of the booths themselves to
9 ensure privacy?

10 THE WITNESS: So with this particular equipment, we
11 did distribute with the initial distribution of the equipment
12 those blue screens that were shown earlier. I believe by --
13 during the exchange with Mr. Cross. So we have those.
14 Counties can then choose to do something different if they
15 want. Some counties, Fulton for example, have the metal
16 carriers that they use. But for our office we provided the
17 blue shields.

18 And then there is also --

19 THE COURT: Those shields are where? I'm sorry. I
20 just forgot.

21 THE WITNESS: They are the corrugated plastic -- the
22 blue corrugated plastic that goes around the machines.

23 MR. CROSS: Your Honor, just to help, if you flip to
24 Page 61 of Exhibit 1242, you can see a picture of that. It is
25 one of the things he looked at in my examination, if you have

1 the document.

2 THE COURT: All right. Is that it right now that is
3 on the screen?

4 THE WITNESS: Yes. That's right.

5 THE COURT: And the blue is -- oh, I see, the outer
6 shield.

7 THE WITNESS: Correct.

8 THE COURT: All right.

9 Thank you.

10 BY MR. BELINFANTE:

11 **Q.** Just to that point, can you read the last sentence of
12 21-2-267(a), which is on Page 7 of the poll worker manual?

13 **A.** In the case of direct reporting electronic, DRE, voting
14 units or electronic ballot markers, the devices shall be
15 arranged in such a manner as to ensure the privacy of the
16 elector while voting on such devices to allow monitoring of the
17 devices by the poll officers while the polls are open and to
18 permit the public to observe the voting without affecting the
19 privacy of the electors as they vote.

20 **Q.** Okay. And just for clarity again, when it says direct
21 recording electronic voting units or electronic ballot markers,
22 is the current Dominion equipment an electronic ballot marker?

23 **A.** Correct.

24 **Q.** Okay. Let's go back to -- I think Mr. Cross pointed out
25 Page 61 of the poll worker manual.

1 If a voter is standing in front of this device -- well,
2 first off, this is a ballot-marking device; is that correct?

3 **A.** Correct.

4 **Q.** Okay. And is this one that is used currently in Georgia
5 that is the subject of this litigation?

6 **A.** Correct.

7 **Q.** Okay. And a voter could be standing in front of the
8 ballot-marking device, correct, to exercise their -- to press
9 the touch screen and whatnot?

10 **A.** Correct.

11 **Q.** Okay. Looking at this, could a voter be standing in front
12 of -- and if a voter is standing in front of that
13 ballot-marking device -- and let's presume someone of average
14 height. I mean, we don't know how this is set up.

15 Would that also provide the voter privacy in terms of what
16 their choices were while still allowing poll workers to monitor
17 the devices?

18 MR. McGUIRE: Your Honor, I would object because from
19 this picture you can't tell is there a wall right behind this.
20 You just don't know the orientation. And I think that that
21 context is necessary to make this question non-objectionable.

22 MR. CROSS: I think it also calls for a legal
23 conclusion, Your Honor.

24 THE COURT: Well, let me just -- I think that the
25 facts -- factual description is really the more important one.

1 MR. BELINFANTE: Okay.

2 THE COURT: So if you -- I mean, you have to have the
3 assumptions of where somebody else is standing.

4 MR. BELINFANTE: Sure. Understood.

5 THE COURT: How much room there is to be able to have
6 a meaningful answer to that.

7 MR. BELINFANTE: I'll withdraw that question and try
8 another route.

9 BY MR. BELINFANTE:

10 Q. If a voter were to be voting on that machine and standing
11 in front of it, okay -- if someone were standing behind the
12 voter six feet, two inches away, given your -- well, let me
13 back up and ask this.

14 Have you ever been in a polling place in Georgia since the
15 current Dominion devices have been deployed on election day?

16 A. I'm usually pretty busy on election day.

17 Q. That's a fair point.

18 A. I have been in early voting locations.

19 Q. Does the Secretary send out employees to kind of go around
20 various polling locations?

21 A. Yes.

22 Q. Okay. And do those individuals report to you?

23 A. The individuals that would typically go out would be our
24 investigators, and they report to our chief investigator Sara
25 Koth.

1 Q. Okay. If an investigator doing these spot checks, I'll
2 call them, on election day were to discover a problem and
3 report it to the chief investigator, what happens then?

4 A. On many occasions, the chief -- or the chief investigator
5 will get in contact with me or somebody in our office.

6 Q. Okay. All right. So --

7 MR. CROSS: Your Honor, I'm sorry. Could we get
8 clarity on what we meant by discover a problem?

9 MR. BELINFANTE: Sure.

10 BY MR. BELINFANTE:

11 Q. If a chief investigator -- or not chief investigator.

12 If an investigator found something that they deem to be
13 potentially unlawful or just not in compliance with the code,
14 what would that investigator do?

15 A. It depends on the severity of the potential violation.

16 Q. Can you provide us some kind of spectrum, if you will?

17 A. Sure. So if they see that a sign is not posted, then on
18 many occasions they will notate that for a violation and tell
19 the poll manager about it so they get the proper sign posted.

20 Q. Okay. And if there was something perhaps more
21 troublesome -- or let me ask it this way. At what point is it
22 your understanding that information would flow to you?

23 A. If it were something that were impeding the ability to
24 vote, then I would find out pretty quickly.

25 Q. All right.

1 Director Evans, do you recall being shown a video of your
2 testimony to the senate ethics committee?

3 **A.** I do.

4 **Q.** Okay. And when was that committee hearing, if you can
5 recall?

6 **A.** I believe it was early November of 2023.

7 **Q.** All right. Do you recall responding to a question from
8 Senator Jones from the Augusta area during that ethics
9 committee hearing?

10 **A.** Yes.

11 **Q.** Okay.

12 MR. BELINFANTE: Can we pull up the video of the
13 ethics committee hearing starting at one hour, 22 minutes,
14 47 seconds into the hearing?

15 Go ahead.

16 **(Playing of the videotape.)**

17 MR. BELINFANTE: Pause it, please.

18 BY MR. BELINFANTE:

19 **Q.** Director Evans, who asked you that question?

20 **A.** One of the senators on the committee.

21 **Q.** Is that Senator Jones?

22 **A.** I believe so.

23 **Q.** Okay. Let's see what your answer was, because I think you
24 were provided a portion of it. Let's see what your answer was.

25 **(Playing of the videotape.)**

1 MR. BELINFANTE: Stop it, please.

2 BY MR. BELINFANTE:

3 Q. Do you agree with -- sitting here today, do you agree with
4 what you said to the senate committee at that time?

5 A. As far as the things that were given, yes. I think
6 Mr. Cross mentioned it was in an attorney's office.

7 MR. BELINFANTE: Okay. We can go ahead and keep
8 playing.

9 (Playing of the videotape.)

10 MR. BELINFANTE: Pause it, please.

11 BY MR. BELINFANTE:

12 Q. What would constitute unauthorized access as you were
13 discussing here?

14 A. Somebody breaking into the room where the election
15 management server is would be an example.

16 MR. CROSS: Your Honor, I just object to the extent
17 we're calling for a legal conclusion.

18 MR. BELINFANTE: I think I said what his
19 understanding is. I'm happy to limit the answer to nonlegal.
20 Does that --

21 MR. CROSS: Yes.

22 THE COURT: All right.

23 BY MR. BELINFANTE:

24 Q. And you said that -- is it your understanding that there
25 are laws determining what constitutes authorized access and

1 unauthorized access?

2 **A.** Yes.

3 MR. BELINFANTE: Okay. We can keep playing.

4 **(Playing of the videotape.)**

5 MR. BELINFANTE: We can pause it and actually take it
6 down.

7 BY MR. BELINFANTE:

8 **Q.** So is it your understanding that if someone lacked
9 authority to access the entirety of the election system that
10 you just described, scanners, precinct scanners, BMDs,
11 et cetera, that that -- if they lacked authority to do so, is
12 it your understanding that would be in violation of Georgia
13 law?

14 **A.** Yes.

15 **Q.** And I will say we have stipulated that machines and --
16 somebody please correct me on this if I get the dates wrong --
17 that the machines in Coffee County in particular were -- well,
18 let me back up. Let me back up before I -- I don't even need
19 to get into that.

20 You said that if someone breaks in, then the equipment can
21 be taken and pulled out and not used.

22 Do you recall saying that?

23 **A.** Yes.

24 **Q.** Is it important, therefore, to know as soon as possible if
25 and when there has been an unauthorized access?

1 **A.** Yes.

2 **Q.** Let's talk about absentee ballots. You were asked a
3 series of questions about those. Specifically whether someone
4 casting an absentee ballot would still have their ballot cast
5 on a BMD because the poll worker or someone would enter the
6 information.

7 Do you recall that general line of questioning?

8 **A.** Generally, yes.

9 **Q.** Okay. Is it your understanding -- well, under what
10 circumstances would that happen where a poll worker, a county
11 official would take an absentee hand-marked absentee ballot,
12 use it to vote on an BMD?

13 **A.** So there are some instances where a ballot will need to be
14 duplicated because it is -- it can't be read by the scanner for
15 a variety of reasons.

16 **Q.** Could you just give us some examples of what those reasons
17 might be that it can't be read by the scanner?

18 **A.** Sure. So one of the -- one of the examples, all ballots
19 that come back from UOCAVA voters who receive their ballot
20 electronically, those have to be duplicated.

21 If a ballot gets torn in the mail stream or at some point
22 in the opening process, then that would need to be duplicated.

23 If there are marks on the ballot that somehow, you know,
24 keep the ballot from being read by the scanner and marks in the
25 timing marks, then that would be a reason why the county

1 election officials would need to duplicate that onto a ballot
2 that could be readable.

3 **Q.** Okay. To your knowledge, is there any county in Georgia
4 that adopts, as a policy, that every hand-marked paper absentee
5 ballot will be converted, as you just described, to a BMD
6 ballot?

7 **A.** There are counties that have chosen to use ballot-marking
8 devices for duplication.

9 **Q.** For duplication?

10 **A.** Yes.

11 **Q.** Okay. And duplication under circumstances like you just
12 described, is that what you are -- is that what you mean by
13 duplication?

14 **A.** Yes.

15 **Q.** Okay. I guess I didn't ask the right question or I didn't
16 ask it clearly.

17 Is it your understanding or do you have any knowledge of a
18 county that just as a policy says every absentee ballot that
19 comes in we're going to have someone complete it, a copy of it,
20 on a ballot-marking device and that is what we're going to use?

21 **A.** No.

22 **Q.** Okay. Did Fulton County have that policy -- or you said
23 you don't know of any. Never mind.

24 You were asked earlier about pilot elections in 2019 using
25 hand-marked paper ballots -- municipal elections.

1 Do you recall that?

2 **A.** I do.

3 **Q.** Okay. And I probably shouldn't have said that.

4 In 2019, what type of elections were those?

5 **A.** Municipal elections.

6 **Q.** Okay. And in terms of -- did Fulton County, while you
7 were there, work with and administer any municipal elections?

8 **A.** Yes.

9 **Q.** Okay. And did that occur while you were the, I believe it
10 was, chief deputy director?

11 **A.** Elections chief.

12 **Q.** Elections chief.

13 Did that happen under your watch where Fulton County
14 administered municipal elections?

15 **A.** Yes.

16 **Q.** Okay. Are the ballots -- can you just tell the Court --
17 we talked about this, I think, with Escambia County.

18 But for Georgia, can you compare the size -- or no, we
19 talked about that in Georgia as well. I can move on from that.

20 Do you have any knowledge of comments made from the Cobb
21 County election director after the 2019 pilot project involving
22 Cobb County?

23 **A.** I don't recall.

24 **Q.** Okay. Let's look at Curling Plaintiffs' Exhibit 605. It
25 was in your notebook. It is the Dominion voting matter.

1 Do you have it up there still, the notebook? Or this one
2 may have been a free copy -- I mean, by free, I mean free
3 standing.

4 MR. CROSS: We didn't charge for it either, Josh.

5 MR. BELINFANTE: I'm sure we will see it somewhere.

6 THE WITNESS: I do have it.

7 BY MR. BELINFANTE:

8 **Q.** If you could turn to, on that exhibit, Page 27 of the
9 document, which is about the back of the fourth page. This
10 Bates label is State Defendants' 48159.

11 **A.** Page 27?

12 **Q.** Yes.

13 **A.** Okay.

14 **Q.** Do you recall being asked a series of questions about this
15 document?

16 **A.** I do.

17 **Q.** All right. First, the document talks about tabulator
18 security keys.

19 What is a tabulator, again, in the context of the Dominion
20 voting equipment?

21 **A.** So in the context -- so a tabulator is the scanner
22 essentially.

23 **Q.** Okay.

24 **A.** I believe -- I believe there are some circumstances where
25 it might also reference a BMD. But it is primarily the -- my

1 understanding, the scanner.

2 **Q.** All right. And is that tabulator or scanner used to
3 tabulate both hand-marked paper absentee ballots and BMD cast
4 printed paper ballots?

5 **A.** Yes.

6 **Q.** Okay. You were asked about why the State does not adopt
7 Dominion's suggestion here or recommendation of using unified
8 security keys -- of not using unified security keys in a real
9 election.

10 Do you recall that?

11 **A.** I do.

12 **Q.** Okay. Why does the State choose not to do that?

13 MR. CROSS: Objection, Your Honor. Foundation. It
14 is not clear that he has any involvement in that decision.

15 BY MR. BELINFANTE:

16 **Q.** Do you have -- as the elections director, if you wanted to
17 have the State utilize unified tabulator security keys, would
18 that fall under your job descriptions?

19 **A.** I would certainly be a part of the discussion.

20 **Q.** Have you -- and so would you, sitting here today,
21 recommend that the State adopt Dominion's recommendation not to
22 use unified security keys in a real election?

23 **A.** No.

24 **Q.** Why?

25 MR. BELINFANTE: You can take it down.

1 THE WITNESS: So my understanding is that what that
2 would do is require a unique passcode for every tabulator. In
3 a deployed -- in a large election in Georgia, we're looking at
4 around 9,000 scanners in the State. And the risk of being able
5 to make sure that passwords got from our office to the election
6 superintendents to poll workers, who at the time of the
7 creation of the election project, election superintendents may
8 not even know who their poll workers are going to be yet.

9 That, in my opinion, is ripe for confusion and
10 potentially the inability to be able to open the equipment on
11 election day.

12 BY MR. BELINFANTE:

13 Q. Okay. If the State were delayed in opening equipment on
14 election day, what would a consequence of that be, based on
15 your experience?

16 MR. CROSS: Objection, Your Honor. Speculation. In
17 fact, he said he has not even been to a precinct on election
18 day in Georgia when he was asked.

19 MR. BELINFANTE: I think, Your Honor, he said he
20 was -- because he was administering them either in Fulton
21 County or with the State, he can testify about what would
22 happen if a state -- well, let me ask this.

23 THE COURT: I think, you know, I know what you are
24 getting at. But I think you have to -- he's got to develop a
25 little bit more of a foundation for that because it is really

1 just rank opinion based on not having observed it.

2 Perhaps the contrary situation where he -- where
3 there have been or his having looked or actually investigated
4 it. So he is just saying this is my -- you know, I understand.
5 This is his reaction as -- based on his work and his -- he
6 doesn't want to run the risk, if I understand his testimony,
7 that people will lose the password, won't have a password.

8 THE WITNESS: Correct.

9 THE COURT: Is that right?

10 THE WITNESS: Correct, Your Honor.

11 THE COURT: But have you investigated this by
12 chatting with any of your colleagues in other states whether
13 they all use -- whether they use a password or whether they
14 are -- I mean, it may not be the same situation. So you may
15 never have talked with anyone about it.

16 THE WITNESS: I know what was done in Escambia
17 County, Florida; and then I also had very limited conversation
18 with -- I think I referenced on Wednesday the state elections
19 director in Colorado, because it is my understanding I believe
20 that they do encourage the use of this feature.

21 THE COURT: Of having separate passwords?

22 THE WITNESS: Correct.

23 THE COURT: Rather than one key?

24 THE WITNESS: Correct.

25 And the reason for that would be that they have

1 many -- fewer scanners because they are central scan.

2 When I say central scan, they don't scan ballots at
3 precincts because they primarily vote by mail.

4 MR. CROSS: Your Honor, we'll just object to that as
5 hearsay, and Your Honor can give it whatever weight you want.

6 THE COURT: Well, I think --

7 MR. CROSS: I don't want to object to anything you
8 ask. That is the challenge.

9 THE COURT: I understand. I understand. But he is
10 reporting what he understood to be so. And that influenced his
11 judgment, whether it is true or not true.

12 MR. BELINFANTE: That would be our response for the
13 record, Your Honor. It explains conduct.

14 BY MR. BELINFANTE:

15 Q. During the summer of 2020, that is when you transitioned
16 from Fulton County to the State; is that correct?

17 A. Correct.

18 Q. Okay. And do you recall primary election day in 2020?

19 A. I do.

20 Q. Okay. Were you at Fulton County or the State on actual
21 primary election day in 2020?

22 A. Fulton County.

23 Q. Okay. Do you recall in Fulton County there being lines --
24 significant lines on election day for persons to vote?

25 A. Yes.

1 Q. Do you recall if any of those lines were caused by late
2 opening poll locations?

3 A. Yes.

4 Q. And just for the record, so significant lines -- or did
5 polling locations open late in Fulton County in the 2020
6 general primary?

7 A. Yes.

8 Q. Okay. And did those same locations have long lines?

9 A. Many.

10 Q. Okay. You were in the Secretary's office after the 2020
11 general election. Or excuse me, after the 2020 primary.

12 During that time, were you -- did you -- were you aware of
13 a lawsuit known as *Anderson v. Raffensperger*?

14 A. I've heard it. I can't tell you the content of it.

15 Q. Okay. If I told you that it involved the State being sued
16 based on lines at polling places, does that ring a bell?

17 MR. CROSS: Your Honor, I'm not sure how this relates
18 to the scope of cross.

19 THE COURT: Well, he doesn't seem to remember.

20 MR. BELINFANTE: That is fine. That is fine. We can
21 talk to others about that one.

22 BY MR. BELINFANTE:

23 Q. As elections director, though, are you concerned about
24 having voters wait in line to vote on election day?

25 A. Yes. That is something we work to prevent.

1 Q. Okay. And as elections director, are you concerned about
2 voters having to wait in line on in-person advanced voting
3 election days?

4 A. Yes.

5 Q. Okay. Do you want to prevent that?

6 A. Yes.

7 Q. Okay.

8 MR. BELINFANTE: Your Honor, I note that it is 12:05.
9 I'm about to get into a different line of questioning. I'm
10 happy to continue. I just wanted to see if you wanted to break
11 now for lunch or just keep going.

12 THE COURT: How long?

13 MR. BELINFANTE: With the witness, I would say I'm
14 probably just over halfway done.

15 THE COURT: Well, why don't we get a little further?

16 MR. BELINFANTE: Sure. Okay.

17 THE COURT: If you get to a resting point, then again
18 we'll reassess.

19 MR. BELINFANTE: Okay.

20 BY MR. BELINFANTE:

21 Q. Do you recall being asked about VVSG 2.0?

22 A. I do.

23 Q. And for the record again, what is VVSG 2.0?

24 A. Voluntary voting system guidelines that the voting system
25 testing laboratories utilize when they are reviewing equipment.

1 Q. All right. Do you still have the notebook up there with
2 the case on it and then it says 5.17?

3 A. I do.

4 Q. Before you open that, who issues the voluntary voting
5 system guidelines or VVSGs?

6 A. The Election Assistance Commission.

7 Q. Could you turn to Tab 4 of that notebook, the 5.17
8 notebook.

9 A. I'm there.

10 Q. Do you recall a series of questions about this document
11 here?

12 A. I do.

13 Q. All right. And again, what is the date on that document?

14 A. Tuesday, January 9, 2024.

15 Q. Okay. So -- and then you were asked a series of questions
16 about the second full paragraph beginning with on February 10,
17 2021.

18 Do you recall that?

19 A. I do.

20 Q. Can you read the second sentence?

21 THE COURT: What is -- is there a document number?

22 Because I am --

23 MR. BELINFANTE: I just confirmed it was not entered
24 into evidence. Your Honor, I'm happy to actually enter it into
25 evidence if that would make things easier.

1 THE COURT: Well, I just need to know what we're
2 looking at, at the moment.

3 MR. BELINFANTE: It was in the 5.17 notebook, if the
4 Court has that, at Tab 4.

5 Do we have that that we can --

6 THE COURT: 5.17?

7 MR. BELINFANTE: Yeah. We have marked it as
8 Defendants' Trial Exhibit 1245. It might be easier if I -- I'm
9 happy to admit it.

10 THE COURT: Is there any objection?

11 MR. CROSS: No, Your Honor.

12 THE COURT: Then go ahead and admit it.

13 MR. BELINFANTE: We've got it marked. It is 1245.

14 BY MR. BELINFANTE:

15 Q. Can you read that second sentence there from Defendants'
16 Trial Exhibit 1245?

17 A. Second sentence, second paragraph?

18 Q. Yes. Yes. Thank you.

19 A. In November and December of 2022, the VVSG 2.0 was fully
20 ready to be used for testing with the accreditation of both
21 Voting System Test Labs, VSTL by the EAC to test to this new
22 standard.

23 Q. Okay. Is there -- based on the timing of that, November
24 and December of 2022, to your knowledge is there equipment
25 currently being used in the United States that has not been

1 tested at the VVSG 2.0 level?

2 **A.** I'm not aware of any equipment that has been certified
3 under 2.0.

4 **Q.** Okay.

5 MR. BELINFANTE: We can take this down.

6 BY MR. BELINFANTE:

7 **Q.** Let's go back to the poll worker manual, Defendants'
8 Exhibit 1242.

9 Do you recall being asked --

10 MR. BELINFANTE: We can turn to Page 24 and 25.

11 BY MR. BELINFANTE:

12 **Q.** Do you recall Mr. Cross asking you whether or not these
13 two pages of the manual included the words seals or gave
14 particular instructions on what to do with seals?

15 Do you recall that discussion?

16 **A.** I do.

17 **Q.** Okay. Let's flip back to Page 7 of the same poll worker
18 manual under the last set of statutes there, 21-2-374,
19 et cetera.

20 Can you just read that first bullet point?

21 **A.** Prior to the opening of polls, the poll manager will break
22 the seal on each voting unit, turn on each unit, certify that
23 each unit is operating properly, and set to zero.

24 **Q.** Okay. And is this part of the training that the poll
25 worker -- excuse me, county election superintendents receive?

1 **A.** Yes.

2 **Q.** Okay. Can you turn the page to Page 8?

3 Can you take a look and read that second boxed piece
4 there?

5 **A.** Verified all ballot boxes are empty, locked, and sealed.

6 **Q.** Okay. Is that an obligation of poll -- well, it is your
7 understanding that that is an obligation of poll managers when
8 they open the polls?

9 **A.** Yes.

10 **Q.** And what is the title of this page of the manual?

11 You can -- yeah, you have got it.

12 **A.** Polling place preparation. Opening the polls checklist.

13 **Q.** All right. Let's turn to Page 16 of the poll worker
14 manual. Specifically looking at the touch recap -- touch
15 screen recap sheet down at the bottom there.

16 What is in that middle column under touch screen recap?

17 **A.** Side compartment seal numbers.

18 **Q.** Okay. So the seal numbers, what is -- why is that there
19 or what is that -- what is the effect of that being on the
20 touch screen recap sheet?

21 **A.** To list the numbers that are on the seals that are on the
22 machine so that the poll workers can verify them.

23 **Q.** Okay. Do you see any other place on the touch screen
24 recap where seals are something that is to be written down?

25 **A.** Yes.

1 Q. Where?

2 A. There's, starting from the left, the opening case seal
3 number, opening power printer seal number. And then the ones
4 that we just referenced. There's also for closing the polls
5 compartment seals, closing case seal number, closing power
6 printer seal number.

7 Q. And who is to sign this form?

8 A. The poll manager and two assistant managers.

9 Q. All right. Let's go to the one that is to its right, the
10 scanner recap sheet.

11 MR. BELINFANTE: If we could zoom in on that.

12 BY MR. BELINFANTE:

13 Q. Do you see any portion here that is supposed to address
14 seals?

15 A. Yes.

16 Q. Where?

17 A. Starting from the top, there are the columns for the L&A
18 seals from the front. And then over through each column, the
19 front lock lid seal -- back lock -- or back lock lid seal, and
20 so on. And then down below that are additional places for
21 seals to be recorded.

22 Q. Okay. Who is to sign that document?

23 A. The poll manager and two assistant managers.

24 Q. All right.

25 MR. BELINFANTE: Can you zoom out a little bit there?

1 And -- okay. Yeah.

2 BY MR. BELINFANTE:

3 Q. Now, that is showing the supplies. Let's turn to --

4 THE COURT: What is the exhibit number again?

5 MR. BELINFANTE: It is Defendants' Exhibit 1242, Your
6 Honor.

7 BY MR. BELINFANTE:

8 Q. That is talking about the supplies. Let's look at Page 30
9 of the poll worker manual.

10 A. Okay.

11 Q. What is this page conveying to potential poll workers and
12 certainly -- or potential poll workers and others?

13 A. So this page covers information about the touch screen
14 recap sheet and the scanner recap sheets.

15 Q. So does it provide an actual explanation of the documents
16 that we just looked at?

17 A. Yes.

18 Q. Okay. Can you read the first bullet point under touch
19 screen recap sheet?

20 A. This form is used to verify the touch screens were sealed
21 when the polls opened and closed on election day. This form
22 also provides a summary of the printed ballots on election day.

23 Q. If you could go down to the fifth bullet point starting
24 with when polls close.

25 MR. CROSS: Your Honor, just briefly, object to

1 relevance. There is no foundation this witness knows whether
2 any of these forms have ever been completed. None have been
3 produced. So I'm not sure what the point of this is if they
4 are not going to be used.

5 MR. BELINFANTE: Two things, Your Honor. One, this
6 was a question brought by Mr. Cross. I'm trying to point out
7 that the poll worker manual -- I'm guessing the implication was
8 ineffective because in two pages it doesn't have seals.
9 This -- I'm walking through and showing where it is in the poll
10 worker manual, so I think any objection would be waived.

11 Two, in terms of relevance, it shows State efforts in
12 terms of what the expectation is on seals. If they want to say
13 that seals are irrelevant, I think we could probably cut down a
14 lot of the testimony we've already heard.

15 And, three, the point that he can certainly argue and
16 has on cross-examination whether the documents have been
17 provided back to the State and what the State does with them.

18 THE COURT: Could I see the manual -- the manual
19 again? I know I saw it, but I'm not sure ...

20 I have it. The latest update was May of '21?

21 MR. BELINFANTE: That is the one we're using, yes,
22 Your Honor. And I believe that is the latest update.

23 THE COURT: Let me just ask you this: Do you have
24 any knowledge that these are actually being completed -- these
25 forms that are referenced?

1 THE WITNESS: It is the county's responsibility to
2 make sure that they are completed. I know there are instances
3 where they are not completed properly.

4 But generally, yes, these are the forms that are
5 used.

6 THE COURT: Have you ever reviewed them, actually
7 be -- any sort of sampling of them when you have gone out to
8 visit counties?

9 THE WITNESS: We have received forms back and have
10 reviewed them -- a sampling. Our office has done that, yes.

11 THE COURT: Have you yourself?

12 THE WITNESS: Yes, I have looked at a sampling.

13 THE COURT: And where was that from?

14 THE WITNESS: I believe that they would have been
15 from the November 2022 election.

16 THE COURT: So is the process for -- is the -- is the
17 county required to send back the forms or is this just -- this
18 is sort of a suggested management tool that they will use and
19 maybe somebody may ask them to send in at some point?

20 THE WITNESS: So on the top right of the forms, it
21 tells them -- because these are like triplicate forms. So it
22 says where they have to --

23 THE COURT: So I'm just looking for the page for the
24 form on the top right. Can you read that -- from what page is
25 it? Can you see from the --

1 THE WITNESS: So one copy goes to the Secretary of
2 State. One copy goes to the clerk of superior court. And I
3 believe another copy stays with the election superintendent.

4 THE COURT: Does it say that on the form you have in
5 front of you?

6 THE WITNESS: I'm reading the very small print that
7 is on the bottom.

8 THE COURT: I see.

9 And what is the page from that?

10 THE WITNESS: This is Page 30.

11 THE COURT: Page 3 or 30?

12 THE WITNESS: 30.

13 THE COURT: So the language you read came from the
14 top right corner of that page? Is that what you are saying?

15 THE WITNESS: The -- yes. The top right corner of
16 that page informs the county where to send the documents, the
17 copies.

18 THE COURT: Okay. I'm going to allow counsel to
19 proceed.

20 MR. BELINFANTE: Thank you, Your Honor.

21 BY MR. BELINFANTE:

22 Q. We can take that -- well, I think the question -- yeah, we
23 were back on this, and I was asking about bullet points.

24 What is -- looking, if you could, because I think this is
25 where the question interrupted you.

1 Director, could you just read that second highlighted
2 bullet point there.

3 **A.** When the polls close, the poll workers will verify the
4 opening seals are intact. A checkmark should be placed in the
5 compartment seals verified/intact column. The closing seal
6 numbers and closing count should be recorded for each touch
7 screen in use.

8 **Q.** Let's go down to the scanner recap sheet heading there.
9 And can you read the first bullet point there?

10 **A.** This form is used to verify the scanner was sealed when
11 the polls opened and closed during the election. This form
12 also provides a summary of the vote counts during the election.

13 **Q.** Okay. What about the fifth bullet point there? What does
14 that information convey?

15 **A.** The seal number must be provided for the items below:
16 Front and back lock lid, ballot box, poll worker and
17 administrator memory card slots, scanner lock, and emergency
18 bin.

19 **Q.** All right. And is that reflected in the scanner recap
20 sheet document, which is also on the page at the bottom right
21 that we looked at earlier?

22 **A.** Yes.

23 **Q.** All right.

24 MR. BELINFANTE: Your Honor, I just have two more of
25 these that should move pretty quickly.

1 BY MR. BELINFANTE:

2 Q. Can you turn to Page 96 of the document?

3 What is the heading of this document?

4 A. Closing the polls election forms.

5 Q. Okay. Can you read the second bullet point under touch
6 screen recap sheet?

7 A. When the polls close, the poll manager will verify the
8 seals are intact. A checkmark should be placed in the
9 verified/intact column. The closing count and closing case
10 serial numbers should be recorded.

11 Q. All right. And how about the scanner recap sheet
12 provision there? Can you read the second bullet point under
13 that?

14 A. When the polls close, the poll manager will verify the
15 seals are intact. The closing count should be recorded.

16 Q. As the election director for the state of Georgia, is it
17 your expectation that these provisions will be followed?

18 A. Yes.

19 Q. Okay. Let's look -- and that goes for -- you know, the --
20 those two.

21 Let's look again at Page 98.

22 What does this document or this portion of the poll worker
23 manual address?

24 A. A portion of what to do when closing the polls.

25 Q. And can you read the second to last bullet point on that

1 page?

2 **A.** Make sure all machines are sealed at the end of the day.

3 MR. BELINFANTE: All right. Your Honor, my next
4 series of questions goes to a different topic, so I'm happy to
5 keep going or take a break?

6 THE COURT: How long is that topic?

7 MR. BELINFANTE: It is going to be similar. We are
8 going to go through some State Election Board rules.

9 THE COURT: Why don't we take a break?

10 MR. BELINFANTE: I thought you might want to. I get
11 the dry witnesses sometimes.

12 THE COURT: All right.

13 MR. BELINFANTE: You're not dry. The topic is dry.

14 THE COURT: Let's start at ten after 1:00.

15 You're excused.

16 **(A lunch break was taken.)**

17 THE COURT: Go ahead and proceed.

18 MR. BELINFANTE: Thank you, Your Honor.

19 BY MR. BELINFANTE:

20 **Q.** Director Evans, right before we left, we had walked
21 through the poll worker manual and shown various places where
22 seals and sealing election equipment was addressed.

23 To your knowledge, are those requirements or those
24 provisions about seals reflected in SEB rules?

25 **A.** Yes.

1 Q. Okay. To your knowledge, what happens if a county is
2 found to have potentially violated a State Election Board rule?

3 A. The case would get presented to the State Elections Board
4 and the State Elections Board would make a determination on the
5 penalty for that.

6 Q. Okay. You were asked by Mr. Cross, I believe, about
7 whether you were aware that voter cards that are used in the
8 Dominion BMDs in Georgia can be counterfeited so that they
9 allow unlimited voting.

10 Do you recall a conversation like that?

11 A. I do.

12 Q. What would happen -- or at least in terms of your
13 understanding, if a voter tried to vote twice in a Georgia
14 election, would the system -- is it set up to be able to detect
15 that?

16 MR. CROSS: Your Honor, depending on what he is
17 asking for, he set it up with reference to a cybersecurity and
18 computer science finding. He can't speak to that.

19 MR. BELINFANTE: And he can't answer the question
20 that was posed. He did answer, so I think now he can explain
21 his answer. And specifically, we can look at the transcript.
22 It was 247, 21 and 23.

23 He can explain his answer.

24 MR. CROSS: What was the Q and A, Josh?

25 MR. BELINFANTE: I'm sorry. Yeah, it's, are you

1 aware that voter cards that are used in Dominion BMDs can be
2 counterfeited so they allow unlimited voting?

3 The question is, what happens if a Georgia voter
4 tries to vote twice?

5 MR. CROSS: I thought he testified he wasn't familiar
6 with this. There is no foundation for him to respond at all.
7 And he would be speculating, and he doesn't have the expertise
8 to answer that.

9 THE COURT: So what was his answer again?

10 Could you read the answer.

11 MR. BELINFANTE: That part I don't have, Your Honor.
12 That would be the wise thing. I do have it pulled up, though.
13 It will take me just a couple of seconds if I can figure out
14 page up versus page down.

15 If anybody wants to beat me to it, it is 247, 21 to
16 23.

17 Answer: I don't -- let's see.

18 Question: Were you aware you can use the same voter
19 card to vote --

20 THE COURT: Go a little slower, please.

21 MR. BELINFANTE: Question: Were you aware that voter
22 cards that are used in the Dominion BMDs in Georgia can be
23 counterfeited so that they allow for unlimited voting? You can
24 use the same voter card to vote as many times as you want?
25 Were you aware of that?

1 Answer: Not aware.

2 THE COURT: Now you want to ask him --

3 MR. BELINFANTE: If there is a provision in the --
4 perhaps inartfully asked, the question, having looked at that
5 would be, is the Georgia election system as you understand it
6 set up in a way to detect a single Georgian from voting --

7 THE COURT: Well, it is very leading, what you're
8 asking him.

9 MR. BELINFANTE: Well, I was responding to you, Your
10 Honor.

11 MR. CROSS: We object on that basis too.

12 MR. BELINFANTE: If the Court would allow me at least
13 that subject, then I can try to --

14 THE COURT: All right. You can ask the subject, but
15 please -- I've been sort of just -- because we need to make
16 progress, I've been letting any leading questions go by, but it
17 is kind of -- that would be the arch type of --

18 MR. BELINFANTE: Understood.

19 BY MR. BELINFANTE:

20 **Q.** Director, do you have an understanding as to whether
21 Georgia law allows a single voter to vote twice in the same
22 election?

23 **A.** Voting twice would be a violation of Georgia law.

24 **Q.** Are there methods to set up within the election system to
25 detect a voter who may attempt to try to vote twice?

1 MR. CROSS: Just to be clear, we're talking
2 procedural methods; right?

3 MR. BELINFANTE: Correct. I'm not getting into
4 cybersecurity. We'll see what his answer is, but I think --
5 BY MR. BELINFANTE:

6 Q. But yeah, you can answer.

7 A. Yes.

8 Q. What are the methods by which Georgia attempts to detect
9 whether someone is voting twice in the same election?

10 A. So there are multiple. One would be to try to prevent
11 somebody from being able to say, for example, put multiple
12 sheets into a scanner. A BMD ballot is one 8 and a half by
13 11 sheet of paper. So if a poll worker were to see somebody
14 approaching with two sheets of paper to scan through a precinct
15 scanner, which can only scan one at a time and that person had
16 two, then that would be one point where it could be detected
17 and prevented.

18 There are other ways that if somebody were to attempt to
19 vote twice or did vote twice that we would detect it. We --
20 after federal general elections, through our membership in
21 ERIC, they provide us with an in-state report of potentially
22 people with duplicate registrations who may have cast a ballot
23 under each registration.

24 THE COURT: But that is really for people who are
25 voting in two different states, isn't it?

1 THE WITNESS: Well, it is two different reports.
2 There's an in-state report, and then the one that is probably a
3 little bit better known is the one that compares our voter list
4 against other states' voter lists. So that would be another
5 avenue to capture somebody if they voted in two states.

6 But we also get a report that would detect
7 potentially somebody who had duplicate registrations and voted
8 under each registration.

9 THE COURT: So you are saying like I was registered
10 in Fulton and in DeKalb, or you are saying that I registered
11 twice in Fulton?

12 THE WITNESS: So there are things in place to prevent
13 duplicate registrations. But in the event that somebody were
14 to have duplicate registrations -- and many times that is due
15 to clerical error -- if somebody were to know that and attempt
16 to vote under each registration, then we have a method in place
17 to be able to try to identify that so we can investigate it.

18 THE COURT: So how often does that happen?

19 THE WITNESS: That is very rare.

20 THE COURT: Okay.

21 BY MR. BELINFANTE:

22 **Q.** Looking at election day itself, could we pull up the poll
23 worker manual, Defendants' Exhibit 1242, and turn to Page 16.

24 Do you see that ballot recap sheet at the top?

25 **A.** I do.

1 Q. Are you familiar with the ballot recap sheet?

2 A. I am.

3 Q. What does it measure?

4 A. So it is used to reconcile at the end of election night.
5 So poll workers will use this form to reconcile their numbers
6 at the end of election night.

7 Q. Okay.

8 A. And what I mean by that is there is a spot at the bottom
9 to put Poll Pad check-ins. There are places to indicate how
10 many ballots were printed from the ballot-marking devices.
11 There's places to put the number of ballots scanned by the
12 scanner and then to make sure that those numbers match. And if
13 they don't, to indicate -- or to indicate also spoiled ballots
14 and that kind of thing, so it would be an accounting of all the
15 ballots.

16 Q. And who signs that document?

17 A. The poll manager and two assistant managers.

18 Q. And looking at the top right -- I know it is blurry -- but
19 are you able to make out -- I'm sorry. Same document. Real
20 blurry.

21 Are you able to make out or do you know where the ballot
22 recap sheets are to be returned, or at least a copy of them?

23 A. So I believe it is the clerk of the superior court, the
24 elections superintendent, and the Secretary of State.

25 Q. Okay. Thank you.

1 Do you have still in front of you a notebook that has your
2 name on it and January 23rd, 2024?

3 **A.** I do.

4 **Q.** Could you turn to Tab 4.

5 MR. BELINFANTE: And, Mr. Cross, there's two exhibit
6 stickers. I think we admitted -- or it was admitted as Curling
7 Plaintiffs' 100 as opposed to 4, but I can't recall.

8 MS. KAISER: It is the yellow one.

9 MR. BELINFANTE: It is the yellow one? All right.

10 BY MR. BELINFANTE:

11 **Q.** Referring you to Curling Plaintiffs' Exhibit 100, do you
12 recall a series of questions about this?

13 **A.** I do.

14 **Q.** All right.

15 THE COURT: I'm sorry.

16 Which tab was it in?

17 MR. BELINFANTE: Tab 4.

18 THE COURT: Okay. Fine. Thank you.

19 MR. BELINFANTE: Mr. Montgomery, could you -- are you
20 able to black out the voter's personal information up there?

21 Yes. Perfect. Thank you.

22 BY MR. BELINFANTE:

23 **Q.** You were asked about this email from, one, Laura Jones,
24 and understanding that it was admitted not for the truth of the
25 matter asserted, meaning we don't know if this happened or not.

1 But if you go down to her narrative on the one, two,
2 three, four, fifth line, the sentence starts, one of our
3 machines.

4 Do you see that?

5 **A.** Yes.

6 **Q.** All right. Can you just read that sentence and the next?

7 **A.** One of our machines did show one ballot had been cast on
8 it. We did not use this machine, but we did use all the other
9 machines that had the elections database door open.

10 **Q.** Was it proper not to -- based on your understanding of
11 what county election officials are to do, was it proper not to
12 use the machine that showed one ballot had been cast on it?

13 **A.** I believe that was a proper way to proceed.

14 **Q.** All right. And this email came in, it looks like, on
15 November 5 of 2020.

16 Do you see that?

17 **A.** I do.

18 **Q.** Okay. Do you recall, roughly, was that at or around the
19 time of the 2020 general election in the State?

20 **A.** It was two days after.

21 **Q.** All right. And what time, if you can scan up, did you see
22 that Mr. Harvey responded to Ms. Watson's email?

23 **A.** The day after it was received from Ms. Watson.

24 **Q.** And going back to Ms. Jones' email there at the bottom, I
25 know we've taken out -- we can bring in the county line. I

1 don't need this part.

2 Looking at the county part -- because I know you've got an
3 unredacted up there with you -- what county was Ms. Jones
4 reporting challenges or issues at the Temple Emanu-El voting
5 location?

6 **A.** Fulton.

7 **Q.** And in November of 2020, you were at the Secretary of
8 State's office and not Fulton County; is that right?

9 **A.** Yes.

10 **Q.** Do you recall whether there was a State Election Board
11 investigation into Fulton County with regards to 2020 election
12 incidents?

13 **A.** Yes.

14 **Q.** And was there an investigation into Fulton County?

15 MR. CROSS: Your Honor, just I'm going to object to
16 relevance because Mr. Belinfante is connecting things that
17 aren't connected, I think. We asked him whether he was aware
18 of an investigation having occurred into this incident. His
19 testimony, as I recall, was he didn't know. And now
20 Mr. Belinfante seems to be implying that some other
21 investigation got to him. So there has got to be foundation to
22 make that connection.

23 MR. BELINFANTE: Yeah, I think my question, at least
24 the intent of it -- I think the language was about Fulton
25 County, not this incident, so I highlighted --

1 **(Unintelligible cross-talk)**

2 THE COURT: That is exactly what he is complaining
3 about, though. And I don't know whether you are getting into
4 comparable incidents in Fulton County or what. I mean, I just
5 don't know that it is relevant.

6 MR. BELINFANTE: I can withdraw.

7 THE COURT: I'll let you ask a question, but I'm not
8 really interested in having this about Fulton County generally
9 since that wasn't the issue.

10 MR. BELINFANTE: I will withdraw the question and
11 perhaps ask a more targeted one.

12 THE COURT: Thank you.

13 BY MR. BELINFANTE:

14 **Q.** To your knowledge, did the State Election Board receive
15 numerous complaints involving the conduct of the general
16 primary and general election in Fulton County in 2020?

17 **A.** Yes.

18 MR. CROSS: Same objection, Your Honor.

19 THE COURT: I just don't know that it is -- I'm going
20 to let you have that in, but I'm not going to let you go
21 further to discuss them if it is not relevant to this.

22 MR. BELINFANTE: I think -- if I could be given two
23 more questions, I think we can resolve it. I don't plan to go
24 deep into a rabbit hole on this.

25 THE COURT: Okay.

1 BY MR. BELINFANTE:

2 Q. Mr. Evans, you were aware that complaints came in.

3 Did the State conduct an investigation into Fulton
4 County's conduct during the general and primary elections of
5 2020?

6 A. Yes.

7 Q. Okay. And for the record, the November 5 -- or
8 November 2020 election, was that the first general election
9 that the BMDs were used throughout the State general election
10 as opposed to a primary?

11 A. Yes.

12 Q. Okay. And typically, do you see higher voter turnout in a
13 general election or in a primary?

14 MR. CROSS: Objection. Leading.

15 BY MR. BELINFANTE:

16 Q. Where do you see higher voter turnout? In a general
17 primary or in a general election?

18 A. General election.

19 Q. Okay. Let's turn to Exhibit 608, I believe it is. It is
20 Tab 16 in that same notebook of yours.

21 A. Okay.

22 Q. Do you recall having discussions about this document?

23 A. I do.

24 Q. What is the date that the alleged violation occurred, if
25 you can tell?

1 **A.** December 31st.

2 **Q.** Okay. Of what year?

3 **A.** 2020.

4 **Q.** All right. And what date, if you can tell, did an email
5 come into the vote -- or voter fraud email alerts at sos.ga.gov
6 email address?

7 **A.** Tuesday, January 5th of 2021.

8 **Q.** Do you recall if there was an election being held on
9 Tuesday, January 5th of 2021?

10 **A.** There was.

11 **Q.** Was it statewide?

12 **A.** Yes.

13 **Q.** All right. And when the email comes in on the day of the
14 election, at what time did -- if you can scroll up -- how long
15 did it take Ms. Watson to respond to the email, at least in
16 internally, from what you can tell?

17 **A.** She responded on Friday, January the 8th, so three days.

18 **Q.** Okay. And when did you respond to her email to you?

19 Or respond might be the wrong word.

20 When -- your email is at the top; correct?

21 **A.** Yes.

22 **Q.** And when did you -- and who is Scott Tucker again?

23 **A.** Scott Tucker was with Dominion Voting Systems at the time.

24 **Q.** All right. And how long after you received Ms. Watson's
25 email did you respond to him?

1 **A.** I forwarded it to him the next day.

2 **Q.** All right. The email discusses, at least in Ms. Watson's
3 relay of it, that the ballot or the complaint that came in had
4 a QR code only on it.

5 What did you relay to Mr. Tucker about the frequency of
6 that occurrence?

7 **A.** That it was the first I had heard of it.

8 **Q.** Have you seen this situation described?

9 And again, we're not acknowledging it actually occurred
10 for the truth of the matter.

11 But have you seen the situation described in the complaint
12 email below happen frequently in Georgia?

13 **A.** No.

14 **Q.** Have you seen it since this description of it in the
15 email?

16 **A.** I have not.

17 **Q.** Okay. Let's go to 609 -- Exhibit 609, which is the same
18 notebook, Tab 17.

19 THE COURT: I'm sorry. I'm a little bit confused
20 here. You went through all of this and then we don't -- is 17
21 the response on it?

22 MR. BELINFANTE: No. It is a separate email
23 altogether, Your Honor.

24 THE COURT: So is there anything besides this one
25 page --

1 MR. BELINFANTE: On Tab --

2 THE COURT: -- relative to the issues in Tab 16 about
3 the QR code printing incompletely or that's the voter
4 complaint?

5 MR. BELINFANTE: Yeah, I don't have anything else
6 other than what he has just testified to on that document.

7 THE COURT: So did you follow up about that, other
8 than sending the -- making Dominion aware of the complaint?

9 THE WITNESS: I would have to check with our chief
10 investigator to see if there was a case and whatever
11 investigation ensued following that.

12 THE COURT: So you don't know at this time?

13 THE WITNESS: I don't know at this time.

14 THE COURT: You don't recall Dominion getting back to
15 Mr. Tucker who was with Dominion Voting either?

16 THE WITNESS: Correct.

17 THE COURT: Okay. Thank you.

18 BY MR. BELINFANTE:

19 Q. And just to clarify then, since what is described here in
20 the complaint email, have you seen a situation again in Georgia
21 where a voter claims that they had received -- their ballot
22 printed from a BMD contained only the QR code?

23 A. I have not.

24 Q. Okay. Let's go to Tab 17, which is Curling Plaintiffs'
25 Exhibit 609.

1 **A.** Okay.

2 **Q.** Again, this is not -- this has not been admitted for the
3 truth of the matter asserted.

4 But could you just take a look back and see what the
5 alleged event was and the description of violation provision
6 there.

7 **A.** Okay.

8 **Q.** This was from -- what date did that complaint come in?

9 **A.** It came on January the 6th of 2021.

10 **Q.** Okay. And have you seen that type of complaint repeated
11 frequently in the State of Georgia in elections?

12 **A.** I have seen this type of complaint since then.

13 **Q.** Okay. And what is the State -- or has the State done
14 anything to address complaints like that?

15 **A.** So to summarize, if a voter access card gets used, comes
16 back to the ExpressPoll, and gets put into the Poll Pad to be
17 encoded again, there are instances where if the poll worker,
18 for example, pulls it out too fast and the card doesn't get
19 fully encoded, since the card has already been used and a
20 ballot has been printed from the card, the voter goes and
21 inserts the card into the machine and the BMD displays this
22 message of card already voted.

23 So next time that we do a software update, that is
24 something that we want to change is the verbiage on the screen.

25 **Q.** If the situation you described happens, is a voter not

1 permitted to vote?

2 **A.** The voter can still vote.

3 **Q.** And how would that happen?

4 **A.** The voter would notify a poll worker that the card was not
5 encoded properly. They would go back to the check-in table and
6 encode another card.

7 **Q.** All right. Could you turn to Tab 13 in your notebook and
8 look at Curling Plaintiffs' Exhibit 606.

9 **A.** Okay.

10 **Q.** You were asked a question about an email you sent there at
11 the top.

12 What is the date of that email?

13 THE COURT: I'm sorry. Could we just stop here.

14 MR. BELINFANTE: Yes, Your Honor.

15 THE COURT: I mean, I'm trying to put together your
16 answer with what Mr. Tucker wrote you on the 12th of January at
17 9:42 A.M.

18 So you basically decided there was nothing that could
19 be done for now, it seemed, if the file were not modified on
20 each server. Scott wrote you, and a new BMD tabulator were
21 created on a local server that was not modified, we run the
22 risk of BMDs displaying different messages when a blank voter
23 card is inserted.

24 And they are just saying -- and then he says, I'm not
25 sure how long it will be until we certify a new software

1 version, but we may want to look at modifying this verbiage at
2 that time.

3 Which you kind of agreed.

4 So -- so is he just saying there is no software fix
5 for this problem?

6 THE WITNESS: So, essentially, there is now, for
7 example, the 5.17 that we talked about would allow us to --
8 since we're going out or since it would be a reinstallation on
9 every ballot-marking device.

10 THE COURT: But you're not using 5.17 and haven't
11 purchased it yet; right?

12 THE WITNESS: Correct. Correct.

13 So one of the ways that counties have, since this,
14 been able to reduce the instances of this is through poll
15 worker training, making sure that their poll workers who are
16 checking in voters know to make sure to leave the card in long
17 enough until it gets encoded.

18 So they have adjusted. We still hear about this from
19 time to time. But just from using the equipment, there has
20 been an adjustment made.

21 THE COURT: Thank you.

22 BY MR. BELINFANTE:

23 **Q.** All right. Could you, if you are not there, turn to
24 Tab 13, which is Plaintiffs' Exhibit 606.

25 **A.** Yes.

1 Q. All right. You were asked questions about an email you
2 sent on October 22nd of 2020.

3 Do you see that?

4 A. I do.

5 Q. Okay. What is an L&A upload?

6 A. So a logic and accuracy upload refers to a test upload
7 into the election night results reporting system. So,
8 essentially, after a county will conduct their own logic and
9 accuracy test, they take some results from a test deck, get a
10 file from their election management server of those results.
11 And then just like they will on election night, they will take
12 that file to a computer that is connected to the internet and
13 then upload the file into the election night results reporting
14 system, which is how we broadcast results publicly.

15 Q. All right. Could you turn to Tab 14 of your notebook,
16 which contains Plaintiffs' Exhibit--

17 MR. BELINFANTE: I don't know if it is Plaintiffs' or
18 Curling Plaintiffs'. Y'all used it. I just can't recall how
19 we're designating it. It is Exhibit 607, is the number I have.

20 MR. CROSS: Curling.

21 MR. BELINFANTE: Curling Plaintiffs'.

22 BY MR. BELINFANTE:

23 Q. You recall getting questioned about that combined with
24 what is behind Tab 15, which is sequentially the next number on
25 those bottom numbers?

1 **A.** I do.

2 **Q.** The email back on the first one at Tab 14 shows it going
3 to Chris Harvey.

4 Do you know if it was -- if that document was sent to
5 others in the Secretary's office?

6 **A.** So it looks like it went to Chris Harvey and also Breanna
7 Thomas.

8 **Q.** Who is Breanna Thomas?

9 **A.** Breanna Thomas at the time, I believe, would have been the
10 training administrator.

11 **Q.** Okay. Do you know if it went to anyone else -- if they
12 forwarded it to anyone else in the Secretary's office?

13 **A.** I'm not sure.

14 **Q.** Last little bit of questions.

15 You were asked earlier about roughly the population of
16 Escambia County, Florida.

17 Do you recall that?

18 **A.** I do.

19 **Q.** And what was your answer again?

20 **A.** If I remember correctly, when I left, there were about
21 215,000 registered voters.

22 MR. BELINFANTE: Your Honor, at this point I have --
23 and I will show opposing counsel -- census data pulled -- that
24 shows the population of Cherokee, Chatham, DeKalb, and Fulton
25 Counties in Georgia.

1 We would ask if the Court would take judicial notice
2 of the populations of these Georgia counties. It is based on
3 census data pulled from the website a moment ago.

4 THE COURT: What is the point?

5 MR. BELINFANTE: The point is to provide the Court
6 with context because there has been a series of questions on
7 both sides about administering elections in Escambia County,
8 Florida, with a population of roughly 215,000, and some of
9 Georgia's larger populations here, which exceed that number.

10 MR. CROSS: Yeah, I'm not sure how to respond, Your
11 Honor. We're seeing this for the first time. I'm not sure I
12 get the relevance, and I don't have any way to authenticate it.

13 Can we discuss and get back to the Court?

14 THE COURT: Sure. We will --

15 MR. BELINFANTE: We can --

16 THE COURT: I mean, you could -- I mean, the Court
17 can take --

18 MR. CROSS: Rob --

19 MR. McGUIRE: And also, I'm not sure it is
20 comparable, Your Honor, because this is population, and he is
21 answering in terms of registered voters, which is two different
22 bases.

23 MR. BELINFANTE: Well, if you look, I would say to
24 that, under age and sex, there is a category of persons under
25 18. I see the point.

1 MR. CROSS: Then we're going to object, Your Honor.
2 Now we realize what is happening.

3 THE COURT: I mean, I don't think this is useful if
4 it doesn't have the number of voters.

5 MR. BELINFANTE: Fair enough. Fair enough. I can --
6 let me ask --

7 THE COURT: I think the differential population size
8 can be -- which you can infer some difference in the voter
9 size, I can recognize. I mean, I don't have the exact numbers,
10 obviously.

11 MR. BELINFANTE: And I don't recall, Your Honor,
12 candidly, if the question was about the number of voters in
13 Escambia County. And let me ask it -- so let me just ask the
14 witness. This will be like two or three questions.

15 BY MR. BELINFANTE:

16 Q. Do you recall roughly how many registered voters there
17 were in Escambia County when you left?

18 A. 215,000.

19 Q. So that is --

20 A. Around there.

21 Q. When you left Fulton County, do you recall roughly how
22 many registered voters there were in Fulton County?

23 A. Around 7- to 800,000.

24 MR. BELINFANTE: I have no further questions at this
25 time, Your Honor.

1 MR. CROSS: All right. This won't be long.

2 THE COURT: Can you give this back to them? There's
3 enough on my plate.

4 RECROSS-EXAMINATION

5 BY MR. CROSS:

6 Q. This won't be long, Mr. Evans.

7 You had a lot of questions about the oath that election
8 officials and poll workers take.

9 Do you recall that?

10 A. I do.

11 Q. You said there's an expectation that they comply with
12 their oath; right?

13 A. Correct.

14 Q. Was that -- do you know -- I mean, as the deputy election
15 director in January of 2021, did you have the expectation that
16 the election officials in Coffee County would comply with their
17 oaths?

18 A. Yes.

19 Q. Fair to say that they did not?

20 A. Correct.

21 Q. All right. If you can grab Exhibit 1242 real quickly, the
22 Secure the Vote manual that we have walked through.

23 Do I understand correctly the date on this of May 2021 --
24 this is the most current version?

25 A. I believe so, yes.

1 Q. So it has not been updated since the State learned about
2 the breaches in Coffee County; right?

3 A. I do not believe there is a more updated version.

4 Q. Okay. If you flip to Page 7, you were asked a number of
5 questions about the privacy setup. I just want to make sure
6 that we're still in agreement.

7 There is no dispute that Georgia law requires the BMDs
8 shall be arranged in such a manner as to ensure the privacy of
9 the elector while voting on such devices.

10 We're still agreed on that?

11 MR. BELINFANTE: Objection only to the extent he's
12 asking for a legal conclusion. He can ask about his
13 understanding.

14 BY MR. CROSS:

15 Q. We're agreed that your understanding is that is what is
16 required?

17 A. Yes.

18 Q. And if you come back to Page 5 in Exhibit 1242, there is a
19 list of statutes and election offenses involving operation of
20 the polls.

21 Do you see that?

22 A. I do.

23 Q. And the third one, which Mr. Belinfante did not ask you
24 about, is intentionally observing an elector while casting a
25 ballot; right?

1 **A.** Correct.

2 **Q.** And is it your understanding that applies to poll workers
3 and election officials too; right?

4 **A.** Yes.

5 **Q.** A poll worker, to your understanding, would not be allowed
6 to intentionally watch an elector while they are in the voting
7 booth; correct?

8 **A.** Would not be allowed to infringe upon the voter's privacy
9 or try to view what they are -- what -- the choices they are
10 making on the screen.

11 **Q.** Intentionally observe an elector while casting a ballot,
12 your understanding that that is illegal; right?

13 **A.** Yes.

14 **Q.** If you flip -- this is the last question on this. Flip to
15 Page 61, if you would. This was another one you were asked
16 about.

17 Again, we've got the setup here of a BMD with the printer
18 inside the blue privacy screen; is that right?

19 **A.** Yes.

20 **Q.** And you understand -- you see how the BMD is pushed back
21 towards the back of the table inside the screen and then the
22 screen comes around the side of it?

23 **A.** I do.

24 **Q.** And you understand the power button that can reboot the
25 machine is on the back of the machine; right?

1 **A.** It is on the side compartment, the bottom right-hand.

2 **Q.** Do you think it is on the side or on the back?

3 **A.** The power button, you open the door on the side and it
4 is -- reach your hand back, so kind of back side.

5 **Q.** Okay. And you are not offering any testimony that a voter
6 who would hold that button down in under five seconds
7 necessarily would be seen doing that inside this screen; right?

8 **A.** I have not commented one way or the other on that.

9 **Q.** You're not offering a belief that that would be
10 necessarily seen?

11 COURT REPORTER: I can't hear you.

12 BY MR. CROSS:

13 **Q.** You are not offering a belief that that necessarily would
14 be seen; right?

15 **A.** No.

16 **Q.** In some -- at least in some precincts, the machines are
17 set up where the screen faces a wall; right?

18 **A.** Correct.

19 **Q.** In that situation, no one would be able to stand behind
20 the voter because they are at a wall and no one is allowed to
21 stand behind them if the machine is within six feet of the
22 wall; right?

23 **A.** If the machine were within six feet of the wall, then
24 correct.

25 **Q.** There was a little bit of talk again on the passcodes that

1 are used for the scanners, the key, and you said, I believe,
2 that the reason why you guys have disregarded Dominion's
3 recommendation and done it at a countywide level is easier to
4 administer than having a lot of different passcodes for poll
5 workers; is that right?

6 **A.** I believe I said less risk.

7 **Q.** You think that is less risk?

8 **A.** Correct.

9 **Q.** So you disagree with Dominion on the risk here?

10 THE COURT: Or is it just a different risk?

11 THE WITNESS: Less risk.

12 BY MR. CROSS:

13 **Q.** So you disagree with Dominion?

14 **A.** I don't -- I think there's some jurisdictions where their
15 guidance should be followed in regard to this, and I think
16 there's some where it should not.

17 **Q.** But the manual that was provided to Georgia with the
18 machines by Dominion recommends not to do it the way you're
19 doing; right?

20 **A.** Correct.

21 **Q.** So you disagree with Dominion on how this -- at least this
22 security measure should be handled; right?

23 **A.** For our state, yes.

24 **Q.** And you don't -- who made that decision?

25 **A.** I know that we have discussed it internally, and so,

1 collectively, that is the decision that has -- that we have
2 come to.

3 **Q.** And you have not identified anyone with cybersecurity
4 training as having been involved in that decision, have you,
5 sir?

6 **A.** I do not remember the -- anybody with that specific
7 training being involved.

8 **Q.** I believe one of the reasons you gave for this also was
9 that if there were a lot of different passcodes that had to be
10 entered to set up the polling sites that could slow down the
11 setup; is that right? And that could cause long lines?

12 **A.** No. I don't believe I used the term slow down.

13 **Q.** Fair enough. But I'm trying to capture what you said.

14 Let me ask you this way: When you were offering an
15 explanation on why you guys have disregarded Dominion's
16 recommendations, you said something to do with long lines.

17 What is the connection you were drawing?

18 **A.** So I'm not 100 percent sure that I said long lines. I
19 think that might have been part of the question.

20 But the concern would be that -- the concern would be that
21 the correct passwords would not get to the intended precincts,
22 which could potentially cause election equipment to not be open
23 by the time the polls open at 7:00 A.M.

24 **Q.** And the concern was that that could create lines while
25 people wait?

1 **A.** Yes.

2 **Q.** The State Election Board actually has a rule that if lines
3 get longer than 30 minutes you go to hand-marked paper ballots;
4 is that right?

5 **A.** You have the rule I can reference?

6 **Q.** You are not familiar with that rule? You don't recall it?

7 **A.** I remember it generally, but it would be helpful if I
8 could read it.

9 **Q.** Well, let me ask it this way: At a general recollection,
10 do you understand that that rule exists?

11 **A.** Yes. I remember the rule generally, yeah.

12 **Q.** And so the SEB itself has determined how to deal with long
13 lines without diluting security in the way that you guys have
14 decided to do it; right?

15 MR. BELINFANTE: Objection. He is now being asked
16 what the SEB --

17 MR. CROSS: I was wrong. I'll withdraw.

18 BY MR. CROSS:

19 **Q.** All right. Mr. Evans, you also talked -- you were asked
20 some questions about VVSG 1.0 versus 2.0.

21 Do you recall that?

22 **A.** I do.

23 **Q.** And are you familiar with Dr. Ben Adida?

24 **A.** I am.

25 **Q.** In your role as state election director, have you worked

1 with him in his role working with the State on audits and other
2 things?

3 **A.** Yes.

4 **Q.** And are you aware that Dr. Ben Adida in May of 2020 asked
5 the EAC to require all voting vendors and their machines to
6 comply with VVSG 2.0?

7 **A.** I am not aware.

8 **Q.** That is not something you have discussed with your expert?

9 **A.** It is not something I've discussed with Mr. Adida.

10 **Q.** Were you aware that he also raised a concern that the
11 machines that are being used under VVSG 1 are complying with
12 the standard that existed before that is older than the iPhone?

13 **A.** I have not heard that exact phrasing.

14 **Q.** Do you think it might be valuable to speak with Dr. Adida
15 about his concerns on VVSG 1.0 versus 2.0?

16 **A.** I think there is a lot of things that it would be valuable
17 to speak to Dr. Adida about.

18 **Q.** Lastly, you were shown a bunch of different forms that the
19 counties use.

20 Just so we're clear, the form -- the different forms you
21 walked through, you don't actually know how often county
22 workers complete those forms? That is not your responsibility;
23 right?

24 **A.** I have sampled them, but I do not look at all of them.

25 **Q.** You don't know if they are regularly completed; right?

1 MR. BELINFANTE: Objection. Vague.

2 THE COURT: Well, regularly --

3 MR. CROSS: I can ask it differently.

4 THE COURT: Go ahead.

5 MR. CROSS: I can ask it differently.

6 BY MR. CROSS:

7 Q. You don't know if they are completed in every instance
8 that they are required to be completed; right?

9 A. Correct.

10 Q. And you don't know if they are carefully completed,
11 meaning everything that is supposed to be included is included;
12 right?

13 A. Every time, no.

14 Q. And would it surprise you that the State has not produced
15 any of these? You have never seen --

16 MR. BELINFANTE: Objection. Relevance. No
17 foundation. I'm not even aware of an interrogatory request to
18 produce to recover it. There may be one. Lord knows there
19 have been plenty, but --

20 MR. CROSS: I'll withdraw it.

21 THE WITNESS: Can you repeat the question?

22 BY MR. CROSS:

23 Q. I'm going to withdraw it, Mr. Evans, just to wrap up. Let
24 me see if I had anything else.

25 You were asked the question, what happens in a county if a

1 county is found to have potentially violated an SEB rule? You
2 said, the case would get presented to the SEB, and the SEB
3 would make a determination on the penalty for that.

4 Do you recall that testimony?

5 **A.** Yes.

6 **Q.** You're not aware of any presentation to the SEB on the
7 breaches in Coffee County in January -- from January 2021;
8 right, sir?

9 **A.** I believe it is still under investigation.

10 **Q.** There has been no determination or imposition of any
11 penalties by the SEB; right?

12 **A.** Correct.

13 **Q.** You were asked about higher voter turnout in a general
14 election versus primaries. You said there tends to be higher
15 voter turnout in general election.

16 Does the volume of voter turnout impede the State's
17 ability to secure voting equipment?

18 **A.** No.

19 **Q.** Does the volume of voter turnout relieve election workers
20 from complying with any of the laws or the rules and
21 regulations concerning elections?

22 **A.** No.

23 **Q.** Lastly, you had some -- walked through some different
24 rules and regulations on seals, and you were asked about
25 potential failures to comply with those rules.

1 Here is my question, Mr. Evans: Any failure to comply
2 with the State's directives or rules regarding the seals on
3 voting equipment, meaning failures by election workers, poll
4 workers, that would be considered a potential security
5 violation, would it not, sir?

6 MR. BELINFANTE: Objection. Vague. What is a
7 security violation versus an SEB rule violation?

8 I think Mr. Cross even tried to prevent the witness
9 from testifying about security violations, so we -- he can
10 probably get there. He just needs to define it more, Your
11 Honor.

12 BY MR. CROSS:

13 **Q.** Would you consider that a security violation as you think
14 of that term?

15 **A.** I think the seals are there for security. So if it
16 weren't there, then yes.

17 **Q.** Thank you.

18 MR. CROSS: Your Honor, there were two video clips
19 played from the senate hearing. We had one; they had one. I
20 think theirs may have incorporated all of ours, but it is not
21 entirely clear, so we would move both into evidence.

22 THE COURT: Okay.

23 MR. CROSS: Our clip would be Exhibit 613, and their
24 clip would be Exhibit 614, and we can provide that on a flash
25 drive or something.

1 MR. BELINFANTE: We have no objection to doing it
2 that way.

3 THE COURT: All right. Thank you.
4 They are admitted.

5 MR. CROSS: Thank you, Mr. Evans.

6 RECROSS-EXAMINATION

7 BY MR. OLES:

8 Q. Mr. Evans, I just have one or two follow-up questions as a
9 result of the questions you were being asked.

10 You were asked a question in follow-up to something that I
11 had asked you about, which is about an alleged 20,000-vote
12 difference in the 2022 Georgia Senate race, and I believe you
13 answered with something to the effect about what you believe
14 was typical in such a case.

15 Am I correct in understanding then you do not know
16 specifically in regard to that 2022 Georgia Senate race what
17 may have been responsible for that particular reduction in
18 count?

19 A. That is what I think is likely, but I would have to look
20 to know for that -- know for sure for that specific one.

21 Q. Okay. So as you sit here today, you can't be sure of what
22 caused that one?

23 A. Correct.

24 Q. All right. Thank you.

25 Now, you were asked a follow-up question by counsel in

1 regard to a letter that I had referred to from Governor Kemp's
2 staff at what I had incorrectly referred to as a 36-point study
3 from the Governor, and you said that you were generally
4 familiar with that.

5 Isn't it true, Mr. Evans, that, in fact, attached to the
6 Governor's letter was a 40-page analysis that was completed by
7 his staff -- the Governor's staff?

8 MR. BELINFANTE: Objection. The basis of the
9 objection is relevance. I believe the Court has ruled the
10 document itself irrelevant. And to ask the witness about
11 something that he doesn't have in front of him, I think,
12 renders the testimony unfair.

13 So we can either debate the merits of the document or
14 put it in front of him and he can testify to it, or he can
15 testify to his recollection, which I don't --

16 THE COURT: I don't think I ruled on the grounds
17 of -- I thought it was because we didn't have the document in
18 any way authenticated, so -- and I could be wrong. It could
19 have been exactly as you say.

20 MR. BELINFANTE: Your Honor, I'm happy to proceed
21 under that. Just if the witness is going to be asked about the
22 specifics of the document, I would just want him to have it. I
23 don't know if you have got a copy or not.

24 MR. OLES: I have a copy here. But if PX 208 could
25 be brought up, I believe he can see it on the screen.

1 BY MR. OLES:

2 Q. So, Mr. Evans, if you will take a look at that and the
3 two-page letter and the report behind it.

4 A. Can we flip to the report portion?

5 Q. Do you see starting on that Page 3?

6 A. I do.

7 Q. Okay. And where it says review of inconsistencies and
8 data supporting the risk-limiting audit report dated
9 November 17, 2021 --

10 A. Yes.

11 Q. -- can you identify that as the report coming from the
12 Office of the Governor that is attached to the Governor's
13 letter making a referral to the SEB?

14 A. Yes.

15 Q. All right.

16 MR. OLES: Thank you, Judge. We move to admit PX 208
17 into evidence.

18 MR. BELINFANTE: Your Honor, I don't think we have an
19 objection just so long as the record reflects the document
20 speaks for itself and not any particular description of it. I
21 don't think --

22 MR. OLES: We have no problem with that, Judge.

23 THE COURT: All right. It is admitted --

24 MR. MCGUIRE: No objection.

25 THE COURT: -- with those reservations noted.

1 MR. OLES: Excuse me?

2 THE COURT: With the reservations of counsel noted.

3 MR. OLES: Thank you.

4 BY MR. OLES:

5 Q. Mr. Evans, one last question I have for you.

6 Are you familiar with the complaint before the State
7 Election Board concerning a Dominion QR code signature mismatch
8 error?

9 A. Yes.

10 Q. Okay.

11 MR. OLES: May I approach, Judge?

12 THE COURT: Yes.

13 BY MR. OLES:

14 Q. Mr. Evans, I'm going to show you what was previously
15 marked as Davis Exhibit 10 for identification.

16 Can you take a look at that, please?

17 A. Okay.

18 Q. Can you identify that as a copy of the letter that -- the
19 complaint letter that was submitted to the State Elections
20 Board concerning the Dominion QR code signature mismatch error?

21 A. It appears to be so.

22 Q. All right.

23 MR. OLES: Thank you, Judge.

24 I do not believe I had previously moved to admit
25 Davis Exhibit 10 into evidence, but I believe everyone has a

1 copy. I would like to do so at this time.

2 MR. BELINFANTE: I am looking for a copy, Your Honor.

3 THE COURT: Is it what was posted on --

4 MR. BELINFANTE: It is already admitted, I'm being
5 told.

6 MR. OLES: Oh, okay. All right. Thank you.

7 BY MR. OLES:

8 Q. Mr. Evans, final question or questions.

9 With respect to that QR mismatch error or signature
10 mismatch error that was being alleged there, are you familiar
11 with the fact that the State of Tennessee also used a Dominion
12 system version 5.5 just like Georgia was using?

13 MR. BELINFANTE: Objection, Your Honor. Outside the
14 scope of redirect.

15 And I didn't have a problem with the document, but
16 now I see where we're going. I think -- I think the line of
17 questioning is outside the redirect.

18 THE COURT: Maybe I should look at the document. I
19 mean, it is what caused you to have concerns, so --

20 MR. OLES: I think we're up to --

21 THE COURT: What is your question about the
22 Tennessee?

23 I'll just take it conditionally and decide. All
24 right?

25 MR. OLES: My question simply was going to be whether

1 or not Mr. Evans was familiar with the nature of this
2 complaint -- familiar with the problem that the State of
3 Tennessee had with the same system and that they discontinued
4 use of the system as a result of the error that was being
5 alleged.

6 THE WITNESS: So looking at -- it says Page 2. But
7 it is of the Election Assistance Commission document under
8 report anomaly. I believe Tennessee had 5.5-B, and we use
9 5.5-A.

10 BY MR. OLES:

11 Q. As you sit here today, do you know, though, whether that
12 makes a difference?

13 A. I remember when this has come up before, discussions with
14 Dominion where I believe that does make a difference.

15 Q. Okay. Mr. Evans, as you sit here today, do you know why
16 it makes a difference?

17 A. I do not recall.

18 Q. So you don't have that knowledge?

19 A. Correct.

20 Q. All right. Thank you.

21 MR. OLES: I have nothing further.

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

23 MR. BELINFANTE: Your Honor, respectfully, I would
24 object to Mr. Oles answering what appears to be a series of
25 questions written for him by Mr. Cross on a couple of grounds.

1 One, Mr. Cross has had plenty of time with the
2 witness.

3 Two, there appears to be no longer a common interest
4 between the parties, and I would like to know the basis of the
5 conversation.

6 Three, Mr. Oles has had to run all of his questions
7 by Mr. Cross and others of plaintiffs' witnesses, and for now
8 plaintiffs to use him as a means to ask their own questions
9 seems improper.

10 MR. CROSS: There is a lot built in there that is not
11 accurate. I don't even know how to respond to that.

12 MR. BELINFANTE: Did you write the questions --

13 MR. CROSS: Yeah. You're welcome to read them
14 because he is going to read them out here in a moment.

15 MR. BELINFANTE: Then that part is undisputed.

16 MR. CROSS: Correct. The idea that he is running
17 questions by us, I'm not really sure what we're talking about.

18 MR. BELINFANTE: We watched it happen. He has had to
19 get his questions approved. The objection --

20 MR. CROSS: What is the objection?

21 THE COURT: I don't think that is a correct
22 description that he's had to have them approved by them. I
23 think he had an obligation when he was bringing in new
24 information, new evidence that had not been considered in the
25 case or litigated in the case to make other counsel aware of

1 it.

2 He didn't have to get their approval. He just needed
3 to consult with them.

4 MR. BELINFANTE: We weren't part of those
5 conversations, Your Honor, so I misunderstood.

6 THE COURT: That is all I required, and I directed
7 them that that was professional -- what was professionally
8 appropriate. And, you know, I'm just going to let the
9 questions be asked and so be it.

10 I think this is -- I don't think it is backdoor, but
11 I do think it extends things. If Mr. Oles thinks they are
12 appropriate questions and wants to ask them, he may. If he
13 doesn't think that they are -- I mean, I know everyone here
14 sends messages to each other at large, so -- but I just
15 think -- Mr. Oles, just take it -- look at it and decide for
16 yourself. Okay?

17 MR. OLES: I think I would like to, Judge. It should
18 be very brief.

19 BY MR. OLES:

20 Q. Mr. Evans, were you familiar with an incident that
21 occurred in Spalding County on October of 2002 [sic] involving
22 allegations that a fake ballot was scanned? Are you aware of
23 that?

24 MR. BELINFANTE: Objection. Spalding County is
25 outside the scope of redirect. There was not a question about

1 Spalding County in the redirect itself.

2 THE COURT: All right. Well, let me just say,
3 because I try normally to reserve all my questions until the
4 end, I have a question about Spalding County, so --

5 MR. BELINFANTE: Fair enough. I will not object to
6 those questions, Your Honor. Mr. Oles, however, is different.

7 THE COURT: I understand. I would feel embarrassed
8 at this juncture to be asking and tell him he can't.

9 MR. BELINFANTE: Understood, Your Honor.

10 THE COURT: So don't embarrass the judge.

11 BY MR. OLES:

12 Q. Are you familiar with the incident, Mr. Evans?

13 A. From October of 2022, yes.

14 Q. All right. And so you are aware that election officials
15 identified one ballot that they believed to not look like the
16 other BMD ballots, and they threw that one out?

17 Are you familiar with that?

18 A. I believe they excluded it, and that ballot became part of
19 an investigation.

20 Q. My question is this: Does the State have any policy for
21 how it would handle that situation if all the ballots that
22 were -- were tabulated looked legitimate?

23 A. I'm not sure I understand the question.

24 Q. Okay. Well, does the State have any policy around how
25 such a thing should be handled?

1 **A.** If the ballots look illegitimate?

2 **Q.** Yes.

3 **A.** So there are a lot of factors at play here. With that
4 particular -- that particular instance, the elections
5 superintendent or the elections director in Spalding noticed
6 that her counts were off. And so there was a difference
7 between the number of voters that had been checked in and the
8 number of ballots that had been printed from her BMDs and the
9 scanner, and so that prompted her to do what she deemed to be
10 appropriate, which was to further investigate.

11 So I believe what they did was they completed a -- I think
12 they completed a voted ballot removal form and took the ballots
13 out and began to count the physical sheets of paper, and in
14 doing so found this ballot.

15 And so it is hard to answer a blanket statement because
16 there are other factors in play of what -- why does somebody
17 think that a ballot is illegitimate?

18 In the case of Spalding, it was because her numbers were
19 off. She had so many voters checked in, so many ballots
20 printed, and her scanner was coming up one more than that.

21 So it is hard to provide a blanket answer because it
22 depends on several other factors at play.

23 **Q.** Well, and would it be possible then that the answer for
24 this was that you might have to rerun the entire election?

25 **A.** There are -- there are places in law that outline election

1 challenges, and so if there were -- or an election contest.

2 And so if there were an election contest, then a judge
3 could order that a -- for a variety of reasons that an election
4 would need to be conducted again.

5 MR. OLES: All right. Thank you, Mr. Evans.

6 EXAMINATION

7 BY THE COURT:

8 **Q.** Wednesday seems like a century ago when I last talked with
9 you.

10 But let me ask you this question, and I probably won't be
11 very capable of refreshing your memory if I have to, so I might
12 have to turn it over to somebody else.

13 I think we discussed -- spent a little time on Wednesday
14 discussing the Spalding County incident where the Secretary of
15 State's office replaced the Spalding County EMS server.

16 Do you remember that?

17 I mean, what happened was that you told me that Michael
18 Barnes was the man to ask, that you didn't know, I think,
19 something like that.

20 And I think the record will reflect that at least there
21 was testimony introduced indicating that the State took
22 possession of the old server when it replaced -- might have
23 taken possession or might not have taken possession of the old
24 server when it replaced a new one.

25 **A.** Are we --

1 Q. Mr. Barnes was not sure.

2 A. I'm sorry, Your Honor.

3 Are we talking about Spalding or Coffee?

4 Q. Spalding.

5 A. Spalding.

6 Q. I could give you -- it is Plaintiffs' Exhibit 194 so you
7 could look at what I'm talking about.

8 THE COURT: If counsel could present 194 because I've
9 got mine marked up.

10 MR. FISHER: We put it on the screen, Your Honor.

11 THE COURT: Is it on the screen now?

12 Okay. Can you start with the old -- with the -- make
13 him -- do you have the original copy?

14 MR. BELINFANTE: Your Honor, I was just going to
15 point out, if you wanted the hard copy, it is in your notebook
16 entitled Blake Evans at Tab 5.

17 BY THE COURT:

18 Q. Don't start on the first page. Start at -- it really
19 starts -- at least if these timestamps are right at -- with the
20 communication from Ms. Slaughter at 7:45 A.M.

21 A. Okay. This is very helpful.

22 Q. Okay. Do you want to take a moment to look at it?

23 A. Just about 15 seconds or 20 seconds.

24 Q. That's fine.

25 A. Okay.

1 **Q.** Okay. I think beforehand that you testified you didn't
2 recall the specifics about the replacement and I should talk to
3 Mr. Barnes, but I didn't get terribly far, so I don't know
4 whether you looked at this -- these communications before or
5 not.

6 But do you feel like you remember the incident enough for
7 me to answer a few questions, possibly?

8 **A.** I remember certain things about this particular incident.

9 **Q.** Is there actual -- do you have any concrete information
10 whether the State actually took possession of the old server?

11 We know that they replaced it with a new one, but I don't
12 know where the old server went, and I wasn't able to get to the
13 bottom of that before.

14 Do you have any knowledge about that?

15 **A.** Not off the top of my head.

16 **Q.** Are you able to provide any information as to whether
17 there is a policy written or otherwise related to when county
18 equipment should be replaced and how to handle the replacement
19 and the computer systems that have been replaced? What happens
20 to them?

21 **A.** I would have to look. Sometimes -- sometimes it depends
22 on why that server is being replaced. There are times where
23 the county still needs to be able to access the old information
24 maybe for records retention purposes to be able to retrieve old
25 files, old ballot images. And in those situations, it might

1 stay with the county.

2 As far as a written policy, I would have to look. I'm not
3 sure.

4 **Q.** And I know your last letter in this chain -- this letter
5 that ends to Mr. Johnson, who I guess was -- was he president
6 of the board?

7 **A.** He was their board chair.

8 **Q.** And Ms. Slaughter, and she was the new election officer
9 for the county.

10 You suggest that it would be helpful to get on a Zoom call
11 in about five days from there then, which is August 23rd.

12 Did that call happen?

13 **A.** It did.

14 **Q.** And what did you resolve at that point? Do you recall?

15 **A.** I remember that it was a productive call, and I remember
16 that at this time there had been a lot of turnover in Spalding.
17 New elections director. I believe several members of their
18 board were new, and so we wanted to get an understanding of
19 their concerns. And I remember that it was a good call and
20 that we came out of it with the next steps to move forward.

21 What those specific steps were, I don't recall.

22 **Q.** Okay. And your communications with Ms. Slaughter began
23 with a bold -- a directive in bold lettering, do not allow an
24 IT company to image or conduct any activity on voting
25 equipment. That is not allowed.

1 And am I correct that that was Sullivan -- what is the
2 last name?

3 MR. FISHER: Strickler. SullivanStrickler.

4 BY THE COURT:

5 **Q.** -- SullivanStrickler they wanted to hire?

6 **A.** That seems to be my memory as well.

7 **Q.** So what was your knowledge at that point in August of 2021
8 that it would be -- about SullivanStrickler that would -- and
9 being involved in any imaging or activity related to voting
10 equipment that led you to place this in such -- in bold and
11 underlined that warning?

12 **A.** In August of 2021, I don't think -- I don't think that I
13 knew anything specifically about Sullivan and Strickler, but I
14 knew that the action that they were talking about doing was
15 wrong and should not occur, which is why I stressed it to the
16 point that I did in my email.

17 **Q.** Did you ever find out what was wrong with their equipment
18 that they were complaining about or the software in it that was
19 being run?

20 **A.** I remember from talking to Ms. Slaughter that when they
21 took over -- I say they. When she came in as the new elections
22 director, I don't believe the previous director left on good
23 terms. So there wasn't a good handoff of procedures,
24 passwords, and that sort of thing.

25 And it would be helpful -- seeing this email thread -- I

1 referenced even in my email additional emails, including an
2 email that Ms. Slaughter helped. That would be helpful to be
3 able to see that original one.

4 **Q.** It would be helpful to what?

5 **A.** To be able to see that original email from Ms. Slaughter.
6 And I think that might spur my memory a little bit, but --

7 **Q.** Yeah, I don't have it. I mean, it is not what I -- in my
8 possession at this point or that has been presented.

9 But if you look at the letter from -- that you wrote to
10 her, because I think that was a concern at the time, and your
11 letter at 9:08 A.M. on August 18, 2021, first of all, you
12 attach the -- an election board rule and -- saying equipment
13 modification has to be authorized by the Secretary of State.

14 But this is what -- second, please, send me a written
15 explanation of your concerns. Since the equipment you have
16 stored is State-owned equipment, we must follow protocols to
17 examine the equipment to detect possible issues.

18 So it seems like when I read that that you didn't have a
19 written explanation at that point that you were dealing with
20 this.

21 **A.** Yeah. Yes, Your Honor. I think they had concerns, and
22 what I -- from what you just read, what I was asking her to do
23 was put those concerns in writing so we can proceed in this
24 way.

25 **Q.** I guess, ultimately, my question is this, is that the

1 equipment was replaced. We're not sure where it went to after
2 that.

3 But as in May or June of 2021 in Coffee County, there
4 doesn't seem to have ever been any analysis of the computers or
5 the software afterwards to determine what was wrong or what
6 might be wrong; is that right?

7 **A.** In Spalding County?

8 **Q.** Spalding or Coffee.

9 I'm talking back in '21. I'm not talking about what might
10 have been done later.

11 **A.** Correct. So as of this time, I believe you would be
12 correct.

13 THE COURT: All right. Thank you very much. It is a
14 challenging job to be director of elections.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: All right. Thank you for your service
17 and being here.

18 Anything occasioned by my questions?

19 MR. TYSON: I have no questions, Your Honor.

20 MR. CROSS: No questions, Your Honor.

21 MR. MCGUIRE: None from us.

22 MR. OLES: Nothing further, Judge.

23 THE COURT: Looks like you are liberated.

24 THE WITNESS: Thank you.

25 THE COURT: Take a deep breath and go home if you

1 can. Thank you.

2 MR. MILLER: Your Honor, the State is now going to
3 call Joseph Kirk.

4 I do want to note a couple of things based off some
5 questions. It's not really something to spend a ton of time
6 on.

7 THE COURT: I think Harry has something against you.

8 MR. MILLER: I don't blame him for that. I just want
9 to note a couple of things based on some of the questions. I
10 think there was a question by counsel implying about production
11 of these forms. I just want to note that --

12 THE COURT: Which forms?

13 MR. MILLER: The polling place forms that we were
14 going through. And I just started looking for a couple while
15 we were here. And the voting equipment exception report can be
16 found at State Defendants' 129691, polling pad recap form can
17 be found at State Defendants' 129428 --

18 MR. CROSS: Your Honor, I can help.

19 THE COURT: Wait a second.

20 MR. CROSS: I can help. I may not have asked it
21 clearly. I meant they had not been produced in evidence at the
22 trial. That is what I was trying to make a point. They are
23 not in evidence. That was my only point.

24 MR. MILLER: If they are not in evidence, I'm not
25 really sure what the relevance of that question is --

1 **(Unintelligible cross-talk)**

2 MR. MILER: -- Your Honor. Given that we're
3 discussing discovery disputes, I just wanted to make that
4 clear.

5 MR. BROWN: We love to hear from Mr. Miller. But
6 this is not an objection. It is just sort of a speaking
7 moment, and I think we don't have many left, so --

8 THE COURT: If you want to say that at the end when
9 we haven't gone through all the witnesses, I'll be willing to
10 try to digest what you are saying, but I'm not going to listen
11 to it right this moment. Okay?

12 MR. MILLER: Truthfully, Your Honor, I don't think it
13 is something that is worth spending our time on.

14 THE COURT: All right. That's fine.

15 MR. MILLER: Just given the other discovery
16 discussions, I just wanted to make clear.

17 THE COURT: All right. That you've got some other
18 documents that were -- well, anyway, let's go forward.

19 COURTROOM DEPUTY CLERK: Please raise your right
20 hand.

21 **(Witness sworn)**

22 COURTROOM DEPUTY CLERK: Please have a seat.

23 If you would, state your name into that microphone
24 right there and spell your full name.

25 THE WITNESS: My name is Joseph Kirk, J-O-S-E-P-H,

1 K-I-R-K.

2 Whereupon,

3 JOSEPH KIRK,

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

5 DIRECT EXAMINATION

6 BY MR. MILLER:

7 Q. Mr. Kirk, good afternoon.

8 A. Afternoon.

9 Q. Thank you for joining us today.

10 Mr. Kirk, could you describe to the Court your current
11 employment.

12 A. I am the elections supervisor for Bartow County, Georgia,
13 which means I'm the secretary of the local board of elections
14 as well the department head to take care of the day-to-day
15 office matters.

16 Q. Thank you, Mr. Kirk.

17 And I -- for the benefit of Ms. Welch, I know being on the
18 stand can be a little intimidating and get you nervous, but it
19 is important for the record that we try and speak slowly and
20 clearly today. Okay?

21 A. Absolutely.

22 That is a failure of mine. So please, if I go too fast,
23 tell me.

24 Q. So, Mr. Kirk, just to be clear, who hired you?

25 A. I was selected by the Bartow County Board of Elections &

1 Voter Registration and then hired by the county commissioner.

2 Q. Okay. And to your understanding, does the Secretary of
3 State have any involvement in your hiring?

4 A. Not at all.

5 Q. And the State Election Board?

6 A. Nope.

7 Q. So to step back a little bit, I want to talk kind of about
8 your background because I understand you have been in and
9 around elections for a long period of time.

10 A. That's correct.

11 Q. So let's start with college.

12 Where did you go to school?

13 A. The University of Georgia.

14 Q. And did you graduate with a degree from UGA?

15 A. I did. In computer science.

16 Q. And, Mr. Kirk, following your time at the University of
17 Georgia, what did you do for work?

18 A. Well, if I can step back a little bit, while I was at the
19 University of Georgia, I worked for the Center for Elections
20 Systems at Kennesaw State University helping to implement and
21 test the statewide DRE system.

22 And then I used that experience and went to the Secretary
23 of State's office in Mississippi where I implemented their
24 statewide system from 2005 to 2007.

25 Q. Okay. And what was your title with the State of

1 Mississippi?

2 **A.** I believe it was more of a description, support and
3 training.

4 THE COURT: Support and what?

5 THE WITNESS: Training.

6 THE COURT: Training.

7 BY MR. MILLER:

8 **Q.** So -- and this may be a simplistic understanding of that
9 title.

10 So support and training, that was supporting
11 implementation and training on the machines or something?

12 **A.** Yes. My actual job duties were to work with the vendor
13 to -- and my colleagues to write the procedures for vote booth
14 testing as well as how it will be used in the field. And the
15 work product was a manual for step by step how to conduct an
16 election in Mississippi with that statewide voting system.

17 **Q.** Okay.

18 **A.** And I also trained the officials directly.

19 **Q.** Okay. And I believe you said that was 2005 to 2007?

20 **A.** That's correct.

21 **Q.** Okay.

22 THE COURT: What was the system?

23 THE WITNESS: It was the AccuVote TSX voting system
24 with the voter-verified paper audit trail attached.

25

1 BY MR. MILLER:

2 Q. So can you describe to the Court -- I know the Court is
3 familiar with the AccuVote DRE system that was previously used
4 in Georgia.

5 A. Uh-huh (affirmative).

6 Q. Can you describe to the Court any differences and
7 similarities between that and the Mississippi system?

8 A. It was -- I'm not sure if the software version was the
9 same, but the hardware was the same with the one exception that
10 in Mississippi we had a device that fit on to the printer of
11 the TSX tablet that would print out the voters' selections for
12 every voter that voted rather than just the summary results at
13 the end.

14 Q. Okay. And to clarify those, I understand voter verifiable
15 paper audit trail is a bit of a term of art, but that is not a
16 ballot; right?

17 A. No.

18 Q. Okay.

19 MR. CROSS: Objection. Leading.

20 BY MR. MILLER:

21 Q. Can you describe what you mean by the term of art, voter
22 verifiable paper audit trail?

23 A. Absolutely. When the voter entered the voting
24 compartment, they would put their voter access card into the
25 machine and then mark their selections on the screen of the

1 DRE. At the end of that process, they had a summary screen
2 where they would verify their selections on the screen and then
3 they would choose to print their selections, and those
4 selections were held behind a plastic panel so they could not
5 touch them, but they could look at the piece of paper and
6 verify that those selections matched the selections on the
7 screen that they made while they were voting.

8 And as long as they matched, they could cast their ballot,
9 in which case that was the audit trail of record; if not, they
10 could go back, remark their ballot, and print it again.

11 Q. Okay. And so following your time in Mississippi, where
12 were you next employed?

13 A. After I left Mississippi, I started as the election
14 supervisor in Bartow County October 1st of 2007.

15 Q. Okay. So you have been election supervisor ever since
16 October 1, 2007?

17 A. That's correct.

18 Q. Do you serve on any national groups or boards concerning
19 elections?

20 A. I do. I currently serve on the advisory board for the
21 Election Official Legal Defense Network, the Bipartisan Policy
22 Centers Election Task Force. I am involved with the Election
23 Center, which is a National Association for Election Officials,
24 as well as other groups that I work with, such as, like I say,
25 the Brennan Center and folks like that.

1 THE COURT: What is the Election Office [sic] Legal
2 Defense Network?

3 THE WITNESS: We provide pro bono counsel to any
4 election official who needs it in performance of their duties
5 and also help with communications efforts.

6 I'm sorry. I left one off the list.

7 I'm also a member of the Election Verification
8 Network, which is academics and researchers talking about
9 evidence-based elections.

10 BY MR. MILLER:

11 **Q.** Are there any familiar faces in the room that are involved
12 in any of those groups with you?

13 **A.** Yes. I see at least one who is a member of the Election
14 Verification Network, but I'm not familiar with every single
15 one of the members, and I'm bad with faces too.

16 **Q.** Okay. And who is the one that you see?

17 **A.** Marilyn Marks.

18 **Q.** Okay. Are you familiar with the name Alex Halderman?

19 **A.** I am.

20 **Q.** And how are you familiar with that name?

21 **A.** Through that organization, I have seen him and spoke with
22 him at the annual conference.

23 **Q.** What about Philip Stark? Are you familiar with that name?

24 **A.** I am. I have met with him virtually, I believe, once, but
25 never had a chance to meet him personally at the conference.

1 Q. And you say at the conference?

2 A. Both members of the EVN.

3 THE COURT: Of?

4 THE WITNESS: The Election Verification Network.

5 BY MR. MILLER:

6 Q. EVN?

7 A. EVN.

8 Q. What about at the State level? Do you serve on any boards
9 or councils regarding elections?

10 A. I'm the president-elect for the Georgia Association of
11 Voter Registration and Election Officials, which is a statewide
12 organization for my profession.

13 Q. And the Georgia Association of Voter Registration and
14 Election Officials -- which I understand is colloquially
15 referred to as GAVREO --

16 A. That's correct.

17 Q. -- what kind of programs or events or communications does
18 GAVREO put on as part of its duties?

19 A. The main thing that we do and the purpose we were created
20 for is an annual training conference that maintains the
21 election officials' election certification for the State.

22 Q. Okay. And at that election -- well, let me back up a
23 little bit.

24 You referred to election officials certification for the
25 State.

1 Can you describe to me in general terms what you mean by
2 that?

3 **A.** Every county needs at least one election official who has
4 been certified by the Secretary of State to conduct elections
5 to legally conduct those elect.

6 Ions. The initial certification currently is done online
7 through the Secretary of State's office. I believe it is a
8 12-module course.

9 And afterwards, the continuing education is normally
10 handled through our annual training conference -- GAVREO's
11 annual training conference.

12 **Q.** Okay. So at the initial certification, is there a test or
13 something like that?

14 **A.** There are -- it is has been awhile since I have gone
15 through this, but I believe there is a quiz at the end of each
16 module to demonstrate proficiency in that topic.

17 **Q.** Okay. And then, you know, you spoke about training at
18 GAVREO.

19 Are those conferences generally election superintendents
20 like yourselves, or are there other folks involved?

21 **A.** Everyone at the conference is an election official. Some
22 counties choose to bring their entire staff with them. Some
23 counties choose to send, say, the supervisors and the election
24 board.

25 In my case, it is normally myself and my assistant

1 department head that go to the annual conference.

2 **Q.** Okay. And with respect to kind of training more
3 generally, who is responsible for training the poll workers
4 that, for example, work under your office?

5 **A.** Me. Poll worker training is a county responsibility, and
6 we all do it slightly differently. But in my case, I do most
7 of it personally.

8 **Q.** Okay. And so let's talk about some of the training
9 subjects that may occur at GAVREO.

10 **A.** Uh-huh (affirmative).

11 **Q.** I'm not asking for an encyclopedic knowledge of every
12 conference you have attended.

13 But, you know, in terms of the types of training that are
14 put on there, can you describe some of that to me?

15 **A.** In general terms, we try to prepare our members for the
16 upcoming election year. That could be instruction on things
17 like absentee balloting or qualifying procedures, voter
18 registration topics.

19 At a recent conference, we branched out and actually
20 taught stuff about deescalation, active shooter training. We
21 also do a legislative update to know what the new laws are, how
22 to anticipate those, and we have also taught classes on post
23 election audits.

24 **Q.** And now, have you personally put on training at those
25 conferences?

1 **A.** I have.

2 **Q.** And in what subjects?

3 **A.** Audits come to mind. I think I taught a training class on
4 that twice. And then my latest class involved the voting
5 system itself, the maintenance, the -- how, you know --
6 interaction with open records laws, things like that.

7 **Q.** And so let's -- you mentioned audits.

8 What kind of training were you putting on for audits? Can
9 you describe it to me?

10 **A.** Well, we were trying to teach them how they were going to
11 conduct a risk-limiting audit after the election, how to
12 prepare for it, how to create what is called a ballot manifest,
13 the sort of index of what really the ballots are, where they
14 came from, how that leads into the auditing procedure. The
15 nuts and bolts of how their folks will actually conduct the
16 audit, as well as how the results will be reported afterwards.

17 **Q.** We'll come back to the topic of audits, but I want to talk
18 a little bit about step by step through a running an election.
19 Okay?

20 **A.** Okay.

21 **Q.** So when preparing for an election, can you describe to me
22 some of the processes that you and your office go through in
23 setting up the polls for in-person voting?

24 **A.** Specifically how we set up the polls for in-person voting
25 or how we get ready to do that?

1 Q. Let's do that. Let's start from the beginning.

2 How do you get ready to do that?

3 A. So it all starts with creating the ballots, creating the
4 databases, which is done by the Secretary of State's office.
5 We have a part in that of proofing and a testing process we go
6 through afterwards called logic and accuracy testing where
7 we're ensuring the hardware operates properly, tabulates
8 accurately, and makes sure that the results get reported
9 accurately in the State's ENR system or election night
10 reporting system works.

11 Once we get through that testing process, everything is
12 sealed up until it is used in an actual polling place. We're
13 also packing supplies --

14 THE COURT: Could I just stop you for a second.

15 The first thing we're talking about is the --
16 creating the ballots and then creating the database, which is
17 done by the Secretary of State's office.

18 THE WITNESS: I apologize. That was a misspeak on my
19 part. It is the same thing.

20 THE COURT: It is the same thing?

21 THE WITNESS: Yes.

22 THE COURT: So the first part is obviously creating
23 the ballots which the Secretary of State prepares for you, and
24 then you do logic and accuracy testing?

25 THE WITNESS: That's correct.

1 THE COURT: All right. But you're not creating the
2 database? You're just --

3 THE WITNESS: No. Uh-uh (negative). I apologize.
4 Yes.

5 THE COURT: That's all right.

6 BY MR. MILLER:

7 **Q.** So just to back up, the ballot is created by the Secretary
8 of State's office; right?

9 **A.** Well, to be accurate as I can be, they create the Dominion
10 database that produces the ballots.

11 **Q.** Okay.

12 **A.** Once I proof the ballots from that database, example
13 ballots and some reports about where the ballots will go and
14 who receives them and sign off on it, then the print files are
15 sent to my print vendor for them to print the ballots.

16 And then once we get -- and those would be hand-marked
17 ballots. Once we get those in, we enter into the testing
18 process with those printed ballots.

19 The other way a ballot is generated is through a
20 ballot-marking device, and we test the production of those
21 ballots during logic and accuracy testing.

22 **Q.** Okay. And so talking about that database file, you
23 mentioned something called proofing.

24 So are you receiving it and reviewing it and then
25 something else, or --

1 **A.** They distribute certain files to me ahead of time. Ballot
2 proofs that they generate out of the database, they still have,
3 along with reports such as, you know, what districts are
4 included on each ballot, what precincts those ballots will
5 appear in.

6 And once I sign off and say that information is correct is
7 when I actually have the database in hand. That is when they
8 send it to me.

9 **Q.** Okay. So in that proofing process, you're checking that
10 it is the right names, for example?

11 **A.** The right names. The right order. Are they spelled
12 correctly? And I think, most importantly, is there a proper
13 ballot style for every area of these in my county? Is there a
14 collection of races that is going to be assigned to that
15 precinct for the voters who need to vote that set of races?

16 **Q.** And I think you just began explaining there.

17 But can you explain to the Court what you mean by ballot
18 style?

19 **A.** Absolutely. If you think about an overhead projector back
20 when we still used those and if you had a sheet for every type
21 of district in the county, say, state house, state senate,
22 school board, and you put them all on top of each other, every
23 little box would be what we call a district combination. And
24 that's --

25 THE COURT: Every little box would be what?

1 THE WITNESS: A district combination. In Georgia,
2 that's a three-digit code. And it indicates a set of races
3 that would be displayed to those voters.

4 And then when you -- that set of races from the
5 district combination becomes what we call a ballot style. And
6 one ballot style can be assigned to more than one location, but
7 it really has to do with the races that are displayed on that
8 ballot.

9 BY MR. MILLER:

10 **Q.** All right. So we talked about ballot proofing. You began
11 to talk about logic and accuracy testing.

12 Can you describe to me how you carry that out?

13 **A.** Absolutely.

14 In most cases, it is my staff that carries it out. But
15 this a public process where we go through, and we'll frankly
16 make sure there are no surprises on election morning or when
17 advanced voting starts.

18 We set up all the equipment, turn it on, verify the
19 software version. On the ballot-marking -- program the
20 machines -- the devices as part of this process using the
21 database to transfer that information either through a PCMCIA
22 memory card or a USB drive for the tablets themselves.

23 And then my staff makes sure that the right ballots are
24 displayed. That when they mark a name on that ballot, that
25 ballot actually prints out with the name on it. And this is

1 talking about the ballot-marking devices themselves.

2 Once they print all of the different ballots for -- for
3 that precinct, it creates what we call a test deck. Then they
4 go to a -- the newly programmed scanner that is going to be
5 assigned to that precinct or polling place and scan through
6 that entire test deck to be sure it tabulates everything
7 properly.

8 When we do that, we also scan through a test deck that is
9 generated by the ballot printer with a certain selection on it
10 prefilled for us, as well as at least one ballot from the
11 actual printed ballots will be used for the voters to be sure
12 all that scans accurately.

13 At the end of that process, those results are transferred
14 to the central server -- it is called a results tallying
15 reporting system -- to verify that it is reporting results
16 accurately.

17 And eventually, the results are exported from that system
18 and uploaded to the State's election night reporting system to
19 be sure that transfer happens properly.

20 THE COURT: Can we stop for just a second?

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

22 THE COURT: You're speaking faster than you would
23 know, but it is also because you know all the words you are
24 going to say.

25 MR. MILER: You were doing pretty well until right

1 there at the end.

2 THE WITNESS: Yes. If you need to like throw
3 something at me, just throw it.

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

5 THE COURT: Let's take a ten-minute break.

6 COURTROOM SECURITY OFFICER: All rise.

7 **(A brief break was taken at 2:55 PM.)**

8 THE COURT: Have a seat.

9 BY MR. MILLER:

10 **Q.** Okay. Mr. Kirk, before we took a short break, we were
11 talking about preparing for running an election; right?

12 **A.** (Witness nods head affirmatively.)

13 **Q.** And I believe the step that we left off on was after logic
14 and accuracy testing.

15 Was I correct on that?

16 **A.** I believe I had just finished talking about logic and
17 accuracy, yes.

18 **Q.** Okay. All right. So timeline-wise, you were preparing
19 for advanced in-person and absentee voting right at this point;
20 right?

21 **A.** That is correct, as well as probably packing supplies for
22 election day.

23 **Q.** Okay. And how many advanced voting locations are in
24 Bartow County?

25 **A.** It depends the election. But for most large elections, a

1 total of four, one for the entire period and three additional
2 locations the final week.

3 **Q.** And what is the period of advanced in-person voting?

4 **A.** It begins the fourth Monday prior to an election and ends
5 the Friday prior to the election and includes two Saturdays in
6 that period for a total of 17 days.

7 **Q.** Okay. And when do you begin sending out absentee ballots?

8 **A.** Right at a month before the election.

9 **Q.** Okay.

10 **A.** Well, there's one set that goes out for what is called
11 UOCAVA voters, Uniformed and Overseas Citizens Absentee Voting
12 Act, and that happens 45 days prior to the election. But the
13 ballots for most voters go out about a month before the
14 election.

15 **Q.** Mr. Kirk, I should probably back up a little bit because I
16 think we've got some folks here that are from out of state.

17 But can you describe where Bartow County is located?

18 **A.** It is about an hour north of I-75 from here.

19 **Q.** And do you have a sense of the number of registered voters
20 in Bartow County?

21 **A.** We currently have, I believe, around 75,000 active
22 registered voters and less than 10,000 inactive registered
23 voters.

24 **Q.** Okay. Relative to some other counties in Georgia and the
25 size of their registered voter population, where does Bartow

1 fit in the mix?

2 **A.** We are considered a medium-sized county.

3 **Q.** Okay. So --

4 THE COURT: I'm sorry. You have 75,000 active
5 registered voters, more or less, and how many people voted in
6 the last State election?

7 THE WITNESS: I think it was around 40,000.

8 I normally have to look up statistics to give good
9 numbers.

10 BY MR. MILLER:

11 **Q.** Yeah. And we're just looking for a general sense here. I
12 realize you don't have your setup in the elections office right
13 here in front of you.

14 And so it would be accurate to describe Bartow as a
15 suburban county?

16 **A.** It depends where you are in the county.

17 **Q.** Okay.

18 **A.** We still have a lot of rural areas. Our commissioner, I
19 think, still raises cattle. But there are places that would
20 definitely be suburban.

21 **Q.** Okay. So back to the election day -- or excuse me --
22 election preparation process, can you describe to me the
23 processes involved in opening the polls for in-person voting?

24 **A.** Absolutely. I think the first step there would be to set
25 up the location. One of the locations in my -- is in my

1 office. That is fairly simple. We leave it mostly set up with
2 signs on the wall year-round.

3 The other ones we have to go in, prepare the facility, set
4 up tables, chairs, put signs on the walls in the proper places,
5 and then deliver the voting equipment from our secure storage
6 space to those locations.

7 And what we normally do is set up ballot-marking devices
8 at least by the day before the facility opens and deliver the
9 scanner, which remains sealed until they use it on -- for
10 voting the day they open.

11 And that way -- well, the goal is for the poll manager and
12 their employees to have to do as little as possible when they
13 show up on the morning of voting. Because things tend to go
14 wrong and you want to be able to pivot in case something
15 happens before voting opens.

16 **Q.** Okay. You talked about seals.

17 Can you describe some of the seals you are referring to?

18 **A.** Yes. So during logic and accuracy testing, we put seals
19 on key areas of the equipment. And in the case of the
20 ballot-marking device, there are seals that the State puts on
21 that we never remove. And then there are other seals that we
22 put on during testing. One of which the poll workers have to
23 remove to turn the machine on.

24 On the scanner -- the in-person scanner that we use, there
25 are seals on the compartments that contain the memory cards

1 that we put on during L&A testing. There is a seal on the
2 accessories compartment on the side that is put on by the
3 State. And then the entire thing is sealed up with a big lid
4 on top of it so you can't access the scanner at all without
5 breaking the seal on the ballot box.

6 When they open the polls, either for advanced voting or on
7 election day, they are required to verify every single one of
8 those seals before they break any of them and are required to
9 notify me if anything doesn't match before they proceed.

10 And then on the ballot-marking device, the ICX, they break
11 a seal on the power printer compartment where the power button
12 is located, turn the machine on, and then reseal that
13 compartment. That seal is not broken again during the day
14 unless there is some reason we have to reboot the machine.

15 On the scanner itself, they don't break -- they break the
16 seals on the ballot box on the lid, but not on the scanner
17 until the very end of the day when they are closing.

18 **Q.** Okay. And I think you mentioned a couple of times
19 comparing seals in your testimony there.

20 Is this process documented in any way?

21 **A.** Yes. I use my own forms for this, but we record the seal
22 numbers during logic and accuracy testing. I transfer that
23 information to the forms they will use on election day or
24 during advanced voting.

25 And then I require it to be at least a two-person process.

1 One person reads the numbers while somebody else verifies the
2 numbers, and they are required to initial the form to take
3 personal responsibility that they verified those numbers.

4 THE COURT: Can you just tell me -- because we're
5 going with great particularity and detail -- and I appreciate
6 that.

7 But is this uniquely your process, or is this
8 basically you are describing what is the approved State process
9 for going through this?

10 Because I'm -- you know, if it is just what you, as a
11 very obviously highly professional person does, it doesn't tell
12 me that -- I mean, it tells me you are doing a great job. But
13 it might not be -- tell me what anyone else is doing.

14 And on the other side of it, if we're just repeating
15 what we have done in your introduction of the -- Counsel, in
16 your introduction of information via the Secure the Vote poll
17 worker manual, then why would I be going through all that
18 again? Why wouldn't it be just redundant?

19 MR. MILLER: I apologize, Your Honor. I was asking
20 my co-counsel for a note real quick.

21 What was that?

22 THE COURT: Okay. So my question is this: We have
23 got -- obviously have a highly professional chief of election
24 division -- I know chief is not the right word, but -- here
25 from Bartow County, and he is going through a process about

1 talking about the seals and the voting equipment, et cetera.

2 We have already gone through the poll worker manual
3 description, so I'm just trying to get -- find out, are we --
4 is this redundant? Is this uniquely his? Is this his
5 elaboration of what best practices are, but -- which a variety
6 of counties may or may not do other than supposedly following
7 the poll worker manual.

8 I just need some clarity because we're going with
9 such granularity about this. And I mean, no reason to doubt
10 anything of the professionalism of the witness, but it doesn't
11 necessarily tell me that that is what everyone else is doing.

12 MR. MILLER: I see, Your Honor. And I think the
13 answer is a little bit of both, and I think I can get to just a
14 couple of questions right here that will bring that out before
15 we proceed further.

16 THE COURT: Okay. Because I'm looking at the time,
17 and we do -- I don't want to have to drag this witness back,
18 and at the same time, I do not think that it would be fair to
19 the court reporter to go much past 5:00 today given what she
20 has been producing at midnight to you-all.

21 MR. MILLER: I'm going to knock on wood that we are
22 out before 5:00, but I better go ahead and --

23 THE COURT: But we have another matter to deal with
24 still.

25 MR. MILLER: Okay.

1 BY MR. MILLER:

2 Q. Mr. Kirk, those processes you referred to, do you have any
3 understanding as to if there are statewide minimum requirements
4 that reflect those processes?

5 A. Yes, and I believe the manual that Judge Totenberg
6 referred to indicates those minimum standards. Everyone should
7 be, you know, requiring seal comparison. Everyone should have
8 certain chain of custody steps in place. The forms for the
9 procedures are uniquely mine that I'm describing.

10 Q. Okay. And so to clarify there, you mentioned that you use
11 your own forms.

12 Did I hear that right?

13 A. That's correct.

14 Q. Okay. Am I understanding you correctly that the forms are
15 intended to reflect a requirement of State law or regulation?

16 A. Yes. The information in that report, everything they need
17 is there. The way I report it is a little bit different to
18 streamline it for my employees.

19 Q. Okay. So, Mr. Kirk, without attempting to get redundant
20 here, I'm going to kind of skip past the voting process
21 temporarily and talk about the closing of the polls. Okay?

22 A. Yes.

23 Q. So when you close the polls for an election day, is there
24 any comparison between the voters who checked in and the
25 ballots that were cast?

1 **A.** Yes. That is one of the key parts of the process. We
2 want to compare how many voters we checked in, how many folks
3 should have been issued a ballot to how many received and how
4 many we reported. And that is done through the forms I
5 described.

6 **Q.** Okay. And similar to before, those forms you described,
7 that is a practice that is reflected in a statewide regulation;
8 right?

9 **A.** Yes.

10 **Q.** Okay. So in the scenario where -- strike that.

11 Let's say at the close of polls you had more ballots than
12 the number of folks checked in.

13 What would you do?

14 **A.** What I trained my poll workers to do at that point in the
15 process, because there's so much going on at that point. Is to
16 do their best to try to explain what happened. If they cannot,
17 then they are to seal everything up, bring it back to the
18 office, and either I investigate it or meet with them to
19 help -- have them help me investigate it in the days following
20 the election.

21 **Q.** And if you couldn't get to a simple explanation, what is
22 the next step?

23 **A.** Well, the end result of my work after the election is to
24 report everything to my board who certifies the results; report
25 the good, the bad, the what could have gone better; and then

1 they choose to certify or not. We -- and then we report
2 anything we need to to the proper authorities.

3 **Q.** Okay. So at the risk of not repeating kind of some of the
4 election day processes, let's talk about post election and more
5 specifically with respect to post election auditing.

6 There has been some -- or let me back up.

7 Have you conducted a risk-limiting audit in your role as
8 elections director of Bartow County?

9 **A.** Oh, yes.

10 **Q.** And was that a part of the statewide risk-limiting audit,
11 or an additional audit you put on, or both?

12 **A.** It would depend the election. I have audited every
13 election I have conducted since 2019 with the exception of the
14 2020 general primary because that was just a weird time. But
15 every election since I have audited. And the audit that I
16 conduct normally is a risk-limiting audit on steroids. I
17 choose to go beyond the batches to be selected for an RLA and
18 just audit all the batches.

19 So I do a full hand tally of a single race for every
20 election I conduct.

21 **Q.** And describe to me how you carry that out.

22 It is not only you personally; right?

23 **A.** No, it is not. For a -- we'll say a big election --

24 MS. KAISER: Your Honor, just to interject, we don't
25 see the relevance here. He has already testified that this is

1 atypical practice across the State and something that he just
2 independently does on his own.

3 MR. MILLER: That is not exactly what he said. He
4 said he participates in both the statewide risk-limiting audit
5 and does additional audits himself.

6 And, Your Honor, if we don't want to hear from the
7 folks carrying this out on boots on the ground, then we can
8 move on.

9 THE COURT: I know, but it would be helpful to hear
10 what a comparison of his -- his audit on steroids, as
11 described, versus the State audit. I can process that would --
12 might be useful. But I don't -- but just it would be better
13 than having to have to learn all over again about the State
14 audit that has been described or alternatively --

15 THE WITNESS: May I add one thing?

16 THE COURT: Yes. Yes. Go ahead.

17 THE WITNESS: There are other counties following my
18 example now. I'm not sure how many, but I know that some of my
19 surrounding counties will be doing this this year, and I
20 suspect others will as well.

21 THE COURT: Well, that is great, but I just -- I
22 don't know that we understand the scope of the population,
23 et cetera, so -- but you're welcome to focus in on what are
24 the -- what makes his auditing -- obviously, the witness
25 believes and based on his experience and expertise that his

1 auditing is more extensive, so that might be useful to
2 understand.

3 MR. MILLER: Your Honor, that is what I'm trying to
4 get at. I think it starts from a baseline of what is part of
5 the statewide audit and then what turns into --

6 THE COURT: We already had a lot of testimony
7 about -- about the statewide audit, I thought.

8 MR. MILLER: I do need to cover one aspect.

9 THE COURT: If there is some dimension you feel like
10 you need to cover, that is fine.

11 MR. MILLER: Okay.

12 THE COURT: But I'm just trying to get out what is
13 useful without our drowning.

14 MR. MILLER: Okay.

15 BY MR. MILLER:

16 **Q.** So, Mr. Kirk, with respect to the statewide audit, the
17 Court has already heard some testimony about, you know, what
18 Arlo is, how the manifest works, et cetera.

19 When you are conducting your audit on steroids, as you
20 referred to it, how does that work in relation to what is going
21 on with the statewide audit?

22 **A.** So the elections that have a statewide audit component, I
23 normally choose the race that is part of the statewide audit.
24 My goal in my audits is to address the concerns of my
25 community, and I try to select a race that they are concerned

1 about.

2 And in each statewide audit so far, the race selected by
3 the Secretary of State's office has coincided with my
4 community's concerns. So I start with their batches and then
5 just do the rest of them.

6 **Q.** Okay. So you say you start with their batches.

7 I'm probably oversimplifying it, but say they tell Bartow
8 County you're pulling two batches?

9 **A.** Uh-huh (affirmative).

10 **Q.** What else do you do from there?

11 THE COURT: Two batches for sample -- as samples?

12 THE WITNESS: Uh-huh (affirmative). Those would be
13 the batches selected by Arlo. But my day starts out for my
14 audits by transporting every single sealed ballot container to
15 an off-site auditing location that's large enough for the
16 public to observe.

17 So all the ballots are there. All the polling
18 containers are there. All the batches are there. And once
19 we've audited the batches the State selected -- or sometimes we
20 do a few others first and then get to theirs because it works
21 better for the process -- we just keep checking them out to my
22 auditing teams and -- until we have audited everything.

23 BY MR. MILLER:

24 **Q.** And everything, you -- do you mean literally every ballot?

25 **A.** Every single one.

1 THE COURT: Every single ballot in the batch, or
2 every single ballot that was cast in the county?

3 THE WITNESS: It would always be every single ballot
4 in the batch because you want to compare the totals for the
5 report by the voting system for the batch to the hand count
6 during the audit.

7 I choose to audit every single batch. So every
8 single ballot cast in the election: Absentee, advanced voting,
9 election day, provisional, all.

10 THE COURT: But that doesn't represent all of the
11 entire voting population, does it?

12 THE WITNESS: For that election, for that county.

13 THE COURT: For the county?

14 That is what I'm just trying -- this is just like a
15 communication issue between us.

16 Is it you're seeking to review every ballot that was
17 cast in the county?

18 THE WITNESS: If the voting turnout was 40,000
19 voters, I would audit 40,000 ballots.

20 THE COURT: All right. And so what does it mean to
21 be -- then be auditing just the batches selected by Arlo versus
22 what you are doing?

23 THE WITNESS: Normally, Arlo selects a very small
24 number of batches. The risk-limiting audit formula is very
25 efficient.

1 And you can -- in most elections, in my experience,
2 especially statewide elections, we only need to audit a small
3 number of batches, meaning every ballot cast through an
4 in-person scanner or every time we scan a stack of ballots
5 through the central scanner to hit the risk -- or to achieve
6 the goal of the audit and have confidence in the results.

7 So if there's 40 batches, I may have two for the
8 State that I report back to the State but I will audit all 40
9 of them.

10 THE COURT: All right. So you are doing the entire
11 group, but you are only reporting to the State on your two that
12 were the batches they identified?

13 THE WITNESS: That's correct. The way Arlo works
14 from my end, I can only report those batches.

15 THE COURT: I see. I see. All right.

16 THE WITNESS: But I'm happy to share.

17 THE COURT: So the question I have coming out of that
18 is, Arlo, I guess, after 20 -- there were -- the picking of
19 batches changed because, of course, in 2000 [sic], it was an --
20 all ballots for the purposes of the State, but I gather in
21 2022, Arlo started using -- was identifying batches for you?

22 THE WITNESS: So originally, I piloted audits for the
23 State in 2019. And when I did, we were looking at what is
24 called a ballot polling audit where you select ballots at
25 random to -- and it is -- I hate explaining ballot polling

1 audits.

2 But the key point here is that it is a random
3 selection, and the closer the margin of victory, the more
4 ballots you have to select.

5 THE COURT: Right.

6 THE WITNESS: It would have taken us longer to do a
7 sampling of ballots in 2020 at random than just hand counting
8 every single one of them.

9 THE COURT: Right.

10 THE WITNESS: Since then, we have changed the type of
11 audit we do to a batch audit rather than a ballot polling
12 audit. And in that case, a small number of batches is selected
13 rather than a certain number of ballots that we would have had
14 in 2020 had the margin not been so close.

15 BY MR. MILLER:

16 **Q.** So, Mr. Kirk, you mentioned you do this to instill
17 confidence in the voters in your county.

18 Did I hear that right?

19 **A.** Absolutely.

20 **Q.** Okay. Did something come up with voters in your county
21 that caused you to feel you needed to instill that confidence?

22 **A.** It has always been my goal to increase public confidence
23 in elections. It has always been my goal to be observed as I'm
24 conducting an election and be as transparent as possible. And
25 those efforts served me well when 2020 happened.

1 I was a little ahead of the curve, and I already had
2 confidence from my community and had parties that supported me.
3 And when people were calling me after that election asking how
4 I knew their ballot was counted properly when there were a lot
5 of allegations that, how do I know my vote for our presidential
6 candidate went to the right place, I could explain very easily,
7 I know that it happened because we checked. We checked every
8 single ballot one at a time going through them with teams of
9 two publicly. And the results, for the most part, matched. My
10 audits always had a small margin of error, like .03 percent, so
11 .003.

12 That explanation is very simple, and folks can understand
13 it. I trust risk-limiting audits. I trust the math works. I
14 don't want to explain the math.

15 So I find this small investment in time and resources pays
16 off very well in the end because everyone understands what I'm
17 doing and they have confidence as a result.

18 **Q.** And you mentioned before other counties in the State.

19 So have you spoken with other counties about these audits
20 on steroids?

21 **A.** Absolutely. I point out that as they keep getting angry
22 phone calls or folks coming to their board meetings with
23 concerns, I don't have those same issues because I acted
24 proactively and tried to get ahead of people's concerns. Not
25 that I think there is actually a problem with the voting

1 system. But sometimes you need to show people what you are
2 doing for them to trust it. And I encourage them to follow in
3 my footsteps.

4 **Q.** And how has that encouragement been received, to your
5 knowledge?

6 **A.** At first, not very well. But over time, people tried it,
7 saw the benefits of it, and want to have that level of
8 confidence in their communities.

9 **Q.** And does the Secretary of State or State Election Board
10 prohibit you from what you are doing?

11 **A.** Not at all. In fact, I have received two awards now from
12 the Secretary of State for what I do with audits.

13 **Q.** And I'm sorry.

14 Did you say you received two awards from the Secretary of
15 State?

16 **A.** Yes.

17 **Q.** And can you describe that to me?

18 **A.** I received one award at a training conference in Athens,
19 really about the voter registration system that was a little
20 humorous, the most likely to conduct an audit.

21 But then yesterday, I actually received what is called an
22 Eagle Award from the Secretary of State's office, which is a
23 new thing this year to recognize excellence in innovation in
24 elections.

25 **Q.** So does the Secretary or the State Election Board -- do

1 they encourage you doing these audits on steroids?

2 **A.** I don't know if encourage is the right word, but I think
3 they are grateful. It is done -- I like to talk about this, if
4 you can't tell. And going around talking about this has
5 really, I think, helped with elections in Georgia.

6 **Q.** So, Mr. Kirk, I want to back up to just a couple of things
7 that have come up elsewhere in this case and relative to how
8 those operate in your county. Okay?

9 What is your understanding of the -- or any requirement
10 for the provision of sample ballots at the polling place?

11 **A.** We are required to display publicly two sample ballots at
12 every in-person voting location. That can be either the
13 individual ballot styles that are assigned to that location or
14 what is called a consolidated sample ballot that includes all
15 the races available countywide.

16 I very much prefer to hand out the proper ballot style to
17 voters so they know what to expect and encourage them to
18 download it from their MyVoter page at the Secretary of State's
19 office before they come, if they can. But occasionally, you do
20 have to use consolidated ballots just to conserve resources and
21 time.

22 We also have a supply of ballots there to hand out to
23 voters. Whether that is during, you know, advanced voting or
24 on election day, there are always sample ballots. If somebody
25 wants to take one with them into the compartment or take it

1 home with them, they are more than welcome to.

2 Or what some folks do is actually print it off at home as
3 a cheat sheet and to remind them how they want to vote, and
4 they bring it in to vote with them.

5 **Q.** So in terms of being in the polling place, just out of
6 curiosity, have you ever seen a voter walk in with a keyboard?

7 **A.** No.

8 **Q.** Can you describe to me how you set up your polling place
9 relative to the machines how they are set up in the area?

10 **A.** Absolutely. The law talks about what is called the
11 enclosed space, which is the space around the machines that you
12 can only go into if you are a voter or on a very select list of
13 people.

14 So when the voter enters, we want to funnel them to the
15 check-in station first, but also have it configured to prevent
16 access to the secure area of the polling place before they are
17 checked in.

18 Once that happens that they enter the enclosed space,
19 approach a machine, you know, put the card in, mark their
20 ballot, print it, and then go to the scanner. And the scanner
21 is positioned in a way where no one can get past the scanner
22 and get out the door with their ballot because then it wouldn't
23 be counted, but also to preserve the voter's privacy as they
24 scan their ballot.

25 **Q.** Okay. Mr. Kirk, I want to ask you now a little bit about

1 the relief generally being sought in this case. Okay?

2 And I'm asking you this from the perspective of a local
3 election administrator. Okay?

4 Do you understand in this case that the plaintiffs are
5 seeking mandated use of hand-marked paper ballots?

6 MR. BROWN: Objection, Your Honor. That's a complete
7 mischaracterization of the relief that we're seeking.

8 MR. MILLER: Okay. This will be helpful for me.

9 MR. BROWN: Your Honor, I move to strike.

10 BY MR. MILLER:

11 **Q.** Are you aware in this case that plaintiffs are seeking the
12 use of both paper ballots and ballot-marking devices for
13 in-person voters?

14 **A.** I have heard that. I have not read anything in the case
15 in a while.

16 **Q.** Okay. From an administrative perspective, do you have any
17 concerns with providing both hand-marked paper ballots and
18 ballot-marking devices for the voters' choice?

19 **A.** I do. I refer to that as kind of the paper or plastic
20 option, and it is sort of the worst of both worlds.

21 **Q.** How so?

22 **A.** Well, there's certain things you have to have in place for
23 the ballot-marking devices, certain amount of space. You know,
24 there's a certain amount of infrastructure that goes into the
25 chain of custody and the forms that they fill out and how they

1 interact with those machines.

2 You need the same sorts of things for hand-marked paper
3 ballots. You need a way to store them securely. You need a
4 way to be sure that the voter gets the proper ballot based on
5 their district combination that I described earlier.

6 And putting both infrastructures in place at the same time
7 would require more employees, and it would be a hardship on my
8 operation.

9 Not to mention that the only way I see a hand-marked
10 voting solution operating properly, especially at an advanced
11 voting site with multiple ballot styles, would be to have
12 Ballot on Demand printers available that would hook up to the
13 Poll Pads that check in the voters to print the ballot just for
14 that voter at the time they check in to be sure they get the
15 right one that we don't have. And we don't have time to put
16 them in before in any reasonable amount of time.

17 **Q.** Those Ballot on Demand printers, do you have an
18 understanding of what the cost of one of those is?

19 **A.** I do not. But in my experience, that type of technology
20 is not cheap.

21 **Q.** I want to turn briefly to -- well, strike that.

22 MR. MILLER: Your Honor, if I can confer real quick,
23 I think I can wrap this up now.

24 THE COURT: All right.

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

1 BY MR. MILLER:

2 Q. Mr. Kirk, just briefly, similar to what we talked about
3 before, you talked about providing sample ballots for voters;
4 right?

5 A. Correct.

6 Q. And did I understand you correctly that you provide
7 physical copies that the voters can take with them?

8 A. Yes.

9 Q. What about -- or do you have an understanding as to any
10 State requirement for instructing voters to review their
11 ballots?

12 A. There is a State requirement to -- that every voter prior
13 to casting their ballot in person should be prompted to review
14 that ballot. And when I train my poll workers on it, I tend to
15 jump up and down and say, you will do this, or you are fired.

16 We need them to review their ballots in order for my
17 audits to have any meaning.

18 Q. And from a practical perspective, how do your workers
19 carry out that reminder to review ballots?

20 A. I require my employees to stay within basically an arm's
21 distance of the scanner itself. So that is the most important
22 thing in the room. That is where the voted ballots are.

23 And so they are standing there. They greet the voter as
24 the voter approaches them with their ballot. And we have gone
25 from saying, have you reviewed your ballot, to, would you

1 please review your ballot?

2 And most folks are happy to comply.

3 **Q.** I want to go back to one thing regarding the statewide
4 risk-limiting audit, so different from your audit.

5 There has been some innuendo in this case that the
6 statewide risk-limiting audits will no longer be required
7 across the entire state.

8 Do you have any understanding of that?

9 **A.** If you are referring to what I think you are to be the
10 change in law and the term we're using to describe it, but the
11 actual -- I have helped the State design the audit procedures.
12 I've been the person doing all the training on those
13 procedures.

14 The only true change in law is how many audits we're
15 conducting, and we're increasing the number of audits we're
16 conducting. Nothing in the procedures have changed.

17 **Q.** And how are you increasing the number? From what to what?

18 **A.** If my recollection is correct, it is we have gone from
19 requiring a statewide audit for every statewide general
20 election to every statewide election.

21 **Q.** And sitting here today, it is your understanding an
22 audit -- at least one statewide audit will be conducted in this
23 2024 election cycle?

24 **A.** It is my understanding they will be doing an audit for the
25 presidential preference primary, the general primary, and the

1 general election statewide at the very least.

2 **Q.** Mr. Kirk, I want to just kind of ask you briefly on a
3 couple of general questions.

4 Do you take an oath for your position?

5 **A.** I did, yes.

6 **Q.** And do you take that oath seriously?

7 **A.** Absolutely.

8 **Q.** And in relation to taking that oath seriously, do you take
9 responsibility for your poll workers seriously?

10 **A.** Absolutely.

11 **Q.** Mr. Kirk, with respect to your line of work in Bartow
12 County, have things changed over the last several years
13 relative to the attitude of the voters in your county?

14 **A.** In some cases, yes. I have a few that are very upset
15 we're still using the same voting system. They are very vocal
16 about it when they call me. They have never come to visit me
17 in person.

18 And I've heard from my poll workers a general, say,
19 distrust that as folks are coming in making offhand comments
20 about the type of voting system we're using, you know, the --
21 insinuating that our goal was to steal an election rather than
22 conduct an election. And I have lost employees, I suspect, as
23 a result. But I never do exit interviews, so I don't know for
24 sure.

25 **MR. MILLER:** Mr. Kirk, thank you for your service.

1 Your Honor, I'll reserve for redirect.

2 THE COURT: All right. Thank you.

3 CROSS-EXAMINATION

4 BY MR. BROWN:

5 **Q.** Good afternoon, Mr. Kirk. My name is Bruce Brown, and I
6 represent the Coalition Plaintiffs in this case.

7 First, I think everyone here appreciates your good service
8 to the State of Georgia and Bartow County.

9 And you testified that you had received some awards from
10 the Secretary of State?

11 **A.** Uh-huh (affirmative).

12 **Q.** And I believe Secretary of State Raffensperger gave you an
13 award yesterday; is that right?

14 **A.** That's correct.

15 **Q.** Could we get -- and is this a photo of the award that he
16 gave you yesterday?

17 **A.** That is.

18 **Q.** And where physically were you when you got that award?

19 **A.** That is in my office.

20 **Q.** In Bartow County?

21 **A.** That's correct.

22 **Q.** So while we're down here trying the case, you were getting
23 an award with Secretary Raffensperger. Congratulations.

24 **A.** And then I left that award to drive down here and see if I
25 could testify. I was in the witness room right across the

1 hall.

2 **Q.** But seriously, the award that you got was being the best
3 election administrator in the entire state; correct?

4 **A.** I don't believe so. I think it says for excellence in
5 election administration. What he said when he gave it to me, I
6 don't recall. But I do appreciate his kind words.

7 **Q.** And your level of competence and rigor it's fair to say is
8 way above average for Georgia; right?

9 **A.** There are things that I do that other folks don't. But we
10 have a lot of very talented election officials in the State of
11 Georgia.

12 **Q.** In fact, many would consider you to be the most
13 security-minded election official in Georgia; would you agree
14 with that?

15 **A.** I -- people may have said that, yes.

16 **Q.** And you yourself personally have the skill to check the
17 accuracy of the electronic database by examining the
18 configuration of the files; right?

19 **A.** I'm not sure I understand your question.

20 **Q.** Well, I mean, you have a computer science background;
21 right?

22 **A.** (Witness nods head affirmatively.) That's correct.

23 **Q.** You are unusually qualified and competent in managing the
24 BMD election system; correct?

25 **A.** I see what you are getting at. But I don't feel the need

1 to go into State configuration files because my main goal is to
2 focus on the accuracy of the paper ballots.

3 **Q.** Now, there are 159 counties in Georgia.

4 Fair to say that not all county election managers live up
5 to the standards that you are capable to live up to; right?

6 **A.** In some cases, yes. But most of our security and I'll say
7 the testing that we designed is focused on the accuracy of
8 those paper ballots.

9 **Q.** Do you recall saying on Twitter or commenting on Twitter
10 about Misty Hampton being hired by Treutlen County?

11 **A.** I do not. But if you could show it to me, I'm sure.

12 **Q.** Well, here we go. Let me show you what is on the screen
13 now.

14 MR. MILLER: Your Honor, I'll just note an objection
15 as to the scope of direct. This is impeachment or bias. It is
16 a different story.

17 It is an objection as to exceeding the scope of
18 direct. I'm not sure if this is an impeachment or bias line of
19 questioning, but it didn't seem like it.

20 THE COURT: I think it is -- it is a kind
21 impeachment.

22 THE WITNESS: I'm not sure what that means.

23 MR. BROWN: That is exactly what I intended, so that
24 is good.

25

1 BY MR. BROWN:

2 Q. Mr. Kirk, do you see here this Tweet about Misty Hampton
3 in Treutlen County? Do you see that?

4 A. I do.

5 Q. And is your understanding that after the Coffee County
6 incident that we all know about, Treutlen County hired Misty
7 Hampton to work in their election office?

8 A. That is my understanding.

9 Q. Do you know how Misty Hampton got credentials that she
10 would need to have to work in Treutlen County?

11 A. I do not.

12 Q. And wouldn't she have to have some sort of credentials,
13 either from the county or from the Secretary of State, to work
14 there?

15 A. What do you mean by credentials? Are we talking about
16 certifications or, like, access to the facility, using -- I'm
17 not sure what you're --

18 Q. Open question.

19 What sort of credentials would she need to do the work
20 that you understand she did in Treutlen County, if any?

21 A. She would need access to the equipment. She would need
22 access to -- depending on what her duties were, possibly the
23 State's voter registration system or to the voting system.

24 I'm not sure what the scope of her duties were there. I
25 have never discussed it with her or anyone else in Treutlen

1 County.

2 **Q.** But I mean, somebody off the street can't come into
3 Treutlen County elections office and say, hey, I want to tinker
4 around with the equipment; right?

5 **A.** Absolutely not. She would have to be granted access by
6 somebody in the county.

7 **Q.** In the county?

8 **A.** (Witness nods head affirmatively.)

9 **Q.** And is there any mechanism that you're aware of from the
10 Secretary of State or the board that would issue an alert or
11 some kind of checking to see if a person like -- with
12 Ms. Hampton's background would get jobs in county elections
13 offices? Are you aware of anything like that?

14 **A.** I would hope the county would do a background check and do
15 their due diligence. But beyond that, I do not know of
16 anything.

17 **Q.** You're not aware of any statewide sort of rules that apply
18 to that?

19 **A.** No.

20 **Q.** And you also remark here at the bottom of this Tweet, this
21 also illustrates how few qualified election administrators are
22 out there and how hard it can be to fill those positions.

23 Do you see that?

24 **A.** I do.

25 **Q.** And is that still your belief now?

1 **A.** I believe we have lost a lot of really good people in
2 elections since 2020.

3 **Q.** And it is hard to hire good ones; right?

4 **A.** We've lost some good administrators since 2020, and not as
5 many folks are entering the elections administration field.

6 **Q.** And it is hard to find qualified people; correct?

7 **A.** That is what I said, yes.

8 **Q.** You testified on direct about checking ballots or
9 reviewing ballots after -- the BMD ballot card before it goes
10 into the scanner.

11 Are you with me?

12 **A.** The ballot, yes.

13 **Q.** And it is important for the voter not just to check the
14 ballot, but to actually verify it; right?

15 **A.** Would you mind telling me the difference.

16 **Q.** Well, do you know the difference?

17 **A.** That is what I'm asking. Check and verify, it is sort of
18 the same thing.

19 **Q.** Well, check-- well, let me give you this.

20 Is it enough for a voter in a couple of seconds to just
21 check, here's my ballot and scan it, or do they have to check
22 to ensure that it is -- that all of the races and all of the
23 questions are on the ballot and that all of the races and all
24 of the questions match the way the voter actually intended to
25 vote?

1 **A.** So, one, it depends on the size of the ballot. You know,
2 the ballot we're about to use in March is going to have one
3 name on it, one race, and I believe they can check that pretty
4 quickly if they showed up and they knew who they wanted to vote
5 for.

6 As far as the rest of it, voters have -- you know, they
7 know how they wanted to vote. They want to vote for all the
8 Republicans, all the Democrats, the incumbents. They are
9 checking to see if anything is left blank.

10 And I believe they can do that fairly quickly.

11 **Q.** Now, in Bartow County, we'll have ballots with as many as
12 several dozen different races and candidates on it; right?

13 **A.** Eventually, yes, especially if you're talking about the
14 primary ballot where there might be party questions on there.

15 **Q.** I'm looking at some numbers that we have collected from
16 Adairsville.

17 Adairsville is in Bartow County?

18 **A.** Yes.

19 **Q.** And Adairsville has about 7,500 voters as of
20 November 2022, thereabouts?

21 **A.** That sounds about right.

22 **Q.** And it has about -- well, the note -- what we have, just
23 to give you the order of magnitude here -- I'm not trying to
24 pin you down for exact -- but for the purpose of my question
25 about how lengthy the ballot is in general terms.

1 In November '22, there were 26 races and questions.

2 Does that sound about right?

3 **A.** Approximately.

4 **Q.** In November '22 for the Democrat ballot, it was 31; right?

5 **A.** There wouldn't have been a Democrat ballot in November.

6 **Q.** I'm sorry. May '22 Democratic ballot. I misspoke. You
7 are correct.

8 About 31 ballots?

9 **A.** Adding in some party-specific things, probably.

10 **Q.** May '22 Republican, 37?

11 **A.** The difference would be the party-specific races.

12 **Q.** Okay. Do you know of any human who can remember -- not --
13 just remember 30 races from a ballot that they just cast on the
14 screen?

15 **A.** I have always felt comfortable verifying my ballot.

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

17 MR. MILLER: I'll state an objection here, first of
18 all, as far as the scope of direct.

19 Second, this sounds awful like the scope of expert
20 testimony that there was an objection to but then elicited
21 anyway yesterday.

22 But it is certainly beyond what we talked about in
23 direct.

24 MR. BROWN: I'll withdraw the question if it is
25 confirmed that he didn't state any observations about people's

1 ability to read ballots during his direct.

2 Is that correct?

3 MR. MILLER: I think we just talked about the
4 availability of sample ballots and things like that. I don't
5 recall that, so --

6 MR. BROWN: So there is no testimony then about
7 whether his -- the voters in his county are able to read the
8 ballot; is that correct?

9 THE COURT: I didn't hear any. Let me just put it
10 that way.

11 MR. BROWN: Thank you. Thank you, Your Honor.

12 THE COURT: There was a lot of other testimony, but
13 not specifically about that. And there was about the handing
14 out the --

15 MR. BROWN: Thank you, Your Honor.

16 THE COURT: -- sample ballots.

17 BY MR. BROWN:

18 **Q.** Now, you have at least one BMD that is equipped to be used
19 by voters who need assistance in every polling location; right?

20 **A.** Yes.

21 **Q.** And you don't let your BMD that is used for people who
22 need assistance to just gather dust in the corner, do you?

23 **A.** I do not.

24 **Q.** Instead, it is tested, cleaned, and ready to use just like
25 any other BMD come election day; right?

1 **A.** The only difference between it and any other BMD is that
2 there is a special device attached for disabled voters to use
3 should they need it because of dexterity or visual impairment.

4 THE COURT: Because of what?

5 THE WITNESS: Dexterity issues or visual impairment.

6 BY MR. BROWN:

7 **Q.** And, Mr. Kirk, in early -- in early voting, you are
8 required by law to have a sufficient number of paper ballots
9 for every ballot style; correct?

10 **A.** During advanced voting, my understanding is the only paper
11 ballots they need at the polling place is -- are enough for
12 provisional ballots, and they do have a full supply of those,
13 and we usually go a little bit overboard to be sure they have
14 plenty. And we can always run them more.

15 **Q.** Are you familiar with the poll worker manual?

16 **A.** I am.

17 MR. BROWN: Do we have another copy?

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

19 BY MR. BROWN:

20 **Q.** Now, don't the rules require you to have enough ballots to
21 use paper ballots in case there is a problem with the BMDs?

22 **A.** My recollection is that is more of an election day rule,
23 but I do have every ballot style available at every advanced
24 voting site should they need it.

25 **Q.** Right. So you would be able to service your population in

1 early voting whether you had BMDs or hand-marked paper ballots;
2 right?

3 **A.** We rely on the BMDs in the primary method, and that has
4 been a good method for a while now. There is a sufficient
5 number there to get them started, and then I have a full supply
6 at my office that I can always take them if they need it.

7 **Q.** But you would be ready to handle voters in early voting in
8 your voting centers if the BMD went down first thing in the
9 morning; right? You would be able to do it?

10 **A.** The technical answer is yes. The real world scenario
11 would be: It would be a lot slower; we would have ballots
12 issued to the wrong people; and just trying to balance that
13 many ballot styles for precincts in a location, especially with
14 a long line, would be problematic.

15 **Q.** And you would need -- it would be very helpful to get a
16 Ballot on Demand printer in that instance, wouldn't it?

17 **A.** That is the only way I think that would go well.

18 **Q.** But that would work; right?

19 **A.** Yes. Well, not just one; one for every Poll Pad checking
20 in voters.

21 **Q.** Right. And that does cost money; correct?

22 **A.** Yes.

23 **Q.** How much does it cost you in hours to conduct logic and
24 accuracy testing on each BMD machine?

25 **A.** Off the top of my head, I don't have a firm number for

1 you. I have a full-time staff member who leads that for me,
2 and then we bring in temporary help as needed to help her out.

3 **Q.** But you would say --

4 **A.** How many hours that takes depends on the size of the
5 ballot, the size of the election, whether it is a primary or
6 not.

7 There's a lot of unknowns in that question.

8 **Q.** But in fairness, if you did not have to conduct logic and
9 accuracy testing on every BMD, but instead had to conduct logic
10 and accuracy testing on only one BMD per polling location, you
11 would save a lot of time and money; fair enough?

12 **A.** I would save some time.

13 I'm not sure if a lot is the right word to use there.

14 **Q.** Now, you talked about training, and I was very impressed
15 with the way you described your combination of hands-on work
16 yourself but also training the people to work with you.

17 Your workers are trained to handle hand-marked paper
18 ballots; correct?

19 **A.** Yes. A component of my training involves emergency
20 procedures. It is specifically in -- I have a class for the
21 voting system, meaning the ballot-marking devices and the
22 scanners and a separate class for the Poll Pads and how the
23 employees at those stations would have to pivot during -- if
24 there is an emergency that requires us to make that change.

25 I start that part of the presentation by saying that

1 voting can slow down, voting can pause, but voting can never
2 stop. But if this is to happen, we're going to support you
3 however we can and have people out there to help you. And this
4 is going to be -- this will possibly be slower. It will be
5 more chaotic. But here is what we're transitioning to in an
6 emergency, and that is expected during an emergency.

7 **Q.** But the poll workers know all the steps of how to handle
8 voters coming in through a line and being given a hand-marked
9 paper ballot and putting it in the scanner, et cetera; correct?

10 **A.** I relate it to our provisional ballot procedures, how we
11 issue that ballot, how we make sure they get the right ballot
12 style for that voter.

13 And in that case, they can. And -- yes.

14 **Q.** But they are trained to handle hand-marked paper ballots?

15 **A.** It is a small component of the training, yes.

16 **Q.** You testified about the way you set up machines in a
17 polling location.

18 And I believe that Cartersville Civic Center is one of
19 your polling locations; is that correct?

20 **A.** That's correct.

21 MR. BROWN: Could you show that.

22 BY MR. BROWN:

23 **Q.** And does this appear to be a photo of the Cartersville
24 Civic Center?

25 **A.** I believe so.

1 Q. And that would be the unit for voters needing assistance?

2 A. That would be the unit for voters who need that -- that
3 accessible device. Voters who need assistance could use any --
4 any BMD because there is someone there assisting them.

5 Q. And in Cartersville Civic Center, the BMDs are -- the
6 screens of the BMDs face the wall behind the voter; correct?

7 A. That's correct.

8 Q. And the screens of the BMDs are surrounded by the blue
9 privacy shields; correct?

10 A. That is correct. We mostly use them for -- as a sign
11 holder. We have additional privacy screens on the screen of
12 the machines so that if people start moving around them or if
13 somebody needs to move around the poll, their privacy is
14 ensured beyond those blue panels.

15 Q. So if you are the poll worker that the voter would be
16 facing, the poll worker, if you are six feet or so, could see
17 the top of the voter's head, let's say, but the poll worker
18 would not be able to see the body of the voter or the BMD or
19 the printer; correct?

20 A. From the perspective this picture was taken from, yes.
21 But there's other positions in the polling place where they
22 would be able to see the full body of the voter.

23 Q. But the poll worker is not supposed to be able to see the
24 screen; correct?

25 A. No. And that is the beauty of the one -- the additional

1 privacy panels that I have.

2 **Q.** Right.

3 THE COURT: It is the beauty of what?

4 THE WITNESS: The additional privacy panels that I
5 have. They fit on the screen themselves too. So they can
6 stand in front of it and really have a tight panel around them.

7 THE COURT: Is anyone else using the screens in your
8 region that you know of?

9 THE WITNESS: Yes. I got the idea from Cobb County,
10 and I think quite a few jurisdictions purchased them at the
11 time.

12 There are machines I put out into the field on what
13 are called Origami carts that have no blue panel around them at
14 all.

15 COURT REPORTER: Please repeat.

16 THE WITNESS: They have no blue privacy panel around
17 them at all. They just have that black thing attached to the
18 screen, and that is to save space.

19 BY MR. BROWN:

20 **Q.** If you're the poll worker, you can't see the -- for
21 example, the cable between the printer and the BMD; right?

22 **A.** Probably not from where they are from their positions.

23 **Q.** And a voter can pick which BMW -- BMW --

24 THE COURT: BMW.

25 THE WITNESS: I hope would so, if they're going to

1 pay for it.

2 MR. BROWN: Not this lawyer. Maybe one of these
3 guys.

4 THE WITNESS: Definitely not me.

5 BY MR. BROWN:

6 Q. The voter can pick the BMD that they want to vote on;
7 correct?

8 A. In most elections, yes. Sometimes they are so full that
9 they have to pick whichever one is open.

10 Q. But a voter could pick one of the BMDs that has a printer
11 cable that can't be seen by the poll watcher; right?

12 A. I suppose so.

13 Q. And is this --

14 MR. BROWN: Thank you, Tony.

15 BY MR. BROWN:

16 Q. Is this -- does this look like the Cartersville --

17 A. It may even be the same picture.

18 Q. I believe it is, yeah.

19 And that shows the orientation of the screens and the
20 printers, which cannot be seen, at least, from where the photo
21 was taken; correct?

22 A. Correct.

23 Q. And does this appear to be the configuration from last
24 November 2023, if you know?

25 A. That, I don't remember. For machines, possibly.

1 MR. BROWN: Your Honor, we would like to mark this as
2 Coalition Exhibit 606 -- I'm sorry, 66.

3 THE COURT: 66?

4 MR. BROWN: Yes.

5 THE COURT: Any objections?

6 MR. MILLER: Your Honor, I think the only objection
7 would be to the extent Mr. Brown's questions are going to go to
8 a specific date. That is what the witness couldn't testify.

9 So if we're just talking about this is a picture of a
10 polling place, no objection.

11 MR. BROWN: Fair enough.

12 THE COURT: All right. Admitted with that
13 qualification.

14 But these are the blue screens currently being -- in
15 use and distributed?

16 THE WITNESS: Yes.

17 THE COURT: I mean, not the screens, but the
18 protective --

19 THE WITNESS: The privacy panels.

20 THE COURT: Right.

21 BY MR. BROWN:

22 **Q.** Now, you have seen photos of, for example, the State Farm
23 Arena polling location in Fulton County?

24 **A.** Yes. I'm trying to remember -- I know I have seen them.
25 I'm trying to remember them.

1 Q. And you would agree that they do not offer the same kind
2 of privacy protection as your Cartersville Civic Center polling
3 location does; right?

4 A. Is that where they use those big carts?

5 Q. I give up, but they are a long line of BMDs.

6 Do you recall that with people walking up and down behind
7 them?

8 MR. MILLER: Your Honor, I'm going to object right
9 here. We're going into speculation.

10 MR. BROWN: No. I'm asking for -- not for your
11 speculation but for your personal observations.

12 MR. MILLER: He just said he didn't know. If he is
13 not sure what he is talking about, maybe --

14 THE COURT: Now you are testifying.

15 THE WITNESS: Possibly. If you have a picture, I
16 would love to see it.

17 BY MR. BROWN:

18 Q. That's all right.

19 Now, you testified on direct that you spoke with Dr. Alex
20 Halderman at an EVN conference last year.

21 Do you recall that?

22 A. I believe I spoke to him last year, yes.

23 Q. In that conversation, you told Dr. Halderman about an
24 effort of some individuals to obtain unauthorized access to
25 your county voting equipment; right?

1 **A.** I don't remember talking to him about that, but I do know
2 what you are talking about.

3 COURT REPORTER: I'm sorry. Wait.

4 I remember talking to him?

5 THE WITNESS: I do not remember that being part of
6 the conversation with Dr. Halderman, but I do -- I think I know
7 what you are talking about.

8 BY MR. BROWN:

9 **Q.** And that effort occurred around the same time as the
10 breaches of the State voting system in Coffee County in
11 January 2021; correct?

12 **A.** I believe so.

13 **Q.** Did that effort involve some of the same people who were
14 involved in the Coffee County breaches?

15 **A.** That, I don't know.

16 **Q.** Who was it?

17 **A.** So I'll just tell you the story.

18 **Q.** Sure.

19 **A.** I got a call from my local Republican party chairperson
20 asking me to conference in people that had contacted him with
21 concerns about the election. They described to me wanting to
22 come in and take images of the voting system itself.

23 I listened to them politely and then explained that that
24 was entirely illegal and was never going to happen here. And
25 that is where the conversation ended.

1 Q. And did you report this incident to the Secretary of
2 State?

3 A. To the office, yes.

4 Q. Who did you report it to?

5 A. To the State election director.

6 Q. Chris Harvey?

7 A. I believe so, yes.

8 Q. And was that notification verbally or in writing?

9 A. I believe I called him immediately.

10 Q. And what did the -- what did the Secretary of State do to
11 follow up on the information that you gave the Secretary of
12 State?

13 A. I have no idea.

14 Q. Nothing as far as you know of; correct?

15 A. I was never part of those conversations. I reported it,
16 but I was obscenely busy at the time and never followed up.

17 Q. Let me make sure the testimony is correct.

18 Your -- the call came after -- shortly after the
19 November 2020 election, to the best of your recommendation?

20 A. That is my recollection, yes. Where it happened in that
21 time frame, I'm not sure.

22 Q. Who was the local party chairperson who contacted you?

23 A. Louis DeBroux.

24 Q. Louis DeBroux?

25 A. Louis DeBroux. And I cannot spell his last name.

1 Q. And was he a Democrat or Republican?

2 A. A Republican.

3 Q. Do you recall a notification from Chris Harvey that was
4 sent to all elections directors in December of 2020 about
5 people seeking unauthorized access to voting equipment?

6 MR. MILLER: Your Honor, I'll just note a brief
7 objection. I didn't do it earlier, but we have gone well
8 beyond the scope of the direct.

9 THE COURT: Well, you've had him talk all about his
10 experience and the security of -- and what he does to secure
11 the system. So I think it flows from that.

12 I mean, we're not going to go too deep, but I think
13 these are fair game having opened this up as this is the --
14 really one of the obviously leading folks in running elections
15 in at least the county level in terms of his qualifications.
16 Obviously not the largest county by any means though.

17 THE WITNESS: Thank you. I did not remember the
18 call, but --

19 BY MR. BROWN:

20 Q. Mr. Kirk, let me put on the screen in front of you
21 Exhibit 188, which is already in evidence.

22 Do you recall receiving that official election bulletin
23 from Chris Harvey?

24 A. I do. And my recollection is it wasn't so much what I had
25 reported, that kind of incident, as we were getting open

1 records requests for State election databases and addressing
2 that concern.

3 **Q.** And if you remember, was the contact that was made to you
4 by the local party official before or after you received this
5 notice?

6 **A.** I do not. And it is worth noting, just to give him
7 credit, as soon as I informed the people on the call it was
8 illegal and I wouldn't do it, the local party chair backed me
9 up 100 percent and I never heard from those folks again.

10 **Q.** He didn't push it?

11 **A.** No. He pushed them away from me.

12 **Q.** And you don't know who the --

13 THE COURT: When you say pushed them --

14 THE WITNESS: Yes.

15 THE COURT: Somebody else was on the phone with him?

16 THE WITNESS: It was a conference call between the
17 local party chair, me, and two or three people who described
18 themselves as attorneys.

19 But as soon as I said, we're not doing that, Louis
20 DeBroux said, absolutely not; if he says no, the answer is no.

21 BY MR. BROWN:

22 **Q.** And those were attorneys?

23 **A.** My recollection was that it was attorneys, but I have no
24 idea what their names were. I never recorded the phone number.
25 I was moving so dang fast.

1 COURT REPORTER: I'm sorry. You were what?

2 THE WITNESS: I never recorded the phone number. I
3 was just moving so dang fast trying to get ready for election
4 stuff.

5 BY MR. BROWN:

6 Q. Now, do you know where the lawyers were from?

7 A. I do not.

8 Q. Just to close that loop, were there any other people who
9 contacted you to try to make images of your election equipment?

10 A. No. Well, not that I recall.

11 Q. You also discussed some other horror stories about --
12 involving security lapses with Dr. Halderman in other Georgia
13 counties.

14 Are you aware of any of those?

15 A. That conversation happened a long time ago. If you care
16 to --

17 Q. Do you remember any of those security lapses that you
18 conveyed to him?

19 A. I do not.

20 Q. Was there any mention of -- in that conversation that we
21 just referred to of SullivanStrickler?

22 A. From --

23 Q. The question was: There was someone who was going to come
24 in to do the imaging.

25 Are you with me?

1 **A.** Yes.

2 **Q.** And you don't recall or maybe you didn't know who those
3 people would have been.

4 But was the name SullivanStrickler mentioned in that
5 conversation?

6 **A.** No. Because I -- I believe I know who you're talking
7 about, but it is not a name that I actually know.

8 **Q.** How about Doug Logan or the Cyber Ninjas?

9 **A.** The only time I have ever talked about the Cyber Ninjas
10 was how much of a -- well, I would like to say joke -- but
11 poorly an audit that was in Arizona, from my understanding.

12 **Q.** Was Scott Hall involved in that call?

13 **A.** I'm not sure who that is.

14 **Q.** How about Robert Sinners? Are you familiar with that
15 name?

16 **A.** I do know Robert Sinners. He was not on the call.

17 MR. BROWN: Your Honor, we're doing the best we can
18 to consolidate questions and go quickly without too much
19 back-and forth.

20 So may I have a minute to --

21 THE COURT: Sure.

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

23 BY MR. BROWN:

24 **Q.** Thank you for your patience.

25 **A.** Absolutely.

1 Q. Did you hear of the efforts -- efforts of individual to
2 get into other counties other than Coffee County and Bartow
3 County?

4 A. I do not recall any of that.

5 Q. Did you ever hear of Doug Logan or Lin Wood or
6 SullivanStrickler trying to access DeKalb equipment?

7 A. No.

8 Q. Did you hear of anyone claiming to have access -- claiming
9 to have access to a Ware County voting machine?

10 A. That rings a bell, but I can't remember anything about it.
11 Just the name Ware County just strikes -- rings something.

12 Q. Rings a suspicious bell?

13 A. Well, I won't say a suspicious bell, but, you know,
14 something -- there was something about a claim about Ware
15 County. I just don't remember what it was.

16 Q. Ware County? Something strange? Sort of those two things
17 come together?

18 A. Maybe.

19 Q. But you don't recall any details about that?

20 A. No.

21 Q. Getting back to the overture that was made to you --

22 A. Uh-huh (affirmative).

23 Q. -- did you report that to the IIRC?

24 A. What is the IIRC?

25 Q. I'm not sure. It is an agency.

1 Do you recall reporting it to them?

2 THE COURT: No one can take down if they are
3 laughing, and I didn't appreciate the laughing.

4 MR. BROWN: It is a fair question.

5 THE COURT: It is. It is just we have to hear it.
6 That's all.

7 BY MR. BROWN:

8 Q. Are you not familiar with an agency called the IIRC?

9 A. I deal with a lot of acronyms.

10 Do you know what it stands for?

11 Q. I do not. It is not Bavarian Motor Works or
12 ballot-marking device. I do know that.

13 A. No. That's fair.

14 So I'm fairly certain no, I did not.

15 Q. Did you report it to any federal -- I'm not suggesting you
16 should have. I'm just trying to get the fact --

17 A. No. The only person I reported it to officially was the
18 State election director.

19 Q. Did you tell other counties about that or county election
20 officials?

21 A. I assume so.

22 Q. But you don't have any specific recollection?

23 A. No.

24 Q. You testified about the proposed solution that the
25 plaintiffs are offering, and you said it was the worst of both

1 worlds because you would have to crowd in all these BMDs and
2 polling booths or tables for hand-marked paper ballots.

3 Do you recall that?

4 **A.** I believe that is one of the reasons I listed, but not the
5 only reason I listed.

6 **Q.** Right. But if you only had one BMD in a polling location,
7 certainly you could arrange booths for hand-marked paper
8 ballots quite simply, couldn't you?

9 **A.** If we were to change the method of voting, I would set for
10 that method of voting.

11 **Q.** I did not --

12 **A.** If we were to change the method of voting, I would set up
13 for that method of voting.

14 **Q.** And you would do it quickly and efficiently, wouldn't you?

15 **A.** I -- what is the time frame of that? Do you mean like
16 during the day if there is an emergency, if it was ordered, if
17 the legislature changed? Like how -- what are we talking
18 about?

19 **Q.** Let's pick if it was ordered.

20 **A.** Okay. Well, I would have to procure more voting booths
21 because I only have enough for provisional balloting right now.
22 Otherwise, I would be using the privacy panels I already have
23 on tables.

24 COURT REPORTER: I'm sorry?

25 THE WITNESS: Sorry. Otherwise I would be using the

1 privacy panels -- the blue panels I already have on tables.

2 And I have not thought through all the things I would
3 need to make that happen, but it would be an undertaking, and I
4 would do it as efficiently as possible.

5 But I can't list off everything right now that I
6 would have to do.

7 BY MR. BROWN:

8 Q. Sir, you referenced Dr. Ben Adida?

9 A. Did I?

10 Q. From Arlo.

11 MR. MILLER: Your Honor, I don't think Dr. Adida was
12 discussed at all.

13 COURT REPORTER: I'm sorry?

14 BY MR. BROWN:

15 Q. Are you familiar with Dr. Adida?

16 COURT REPORTER: I'm sorry. I didn't get his
17 objection at all. I couldn't hear it.

18 MR. MILLER: I was objecting to that. I think
19 Mr. Brown is rephrasing, but I don't think we discussed
20 Dr. Adida at all. We did discuss Arlo.

21 THE COURT: You discussed the -- you discussed
22 matters relating to his participation in the -- in the RLA
23 audits designed by --

24 MR. MILLER: Sure. I was correcting the question
25 because Mr. Brown said, do you remember discussing Dr. Adida?

1 He rephrased it, which is fine.

2 MR. BROWN: I'll withdraw that question. I just got
3 that wrong.

4 BY MR. BROWN:

5 **Q.** You testified about the Arlo audit application.

6 Do you recall that?

7 **A.** Yes.

8 **Q.** Are you familiar with Dr. Adida who runs that company?

9 **A.** I am.

10 **Q.** And do you have a respect for his opinions about auditing
11 and about equipment configurations?

12 **A.** I believe that could depend on the opinion.

13 **Q.** Well, did you know that he recommends to 99 percent of his
14 customers that they use in their polling locations one BMD for
15 accessibility and the rest hand-marked paper ballots? Did you
16 know that?

17 **A.** I do not.

18 MR. MILLER: Objection, Your Honor, to the extent it
19 is not in evidence. If we're agreeing the Tweet is now in
20 evidence -- I don't recall him testifying about this, but --

21 MS. KAISER: He testified to it.

22 MR. BROWN: Your Honor, he said that maybe half a
23 dozen times, maybe more.

24 THE COURT: I think he did say it. I mean, I'm not
25 sure it is that helpful, but -- in terms of the use of time and

1 where we're at, but you can ask him.

2 MR. BROWN: Your Honor, I get the hint and have no
3 further questions. Thank you.

4 THE COURT: Mr. Oles is very efficient.

5 MR. OLES: I'm going to try and continue to be.

6 CROSS-EXAMINATION

7 BY MR. OLES:

8 Q. Good afternoon, Mr. Kirk. My name is David Oles, and I
9 represent one of the plaintiffs, Ricardo Davis, in this -- in
10 this suit here.

11 A. It's nice to meet you.

12 Q. Nice to meet you too.

13 I have a couple of questions for you concerning your
14 experience with election systems and your current position.

15 Would you agree with me, in your extensive experience,
16 that an election process should provide confidence to voters
17 that their vote is accurately recorded?

18 A. I would go beyond that and say it should provide
19 confidence to the voters in the entire process.

20 COURT REPORTER: I need you to repeat.

21 THE WITNESS: Sorry. I would go beyond that and say
22 it should provide confidence to the voters in the entire
23 process.

24 BY MR. OLES:

25 Q. Now, in its -- and you are familiar with -- obviously,

1 with the Dominion system that Georgia currently uses; correct?

2 **A.** I am.

3 **Q.** Okay. In its current configuration system, the Dominion
4 ballot-marking device prints a paper ballot with a QR code; is
5 that correct?

6 **A.** That is correct.

7 **Q.** Okay. And would you agree with me that it is not possible
8 for a voter to read Dominion's proprietary QR code that
9 actually contains the ballot selections?

10 **A.** Yes. But I would go further to say that no matter how a
11 ballot is marked, whatever kind of pen you use, whether it is a
12 BMD or a pen bubbling in an oval, the voter has no way of
13 telling where -- how the tabulation happens because in both
14 cases that is coding.

15 **Q.** Okay. Thank you.

16 But here is my question: As a result of the QR code
17 holding the encoded information, even if, as you suggest, the
18 voter reviews the paper ballot and the text that is printed on
19 it, the voter has no way of ensuring that its vote -- that
20 their vote that they feed into the scanner is what they
21 actually picked on the screen?

22 **A.** I -- going back to the point I just made, whether you mark
23 a ballot with a machine or you mark it by bubbling in an oval,
24 the voter has no way of knowing how that ballot is being
25 tabulated.

1 The scanner for hand-marked ballot does not look at the
2 theme. It looks at the coordinates of the bubble. If you swap
3 names -- so in both cases, they have no way of knowing.

4 **Q.** Now, you testified that you audit, I think you said,
5 100 percent of elections?

6 **A.** I audit one race in every election I conduct currently.

7 **Q.** Okay.

8 **A.** I'm looking at ways to expand that.

9 **Q.** Now, would you agree with me that risk-limiting audits
10 depend upon printed ballots? That is, they look at the printed
11 ballots in order to perform the audit?

12 **A.** The -- yes. Any kind of tabulation audit should look at
13 what the voter looks at, not what the machine looks at.

14 **Q.** So as a result of the ballot-marking device being in
15 this -- in this mix here, would you agree with me that any
16 risk-limiting audit, even if you audited 100 percent of the
17 races, cannot verify the choices displayed to the voter as
18 accurate?

19 **A.** Absolutely not.

20 **Q.** So let me make sure I understand.

21 When the voter walks into the -- when the voter takes
22 their card and walks in front of that ballot-marking device,
23 you're telling me that there is some way that that voter can
24 tell that what is displayed on the screen is accurate for them?

25 **A.** What would they be checking for accuracy? You mean what

1 races are displayed?

2 Q. Yes.

3 A. Well, if they know what races they are entitled to vote
4 on, then yes, they can look at the screen and see those races
5 on the screen.

6 Q. In your experience with -- you have been doing this for
7 how many years?

8 A. I have been in elections since 2002.

9 Q. In your experience with this, how many voters actually
10 come in and know all the races that they are supposed to see on
11 the screen?

12 A. I'm not sure.

13 Q. Okay. In reality, it is a small fraction, if at all;
14 right?

15 A. I have never taken a poll to know how many voters know
16 what districts they are in on their way in the door.

17 Q. And you would further agree that a risk-limiting audit
18 cannot verify if the selection made by the voter on the screen
19 was properly recorded?

20 And I think you just already agreed with that.

21 A. No, I didn't.

22 Q. Okay. Let me pose it to you again then.

23 Would you further agree that a risk-limiting audit cannot
24 verify if the selection made by the voter on the screen was
25 properly recorded as his or her vote by the system?

1 **A.** Oh, you're saying if a voter didn't verify their ballot at
2 all how would we know that was their selection?

3 **Q.** I'm saying even if they did look at it, you can't
4 guarantee -- the voter can't be sure with the current system
5 that what is recorded in the system was what they picked?

6 **A.** To back up a little bit then, we ask the voters -- we make
7 sure the voters verify their selections prior to casting their
8 ballot. Once that ballot goes into the machine and enters into
9 a locked sealed box, it is transferred once under public
10 scrutiny, if there are poll watchers there, into a separate
11 sealed container where it sits until the audit.

12 And during my audit, we will look at what the voter looked
13 at and compare the results of us looking at the voters'
14 selections that they verified to the results reported by the
15 voting system.

16 So yes, I can verify that what they verified and what they
17 cast matches the results that were reported.

18 **Q.** But you're just looking at that paper ballot; right?

19 And what the scanner counts -- and you just said yourself
20 what it is counted is what was on the QR code. There is no way
21 that in a risk-limiting audit -- several experts have come up
22 here in this case and testified that there is absolutely no way
23 that a risk-limiting audit with a BMD in the center can produce
24 an accurate and reliable audit.

25 Are you disagreeing with them?

1 THE WITNESS: Before I answer, do you want to say
2 something?

3 MR. MILLER: Your Honor, I'll just state an objection
4 as to I think he's asked and answered this question a couple of
5 different times. And we're veering, again, outside the scope
6 of direct.

7 We talked about what he conducts. Not some expert
8 opinion on risk-limiting audits.

9 THE COURT: Could you just read me the witness'
10 answer?

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

12 THE WITNESS: If I may, maybe this will clarify.

13 THE COURT: Go ahead.

14 THE WITNESS: No matter what kind of ballot is cast,
15 whether it is hand-marked, whether it is a ballot from a BMD
16 that contains a different coding than the hand-marked paper
17 ballot does, what we need for the audit is the text the voter
18 verified.

19 We compare that overall vote total to the total
20 reported by the system. I am not sure how that comparison
21 wouldn't show a discrepancy between what the voter verified and
22 what the system reported.

23 BY MR. OLES:

24 Q. What we're talking about is what the voter picked when
25 they walked into -- in front of that BMD.

1 **A.** Let me rephrase then.

2 Then what the voter picked and looked at is what I'm
3 looking at during the audit, and I compare that to the results
4 reported by the voting system to ensure that they match or
5 match with a very small margin of error.

6 **Q.** You already agreed with me, I believe, that the scanner
7 reads the QR code?

8 **A.** Right.

9 **Q.** And the voter could not verify what is in the QR code;
10 right?

11 **A.** Right.

12 **Q.** So there is no way that your audit can verify that what
13 the voter picked is what made it to the other end?

14 **A.** What it verifies is the results reported by the voting
15 system.

16 THE COURT: Go slow. Go slow.

17 THE WITNESS: What it verifies is the results
18 reported by the voting system, so what it read from the code or
19 from the bubbles, matches a hand tally of what the voter looked
20 at.

21 BY MR. OLES:

22 **Q.** Do you understand how the ballot works?

23 **A.** Do you?

24 **Q.** No.

25 **A.** Yes, I do.

1 Q. I get to ask questions here.

2 Because you're telling me -- and I think -- I want to make
3 sure I get this right.

4 You are telling me that you can take that ballot as it was
5 scanned and guarantee that what the voter entered at the BMD is
6 in there?

7 A. I can -- I'm trying to think of a different way to say
8 this.

9 What I look at during my audit is what the voter verified,
10 the name on the ballot, the selection in a contest yes or no.
11 And we count those voter verifiable selections, and we compare
12 that to the overall vote total reported by the system.

13 So do I compare the results of every individual ballot?
14 No.

15 Do I compare the aggregate totals for each batch that I'm
16 auditing. Absolutely. And they have always matched.

17 Q. Okay.

18 MR. MILLER: Your Honor, at this point, not only is
19 it beyond direct, which I objected to before and was overruled
20 on, but it is also now cumulative.

21 It is going back to the same verifiability line of
22 questioning that I was overruled on and allowed to go forward
23 in the earlier cross-examination.

24 THE COURT: I think that -- I think that you've done
25 probably as much as you can do at this point.

1 MR. OLES: I'm moving on, Judge. Thank you.

2 THE COURT: Well -- all right. To a new topic that
3 is within the scope of his examination?

4 MR. OLES: Yes, Judge.

5 BY MR. OLES:

6 **Q.** Mr. Kirk, would you agree with me that only a small
7 fraction of people -- of voters ever review the paper ballot
8 that is printed out before they feed it into the scanner?

9 MR. MILLER: Your Honor, I think the testimony
10 elicited on the first cross-examination was that he had not
11 conducted a poll of that sort.

12 THE COURT: All right. That is what he --

13 MR. OLES: I'll move on, Judge.

14 THE COURT: -- responded to. Move on.

15 BY MR. OLES:

16 **Q.** Now, Mr. Kirk, you were asked a couple of questions about
17 using hand-marked paper ballots.

18 I believe in last year -- in August of last year in
19 Cherokee County -- which is right next door to Bartow County;
20 correct?

21 **A.** Uh-huh (affirmative).

22 **Q.** -- that VOTER GA conducted a hand-count demonstration and
23 timing study.

24 Did you attend?

25 **A.** I did not.

1 Q. Okay. Just one more thing.

2 Now, last year, you opposed a number of election integrity
3 legislation efforts, didn't you?

4 A. I opposed bills last year. I would disagree with the
5 characterization of election integrity.

6 Q. So there was a bill -- I believe there were two bills that
7 would have made ballots subject to open records requests.

8 THE COURT: All right. I think that is really
9 outside the scope of the direct, totally outside, so --

10 MR. OLES: I'm done, Judge.

11 THE COURT: Thank you very much.

12 MR. MILLER: Your Honor, I have one question.

13 THE COURT: Sure.

14 REDIRECT EXAMINATION

15 BY MR. MILLER:

16 Q. Mr. Kirk, you testified on the first cross-examination
17 about a lack of qualified election officials and difficulty
18 hiring more following the 20 -- after 2020.

19 Do you recall that?

20 A. I do.

21 Q. Do you have an understanding of why that is?

22 A. Again, I've never taken a poll of people. But the groups
23 I work with that publish reports about less people coming into
24 elections, part of that is because of the pay, part is because
25 of the atmosphere.

1 What used to be a very fun job in a lot of cases has
2 become, well, frankly, not as fun as it used to be. There is a
3 lot of accusations coming at us without a lot of data to back
4 them up, and it is wearing on us.

5 MR. MILLER: Thank you again for your time.

6 THE WITNESS: Thank you.

7 THE COURT: So I think this is a very brief question.
8 I certainly hope so.

9 THE WITNESS: I'll do my best.

10 EXAMINATION

11 BY THE COURT:

12 **Q.** You talked earlier about that you audited, I guess, one --
13 you did a complete audit of the -- at least for one position in
14 each of your audits that you conducted countywide --

15 **A.** Uh-huh (affirmative).

16 **Q.** -- as opposed to the two batches that were identified for
17 your auditing by the State; is that --

18 **A.** That's correct.

19 **Q.** All right. And I'm just -- do you have any understanding
20 of how the batches were drawn up as compared to your -- what
21 you did on the statewide?

22 I mean, just put that aside. I just wanted to clarify.

23 **A.** Meaning how Arlo selects the batches?

24 **Q.** Right. Do you have any notion of that yourself?

25 **A.** I have a general understanding that it involves a random

1 algorithm and the sort of math that goes into an RLA of how
2 many batches to select.

3 I have never seen the code. I know it is open source. I
4 have never looked at it to see how it actually does it.

5 **Q.** And your county is approximately about 11 percent -- has a
6 population that is about 11 percent African-American and 5
7 Hispanic.

8 I don't know if that is still true.

9 **A.** I am not sure.

10 **Q.** But is it something in that range?

11 **A.** That sounds right.

12 **Q.** I mean, I'm not trying to zone in on whether it is
13 precisely right. It is really a question about the sampling.

14 Do you yourself know whether, in fact, the sampling done
15 ensures that there is a wide range of the population by
16 demographics, whether it could be rural or --

17 **A.** This is speculation. But the only data that I know of
18 that Arlo takes in is the ballot manifest.

19 **Q.** The ballot manifest is defined as what?

20 **A.** It is a listing of all the ballot containers, the batches,
21 and what type of ballots they are, how many are in them.

22 So, for example, if there's 200 ballots scanned in an
23 advanced voting location over the entire course of voting, that
24 batch size would be 200 and on the ballot manifest it would say
25 the advanced voting location name, the scanner name or scanner

1 serial number or some identifier for the scanner, and how many
2 ballots were in that batch.

3 THE COURT: Thank you.

4 THE WITNESS: Thank you.

5 THE COURT: All right. Well, thank you for coming
6 again, and --

7 THE WITNESS: Thank you for having me.

8 THE COURT: -- do you need any water for on your way
9 out?

10 THE WITNESS: No, but I do appreciate the
11 hospitality.

12 THE COURT: All right. Good luck with the 2024
13 election too.

14 THE WITNESS: Thank you very much.

15 THE COURT: I know it is a lot of hard work.

16 THE WITNESS: It is going to be a fun year.

17 THE COURT: May the witness be excused?

18 MR. MILLER: Yes.

19 MR. BROWN: Yes, Your Honor.

20 THE COURT: Please don't discuss your testimony with
21 anyone until the case is through, though. I appreciate that.

22 THE WITNESS: Absolutely.

23 MR. TYSON: So, Your Honor, at this point our plan --
24 and we had discussed calling Mr. Davis to testify briefly.
25 Given that it is 4:45 on Friday and I know we still have

1 another matter to discuss, I want to apologize to Mr. Davis. I
2 think he's been here ready for that.

3 But I will take your direction on the best path to
4 proceed.

5 THE COURT: And, Mr. Davis, can you be here on Monday
6 morning, or do you have a work conflict?

7 MR. DAVIS: Let me check.

8 THE COURT: We can find a time, no matter what.

9 MR. TYSON: Certainly, Your Honor.

10 THE COURT: So just identify when you are going to be
11 available before you leave so that everyone can take that into
12 account.

13 MR. DAVIS: All right. Thank you.

14 THE COURT: All right. So we're going to end the
15 public session. We had some matters to deal with some of the
16 lawyers. And if you can -- just so they know who is coming
17 first on Monday, if you could just look right now about Monday
18 morning. If you're not available, then just indicate to your
19 counsel and he can write to opposing counsel.

20 MR. TYSON: And, Your Honor, our only limitation on
21 Monday is Dr. Gilbert needs to conclude his testimony on
22 Monday.

23 THE COURT: So do you want to start with Dr. Gilbert?

24 MR. TYSON: Ideally, we would start with Dr. Gilbert,
25 but I don't think Mr. Davis would take that long, though, if he

1 needed to go first.

2 THE COURT: Well, he can go after -- just please let
3 us know your schedule for Monday and Tuesday. I gather it
4 won't take long. But if you email your counsel, he can email
5 the State's counsel.

6 MR. TYSON: And, Your Honor, last housekeeping item
7 for us before we conclude the public session. I understand
8 that we have had some initial discussions about closings, and I
9 think we're going to have some conversations about that.

10 But my understanding is -- we wanted to make sure if
11 you had thoughts about that that you wanted us to consider.
12 Otherwise, we can discuss that among ourselves and get back to
13 you.

14 THE COURT: Well, why don't you first discuss it
15 among yourselves, and then I'll give you some feedback at that
16 point.

17 MR. CROSS: We had some initial discussions -- I
18 think if the agreement still stands, I think we both thought it
19 would be valuable for the Court.

20 Getting your thoughts today would be helpful because
21 the weekend would be the best opportunity for us to --

22 THE COURT: Well, do you have any idea of when the
23 case might close since we've done so unbrilliantly about our
24 scheduling and how long everything takes?

25 MR. BELINFANTE: Your Honor, I will tell you what we

1 shared with plaintiffs' counsel at one of the last breaks,
2 which is, our intent is to call Mr. Davis, Dr. Gilbert,
3 Ms. Marks, and Gabriel Sterling.

4 Depending -- if it were limited to direct, I think we
5 could do that on Monday, but I have no confidence that
6 that's --

7 THE COURT: No. I think that is at least a two-day
8 adventure.

9 MR. BELINFANTE: I think you're right, Your Honor. I
10 think you're right.

11 And one of the things we discussed is providing for
12 at the close of testimony some time -- and I was thinking a
13 day, but depending on when it closes -- for counsel to be able
14 to prepare -- because I'm sure we're all going to use some
15 level of PowerPoint -- a closing argument that contains
16 numerous citations to the record and the transcript.

17 Obviously, we have been and continue to do so -- but
18 I think those last witnesses are going to involve a fair amount
19 of important material.

20 But I also understand and raised with opposing
21 counsel many of them are flying in and don't want to increase
22 the burden on that.

23 So that is the kind of issue we're looking at is,
24 one, would there be any time between the close of the State's
25 case -- obviously, they don't know if they are going to do

1 rebuttal yet. So that weighs in some. And then the closing
2 and also just how much time the Court wants to afford to
3 closing argument in the case.

4 MR. CROSS: I think our thoughts are, Your Honor, we
5 don't want to take any time unless Your Honor finds it
6 valuable. We will be ready to stand up when the last witness
7 sits down.

8 I think right now we're not thinking that we're going
9 to need much of a rebuttal, maybe not any live rebuttal. There
10 may be some additional deposition testimony would come in as
11 designations or something. But I think right now we're not
12 thinking any live witnesses on rebuttal. But we haven't heard,
13 obviously, from Dr. Gilbert. That might affect it.

14 So our thought was if we can get through the
15 witnesses Monday, maybe even Tuesday morning, I'm fine starting
16 doing closings on Wednesday if that works for the Court, even
17 if we end early on Tuesday. But, otherwise, we just want to
18 move right into it.

19 THE COURT: Well, I'm just doubtful you're going to
20 be through before the end of Tuesday, and so, you know, either
21 Wednesday or Thursday seemed a little more realistic. And I
22 think some of this has to do with are you wanting to submit
23 proposed findings of fact and conclusions of law or not also.

24 And without knowing whether that is something you
25 want to do, it is hard for me to answer your question.

1 MR. CROSS: My initial instinct is we probably may
2 want to do that. I think we need to think more about it. But
3 I think whether we do or not, I think the closings, just given
4 the length of the trial and complexity, like the openings, I
5 think will provide a distillation for the Court from both sides
6 that will be helpful, particularly if there are presentations
7 that kind of bring some of the evidence together.

8 And then if there are findings of fact and
9 conclusions of law, we can get those quickly and you would have
10 all of that together. But we would like to get closings done
11 by Wednesday, if at all possible.

12 THE COURT: All right. I'm going to say we can do it
13 on Wednesday afternoon, but I'm not somebody who has a lot of
14 confidence in this timeline. And maybe it is my fault because
15 I let everyone go on and present their case or their defense or
16 whatever, but -- and I haven't timed anyone, generally
17 speaking, so -- but, you know, are you thinking an hour for
18 each side?

19 MR. CROSS: I think sort of our initial instinct was
20 maybe something more like 90 minutes or two hours. We also
21 have multiple folks that have to coordinate. I think the
22 openings we did an hour. Obviously, there's sort of a lot
23 more.

24 THE COURT: Are you talking about 90 minutes for each
25 set of counsel?

1 MR. CROSS: For a side. So for us --

2 MR. BROWN: So three hours total.

3 MR. CROSS: For our side. That's what I thought.

4 MR. MILLER: 90 minutes for them, 90 for us.

5 MR. CROSS: Yeah, something like that.

6 THE COURT: Well, 90 minutes I could tolerate. I
7 think two hours per side is -- it is hard to listen to that
8 much when you've been listening a lot.

9 So either we're making progress and we can do that on
10 Wednesday afternoon and give everyone enough breathing space on
11 Wednesday morning that you're really ready and you're
12 functional and I'm functional because you do have to think
13 about -- I mean, I have paid a lot of attention, but it is a
14 lot to hear this much testimony and then to listen to argument
15 right on the heels of it.

16 So if we are still going on Wednesday morning, no,
17 I'm not going to -- we'll have to do it Thursday.

18 MR. CROSS: Okay.

19 THE COURT: I'm just not prepared to roll into
20 three hours of intense argument where I might extend something
21 because of my questions. I would rather just be through.

22 So I guess that's the best feedback I can give to
23 you, and obviously --

24 MR. CROSS: That's very helpful.

25 THE COURT: -- we'll see.

1 MR. OLES: Judge, I have one question, if I may.

2 THE COURT: Yes.

3 MR. OLES: My client was considering offering a brief
4 rebuttal witness.

5 Is that something that we can --

6 THE COURT: Well, they might do the same, for all I
7 know, so you can do a rebuttal witness.

8 MR. OLES: Thank you.

9 THE COURT: Have you identified the rebuttal witness?
10 I mean --

11 MR. OLES: Yes. On -- are you talking about --

12 THE COURT: I mean, have you advised both opposing
13 counsel that --

14 MR. OLES: I had intended to do that.

15 THE COURT: So we have to know -- I mean, they might
16 object. But, anyway, theoretically, you can do that. Whether
17 they object and I have to -- and it raises a whole other set of
18 issues, that is another matter.

19 MR. OLES: I will take that up, Judge. Thank you.

20 THE COURT: And I know your folks have been staying
21 up to speed with Mr. Martin.

22 But, Harry, when are you -- on the documents, when
23 are you leaving?

24 COURTROOM DEPUTY CLERK: Thursday.

25 THE COURT: Thursday. So no matter what, you need to

1 not postpone -- for sanity's sake, you have to get all the
2 documents straight on Wednesday, no matter what. I know you've
3 been doing it every day, but --

4 Okay. We're going to adjourn the public hearing
5 right now. And those dealing with this other matter can stay.

6 Let's take five minutes. I will say that I don't --
7 be concise. All right already? We're going to take five.

8 COURTROOM SECURITY OFFICER: All rise. Court stands
9 in recess.

10 (The public proceedings were thereby adjourned
11 at 4:53 PM.)

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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 214 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 27th day of January, 2024.



SHANNON R. WELCH, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
OFFICIAL CERTIFIED TRANSCRIPT

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