

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WILLIE RAY, JAMILLAH JOHNSON,)
GLORIA MEEKS, REBECCA)
MINNEWEATHER, REUBEN)
ROBINSON, EDDIE JACKSON,)
and THE TEXAS DEMOCRATIC PARTY,)

Plaintiffs,)

v.)

Civil Action Number 2:06-CV-385(TJW)

STATE OF TEXAS, a State of)
the United States; GREG ABBOTT,)
Attorney General of the State of Texas;)
and PHIL WILSON, Secretary of)
State for the State of Texas,)

Defendants.)

**PLAINTIFFS' OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Plaintiffs Willie Ray, Jamillah Johnson, Gloria Meeks, Rebecca Minneweather, Reuben Robinson, Eddie Jackson, and the Texas Democratic Party, by and through undersigned counsel, respectfully submit this opposition to Defendants' ("the State's") summary judgment motion.¹

INTRODUCTION

The State's motion for summary judgment should be denied because it seeks judgment based upon disputed material facts and because the State is not entitled to prevail on Plaintiffs' claims as a matter of law. Plaintiffs are entitled to a trial on their claims that several provisions of the Texas Election Code largely enacted in 2003 (the "challenged provisions"), separately and in conjunction, violate Plaintiffs' federal constitutional and statutory rights.² As the State's motion all but concedes, Plaintiffs' serious challenges in this lawsuit already have led the State to revise the design of the carrier envelope that is used for returning mail-in ballots, and to revise the instructions sent to voters for casting such ballots.³ Prior to the State's proposed redesign, the carrier envelope, along with other materials propagated by the State, provided inadequate and misleading notice of the challenged provisions. In particular, voters and potential assistants would not reasonably have known that Texas Election Code Section 86.006(f) criminalizes the mere consensual *possession* of another's ballot or carrier envelope, subject to only a few narrow exemptions, or that all who come into contact with the ballot must provide identifying information, even if they do no more than possess the ballot to mail it. Plaintiffs appreciate the State's efforts to remedy the statutory failings, but respectfully submit that the proposed changes

¹ The State incorrectly claims that Defendant the State of Texas has been dismissed from this case. *See* Defendants' Motion at 3. At the preliminary injunction stage, the Court dismissed the State only with respect to Plaintiffs' constitutional claims. *See* Findings of Fact and Conclusions of Law at 8 ¶ 1. Plaintiffs' statutory claims against the State are proper because Congress has abrogated states' sovereign immunity. *See, e.g., Tennessee v. Lane*, 541 U.S. 509, 519 n.4 (2004) (explaining that "measures protecting voting rights are within Congress' power to enforce the Fourteenth and Fifteenth Amendments, despite the burdens those measures placed on the States" (citation omitted)).

² Specifically, Plaintiffs challenge Sections 64.036(a)(4), 84.003(b), 84.0004, 86.0051 and 86.006 of the Texas Election Code.

³ The State's proposed redesign of the carrier envelope was conceived and announced in the middle of oral argument before the Fifth Circuit in December 2007, on appeal of the preliminary injunction issued by the Court in 2006.

alone do not cure the serious defects in the Election Code identified by Plaintiffs.

As discovery has uncovered, the two state officials primarily responsible for enforcing the Election Code – the Secretary of State and the Attorney General – have indicated their conflicting interpretations of the statutory provisions at issue, which are so broad and vague that they have allowed the arbitrary and unfair enforcement that has existed to date. Indeed, it is undisputed that African-Americans, Latinos and Democrats comprise the great majority if not the entirety of those criminally prosecuted by the State under the challenged provisions since 2003. Moreover, the great majority of those prosecutions were for mere consensual possession under Texas Election Code Section 86.006(f) and involved *no* allegation, proof, or conviction of any actual fraud. In contrast, the State has failed to investigate or prosecute other non-minority, non-Democrats who also have “technically” violated Section 86.006. For example, as discovery has shown, the “Escapees” – a vast organization of recreational vehicle (“RV”) users, whose membership is predominantly non-minority and non-Democrat – use mail distribution and collection procedures for mail-in balloting that violate the plain terms of Section 86.006, but their efforts have been actively *supported* by the State. The vague and overbroad statutory provisions that make such unfair enforcement possible cannot withstand scrutiny.

Discovery also has made clear the vast chilling effect of the challenged provisions on political and expressive activity – of voters, of willing helpers, and of party activists. Plaintiffs have alleged this chilling effect since the inception of this lawsuit; it was confirmed with testimony and other evidence at the preliminary injunction stage of this case; and it has been confirmed further in the discovery that has taken place in the last several months. As Plaintiffs will show at trial, there has been a massive chilling effect on individuals’ longstanding efforts – particularly in Democratic and minority communities – to associate politically and get out the

vote by helping voters with mail-in balloting. The combination of the vagueness and breadth of the challenged provisions and the State's unfair pattern of enforcement has created this demonstrable chilling effect. The State's motion simply ignores the record evidence to the contrary, which creates a material factual issue precluding summary judgment.

STATEMENT OF THE CASE

Plaintiffs filed their initial complaint in this case on September 21, 2006, challenging several unduly restrictive provisions of Texas law concerning mail-in balloting. Following an evidentiary hearing, this Court, on October 31, 2006, issued a narrow preliminary injunction against enforcement of Sections 86.006(f) and (h) of the Texas Election Code in certain and limited circumstances.⁴ The Court concluded that Section 86.006 “prevents [Plaintiffs] and dissuades others, under the pain of prosecution, from participating in legitimate organizational efforts designed to maximize early voter turnout.” The Court thus enjoined the State from enforcing Sections 86.006(f) and (h) “in circumstances in which a person, other than the voter, has merely possessed the official ballot or official carrier envelope and such possession is with the actual consent of the voter.” The Court preserved the State's ability to require identifying information from those *mailing* ballots for voters, stating that the State was not prevented “from enforcing Tex. Elec. Code § 86.0051 under the circumstances in which a person, other than the voter, deposits the carrier envelope in the mail or with a common or contract carrier and does not provide the person's signature, printed name, and residence address on the reverse side of the envelope.” In other words, this Court's injunction barred the prosecution of a person who

⁴ This Court made clear that its preliminary injunction ruling pertained solely to Plaintiffs' challenge to Section 86.006, because “even assuming that [Plaintiffs' other] claims are meritorious, the court could not award meaningful relief in the form of a preliminary injunction given the current timetable governing the election.”

consensually possessed the mail-in ballot or carrier envelope of another but did not actually mail the ballot for the voter.⁵

The State immediately moved for a stay of the injunction in the Fifth Circuit Court of Appeals. The State claimed that the “district court’s injunction has the *immediate* effect of enjoining [the State] from preventing voter fraud,” incorrectly describing the injunction as having “enjoined any enforcement of §§ 86.006(f) & (h) of the Texas Election Code.” Stay Mot. at 3, 15 (filed Nov. 1, 2006). Plaintiffs opposed the stay motion on November 2, 2006.

On November 3, 2006, a panel of the Fifth Circuit granted the State’s motion to stay, but denied the State’s motion to expedite the appeal. Judge Dennis concurred, but found it “difficult . . . to say that the district court abused its discretion in its carefully drawn preliminary injunction of what appears to be the state’s overly broad criminalization of conduct intended to assist disabled voters and its resulting disqualification of disabled voters’ mail-in ballots.” Plaintiffs thereafter sought emergency relief from the Supreme Court, which denied review, over the dissent of Justice Souter.

Following a full briefing on the merits of the State’s appeal of this Court’s limited 2006 injunction, oral argument in the Fifth Circuit was held on December 4, 2007. At oral argument, counsel for the State Defendants for the first time suggested that the State intended to revise its procedures for those voting by mail. In a post-oral argument submission to the Court of Appeals, the State said that it was acting because “the Court [of Appeals] raised certain concerns regarding Texas’s early-voting, mail-in ballot and carrier envelope[.]” The State advised the

⁵ In addition to granting Plaintiffs’ motion for a preliminary injunction in part, this Court ruled on aspects of the State’s motion to dismiss necessary to the disposition of the Court’s injunctive order. The Court granted in part the State’s motion to dismiss the State as a Defendant, determining it was immune from suit only on the constitutional claims. The Court also stated that it had subject matter jurisdiction over Plaintiffs’ constitutional and Voting Rights Act claims, although it relied only on the constitutional right to vote claim as a basis for granting the injunction. Finally, the Court rejected the State’s motion to dismiss or transfer for lack of venue based on *Heck v. Humphrey*, 512 U.S. 477 (1994), concluding that *Heck* did not bar the claims of Plaintiffs Ray and Johnson or warrant transfer.

court of appeals that “the Secretary of State intended to modify the ballot envelope instructions and carrier envelope[.]” App. Ex. 1 (State’s 12/13/07 letter to the Fifth Circuit).⁶ The State’s proposed changes to the carrier envelope (the envelope used for sending mail-in ballots to election officials) were two-fold. A warning would be placed on the carrier envelope stating that “knowingly possessing another person’s ballot or carrier envelope may be a crime unless you provide your signature, printed name, and address.” *Id.* at 2.⁷ Second, on the back of the carrier envelope, where the envelope contains a place for the signatures of witnesses or assistants, there would be placed two hash marks to provide those mailing a ballot for another with a place to sign the envelope. The language underneath the signature line on the carrier envelope would be changed from “Printed names and Signatures of Assistants, Witnesses” to “Printed names and Signatures of all Assistants, Witnesses or Persons handling ballot or carrier envelope.”

The Plaintiffs submitted a response to the Fifth Circuit Court of Appeals concerning the State’s proposed changes. *See* App. Ex. 2. While the Plaintiffs welcomed the State’s effort to attempt to begin to rectify the failings of the Texas election law, Plaintiffs noted that the proposed changes not only failed to resolve Plaintiffs’ objections, but also did not address the basis for this Court’s narrow injunction of Section 86.006(f) of the Texas Election Code. For example, the Texas Election Code imposes criminal liability for mere possession of another’s mail-in ballot and does not exempt from liability persons who handled the ballot and who signed the ballot envelope. Thus, for example, a person who signs the ballot envelope as an assistor is not exempt from the criminal sanctions of the Texas Election Code, § 86.006(f); there are six

⁶ “App. Ex. ___” refers to those exhibits included in the appendices being filed simultaneously with this Motion. Plaintiffs also cite exhibits received into evidence at the 2006 hearing on plaintiffs’ motion for preliminary injunction, and those exhibits are cited herein as “PX___”. Under Fed R. Civ. P. 65(a)(2), evidence introduced at the preliminary injunction hearing is part of the record for trial and need not be reintroduced. *See John v. State of La. Bd. of Trustees for State Colleges and Universities, et. al.*, 757 F.2d 698, 705 (5th Cir. 1985)

⁷ The state also intended to include the warning in the instructions sent to each voter mailed a carrier envelope.

exemptions under 86.006(f) and signing as an assistor is not one of the six exemptions.

Similarly, a person who incidentally handles the mail-in ballot of another with their permission, such as a prison guard or a nursing home attendant, but who does not actually mail the ballot, is criminally liable under the statute. So while the changes to the carrier envelope and the revised instructions proposed by the State provide some notice (albeit not entirely clear or accurate) to those mailing the ballot of another that they need to sign the carrier envelope and if they do so they will exempt themselves from prosecution, the changes made to the envelope (with the proposed warnings) do not alter the underlying problem with the statute: the criminalization of legitimate handling and possession of a ballot without any fraudulent activity whatsoever. Moreover, even the State's proposed warnings to voters are inadequate, because certain possession of another's ballot can never be cured by signing the carrier envelope (such as a nursing home attendant, or any person who consensually may handle another person's mail but does not actually mail the ballot for the voter).

The Fifth Circuit decided the appeal on January 9, 2008, and did not address the State's proposed changes to the carrier envelope or the revised instructions. Rather, in light of the changes to Texas election law that have occurred since the time of the 2006 injunction, the State's proposed changes to the carrier envelope and the Plaintiffs' opposition thereto, the Court of Appeals remanded the case to this Court for resolution of all issues in the first instance. Accordingly, the Court of Appeals vacated the injunction and remanded the case to this Court noting that "[i]n the light of the November 2008 elections, we are confident this action will be resolved well in advance of them."

On remand, an agreed-upon order was entered on February 1, 2008, which severed two of the claims in that complaint, Counts V and VI, which contained allegations of racial

discrimination by defendants. Those claims will be subject to further proceedings with discovery not commencing until after December 1, 2008. Trial of all remaining non-severed claims in the complaint is scheduled for May 29-30, 2008.

STATEMENT OF FACTS

A. Plaintiffs And Others Have A History Of Legitimate Efforts To Assist Texas Voters With Mail-In Balloting.

Voting by mail is a part of Texas's established system of "early voting," whereby individuals may cast ballots before Election Day in person or by mail. Tex. Elec. Code § 81.001 *et seq.* Texas law provides a statutory right to cast a mail-in ballot for any qualified voter who is 65 years or older on Election Day, who will be absent from the county of residence on Election Day, or who is disabled or ill. *Id.* §§ 82.001-82.003. As the Secretary of State has recognized, casting a ballot by mail in Texas is synonymous with "exercis[ing] your right to vote." PX8. To vote by mail, an eligible registered voter "must make an application for an early voting ballot to be voted by mail." *Id.* § 84.001(a). After receiving a mail-in ballot, a voter must "mark a ballot voted by mail in accordance with the instructions on the ballot envelope," *id.* § 86.005(a), and then "place it in the official ballot envelope and then seal the ballot envelope, place the ballot envelope in the official carrier envelope and then seal the carrier envelope, and sign the certificate on the carrier envelope," *id.* § 86.005(c). The marked ballot "must be returned to the early voting clerk in the official carrier envelope." *Id.* § 86.006(a).

Because many voters who vote by mail-in ballot are elderly or physically impaired, there is a longstanding practice in Texas – by Plaintiffs and others similarly situated – of providing assistance to mail-in voters. Tr. 61-65, 72-76, 86- 87⁸; PX14 at 10-17; PX15 at 8-14; 1.R.75-76¶2. The Director of Elections at the Secretary of State's office, Ann McGeehan, testified that she had

⁸ "Tr. __" references the transcript from the October 30, 2006 hearing on plaintiffs' motion for preliminary injunction. "R." references the Record on Appeal.

anecdotal information that it was an important part of the get-out-the-vote effort in the black community in Texas for elderly and disabled voters to be assisted by their neighbors and friends. App. Ex. 3 at 17. Efforts to assist mail-in voters have been conducted by both major political parties and other civic organizations. Tr. 86-87; PX14 at 10-17; 1.R.78¶8. For example, Plaintiff Texas Democratic Party has long undertaken efforts to assist mail-in voters in order to maximize voter turnout, particularly among the elderly and disabled. Tr.86-87; 1.R.75-76¶2. In 2006, the Party expected to spend approximately \$100,000 in efforts to assist mail-in voters. 1.R.76¶3. The Party has also implemented efforts to increase voter turnout in minority communities, including black and Hispanic communities in Texas, because turnout there is typically lower than in Anglo communities, due in large part to the long history of voting discrimination by the State.

1.R.78¶9. Assisting voters with mail-in voting takes many forms. For example, the efforts of Plaintiff Texas Democratic Party have included: providing assistance to voters in completing applications for mail-in ballots, including mailing “pre-filled” applications to voters, who then need only sign and return the application; helping voters who have received mail-in ballots with marking their ballots (particularly voters who are blind or cannot read or write); and physically placing sealed ballots in the mail or otherwise delivering the ballots to election officials. Tr.61-65,72-76, 86-87; PX14 at 10-17; PX15 at 8-14; 1.R.75¶2.

Some voters need assistance for the entire application and voting process. 1.R.76¶4. In all cases, the assistor merely provides whatever help the voter requests. 1.R.77¶6. Where the assistance needed involves reading the ballot to a voter or providing instruction in marking the ballot, the voter’s decision is made by the voter without influence or pressure from the assistor. 1.R.77¶6. In many cases, an assistor is specifically asked to take the voter’s completed ballot, which must be sealed in the carrier envelope, and mail that ballot for the voter. Tr.63-64,75,86-

87,122-23; PX14 at 13-17; PX15¶¶11-12; 1.R.77-78¶¶5,7. Because it was often infeasible or inefficient to immediately deposit a completed ballot in the mail or with a common carrier, the Party's practice before 2003 was to allow assistors to accumulate completed ballots during the day, and, at the end of the day, a Party representative – not necessarily the assistor who interacted with the voter – would deliver the ballots to the clerk. Tr.86-87; 1.R.77-78¶¶7. In past years, a significant number of individuals working on behalf of campaigns and the Democratic Party at the county level have been involved in assisting mail-in voters, including mailing voters' ballots. Tr.61-65,72-76,86-87; PX14 at 10-17; PX15 at 8-14; 1.R.75-76¶¶2. Mail-in voters regularly inform the Party that they appreciate this assistance. Tr.65; 1.R.76¶¶3. Absent such efforts by the Party and the individual Plaintiffs to assist mail-in voters, many potential mailing voters would find it difficult or impossible to receive a mail-in ballot or properly complete and cast a ballot. Tr.64,68,86-87,123; PX14 at 17; PX15 at 12; 1.R.78¶¶8.

The need for such assistance is exemplified by late Plaintiff Parthenia McDonald, who at the time of her videotaped deposition in 2006, was a 78-years old, homebound, and severely physically handicapped woman living in Fort Worth, and who required assistance to receive and cast her mail-in ballot. Tr.119-23. Plaintiff Reuben Robison is another severely handicapped voter who requires assistance to cast his ballot. Mr. Robinson, a paralyzed veteran who resides in Texarkana, is wheel-chair bound and has suffered several strokes. App. Ex 4 at 5. Because he cannot use his right hand, he needs assistance in placing a ballot in the carrier envelope (*id.* at pp. 10-11), and it is "hard" for him to mail his ballot. *Id.* at 12. If Plaintiff Willie Ray or her granddaughter (Plaintiff Jamillah Johnson) were not willing to help him vote, he probably would not get to vote because he does not know anyone else who could help him. *Id.*, at 13, 18. Eddie Buchanan, another stroke victim who is severely disabled and lives in Karnack, also requires

assistance. He resides with his wife, but if she were no longer able to help him, he would need to call upon Plaintiff Eddie Jackson to help him, because he needs help in mailing a ballot, filling out the ballot, and applying for the ballot. App. Ex. 5 at 15. Buchanan testified that if he could not receive assistance in mailing his ballot, he would not be able to vote. *Id.* at 8.

B. Texas Voter Fraud Law And The Challenged Provisions.

Texas law – like the law of other states – has long provided for criminal and other penalties to combat voter fraud. In provisions applicable to both in-person and mail-in voting, Texas criminalizes “illegal voting” – *i.e.*, voting by ineligible individuals, multiple voting, and voting while impersonating another person. Tex. Elec. Code § 64.012. Texas law also makes it an offense to provide “unlawful assistance” to voters in completing their in-person or mail-in ballots – *i.e.*, by assisting ineligible voters, by acting against the will of the voter, or by suggesting to the voter how to vote. *Id.* §§ 64.036(a) (1)-(3). Texas also criminalizes the provision of false information on an application for a mail-in ballot. *Id.* § 84.0041.

Despite these broad provisions empowering Texas officials to combat actual voter fraud, the Texas Legislature amended the Texas Election Code in 2003 to create a series of novel, vague and broad additional prohibitions related to mail-in voting. *See* House Bill 54, 2003 Tex. Gen. Laws 393 (78th Legislature 2003). At the time that the Legislature considered House Bill 54, it was in the midst of one of the fiercest battles in Texas legislative history – the mid-decade redistricting of the Texas congressional districts. PX25-26¶2. Accordingly, the Bill proceeded through the Legislature quickly and without extensive debate. PX25-26¶2. As several legislators explain, “the hasty process and the vague wording of some of the provisions of House Bill 54 may have left it unclear how those provisions would be applied in practice.” PX25-26¶3.

As the legislative hearings concerning these provisions indicate, the Texas Legislature received no evidence of fraud concerning individuals and organizations who provided assistance to voters with mail-in ballots, such as Plaintiffs. *See, e.g.*, PX21-24¶5, PX25-26¶4. Many witnesses simply assumed that such fraud was a problem. For example, Representative Wolens, the Bill's sponsor, indicated that he was acting on unproven suspicions that fraud had occurred in elections involving him and his wife and newspaper accounts alleging voter fraud. 3.R.660-61. As he explained, what motivated him was eliminating any *appearance* of fraud: "I'm not here complaining that there is widespread fraud, I just am saying that there are minimum improprieties that on the face of it look wrong." 3.R.672; *see* 3.R.667 (seeking to "absolutely eliminate the appearance of impropriety"); 3.R.671-72 ("[w]hen I read about it anecdotally in the newspapers, I don't need to go make certain that there is a fraud or not a fraud, it is announced that it just looks bad"). Ultimately, Representative Wolens sought to stop what he described as "pushy" people, R.3.777, not "vote harvesters," proof of which did not exist.⁹

Throughout the proceedings, some legislators questioned whether the provisions were targeted at legitimate get-out-the-vote efforts, particularly those of African-Americans and Hispanics. *See, e.g.*, 3.R.735. Nonetheless, the understanding of legislators (including Democrats) voting for the legislation "was that the amendments would be used to investigate and prosecute actual instances of voter fraud" and would not be used to prosecute those who simply mailed ballots for other voters or to otherwise deter people from providing assistance to voters in need. PX22¶4; PX25¶3; PX26¶3. In contrast, Democrats opposing the Bill feared that its provisions, including Texas Election Code §86.006, would "have a chilling effect on [their]

⁹ "Vote harvesting" is not a recognized term under Texas law, but, according to a news article quoting Representative Wolens, "vote harvesting" occurs when "the mail-in ballots of elderly or other vulnerable citizens are illegally collected by campaign operatives." 2.R.501.

constituents' [right] to vote in cases where voter fraud had not and would not be an issue."

PX24¶5; *see* PX21¶4; PX23¶4.

The 2003 legislation added several restrictions whose primary effect is to deter legitimate and constitutionally protected voting and expressive activity:

Section 64.036(a)(4): The 2003 legislation added a new, broad category of "unlawful assistance," providing for criminal penalties if an individual "provides assistance to a voter who has not requested assistance or selected the person to assist the voter." Tex. Elec. Code §64.036(a)(4).

Section 84.003(b): The 2003 legislation created a restriction of unclear and potentially broad scope, establishing penalties for anyone who "in the presence of an applicant *otherwise assists* an applicant in completing an early voting ballot application" without following the documentation procedure for witnesses. Tex. Elec. Code § 84.003(b) (emphasis added). The term "otherwise assists" in this provision is undefined, and to make matters even more confusing for voters and assistants, the specific definition of "assisting a voter" set forth in the 2003 legislation does *not* apply to Section 84.003(b). *See id.* § 64.0321.

Section 84.004: The 2003 legislation altered the title of this provision, which criminalized witnessing more than one mail-in ballot application in the same election, even if all the required information for a witness is provided. Tex. Elec. Code § 84.004.

Section 86.0051: Section 86.0051 establishes criminal penalties for legitimate assistance provided to voters related to the "carrier envelope" that holds a mail-in ballot. Relevant here, Section 86.0051 provides that it is a criminal offense if "[a] person other than the voter . . . deposits the carrier envelope in the mail or with a common or contract carrier" without "provid[ing] the person's signature, printed name, and residence address on the reverse side of the envelope." Tex. Elec. Code §§ 86.0051(b), (c). It is no defense "that the voter voluntarily gave another person possession of the voter's carrier envelope." *Id.* § 86.0051(c), although there is a narrow exception for immediate family members and individuals registered to vote at the same address, *id.* § 86.0051(e).

Section 86.006: The 2003 legislation added Sections 86.006(f) and (g) to the Texas Election Code, criminalizing the mere *possession* of another's mail-in ballot or carrier envelope:

(f) A person commits an offense if the person knowingly possesses an official ballot or official carrier envelope provided under this code to another. Unless the person possessed the ballot or carrier envelope with intent to defraud the voter or the election authority, this subsection does not apply to a person who, on the

date of the offense, was:

(1) related to the voter within the second degree of affinity or the third degree of consanguinity, as determined under Subsection B, chapter 573, Government Code;

(2) registered to vote at the same address as the voter;

(3) an early voting clerk or a deputy early voting clerk;

(4) a person who possesses the carrier envelope in order to deposit the envelope in the mail or with a common or contract carrier and who provides the information required by Section 86.0051(b) in accordance with that section;

(5) an employee of the United States Postal Service working in the normal course of the employee's authorized duties; or

(6) a common or contract carrier working in the normal course of the carrier's authorized duties if the official ballot is sealed in an official carrier envelope that is accompanied by an individual delivery receipt for that particular carrier envelope.¹⁰

(g) An offense under subsection (f) is:

(1) a Class B misdemeanor if the person possesses at least one but fewer than 10 ballots or carrier envelopes unless the person possesses the ballots or carrier envelopes without the consent of the voters, in which event the offense is a state jail felony;

(2) a class A misdemeanor if the person possesses at least 10 but fewer than 20 ballots or carrier envelopes unless the person possesses the ballots or carrier envelopes without the consent of the voters, in which event the offense is a felony of the third degree; or

(3) a state jail felony if the person possesses 20 or more ballots or carrier envelopes unless the person possesses the ballots or carrier envelopes without the consent of the voters, in which event the offense is a felony of the second degree.

Tex. Elec. Code §§ 86.006(f), (g).

¹⁰ In 2007, the Texas Legislature amended Section 86.006(f) of Texas Election Code to provide for these exemptions. Prior to 2007, these six categories merely provided a person with an affirmative defense to prosecution. Although that is a positive step, such amendment would leave Section 86.006(f) constitutionally defective, because the statute contains no exception for one who merely possesses the ballot of another voter with that voter's consent and does not mail the ballot.

Thus, Section 86.006(f) and (g) provide that it is a class B misdemeanor—subject to up to 180 days in jail and up to a \$2,000 fine, *see* Tex. Penal Code § 12.22—to possess even just one mail-in ballot of another voter. A person possessing such a ballot may escape liability only if he or she falls within one of the six narrow exemptions provided by Section 86.006(f). Moreover, by its plain terms, Section 86.006(f) applies and provides no potential exemption from liability for individuals who, for example: (1) provide lawful assistance to voters, provide identifying information on the carrier envelopes, but do not mail the voters’ ballots, and (2) incidentally or consensually possess but do not mail another’s ballot.

Violations of Section 86.006 result in the complete denial of voters’ right to vote:

“[a] ballot returned in violation of this section may not be counted.” *Id.* § 86.006(h)).¹¹

C. The Challenged Provisions Have Been Used To Target Legitimate Activities Of Disfavored Groups, Creating A Chilling Effect On Protected Expression And Association.

Defendants have enforced the challenged provisions – particularly Section 86.006(f) – in a discriminatory manner, targeting Democrats and members of minority groups for prosecution. Indeed, through public statements, website postings, and testimony before legislative oversight committees, the Attorney General has acknowledged that all individuals prosecuted under the 2003 legislation were Democrats. 1.R.81¶14. In addition, it appears that all but one of those prosecuted was African-American or Hispanic. 1.R.21¶30. In contrast, the Attorney General’s office has refused to properly investigate violations of the election laws allegedly committed by Republicans, such as those involving the improper and illegal handling of ballots. 1.R.81-82¶¶15-16.

This selective enforcement of the challenged provisions is unsurprising, given that the State’s own training materials for local election officials encourage targeting enforcement on a racially discriminatory basis by making the unfounded suggestion that a correlation exists

¹¹ Newly amended Section 86.006 also restricts political parties’ ability to return carrier envelopes for voters, prohibiting return from any “office” of a political party, *id.* § 86.006(d)(1), and requiring that “[c]arrier envelopes may not be collected and stored at another location for subsequent delivery to the early voting clerk.” *Id.* § 86.006(e). Section 86.006 also now provides that a carrier envelope may be delivered to officials only by mail or common carrier, and not methods (e.g., hand-delivery) traditionally used by political parties. *Id.* § 86.006(a).

between membership in a minority group and engaging in voter fraud. For example, a PowerPoint presentation prepared by the office of Attorney General Abbott contains a photograph of African-American voters standing in line to vote to emphasize that “all laws apply” to early voting. PX10 at 25. That same presentation uses a graphic of the “sickle cell stamp” – a postage stamp used widely by African Americans, whom sickle cell disease particularly affects – to exemplify “unique stamps” associated with voter fraud, despite no legitimate basis for making that connection. PX10 at 61.5.

In early 2006, Plaintiffs Ray and Johnson, both of whom are African-American, were indicted by State officials for possessing and mailing ballots for voters who required assistance with their mail-in ballots, and they pleaded guilty to violating Tex. Elec. Code § 86.006(f). PX1. There was no allegation or proof of any actual voter fraud. Tr.78-79; PX1. The Attorney General widely publicized these indictments in 2006. PX9, PX11. These two Plaintiffs were never assessed a finding of guilt, but pursuant to a plea bargain, received a deferred adjudication of the alleged violations. Plaintiffs Meeks and Minneweather, both also African-American, were contacted by state officials concerning their involvement in efforts to assist mail-in voters, leading them to believe that they may be subjects of an investigation. Tr.65-66; PX15 at 16-18.

As the early and mail-in voting period neared for the November 6, 2006 election, the chilling effect of the challenged provisions materialized acutely, as Texas voters and volunteers – including many affiliated with the Texas Democratic Party – reported being intimidated and chilled by the State’s enforcement of the challenged provisions. Tr.66,88; PX14 at 23-31; PX15 at 17-18; 1.R.78-81,82-83¶¶10-14,17. Democratic campaign official Jane Hamilton testified about how Defendant Abbott’s investigations and prosecutions of African-Americans was having, in her words, “a chilling effect”:

[T]he elderly who need help [with voting] are hearing the rumors, the phoners [in the phone banks] are hearing the rumors. This is all—these are all the same people who are all hearing that people are going to jail, hearing that there was a private investigator that peeked into someone’s window. Next thing you know, she has a stroke. Next thing you know she is in a nursing home. Next thing you know she is not the same person that she was years ago. We all hear about these things, and everyone has been affected by it.

* * *

It’s a chilling effect. I mean, that’s what it is. That’s the best way to describe it.

App. Ex. 6 at 31.

Similarly, Plaintiff Rebecca Minneweather also testified about “a very chilling effect for me[.]” App. Ex. 7 at 10. As a result of the Attorney General’s investigation of her activities assisting elderly voters with their mail-in ballot applications, Plaintiff Minneweather, who helped between 80 and 100 voters with their mail-in ballots prior to 2006, has stopped assisting voters altogether and has not assisted a single voter since 2006. *Id.* at 4. Ms. Minneweather’s testimony underscores the personal intimidating effect that the State’s enforcement efforts have had on her:

At that time when they did the investigation or interrogation or however you want to put it, because it was very intimidat[ing], it was a very chilling effect for the mere fact that it was very stressful. I didn’t appreciate them calling me a criminal in the newspaper and judge me because you [the Texas Attorney General’s office] didn’t know me, and I didn’t appreciate that. And that really hurt my character.

....And it really upset me that I didn’t get a chance to spend any more time with my senior citizens because, again, I render a service to the public, and that’s what it’s all about. And for you to come in and suggest the things that have been suggested that really hurt my feelings as an individual, and I feel like you need to know that.

And you also interrogated a lot of the senior citizens to the point they don’t want to have anything to do with anybody else because they are afraid because of how y’all handled the situation.

App. Ex.7 at 10. Plaintiff Willie Ray similarly testified that there was a “chilling effect” in the Texarkana as a result of the Attorney General’s office going door to door in the black community

and interrogating voters. App. Ex. 22 at 14-19. As Ms. Ray put it, the chilling effect produced by the Texas Attorney General's investigations and prosecutions produced "a spirit killing" among the elderly black voters. *Id.* at 17.

Democratic voters and volunteers were confused about what activities would trigger investigation and prosecution, despite the Texas Democratic Party's efforts to educate its members about the challenged provisions. Tr.66,88; PX14 at 23-31; PX15 at 17-18; 78-71,82-83¶¶10-14,17. This confusion and fear was exacerbated by the fact that all but one of the State's voting prosecutions since 2003 had been targeted at black or Hispanic individuals,¹³ and all were Democrats, 1.R.21¶30; 1.R.81¶14,¹⁴ and in light of public comments by State officials, such as the Texas Solicitor General's false and defamatory statements about the individual Plaintiffs in this case, 1.R.80-83¶¶13,17. In particular, Section 86.006(f), which criminalizes the mere possession of another's mail-in ballot, had a chilling effect on those who sought to assist mail-in voters. Although the Section provided for several affirmative defenses (now exemptions) to prosecution, including for an individual who deposits the envelope in the mail and provides

¹³ This Court has severed out the Plaintiffs' claims regarding racially discriminatory implementation and enforcement of the challenged provisions. Nevertheless, the evidence already in the record regarding this claim (offered at the 2006 preliminary injunction hearing) is relevant to show that the challenged provisions are unnecessary to combat actual voter fraud, as well as vague and substantially overbroad, so as to provide an extremely broad basis to arbitrary and unfairly enforce the provisions against disfavored groups.

¹⁴ An updated chart prepared by the Texas Attorney General of those being subjected to prosecution for violations of the Texas Election Code can be found at App. Ex. 8. Because this document has been marked confidential by Defendants, this exhibit will be filed under seal pursuant to Local Rule CV-5.

¹⁶ Notably, the carrier envelope presently used by the State does not contain language indicating that anyone who possesses the envelope – regardless whether they deposit it in the mail – must provide their identifying information. PX2. The envelope also contains no separate signature area for individuals *mailing* ballots for voters – as opposed to individuals *assisting* voters in completing or marking the ballot. PX2. In official correspondence to mail-in voters, the Defendant Secretary of State similarly failed to advise voters that possession of another's ballot is a crime and that identifying information must be provided to avoid prosecution, not only by those who assist but also by those simply mailing ballots. PX8.

identifying information, there was no defense for an individual who merely possessed another's carrier envelope with the voter's consent. Tex. Elec. Code § 86.006(f).¹⁶

Thus, as Early Voting for the 2006 general election got underway, the Texas Democratic Party found that many of its members were unable or unwilling to provide assistance to mail-in voters, for fear of investigation or prosecution by State officials, even in the complete absence of any fraudulent activity. Tr.66,88; PX14 at 23-24,26-31; PX15 at 17-18; 1.R.78-80¶¶10-11,13. Accordingly, the Party foresaw a substantial decline in such assistance as compared to previous years. Tr.88; 1.R.77-78,80-81¶¶7,13. Party officials, worried about encouraging activities that could lead to investigation or prosecution, were forced to curtail their ordinary get-out-the-vote efforts, with some voter turnout programs starting later than planned or not at all. Tr.88; 1.R.81-83¶¶13,17. The Party sought clarification from State officials about the interpretation and enforcement of the challenged provisions, but the State did not adequately respond, leaving such matters to local election administrators and individual citizens. Tr.88; 1.R.82-83¶17. App. Ex. 18.

Absent assistance from Plaintiffs and others like them who wish to assist mail-in voters, many elderly and disabled voters were not able to receive and cast mail-in ballots in the 2006 election, resulting in lost votes. Tr.68,81; PX14 at 23-24,31; PX15 at 25-26; 1.R.78-81¶¶8,13. Several voters have informed Plaintiff Jamillah Johnson that in light of the prosecutions of Plaintiff Willie Ray and her granddaughter (Ms. Johnson) for mailing the ballots of elderly and disabled voters, they would not vote again. App. Ex. 9 at 15. One voter identified by Ms. Johnson was Louise French, who was interviewed by investigators from the office of the Texas Attorney General during the investigation of plaintiffs Ray and Johnson. *Id.* at 15-20. Ms. Johnson testified that she believes Ms. French is now too scared to ask her for assistance in

voting. *Id.* at 20. Even for those mail-in voters able to cast ballots, not all were able to rely on the assistance of the person of their choosing. Tr.125-26; PX15 at 17-19.

D. This Court's 2006 Injunction Order

This Court's October 31, 2006 injunction was based, in part, on testimony from several witnesses describing the chilling effect created by Section 86.006(f) on voting and voter assistance. This Court also received substantial documentary evidence, including confusing materials from State officials concerning Section 86.006(f). PX8-10. Ruben Hernandez, the Executive Director of the Plaintiff Texas Democratic Party, testified about the devastating effect that Section 86.006's broad prohibition was having on get-out-the-vote efforts. Tr.87-89; 1.R.78-83¶¶10-14,17. Several of the Plaintiffs testified live (Ray) or via videotaped deposition (Minneweather, Meeks and McDonald) to explain how Section 86.006 restricted the provision of needed assistance to consenting voters. Tr.65-70,81,122-26; PX15 at 17-20. Campaign manager and Democratic Party activist Jane Hamilton further explained by videotaped deposition the chilling effect created by Section 86.006. PX14at24-25. Based upon this evidence, this Court made the considered factual finding that "§ 86.006 prevents [Plaintiffs] and dissuades others, under the pain of prosecution, from participating in legitimate organizational efforts designed to maximize early voter turnout." 4.R.852¶27; 3.R.E.852¶27. This finding has been further confirmed by the additional evidence developed in discovery, which is cited throughout this brief and included in the attached exhibits.

Based on its findings, this Court issued a narrow preliminary injunction against certain enforcement of Sections 86.006(f) and (h). The Court ruled that, pursuant to the First and Fourteenth Amendments, which protect the fundamental right to vote, the State is barred from

enforcing Sections 86.006(f) and (h) “in circumstances in which a person, other than the voter, has merely possessed the official ballot or official carrier envelope and such possession is with the actual consent of the voter.” 4.R.843; 2.R.E.843. It is important to note that the statute provides no exception or affirmative defense in such a situation. 4.R.856-57¶¶17-20; 3.R.E.856-57¶¶17- 20. However, this Court also stated: “Nothing in this order should be read to enjoin the defendants from enforcing the provisions of Tex. Elec. Code § 86.006(f) or (h) under any other circumstances.” 4.R.843; 2.R.E.843. In particular, the State was not prevented “from enforcing Tex. Elec. Code § 86.0051 under the circumstances in which a person, other than the voter, deposits the carrier envelope in the mail or with a common or contract carrier and does not provide the person’s signature, printed name, and residence address on the reverse side of the envelope.” 4.R.843-44; 2.R.E.843-44.

As a result of the Court’s injunction, Counsel for Plaintiffs prepared a “Memorandum to Interested Parties,” which was widely distributed on November 1, 2006 to over 500 leaders in the state Democratic Party, including Democratic county chairs and candidates, and which accurately summarized the injunction. *See* Ex. 3 to Plaintiffs’ Opp. to 5th Cir. Stay Mot. (filed Nov. 2, 2006).

E. The Parties.

Plaintiffs in this action include the Texas Democratic Party, an organization that has long engaged in legitimate efforts to assist mail-in voters (particularly disabled and elderly voters) exercise their right to vote, as well as several voters (Plaintiffs Ray, Johnson, Meeks, and Minneweather) who assisted disabled and elderly voters in the past and wish to continue assisting them in the future. Plaintiff Reuben Robinson is a disabled veteran who is a homebound

voter; Plaintiff Robinson depends upon the assistance of others to apply for and cast his mail-in ballot.

Defendants are the State of Texas, the Texas Attorney General, Greg Abbott, and the Texas Secretary of State, Phil Wilson.

COUNTERSTATEMENT OF DISPUTED MATERIAL FACTS

Plaintiffs dispute several of the State's alleged undisputed material facts (at Defendants' Motion for Summary Judgment at 27-29) as either incorrect, incomplete, misleading, irrelevant or a combination thereof.

Plaintiffs dispute proposed fact three because there is evidence of voters who have not voted due to the enactment or enforcement of the challenged provisions. *See, e.g.*, App. Ex. 9 at 15-20 (Jamillah Johnson Deposition), App. Ex. 22 at 14 (Willie Ray Deposition); App. Ex. 21 at 21 (Dorothy Dean Deposition), and App. Ex. 6 at 18-25 (Jane Hamilton Deposition). Moreover, the voting histories for some of the Texarkana voters interviewed by the Office of the Attorney General in 2005 during the investigation of Willie Ray and Jamillah Johnson, show that they did not vote after 2004 (*e.g.*, Lillie Briscoe, Opal Walker) and some voted only in the 2006 primary and no other election subsequent to 2004 (*e.g.*, Eugene Grant, Opal Hart, Bernice Junior, Mary Marshall and J.D. Webster). App. Ex.10.

Plaintiffs dispute proposed fact four because there is evidence that political activists have discontinued assisting voters with mail-in ballots due to confusion about the challenged provisions. Moreover, this proposed fact is misleading, because some activists have discontinued some but not all of their activities and/or have scaled back their activities without completely discontinuing them. This chilling effect has been due both to confusion about the challenged provision and fear of arbitrary and discriminatory enforcement by the State. *See, e.g.*,

App. Ex. 7 (Rebecca Minneweather Deposition); App. Ex. 6 (Jane Hamilton Deposition)

Plaintiffs dispute proposed fact five because Plaintiffs Ray and Johnson have not fully resumed the political and associational activities that they undertook prior to being investigated and prosecuted by the State for the mere act of consensually possessing another's mail-in ballot. Moreover, witnesses have testified that the challenged provisions and the State's enforcement thereof have curtailed their ability to help voters in need and organize other helpers. *See* App. Ex. 6 at 38-39 (Jane Hamilton Deposition), App. Ex. 22 at 15-19 (Deposition of Willie Ray) and App. Ex. 21 at 18 (Dorothy Dean Deposition). Furthermore, the Texas Democratic Party's Political Director, Ken Bailey, identified a number of Party activists who discontinued providing assistance to voters who wished to vote by mail because they were intimidated and confused by the 2003 amendments to the law and the Attorney General's prosecutions. App. Ex. 15 at 17-18, 29-30 (Ken Bailey Deposition).

Plaintiffs dispute proposed fact six because Plaintiffs Ray and Johnson do have a criminal record; they were prosecuted, pleaded guilty, paid fines, and served sentences of probation. Indeed, the State has argued throughout this proceeding (including in its summary judgment motion) that because of their criminal records, Plaintiffs Ray and Johnson are barred from bringing suit under *Heck v. Humphrey*, 512 U.S. 477 (1994). Thus, not only is this proposed fact incorrect, but the State should be estopped from taking this factual position, which is contrary to its argument that Plaintiffs Ray and Johnson are convicted criminals who have no right to bring this suit.

Plaintiffs dispute proposed fact seven because it is misleading. Plaintiffs Meeks and Minneweather were not merely questioned by investigators from the Attorney General's Office – they were interrogated, harassed, and intimidated.

Plaintiffs dispute proposed fact eight because it is not clear that the investigations of Plaintiffs Meeks and Minneweather were closed. Neither has received notice to that effect.

Plaintiffs dispute proposed fact ten because Plaintiff Reuben Robinson has been interrogated by investigators from the Attorney General's Office and has thus been part of the State's investigative efforts related to the challenged provisions.

COUNTERSTATEMENT OF ISSUES TO BE DECIDED

There are five substantive causes of action (fundamental right to vote, First Amendment, vagueness, due process and Section 208) and five challenged provisions. The Court must assess all of the challenged provisions (separately and together) under all of the substantive causes of action, both on a facial and as-applied basis, in order to grant summary judgment to the State.

Plaintiffs' vagueness and overbreadth challenge is not only to 86.006(f), but to all of the challenged provisions.

ARGUMENT

I. THE STATE IS NOT ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS' FUNDAMENTAL RIGHT TO VOTE CLAIM.

A. The State Does Not Accurately Describe Plaintiffs' Fundamental Right To Vote Claim Or The Controlling Standard Of Review.

Count I of the Complaint alleges that the challenged provisions are unconstitutional because they violate the fundamental right to vote guaranteed by the First and Fourteenth Amendments. *See, e.g., Crawford v. Marion County Elec. Bd.*, 553 U.S. ___, 2008 U.S. LEXIS 3846 (2008); *Burdick v. Takushi*, 504 U.S. 428 (1992); *Anderson v. Celebrezze*, 460 U.S. 780 (1983). Under the *Burdick-Anderson* framework, which was reaffirmed in *Crawford*, *see* 2008 U.S. LEXIS 3856, at *12-16 & n.8, "[a] court considering a challenge to a state election law must weigh the character and magnitude of the asserted injury to the rights protected by the First

and Fourteenth Amendments against the precise interests put forward by the State as justifications for the burden imposed by its rule.” *Texas Indep. Party v. Kirk*, 84 F.3d 178, 182 (5th Cir. 1996) (citing *Burdick*, 504 U.S. at 434, and *Anderson*, 460 U.S. at 789).

It is established that this balancing analysis “will not be automatic” because “there is ‘no substitute for the hard judgments that must be made.’” *Anderson*, 460 U.S. at 789-90 (quoting *Storer v. Brown*, 415 U.S. 724, 730 n.10 (1974)); *see, e.g., Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 359 (1997) (“No bright line separates permissible election-related regulation from unconstitutional infringements.”). Thus, “[o]nly after weighing all of these factors is a reviewing court in a position to decide whether the challenged provision is unconstitutional.” *Pilcher v. Rains*, 853 F.2d 334, 336 (5th Cir. 1988) (quoting *Anderson*). As the Supreme Court recently reiterated in *Crawford*, no “litmus test” “neatly separate[s] valid from invalid restrictions.” 2008 U.S. LEXIS 3856, at *14-16. Rather, “a court must identify and evaluate the interests put forward by the State as justifications for the burden imposed by its rule, and then make the ‘hard judgment’ that our adversary system demands.” *Id.* at *14. “However slight that burden may appear, . . . it must be justified by relevant and legitimate state interests ‘sufficient to justify the limitation.’” *Id.* at *16 (quoting *Norman v. Reed*, 502 U.S. 279, 288-89 (1992)).

The State erroneously suggests that this case does not implicate the fundamental right to vote because it involves mail-in balloting. *E.g.*, Defendants’ Motion at 41. Plaintiffs respectfully submit that this argument is incorrect.¹⁷ To begin with, the Secretary of State has recognized in his official proclamations that casting a ballot by mail in Texas is synonymous

¹⁷ Plaintiffs recognize the Court’s ruling at the preliminary injunction stage concerning *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802 (1969), *see* Findings ¶¶ 11-12, but respectfully submit that *McDonald*’s application of less than strict scrutiny to absentee balloting restrictions does not mean that such restrictions do not implicate the fundamental right to vote.

with “exercis[ing] your right to vote.” PX8. The State rests its argument on *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802 (1969), *see* Defendants’ Motion at 41. However, *McDonald* does not support the State’s claim that burdensome restrictions on mail-in or absentee balloting do not implicate a fundamental right. In *McDonald*, the Supreme Court held that strict scrutiny did not apply to prisoners’ claimed right to vote by absentee ballot where there was *no evidence* that prisoners could not otherwise exercise the franchise. *See* 394 U.S. at 808. In a series of subsequent cases interpreting *McDonald*, the Supreme Court struck down unreasonable absentee ballot restrictions, despite *McDonald*’s holding that strict scrutiny did not apply in that case. For example, in *O’Brien v. Skinner*, 414 U.S. 524 (1974), the Supreme Court explained that *McDonald* merely “rested on a failure of proof,” and thus struck down a New York law restricting the use of absentee ballots by prisoners as “unconstitutionally onerous,” where the prohibition “denied any alternative means of casting their vote although they are legally qualified to vote.” *Id.* at 530. Similarly, in *American Party of Texas v. White*, 415 U.S. 767 (1974), the Supreme Court rejected the lower court’s use of *McDonald* to sanction absentee ballot restrictions on minority parties, holding that “it is plain that permitting absentee voting by some classes of voters and denying the privilege to other classes of otherwise qualified voters in similar circumstances, without affording a comparable alternative means to vote, is an arbitrary discrimination violative of the Equal Protection Clause.” *Id.* at 795. Thus, it is simply untrue that *McDonald* permits the State to impose whatever restrictions it desires on absentee balloting or that absentee balloting does not implicate First and Fourteenth Amendment rights. Rather, where, as here, voters are significantly restricted in their right under State law to cast an absentee ballot, courts must ensure that such restrictions are not arbitrary, unjustified, or unduly onerous.

The State also erroneously claims that “[t]o succeed on their facial challenge, Plaintiffs

must “‘establish that no set of circumstances exists under which the [statute] would be valid.’”” Defendants’ Motion at 32-33 (quoting *Washington State Grange v. Washington State Republican Party*, 128 S. Ct. 1184, 1190 (2008) (in turn, quoting *United States v. Salerno*, 481 U.S. 739 (1987))). However, as the Supreme Court acknowledged in *Washington Grange*, the *Salerno* standard has not been held to be controlling in fundamental right to vote cases and thus does not bar invalidation of a statute that has less than a “plainly legitimate sweep” with respect to the fundamental right to vote. See *Washington Grange*, 128 S. Ct. at 1190; *Crawford*, 2008 U.S. LEXIS 3856, at *35 (holding that a facial fundamental right to vote challenge “must fail where the statute has a ‘plainly legitimate sweep’”(internal quotes omitted)).

Moreover, critical to the Court’s assessment of the facial fundamental right to vote challenges in *Crawford* and *Washington Grange* was the *pre-enforcement* nature of the challenges at issue, and the corresponding evidentiary deficiency that prevented the assessment of the provisions’ constitutionality. For example, in *Washington Grange*, the Court followed a path of “judicial restraint” because “[t]he State has had no opportunity to implement” the challenged blanket primary provisions. 128 S. Ct. at 1190-91. Likewise, in *Crawford*, the Court could not facially invalidate the voter ID law at issue “on the basis of the record that ha[d] been made in th[at] litigation,” 2008 U.S. LEXIS 3856, at *33, because the record did “not provide any concrete evidence of the burden imposed on voters who currently lack photo identification” and thus made it impossible for the Court to “quantify either the magnitude of the burden on this narrow class of voters or the portion of the burden imposed upon them that is fully justified.” *Id.* In stark contrast to both of these cases, here, the challenged provisions have been in effect and enforced for several years, and Plaintiffs have thus been able to develop evidence showing the burdens created by the provisions, their vagueness, and the State’s enforcement. Moreover,

unlike *Washington Grange* or *Crawford*, this case involves threatened *criminal penalties* on voters and their helpers – an obviously different and more severe sanction than in the ordinary fundamental right to vote case.

B. The Material Factual Disputes Concerning Plaintiffs’ Fundamental Right To Vote Claim, As Well As The *Burdick-Anderson* Balancing, Must Be Resolved By The Court At Trial.

The State is not entitled to summary judgment on Plaintiffs’ fundamental right to vote claim, evaluated under these controlling standards. Plaintiffs have developed evidence supporting their allegations in the Complaint and demonstrating that the burdens created by the challenged provisions and their enforcement do not justify those provisions, despite the State’s obviously important interest in preventing voting fraud. It is the Court’s role, after hearing all relevant evidence at trial, to “make the ‘hard judgment’ that our adversary system demands.” *Crawford*, 2008 U.S. LEXIS 3856, at *14.

Notably, since the inception of this lawsuit, the State has recognized that there are constitutional problems with the challenged provisions. First, in 2007, the Texas legislature amended Section 86.006(f) of the Texas Election Code so as to transform what had been narrow affirmative defenses to prosecution into exemptions. Second, and even more significantly, the State has recently proposed revising its carrier envelope, mail-in ballot envelope, and related instructions, in order to provide what the State attempts to clarify as “more clear” guidance to voters and helpers about the scope of the challenged provisions. Defendants’ Motion at 23. Although the State now argues that the proposed changes were not legally required, its submission to the United States Department of Justice repeatedly makes clear that the proposed changes were “necessitated” by Plaintiffs’ claims in this litigation. App. Ex. 11 at 1 (Secretary

of State's Submission to U.S. Department of Justice, March 27, 2008).¹⁸ Although the State's proposed revisions do not cure the constitutional problems with Texas Election Code Sections 86.0051 and 86.006, they do indicate that there are significant factual issues at stake concerning both liability and remedies. These issues will need to be carefully weighed by the Court based on all the evidence at trial.¹⁹

In arguing for summary judgment, the State misrepresents the existing evidence regarding the burdens on voters and helpers, making the erroneous and unsupported claim that "[t]here is no evidence of a chill on constitutionally protected activities." Defendants' Motion at 40; *see id.* at 41-43. Plaintiffs' evidence establishes burdens on both voters and helpers. Some individuals have stopped voting or helping altogether. App. Ex. 7 at 4 and 10 (Rebecca Minneweather Deposition); App. Ex. 6 at 23, 39 (Jane Hamilton Deposition). Others have sharply curtailed their activities due to the provisions' burdens, vagueness and enforcement. *See* App. Ex. 6 at 22-23, 38-39 (Jane Hamilton Deposition), App. Ex. 22 at 15-19 (Deposition of Willie Ray Deposition); App. Ex. 6 at 4 (Rebecca Minneweather Deposition), and App. Ex. 21 at 18 (Dorothy Dean Deposition). And it certainly should not be held against Plaintiffs that the severely disabled Gloria Meeks and Reuben Robinson, each of whom has suffered strokes, have been able to cast their votes in recent elections, despite that the challenged provisions unduly and unfairly burden the assistance that they may receive, and despite that those provisions threaten to prevent them and other elderly and disabled voters from receiving needed assistance altogether in the future.

¹⁸ The State's submission to DOJ also noted that the proposed changes were made "as a result of [this] litigation" (App. Ex. 11 at 3). On April 3 and 18, 2008, the State supplemented its submission to DOJ, noting in both instances that the proposed changes to the carrier envelope and the instructions to voters were "necessitated" by this litigation.

¹⁹ For example, regardless whether the carrier envelope notifies all consensual possessors to provide identifying information (and the State's proposed revisions still do not provide that notification), the statute does not exempt all such individuals from prosecution. Rather, the statute only exempts such individuals from prosecution if they also mail the envelope. *See* Tex. Elec. Code § 86.006(f). That deficiency can only be remedied by enjoining the vastly overbroad statute, just as the Court did at the preliminary injunction phase of the case.

With respect to Section 86.006(f) in particular, the State misrepresents the scope of the provision, erroneously suggesting that any person who knowingly but consensually possesses another's mail-in ballot may avoid liability by providing identifying information on the carrier envelope. Defendants' Motion at 37, 44. To the contrary, Section 86.006(f) provides *no basis* for exempting from liability any and all consensual possessors who provide identifying information. Rather, under the plain terms of the statute, an individual must fall within one of the six exemption categories in order to be authorized to provide identifying information. *See* Tex. Elec. Code § 86.006(f). Plaintiffs contend that Section 86.006(f) imposes an undue burden as to all mail-in voters and helpers, but Section 86.006(f) provides a particularly severe burden on consensual possessors who do not "possess[] the carrier envelope *in order to deposit the envelope in the mail*," Tex. Elec. Code § 86.006(f) (emphasis added), because such possessors have *no* statutory avenue for exempting themselves from criminal liability. Such individuals include nursing home personnel whose testimony Plaintiffs will present at trial. *See also* App. Ex. 6 at 24 (Jane Hamilton Deposition).

It is noteworthy that the State concedes that liability under Section 86.006(f) need not be linked to any actual showing of attempted fraud, coercion or other wrongful conduct. Defendants' Motion at 37. Accordingly, the State no longer justifies this provision as simply a tool for fighting fraud, but now also contends that the provision is needed to ensure "prompt mailing of the ballot" and "to trace missing, lost or stolen ballots." *Id.* Of course, there is no evidence whatsoever to support the State's present suggestion that there was any problem prior to the 2003 Amendments with delays in mailing or with missing, lost or stolen ballots. Rather, as the Court has previously found, the asserted state interest supporting the 2003 amendments was *combating actual voting fraud*. Conclusions of Law ¶ 14. It is thus highly relevant that the

great majority, if not all, of the State's prosecutions under Section 86.006(f) to date have involved no corresponding allegations or proof of actual voter fraud.

The State's premature *Burdick-Anderson* balancing also ignores that other provisions of the Texas Election Code can be used to combat any actual cases of voter fraud. Neither the Attorney General nor the Secretary of State has been able to identify *one case* of actual voter fraud that could not have been prosecuted but for the existence of the challenged provisions. By analogy, in *Cotham v. Garza*, the Southern District of Texas struck down a provision of the Texas Election Code that banned the voter's possession of written communications while marking a ballot, despite the Court's determination that the provision did not "severely" burden voters' rights. 905 F. Supp. 289, 398, 400-01 (S.D. Tex. 1995). As *Cotham* explained, although preventing fraud is a legitimate state interest in the abstract, the challenged law was not necessary to achieve that interest, particularly because the state's myriad anti-electioneering statutes already protected the integrity of the polling place by prohibiting voters from sharing, exchanging or displaying campaign materials at the polling place. 905 F. Supp. at 400. Similarly here, the broad terms of the challenged provisions are not necessary to prosecute fraud related to mail-in balloting, because many pre-existing provisions of Texas law prohibit voters from exercising undue influence on mail-in voters and engaging in other forms of mail-in ballot fraud. *See, e.g.*, Tex. Elec. Code §§ 64.012, 64.036(1)-(3), 84.0041.

Although the proper time for the Court to weigh the burdens and State interests is after the evidence has been submitted at trial, Plaintiffs note that the State's proffered interest in "ensuring that all eligible votes are counted," Defendants' Motion at 36, does not support the State's position, and, if anything, cuts against it. A ballot returned in violation of the challenged

provisions *may not be counted*. Tex. Elec. Code § 86.006(h).²⁰ Moreover, as Plaintiffs' evidence establishes, the challenged provisions and their enforcement have deterred individuals from voting and assisting others in the exercise of the franchise. In contrast to this hard evidence that the challenged provisions actually impede the State's proffered interest in counting all votes, the State offers no evidence that the challenged provisions have been necessary or even useful in investigating or prosecuting actual voting fraud. Rather, the State offers mere speculation that Section 86.006(f) and the other challenged provisions are necessary to ensure that mail-in ballots are not "lost, stolen, misplaced, destroyed, or forgotten during the time between when the voter marks the ballot and the ballot is mailed." Defendants' Motion at 36. The State's dearth of evidence to support this assertion does not support its theoretical interest in ensuring that all votes are counted. *Cf., e.g., Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 664 (1994) (plurality op.) (explaining that where regulations threaten to impair constitutionally protected rights, the State "must do more than simply 'posit the existence of the disease sought to be cured.' It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way" (citation omitted)).

Finally, the Court should reject the State's erroneous claim that it is entitled to summary judgment because the challenged provisions are allegedly "consonant with laws throughout the nation." Defendants' Motion at 38-40. It is true and unsurprising that many states have promulgated regulations concerning mail-in balloting, including with respect to who may help voters receive and return ballots. What is remarkable about Section 86.006(f) in particular is that

²⁰ The State now appears to make the strained argument that the "may" language in this provision is not mandatory and thus somehow authorizes election officials to count mail-in ballots regardless whether they are returned in violation of Section 86.006(f). Defendants' Motion at 38. Section 86.006(h) makes clear that election officials are not to count ballots returned in violation of 86.006 and sets forth a procedure for processing such ballots. There is simply no basis for the State's erroneous suggestion that election officials are not complying with the mandate of Section 86.006(h) to not count ballots returned in violation of Section 86.006.

– unlike nearly every other state statute cited by the State in its brief – Texas has attempted to subject nearly *all* consensual possession of another’s mail-in ballot or carrier envelope to severe criminal penalties. Unlike nearly all of the other state laws cited, Section 86.006(f): (1) applies to possession in all contexts (not just possession that is incidental to the more involved tasks of assisting, mailing, or personal delivery of a ballot), (2) provides for substantial criminal liability; (3) is not limited to situations involving fraud, tampering, or otherwise nefarious conduct; and (4) applies to all carrier envelopes and ballots, whether unmarked or marked. The State claims that, of the 30 states that allegedly “significantly restrict” the possession of mail-in ballots, “many of them make it a criminal offense to unlawfully possess a mail-in ballot and provide penalties for a violation.” Defendants’ Motion at 39. The State’s citations, *see id.* at 39-40 n.14, do not support this bold and inaccurate claim, as explained here by way of example only. Some of the State’s citations do not even concern criminal prohibitions. *See, e.g.*, Conn. Gen. Stat. Ann. § 9-140b(d); Ga. Code Ann. § 21-2-385(a). Other statutes cited by the State as supposedly applying to mere possession pertain only to situations involving nefarious activity beyond mere possession, such as ballot tampering. *See, e.g.*, Me. Rev. Stat. Ann. tit. 21-A, § 791; Mass. Gen. Laws ch. 54, § 27; Minn. Stat. § 203B.08. Several of the provisions cited by the State do not broadly outlaw possession, but rather more narrowly regulate certain activities related to mail-in balloting, such as providing actual voting assistance, mailing, or personal delivery. *See, e.g.*, Md. Code Ann., Elec. Law §§ 9-307, 9-308, 9-312; Nev. Rev. Stat. Ann. § 293.330(4); S.C. Code Ann. §§ 7-15-385, 7-25-190; Wash. Rev. Code Ann. §§ 29A.40.080, 29A.84.680. And some of the statutory prohibitions cited by the State apply, at most, to election officials, not individuals helping mail-in voters. *See, e.g.*, Mont. Code Ann. §§ 13-13-214, 13-35-103.

In sum, contrary to the erroneous impression that the State seeks to create, Texas’

statutory criminalization of nearly all consensual possession makes Texas one of the most restrictive jurisdictions concerning assistance in mail-in balloting. That fact weighs heavily in favor of Plaintiffs' fundamental right to vote challenge to Section 86.006(f), both by itself and in conjunction with all of the other unduly restrictive challenged provisions.

II. THE STATE IS NOT ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS' FIRST AMENDMENT CLAIM.

A. Plaintiffs' First Amendment Claim Is Not Controlled By The Fundamental Right To Vote Claim Standards In *Crawford*.

In Count II, Plaintiffs allege that the challenged provisions violate the First Amendment because they impermissibly restrict core political speech and association and because they do so in an overbroad manner. *See, e.g., Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 198 & n.12 (1999) (subjecting election-related restrictions on core political speech to strict scrutiny); *Houston v. Hill*, 482 U.S. 451, 458-59 (1973) (setting forth the "substantial overbreadth" standard for evaluating First Amendment overbreadth claims).

The State erroneously claims that Plaintiffs' First Amendment claim must be adjudicated under the *Burdick-Anderson* standard for facial fundamental right to vote challenges at issue in *Crawford* and *Washington Grange*. *See* Defendants' Motion at 30, 33. That is incorrect. Unlike the laws at issue in *Crawford* and *Washington Grange*, here the challenged provisions burden both the fundamental right to vote *and* the First Amendment associational and expressive rights of willing helpers (and voters), such as several of the Plaintiffs in this case. Among other things, the challenged provisions threaten to impose *criminal penalties* on those who help voters through their associational and expressive activity. This case is thus completely unlike *Crawford* and *Washington Grange*, neither of which pertained to the constitutionally protected activities of those who seek to help voters. It is the First Amendment rights of Plaintiffs and others like them

to associate and express themselves politically that is at issue in Count II.²¹

Accordingly, Plaintiffs need not show that the challenged provisions violate the First Amendment in every application to succeed on Count II. Rather, as the Fifth Circuit has recognized, “[w]ith regard to facial First Amendment challenges, the challenger need only show that a statute or regulation ‘might operate unconstitutionally under some conceivable set of circumstances.’” *Center for Individual Freedom v. Carmouche*, 449 F.3d 655, 662 (5th Cir. 2006) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). Moreover, even if the *Crawford* and *Washington Grange* facial challenge framework were applicable here, that framework does not require a challenger to show that every application is unconstitutional, as explained above. Rather, all that Plaintiffs must show under those cases is that the challenged provisions do not have a “plainly legitimate sweep.” *See supra*.

In addition to arguing that the challenged provisions are facially invalid under the First Amendment, Plaintiffs also allege that the challenged provisions are unconstitutionally overbroad. As *Washington Grange* made clear, an overbreadth challenge is “a second type of facial challenge in the First Amendment context” and is not controlled by the facial challenge standards articulated in *Washington Grange*. 128 S. Ct. at 1191 n.6. Rather, the question with respect to the overbreadth aspect of Plaintiffs’ First Amendment claim in Count II is whether the challenged provisions are “impermissibly overbroad because a ‘substantial number’ of its applications are unconstitutional, “‘judged in relation to the statute’s plainly legitimate sweep.’”” *Id.* (quoting *New York v. Ferber*, 458 U.S. 747, 769-771 (1982) and *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973)); *see, e.g., Broadrick*, 413 U.S. at 601 (the overbreadth must be “real, but substantial as well, judged in relation to the statute’s plainly legitimate sweep”); *Houston*, 482

²¹ Elsewhere, the State appears to recognize the proper standard for assessing Count II of the Complaint. Defendants’ Motion at 40.

U.S. at 466-67; *Howard Gault Co.*, 848 F.2d at 561. As Plaintiffs will show at trial, the many “instances of arguable overbreadth” of the challenged provisions, *Washington Grange*, 128 S. Ct. at 1191 n.6. – such as their application to innocent and incidental possessors of ballots, as well as to individuals with no fraudulent or otherwise illegal intent – require those provisions’ invalidation under the First Amendment.²²

B. Material Disputes Of Fact Preclude Summary Judgment On Count II.

There is a material question of fact precluding summary judgment as to whether the challenged provisions are “so broadly written that [they] cannot help but have a deterrent effect on the exercise of First Amendment rights,” *Howard Gault Co. v. Texas Rural Legal Aid, Inc.*, 848 F.2d 544, 561 (5th Cir. 1988), such that they “make unlawful a substantial amount of constitutionally protected conduct,” *Houston*, 482 U.S. at 459. Accordingly, summary judgment should be denied on Count II. Even assuming the more stringent standards argued for by the State are applicable to Plaintiffs’ First Amendment claim (which they are not), there is still a material dispute of fact as to whether the challenged provisions have a “plainly legitimate sweep” and whether they are unconstitutional in every application: Plaintiffs and the State do not agree on how much protected expression is chilled by the challenged provisions and whether that chilling effect is justified by any demonstrable state interest that is actually served by the challenged provisions.

The State simply ignores the record evidence in claiming that Plaintiffs have failed to show that the challenged provisions “adversely affect their right to associate with other members of the Democratic Party or those deemed likely to vote Democratic.” Defendants’ Motion at 41; *see id.* at 42-43. The testimony of Plaintiffs Rebecca Minneweather and Jamillah Johnson, as

²² Although the First Amendment standards described in the text apply to Count II, Plaintiffs also satisfy *Salerno*, as there are no constitutional applications of the challenged provisions, all of which severely burden protected political and expressive activities without any legally sufficient justification.

well as of Jane Hamilton, provide examples of the chilling effect that the enforcement of the challenged provisions has had on Plaintiffs and activists within the Democratic Party. *See supra* pp. 15 to 17.

Faced with the plain factual dispute between the parties concerning the challenged provisions' chilling effect on constitutionally protected activities, the State goes so far as to assert that the activities regulated by the challenged provisions are "conduct not intended to express an idea," inaptly analogizing to a case that rejected a vagueness challenge to a smoking ban, including the challengers' strained argument that the ban amounted to compelled speech. Defendants' Motion at 41 (citing *Roark v. Hardee LP v. City of Austin*, 2008 U.S. App. LEXIS 6484 (5th Cir. 2008)). Plainly, the core political expressive and associational activities that are criminalized and chilled by the challenged provisions are at the heart of what the First Amendment protects.

Plaintiffs are entitled a trial on their claim that the overbreadth of the challenged provisions is "real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Broadrick*, 413 U.S. at 615.

C. Plaintiffs' Overbreadth Claim Concerning Section 86.006(f) Is Not Moot.

The State argues that the 2007 amendments to Section 86.006(f) – which transformed the six narrow affirmative defenses into exemptions from prosecution – have mooted Plaintiffs' overbreadth claim. That is incorrect. Plaintiffs' overbreadth claim was not based solely, or primarily, on the affirmative defenses. Rather, Plaintiffs' claim is that Section 86.006(f)'s criminalization of consensual possession is overbroad because it is not limited to individuals who have any reasonable or conceivable relationship to actual voter fraud. Moreover, as the State recognizes, Plaintiffs claim that the provision is particularly unjustified with respect to

individuals who possess the ballot but do not mail it, Defendants’ Motion at 44, and thus are unable to avail themselves of any of the statutory exemptions – even if they provide identifying information. The State’s position that *all* consensual possessors may avail themselves of the statutory exemption by providing identifying information is contrary to the plain language of the statute.

III. THE STATE IS NOT ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS’ VAGUENESS CLAIM.

In Count III, Plaintiffs claim that the challenged provisions are unconstitutionally vague under the First Amendment and the Due Process Clause because they “fail to provide reasonable notice of what conduct is prohibited.” First Amended Complaint ¶ 57. As the State appears to concede, Plaintiffs’ facial vagueness challenge does not require Plaintiffs to show that the challenged provisions are unconstitutionally vague in every application. *See* Defendants’ Motion at 55 (citing *Roark*). Rather, as the Fifth Circuit recently recognized, “[m]any times void-for-vagueness challenges are successfully made when laws have the capacity ‘to chill constitutionally protected conduct, especially conduct protected by the First Amendment.’” *Roark*, 2008 U.S. App. LEXIS 6484 at *29 (citation omitted); *see, e.g., Reno v. American Civil Liberties Union*, 521 U.S. 844, 871-72 (1996). The standard for First Amendment vagueness claims is whether the challenged provisions “fail[] to provide ‘fair notice to those to whom [they are] directed.’” *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 112 (1972)); *Kolender v. Lawson*, 461 U.S. 352, 357 (1983) (“the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement”); *J&B Ent’t v. City of*

Jackson, 152 F.3d 362, 367-69 (5th Cir. 1988) (“An enactment is void for vagueness if its prohibitions are not clearly defined.”) (quoting *Grayned*, 408 U.S. at 109).

The State does not separately analyze Plaintiffs’ facial vagueness claim, but attempts to lump that claim in with Plaintiffs’ fundamental right to vote and overbreadth facial challenges. See Defendants’ Motion at 30-45. However, Count III presents a constitutional claim that is governed not by *Burdick-Anderson*, but by the separate vagueness standards just described. Where, as here, an allegedly vague statute imposes criminal penalties that implicate expressive and associational rights under the First Amendment, the analysis does not begin and end with *Burdick-Anderson*, as the State erroneously appears to suggest. Moreover, the State only purports to address Plaintiffs’ vagueness challenge to Section 86.006(f), and ignores Plaintiffs’ challenges to the remainder of Section 86.006, as well as the other challenged provisions. Because the State has not addressed Plaintiffs’ vagueness claims, let alone under the proper legal standard, summary judgment should be denied.

As the Complaint details, the challenged provisions are unconstitutionally vague in several respects. What is more, discovery has confirmed that state officials have no standard understanding of many of the challenged provisions, and, in fact, have conflicting understandings of what constitutes a violation of several of the provisions at issue. For example, a representative of the Office of the Attorney General testified that Texas Election Code Section 86.006 applies to “official ballots,” App. Ex. 14 at 32-33 (Eric Nichols Deposition), and a representative of the Office of the Secretary of State testified that Section 86.006 applies to “marked ballots”. App. Ex. 3 at 59-61 (McGeehan Deposition). Moreover, even though Section 86.006 provides that “carrier envelopes may not be collected and stored at another location for subsequent delivery to the early voting clerk,” the Director of Elections at the Office of the

Secretary of State testified that it would *not* be a violation of for a person to collect carrier envelopes containing marked ballots of voters voting by mail and to store them in their trunk while they go and eat lunch. App. Ex.3 at 48-49.

Section 64.036(a) prohibits assistance to a voter “who has not requested assistance or selected the person to assist the voter,” leaving unclear whether a person who is initially unknown to the voter may approach the voter to serve as an assistant. Complaint ¶¶ 57-59.

Section 86.006(f)’s broad ban on “possession” of mail-in ballots and carrier envelopes does not, among other things, specify whether a ballot or carrier envelope must be *marked* for its possession to be illegal. Complaint ¶¶ 38, 58. Although the title of the provision suggests that only marked ballots are covered, the plain text of the statute is not limited to marked ballots, as the Attorney General agrees, see App. Ex. 15 at 32-33 (Nichols Deposition). *See also* pp. 38, *supra*, for a contradictory interpretation of Section 80.006 by Defendants.

In addition, the combined requirements of Sections 86.006(f) and 86.0051 may be read to require *all* individuals witnessing, assisting, and/or possessing a mail-in ballot for the purpose of mailing the ballot to provide their signature and identifying information on the carrier envelope, but the carrier envelope has room for only one individual’s information, rendering the responsibilities of multiple assistors unclear.²³

Section 84.003(b) does not make clear the scope of banned activities related to assisting voters with their mail-in ballot applications, as it merely forbids individuals from “otherwise assist[ing]” voters in an undefined manner not covered by Section 64.0321’s specific definition of “assisting a voter.” Complaint ¶¶ 38 and 58.

²³ The State’s newly proposed carrier envelope has the same sized space for assistors, witnesses and possessors to sign and provide identifying information, but has merely added hash marks in an apparent effort to indicate that more than one individual can provide information. It is doubtful that this proposed revision of the carrier envelope will alleviate any of the confusion, particularly given the other conflicting terms and instructions on the envelope.

The meaning of Section 86.006(e) is also unclear, barring the “collect[ion]” or “stor[age]” of carrier envelopes at “another location for subsequent delivery”—broad, undefined terms that could be read, for example, to prohibit an individual from collecting mail-in ballots in the course of a day of providing individual assistance to voters. Complaint ¶ 28. *See also* App. Ex. at 3 48-49.

Plaintiffs will present evidence at trial that the vagueness of the challenged provisions has had a chilling effect on the activities of would-be voters and helpers. Although such evidence is not required to prevail on Plaintiffs’ vagueness claims, it underscores that – as a matter of practice – the challenged provisions have failed to provide adequate notice. Indeed, as Plaintiffs evidence at trial will show, the challenged provisions’ breadth and vagueness have resulted in the very sort of “arbitrary and discriminatory enforcement” that the First Amendment forbids. *J&B Ent’t*, 152 F.3d at 367-69. Accordingly, summary judgment should be denied.²⁴

IV. THE STATE IS NOT ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS’ DUE PROCESS CLAIM.

In addition to the due process aspect of Plaintiffs’ vagueness claim, *see supra*, Plaintiffs have separately pleaded in Count VII that the challenged provisions violate due process based on the inaccurate and misleading information provided by the State concerning the meaning and enforcement of the challenged provisions. *See, e.g., Zessar v. Helander*, No. 05-C-1917, 2006 U.S. Dist. LEXIS 9830, at *30-31 (N.D. Ill. 2006) (finding that the implementation of a state’s absentee ballot regime violated due process). The State’s argument for summary judgment on this claim hinges on the erroneous premises “that Plaintiffs had actual notice of what was required of them,” Defendants’ Motion at 46, and that “recent modifications” to voting materials “provide even more explicit clarification for voters and assistants,” *id.* at 47. The record

²⁴ For the reasons discussed above with respect to Plaintiffs’ overbreadth claim, Plaintiffs’ vagueness challenge to Section 86.006(f) is not moot.

evidence belies these assertions; disputed questions of fact preclude summary judgment on the due process claim.

Although Plaintiffs' due process challenge is not based only on the State's failure adequately to inform its citizenry of the important amendments to the Election Code in 2003, Defendants' Motion at 45, the State's failure in that regard is relevant to the due process analysis. *See, e.g., Gilbert v. Homar*, 520 U.S. 924, 930 (1997) (explaining that due process is "flexible and calls for such procedural safeguards as the situation demands"). That is particularly so where, as here, the 2003 amendments criminalized longstanding, legitimate practices in relatively unsophisticated minority communities, which were unlikely to learn about the changes in State law and the State's enforcement efforts absent some affirmative effort by the State. As the Attorney General's own voting fraud investigator admitted in 2005:

The actual law about handling ballots, it just went into effect in 2003 and I think the problem is that a lot of people didn't know about it. There's no billboards or anything. There's no way to have known the law changed, and so I think it had been done this way for so long in so many counties that that's why we're having such a problem now, because the law has changed and yet there was nothing advertised about it.

App. Ex.16 (2/3/05 J. Bloodworth Interview with P. and R. Houff). Among other things, no notice whatsoever is provided on the mail-in ballot envelope and carrier envelopes that the State has used since 2004 that merely possessing another's mail-in ballot or carrier envelope constitutes a criminal offense. *See* App. Ex.13.²⁵ Similarly, no notice is provided concerning the other challenged provisions. Not only is such notice required by fundamental fairness – on the carrier envelope and otherwise – but it is expressly required by the Election Code. *See* Tex. Elec. Code §§ 86.012, 86.013.

²⁵ Nor is notice provided that a person who consensually possesses the ballot or ballot envelope other than to mail the ballot may not avail himself of the exemptions by providing identifying information.

In any event, Plaintiffs' due process claim does not rest solely or even primarily on the State's failure to notify. To the contrary, Plaintiffs also allege and will show at trial that Defendants and their agents have issued erroneous, misleading, and improper guidance concerning the implementation of the challenged provisions, and have even lulled voters and helpers into believing that their activities were permissible even though they would eventually be prosecuted. Defendants' conduct has chilled constitutionally protected voting and expressive activities of Plaintiffs and others.

For instance, the Secretary of State's annual letters to voters arbitrarily change their guidance from year to year concerning whether those who possess mail-in ballots for the purpose of mailing them must provide identifying information. App. Ex. 17. On numerous occasions, the Secretary of State, Attorney General and their representatives have issued erroneous guidance to chill the legitimate assistance provided by representatives of political parties and other civic organizations, such as by incorrectly claiming that "everybody has to mail it themselves," (App. Ex. 16) (2/3/05 J. Bloodworth Interview), and by improperly warning voters not to accept help from "stranger[s]" who "show up" on voters' "doorstep[s]" to offer assistance. App. Ex. 17. The Attorney General and Secretary of State have issued conflicting and unclear guidance in PowerPoint presentations to local offices, their websites, and in other materials concerning the challenged provisions. See, for example, App. Ex. 17, where the Secretary of State in 2004 encouraged voters to give their ballot to "a trusted friend" and warned the voters that the trusted friend must sign the carrier envelope to avoid violating the Election Code, but then in 2006 encouraged the use of a trusted friend to mail a ballot but failed to notify voters that if the trusted friend mailed the ballot and failed to sign the carrier envelope, they would be criminally liable under the Election Code. And the voting materials themselves – including the

mail-in ballot application, the mail-in ballot instructions, the mail-in ballot envelope, and the carrier envelope – provide confusing and conflicting guidance concerning the responsibilities and potential liabilities of assistors, witnesses, possessors, mailers. See App. Ex. 13. Under the Texas Election Code, all of these categories of helpers have different statutory obligations, responsibilities, and potential criminal penalties, but the voting materials – as well as State officials – frequently misuse these terms or incorrectly use them interchangeably, further confusing matters.

Ultimately, the State’s argument comes down to a disputed factual issue – whether Plaintiffs had notice of the challenged provisions and their intended enforcement, and whether the State’s recent modifications to the voting materials have cured their previous failings. These are factual questions that must be resolved at trial.

The State’s claim that all Plaintiffs were made aware of the changes in the law and knew the scope and intended enforcement of the challenged provisions is false. Several Plaintiffs have testified to the contrary. See App. Ex. 9 at 29-30. See also the Testimony of Plaintiffs Ray, Minneweather and Meeks introduced at the 2006 preliminary injunction hearing). With respect to the Texas Democratic Party, although it attempted to discern the meaning and scope of the challenged provisions to the best of its ability, even it was unable to receive clear guidance from State officials prior to this lawsuit. Among other things, the Secretary of State refused to answer a letter sent by the party in 2006, seeking clarification in advance of the 2006 elections, and in light of the State’s stepped up investigative and prosecutorial efforts with respect to the challenged provisions. App. Ex. 18. A letter from the Republican Party of Texas seeking guidance from the Secretary of State in 2003 regarding mail-in ballot procedures did receive a response. See App. Ex. 19.

Finally, the eleventh hour changes to the carrier envelope and voter instructions formulated and announced by the State during the Fifth Circuit oral argument are plainly inadequate to cure the confusion caused by the challenged provisions and the State's prior guidance regarding those provisions. To begin with, the carrier envelope does not provide accurate or reasonable notice of the underlying criminal prohibition in Section 86.006(f). Most significantly, neither the envelope nor the instructions state that there is no statutory exemption for prosecution under Section 86.006(f) for individuals who sign the carrier envelope, but who are not mailers. As explained above, statutory language plainly provides no such exemption. Indeed, the carrier envelope, as revised by the State to suggest that all possessors are required to provide identifying information, will likely mislead some consensual possessors who are not mailers into believing (incorrectly) that they will be exempt from prosecution simply by signing the carrier envelope. The proposed revision to the carrier envelope is also confusing: the new bolded language and the revisions to the signature area suggest that mere possession is enough to require identifying information, whereas the preexisting language on the carrier envelope (which will not be changed) continues to suggest that only assistors or mailers must provide information. Moreover, the envelope as revised continues to block off an area in the lower right that suggests that it is assistors and witnesses who are to sign the envelope. Thus, the State's proposed revisions neither improve clarity, nor provide accurate notice of the statutory basis for criminal liability.²⁶

Furthermore, despite the State's proposed revisions, the carrier envelope does not provide

²⁶ The State's proposed revision to the carrier envelope does not state outright that all possessors must provide identifying information – likely because the applicable Texas Election Code provision does not contain any such requirement. Not only does the State's new language provide uncertain and incorrect statements of the underlying criminal prohibition, but the State has used bolded "warning" language that suggests that there is something dangerous or wrong about providing assistance to voters; such language is thus likely to further deter individuals from providing lawful assistance or other aid to voters.

a reasonable means for multiple individuals to provide identifying information. According to the State, all individuals who possess the ballot or envelope (other than the voter) must supply their (1) printed names, (2) signatures, and (3) residence addresses. As Plaintiffs have explained, the current carrier envelope used by the State does not provide room for more than one assistor or mailer to supply identifying information. The only revision proposed by the State relevant to this point is the addition of two hash marks on the name-signature line, and two hash marks on the residence address line. According to the State, these hash marks signify separate compartments for up to three different individuals to include their identifying information. Plaintiffs respectfully submit that the State's proposed cure is insufficient: the envelope does not clearly signify separate compartments for different individuals, and the already tiny area for providing identifying information has become even smaller for each supposed compartment. If an assistor, for example, inserts her full first, middle, and last name in the three compartments, or inserts her printed name and signature (both of which are required) in two separate compartments, there would be no space left for the information of a mailer or a witness. The State's proposed fix simply does not reasonably address Plaintiffs' concern that multiple individuals will not be able to provide the required information on the carrier envelope.

Plaintiffs welcome any effort to make the mail-in voting materials more user-friendly. But the State's proposed revisions do not dispose of Plaintiffs' due process claim. The complete and proper remedy for the State's due process violations should be determined at trial.

V. THE STATE IS NOT ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS' CLAIM UNDER SECTION 208 OF THE VOTING RIGHTS ACT.

Plaintiffs are entitled to trial on Count IV of the Complaint, which states a claim under Section 208 of the Voting Rights Act. Section 208 provides that "[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given

assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 42 U.S.C. § 1973aa-6. The challenged provisions criminalize a wide array of legitimate assistance to mail-in voters and violate Section 208 by "burden[ing] individuals' right to provide assistance to voters" and by "burden[ing] and interfer[ing] with voters' receipt of assistance from persons of their choice." Amended Complaint ¶¶ 64-65.

The State appears to concede, as it must, that provisions of the Texas Election Code must yield if they conflict with Section 208. *See* U.S. Const., Art. VI, ¶ 2.²⁷ The State's argument for summary judgment on Plaintiffs' Section 208 claim thus rests on the erroneous and fact-based assertion that "Plaintiffs have not identified any conflict between the Challenged Statutes and § 208" because "[t]he voter may choose any person to assist with the ballot – consistent with § 208 of the Voting Rights Act – as long as the assistant provides the required disclosures." Defendants' Motion at 48-49. To the contrary, Plaintiffs have established such a conflict, in several respects: some challenged provisions limit outright the number of people a person can help, *see* Tex. Elec. Code § 84.004; other provisions impose unnecessary and vague burdens that serve as a deterrent to would-be helpers as well as voters, *see, e.g.*, Tex. Elec. Code §§ 64.036(a)(4), 84.003(b), 86.006; and the threatened enforcement of all of these provisions has created a chilling effect whereby voters are unable to access the assistants of their choice. *See* pp. 15 to 17, *supra*. This evidence plainly presents a question for trial.

²⁷ Courts discussing Section 208 have recognized the obvious point that state laws and practices that deprive individuals of their rights under Section 208 violate federal law and must give way. *See, e.g., United States v. Berks County*, 250 F. Supp. 2d 525, 532-33, 538 (E.D. Pa. 2003) (enjoining, in part under Section 208, state practice of denying non-English speaking voters "the right to bring the assistant of choice into the voting booth"); *American Ass'n of People with Disabilities v. Hood*, 278 F. Supp. 2d 1345, 1356 (M.D. Fla. 2003).

VI. PLAINTIFFS ALSO PRESENT PROPER AS-APPLIED CHALLENGES TO ALL OF THE CHALLENGED PROVISIONS.

Plaintiffs' as-applied challenges require a trial as well. The State's opposition to Plaintiffs' as-applied challenges rests on the fundamental misconception that Plaintiffs' claims must be based upon a past "application" of the challenged provisions to their conduct by the State. Defendants' Motion at 49. Although Plaintiffs can demonstrate past applications by the State supporting their standing to bring as-applied claims, those as-applied challenges do not hinge on past conduct. Rather, because all Plaintiffs wish to engage in activities barred or chilled by the challenged provisions, but fear investigation or prosecution by the State if they do so, they have standing to bring their as-applied challenges for declaratory and injunctive relief. *See, e.g., Roark*, 2008 U.S. App. LEXIS 6485, at *14-21.

Although Plaintiffs' intended future conduct provides a clear basis for their as-applied challenges, a couple of the State's claims about Plaintiffs' past conduct merit response.

First, and notably, the State appears to have abandoned its argument that Plaintiffs Ray and Johnson lack standing under *Heck v. Humphrey*, 512 U.S. 477 (1994). Instead, the State now claims that Ray and Johnson cannot object to the State's past enforcement of the challenged provisions against them because they had clear notice of the challenged provisions and they were not discriminatorily targeted. Defendants' Motion at 50-53. To the extent such showings are relevant to Plaintiffs' claims, they are the subject of a material dispute of fact and thus require a trial. As explained above, the State has issued conflicting and misleading guidance regarding the scope of the challenged provisions and, in particular, whether violations of Section 86.006(f) would be investigated and prosecuted in the absence of fraudulent conduct. Among other things, the State's own voting fraud investigator stated in 2005 that "[t]here's no way to have known the law changed." App. Ex. 16 (2/3/05 Bloodworth Interview). There is also a material dispute of

fact as to whether the State's investigation and prosecution of Ray and Johnson was improperly discriminatory: Ray and Johnson are both African-American Democrats; there was no allegation or proof of any actual voting fraud in their cases; and yet they were investigated and prosecuted for technical violations of Section 86.006(f), whereas scores of Anglo Republicans who technically violate those provisions every election were never investigated or prosecuted by the State. *See* App. Ex. 20 (Deposition of Escapees RV Club Representative).²⁸ Thus, although Plaintiff contends that the State's proposed inquiries are irrelevant, they are certainly not susceptible to resolution on summary judgment.

Second, the Court should reject the State's attempt to minimize the other Plaintiffs' as-applied challenges as being based on "[h]aving hurt feelings" over the State's investigative and prosecutorial efforts with respect to the challenged provisions. *See* Defendants' Motion at 54-55. As Plaintiffs have alleged and will show at trial, they are all barred and chilled from engaging in constitutionally protected activities due to the overbreadth and vagueness of the challenged provisions and those provisions' discriminatory and unfair enforcement by the State, particularly in situations where there is no charge or evidence of actual voting fraud. In particular, Plaintiffs Meeks and Minneweather have been and continue to be significantly impaired by the challenged provisions and the State's unduly aggressive enforcement efforts, which included state investigators peeping in Meeks' bathroom window while she was stepping out of the bath and intimidating Minneweather into ceasing her efforts to help mail-in voters. Contrary to the State's new assertions, the challenged provisions "significantly relate[] to" core political, expressive and

²⁸ The Escapees are thousands of persons who claim to reside on Rainbow Drive in Polk County, Texas. They usually live and travel in RVs and are out of state for much if not all of the year. They apply for mail-in ballots and have their mail-in ballots sent to a P.O. Box in Shephard, Texas (in San Jacinto County), where an Escapees employee picks up the ballots, brings them back to the Escapees office in Polk County, and then mails them to the voters. Thus, the employee possesses literally thousands of official ballots and carrier envelopes and has not been prosecuted. The Office of the Attorney General in 2000 went to court to protect the rights of Escapees to vote by mail, so the Defendants are fully aware of these procedures and the handling of official ballots by Escapees' employees.

associational conduct, including Plaintiffs' ability to engage in political expression with whom they choose. Defendants' Motion at 56. Finally, it is particularly disingenuous for the State to claim that Plaintiffs can address their individual concerns through facial challenges – rather than through as-applied challenges – when the State's position is that facial challenges are no longer appropriate under *Crawford* and *Washington Grange*. All Plaintiffs are entitled to a trial on their as-applied challenges.

CONCLUSION

For the foregoing reasons, those contained in Plaintiffs' prior briefing, and all others apparent to the Court, the State's summary judgment motion should be denied in full.

Dated: May 14, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Plaintiffs' Opposition to Defendants' Motion for Summary Judgment was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email and/or fax, on this 14th day of May, 2008.

/s/ J. Gerald Hebert
J. Gerald Hebert

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WILLIE RAY, JAMILLAH JOHNSON,)
GLORIA MEEKS, REBECCA)
MINNEWEATHER, REUBEN)
ROBINSON, EDDIE JACKSON,)
and THE TEXAS DEMOCRATIC PARTY,)

Plaintiffs,)

v.)

Civil Action Number 2:06-CV-385(TJW)

STATE OF TEXAS, a State of)
the United States; GREG ABBOTT,)
Attorney General of the State of Texas;)
and PHIL WILSON, Secretary of)
State for the State of Texas,)

Defendants.)

ORDER

Defendants Greg Abbott, Attorney General of the State of Texas, and Phil Wilson, Secretary of State for the State of Texas, filed their Motion for Summary Judgment (“Motion”) under Fed. R. Civ. P. 56(b) on all existing, non-severed claims of Plaintiffs in the above-numbered cause, as remaining in this cause after this Court’s Order of February 1, 2008 (Docket Entry No. 37). Upon consideration of Defendants’ Motion, the Plaintiffs’ response, and the evidence, briefing, and arguments of counsel, the Court finds that there are genuine issues of material fact and hereby denies Defendants’ Motion in its entirety.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WILLIE RAY, JAMILLAH JOHNSON,)
GLORIA MEEKS, REBECCA)
MINNEWEATHER, REUBEN)
ROBINSON, EDDIE JACKSON,)
and THE TEXAS DEMOCRATIC PARTY,)

Plaintiffs,)

v.)

Civil Action Number 2:06-CV-385(TJW)

STATE OF TEXAS, a State of)
the United States; GREG ABBOTT,)
Attorney General of the State of Texas;)
and PHIL WILSON, Secretary of)
State for the State of Texas,)

Defendants.)

APPENDIX TO PLAINTIFFS' OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

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Exhibit 1



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

PHILIP A. LIONBERGER
ASSISTANT SOLICITOR GENERAL

(512) 936-1698
PHIL.LIONBERGER@OAG.STATE.TX.US

December 13, 2007

VIA FEDEX OVERNIGHT MAIL

Charles R. Fulbruge, III, Clerk
Fifth Circuit Court of Appeals
600 S. Maestri Place
New Orleans, Louisiana 70130

Re: Case No. 06-41573, *Willie Ray, Jamillah Johnson, Gloria Meeks, Rebecca Minneweather, Parthenia McDonald, Walter Hinojosa and The Texas Democratic Party v. Greg Abbott, Attorney General of the State of Texas; and Roger Williams, Secretary of State for the State of Texas*

Dear Mr. Fulbruge:

This post-submission, supplemental letter is being submitted as directed by the Court. Please forward it to the panel assigned to this case.

TO THE HONORABLE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT:

During oral argument of this case on December 4, 2007, the Court raised certain concerns regarding Texas's early-voting, mail-in ballot and carrier envelope. Counsel for the Defendants-Appellants, Greg Abbott, Attorney General of the State of Texas, and Phil Wilson, Texas Secretary of State (the "State Officials"), advised that the Secretary of State's Office intended to modify the ballot-envelope instructions and carrier envelope to address and alleviate any concerns the Court might have. The Court directed the State Officials that they had 10 days from the date of oral argument (December 14, 2007) to file a supplemental letter with the Court advising it of any such modifications. This letter does that, as well as addressing a couple of related points.

Charles R. Fulbruge, III, Clerk
December 13, 2007
Page Two

The Secretary of State's Office has modified the carrier envelope for the early-voting, mail-in ballot and the ballot-envelope instructions in several significant respects.¹ First, the carrier envelope contains a warning, in bold-faced type, as follows:

Warning: Knowingly possessing another person's ballot or carrier envelope may be a crime unless you provide your signature, printed name, and address. Aviso: Intencionalmente en posesión de una boleta o sobre portador de otra persona puede ser un delito si no proporcione su firma, nombre en letra de molde y dirección de domicilio.²

This warning, in both English and Spanish, appears on both the front and back of the carrier envelope. (The warning on the front of the envelope differs only in that it includes the prepositional phrase "on the other side of this envelope" after the word "address.")³ The same warning also appears in the instructions to the ballot envelope, except that it also contains the prepositional phrase "on the carrier envelope" after the word "address" in the instruction.⁴ This language was added to improve clarity and should provide clear notice to any person who knowingly possesses someone else's ballot or carrier envelope that the possession of these items is something very serious and may involve criminal penalties. Moreover, this language advises such a person as to what is required of him or her in order to avoid the threat of criminal prosecution.

Second, on the back of the carrier envelope, in the two blanks for the printed names, signatures, and residence addresses of any witnesses or assistants, there are

1. A copy of the modified carrier envelope, ballot-envelope instructions, and carrier-envelope instructions are attached hereto.

2. See, attached, Carrier Envelope.

3. See *id.*

4. See, attached, Ballot Envelope ¶5.

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 Page Three

now two hash marks that divide these lines into six compartments.⁵ These signify separate compartments for up to three different individuals to include their identifying information. This modification should address the concern of Plaintiffs-Appellees that the carrier envelope is misleading because the former blanks allegedly seemed to indicate that only one person needed to provide the required information. In addition, under the printed-name-and-signature blank, the text now reads:

X _____ / _____ / _____
 Printed names and Signatures of **all** Assistants, Witnesses or Persons
handling ballot or carrier envelope. (*Nombres en letra de molde y*
firmas de todos que ayudaron al voltante, testigos, o personas
manejaando una boleta o sobre portador.)⁶

_____ / _____ / _____
 Residence Addresses of **persons named above.** (*Dirección de*
domicilio de las personas indicado arriba.)⁷

Third, in the insert provided with a voter's mail-in ballot, bold-faced type has been added to the third sentence of item 2 under "Important Information About Returning Your Ballot in the Carrier Envelope." It now reads as follows:

If a person (assistant) helps you in marking your ballot or deposits your carrier envelope in the mail or delivers it to a common or contract carrier, that person must sign your carrier envelope and include their printed name and address.⁸

5. See, attached, Carrier Envelope.

6. See, attached, Carrier Envelope. Changes in bold.

7. See *id.* Changes in bold.

8. See, attached, Carrier-Envelope Instructions ¶2. The Spanish version of this instruction is similarly bolded. See *id.*

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These modifications should ameliorate any alleged confusion as to who exactly is required to sign the carrier envelope where one person assists the voter in filling out the ballot and another person deposits it into the mail. By making this language appear in bold, the State Officials have made it abundantly clear that *each such person* must sign and provide the necessary information on the carrier envelope.

All of these modifications serve to make abundantly clear to any individual coming into contact with a ballot or carrier envelope what was already explicit on the face of the statute: that anyone possessing another person's ballot or carrier envelope (and not falling within the statutory exceptions) must put his or her printed name, signature, and residence address on the carrier envelope to avoid committing a crime. Moreover, the statute criminalizes only those who, not disclosing their name and address, "*knowingly possess[] an[other person's] official ballot or carrier envelope,*" providing an explicit *mens rea* for criminal conduct.

This disclosure requirement—which makes evident the full chain of custody for early-voting, mail-in ballots—is entirely constitutional and is consonant with laws throughout the nation. Approximately 30 other States restrict, in some form or fashion, the possession of mail-in (absentee) ballots.⁹ Most of them restrict ballot possession by either having a smaller class of persons eligible to handle the ballots

9. ARIZ. REV. STAT. ANN. § 16-542; ARK. CODE ANN. § 7-5-411; CAL. ELEC. CODE §§3011, 3017, 3021, 18403; COLO. REV. STAT. ANN. §§1-8-112, -113; CONN. GEN. STAT. ANN. §9-140b; FLA. STAT. §101.62; GA. CODE ANN. §§21-2-385, -562; 10 ILL. COMP. STAT. 5/19-6, /19-13, /29-20; IND. CODE ANN. §3-14-2-16; IOWA CODE §§39A.4, 53.17, .22; ME. REV. STAT. ANN. tit. 21-A, §§753-B, 754-A; MD. CODE ANN., ELEC. LAW §§9-307, -308; MASS. GEN. LAWS ch. 54, §92; MICH. COMP. LAWS ANN. §§168.764a, .932; MINN. STAT. §§203B.08, .11; MO. ANN. STAT. §115.631, .637; MONT. CODE ANN. §13-13-214; NEB. REV. STAT. §§32-943, -944; NEV. REV. STAT. ANN. §§293.316, .3165, .330, .730; N.H. REV. STAT. ANN. §§657:15, :17; N.J. STAT. ANN. §§19:57-23, 37.1; N.M. STAT. ANN. §1-6-10.1, 1-20-7; N.Y. ELEC. LAW §8-406; N.C. GEN. STAT. §163-226.3; N.D. CENT. CODE §16.1-07-08; OHIO REV. CODE ANN. §§3509.05, 3599.21; S.C. CODE ANN. §7-15-385; S.D. CODIFIED LAWS §§12-19-2.1, -2.2, -7.2; VA. CODE ANN. §24.2-649, -704, -707; WASH. REV. CODE ANN. §29A.40.080; W. VA. CODE ANN. §3-3-5; WIS. STAT. ANN. §§6.86, .87.

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 December 13, 2007
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than Texas does,¹⁰ or by requiring the absentee voter to designate their agent in writing.¹¹ Some States also restrict the number of voters one person may serve as an agent to.¹² And South Dakota allows only an authorized messenger to deliver an

10. See CAL. ELEC. CODE §§3017, 3021, 18403 (generally allowing only family and members of household to return voted absentee ballots); CONN. GEN. STAT. ANN. §9-140b (allowing only family member or caregiver to return voted absentee ballot); GA. CODE ANN. §21-2-385 (allowing only close family or household member to return voted absentee ballot); 10 ILL. COMP. STAT. 5/19-6, /19-13 (generally allowing only family member to return voted absentee ballot); IND. CODE ANN. §3-14-2-16 (allowing only relative or attorney-in-fact to return voted absentee ballot); IOWA CODE §§ 53.17, .22 (generally allowing only ballot couriers and immediate family to return voted absentee ballot); MASS. GEN. LAWS ch. 54, §92(a) (allowing only family member to return voted absentee ballot); MICH. COMP. LAWS ANN. §168.764a (allowing only immediate family or household member to return absentee ballot); MO. ANN. STAT. §115.637 (prohibiting anyone from possessing another's absentee ballot); NEV. REV. STAT. ANN. §293.330(4) (allowing only family member to return voted absentee ballots); N.M. STAT. ANN. §1-6-10.1 (allowing only caregiver or immediate family to return voted absentee ballot); N.C. GEN. STAT. ANN. §163-226.3(a)(6) (allowing only legal guardian or near relative to possess absentee ballot); OHIO REV. CODE ANN. § 3509.05(a) (allowing only certain relatives to return voted absentee ballot); WASH. REV. CODE ANN. § 29A.40.080(1) (allowing only immediate family to obtain absentee ballot from clerk).

11. See ME. REV. STAT. ANN. tit. 21-A, §753-B (requiring a non-family third-party agent to be designated in writing); MD. CODE ANN., ELEC. LAW §9-307 (requiring a voter's agent to be designated in writing); MONT. CODE ANN. § 13-13-214 (same); N.Y. ELEC. LAW §8-406 (same); N.D. CENT. CODE § 16.1-07-08(1) (same); S.C. CODE ANN. § 7-15-385 (same); S.D. CODIFIED LAWS §12-19-2.1 (same); WIS. STAT. ANN. § 6.86(3)(a)(1) (same).

12. ARK. CODE ANN. §7-5-411(a)(2)(B) (restricting a person who hand-delivers absentee ballots to the clerk to deliver no more than two in an election); COLO. REV. STAT. ANN. §1-8-113(1)(a) (restricting a person who hand-delivers ballots to the election official to deliver no more than five in an election); ME. REV. STAT. ANN. tit. 21-A, §753-B(2) (restricting a clerk to give no more than five absentee ballots at a time to a designated agent); MINN. STAT. ANN. § 203B.08 (restricting a person who hand-delivers absentee ballots to the clerk to deliver no more than three in an election); MONT. CODE ANN. §13-13-214(1)(b)(iv) (restricting an election administrator to refuse an absentee ballot to a designated agent if the agent has previously picked up ballots for four other electors); N.D. CENT. CODE §16.1-07-08(1) (restricting an agent to serve no more than four absentee voters in an election); W. VA. CODE ANN. § 3-3-5(j) (restricting a person who hand-delivers absentee ballots to the clerk to deliver no more than two in an election).

Charles R. Fulbruge, III, Clerk
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absentee ballot if the absentee voter is disabled or ill, requires the messenger for more than one voter to disclose to the person in charge of the election all persons he is a messenger for, and prohibits authorized messengers from displaying campaign materials or soliciting votes.¹³ By comparison, other States are either not as restrictive as the aforementioned states,¹⁴ or are silent as to whether third parties may possess an absentee ballot. Of the approximately 30 States that significantly restrict the possession of mail-in ballots, many of them make it a criminal offense to unlawfully possess a mail-in ballot and provide penalties for a violation.¹⁵ And TEX. ELEC. CODE §86.006(f), like those other state statutes, is entirely constitutional. Accordingly, the Court should reject Plaintiffs-Appellees' facial challenge and reverse the District Court's preliminary injunction.

Finally, please be advised that the changes described in this letter to the ballot materials may be subject to the preclearance requirements of the United States Department of Justice under Section 5 of the Voting Rights Act. The Secretary of State's Office will be submitting these changes to the Justice Department for preclearance. To avoid a potential disruption during the upcoming primary season, these modifications will not be employed until preclearance from the D.O.J. is obtained.

13. S.D. CODIFIED LAWS §§12-19-2.1-2.2, -7.2.

14. *See, e.g.*, R.I. GEN. LAWS §17-20-23 ("The voter shall then . . . cause the envelope to be delivered to the state board on or before election day.").

15. *See* ARIZ. REV. STAT. ANN. §16-1018(6); CAL. ELEC. CODE §18403; COLO. REV. STAT. ANN. §1-13-803; CONN. GEN. STAT. ANN. §9-140b(d); GA. CODE ANN. §21-2-385(a)-(b); 10 ILL. COMP. STAT. 5/29-20(4); ME. REV. STAT. ANN. tit. 21-A, §791; MD. CODE ANN., ELEC. LAW §9-312; MASS. GEN. LAWS ch. 54, §27A; MICH. COMP. LAWS ANN. §§168.931(1)(b)(iv), .932(f); MINN. STAT. §§203B.03, .08; MO. ANN. STAT. §§115.291(2), .304, .631, .637; MONT. CODE ANN. §§13-13-214(1)(b)(iv), -25-103; NEB. REV. STAT. §32-1522(3); NEV. REV. STAT. ANN. §293.330(4); N.H. REV. STAT. ANN. §§657:15, :17, 666:1; N.J. STAT. ANN. §19:57-37; N.M. REV. STAT. ANN. §1-20-7; N.C. GEN. STAT. ANN. §163-226.3(a)(6); N.D. CENT. CODE §16.1-07-14; OHIO REV. CODE ANN. §3599.21(A)(9), (C); S.C. CODE ANN. §§7-15-385, -25-190; VA. CODE ANN. §§24.2-707, -1012; WASH. REV. CODE ANN. §29A.84.680; W. VA. CODE ANN. §§3-3-5(k), -9-19.

Charles R. Fulbruge, III, Clerk
December 13, 2007
Page Seven


Respectfully submitted,

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AW5-21
Prescribed by Secretary of State
Section 86.013, Texas Election Code
3/07

IMPORTANT INFORMATION ABOUT RETURNING YOUR MARKED BALLOT IN THE CARRIER ENVELOPE

1. A carrier envelope may not be returned in an envelope or package containing another carrier envelope unless the other carrier envelopes are from persons registered to vote at the same address as your voter registration address.
2. You must seal your carrier envelope before signing your name. You must sign your name next to the large "X" on the carrier envelope. If you cannot sign your name, you must have a person witness your mark. **If a person (assistant) helps you in marking your ballot or deposits your carrier envelope in the mail or delivers it to a common or contract carrier, that person must sign your carrier envelope and include their printed name and address.** Failure of the assistant to provide this information is a crime, and may result in your ballot being rejected.

SPECIAL RULES RESTRICTING ELIGIBLE COMMON AND CONTRACT CARRIERS

1. If you use a common or contract carrier to return your ballot, the carrier must be a bonafide business, for profit carrier, the primary business of which is transporting or delivering property for compensation.
2. Your ballot will not be counted if it is picked up by a common or contract carrier at an office of a political party or candidate, office for a specific-purpose or general purpose political committee involved in the election, or a candidate's house unless the address of the candidate is your address.
3. If you return your carrier envelope by common or contract carrier, your carrier envelope must be accompanied by an individual delivery receipt when delivered to the early voting clerk. The receipt must indicate the name and address of the person who delivered the carrier envelope to the common or contract carrier and the date, hour, and address where the carrier envelope was received by the common or contract carrier.
4. If your ballot is returned by an unauthorized method, it will not be counted.

If you have any questions about returning your carrier envelope, please contact the early voting clerk's office at (_____)_____. If you feel that your voting rights have been violated or abused, you may report these incidents to the Secretary of State toll-free at 1-800-252-VOTE(8683).

AW5-21

Requerido por el Secretario de Estado

Frac. 86.013, Código Electoral del Estado de Texas

3/07

*DATOS IMPORTANTES EN CUANTO A LA DEVOLUCIÓN DE
SU BOLETA ELECTORAL MARCADA EN EL SOBRE DE ENTREGA*

1. *Es prohibido colocar el sobre de entrega dentro de otro sobre o paquete que contenga sobres de entrega adicionales a menos que las personas enviándolos estén inscritos a votar y el domicilio indicado en sus inscripciones electorales sea igual al suyo.*
2. *Antes de firmarlo, es necesario que cierre y selle el sobre de entrega. Firme el sobre en el lugar indicado por la "X" grande en el sobre. Si no sabe cómo firmar su nombre, será necesario que tenga un testigo presente cuando haga su marca. Si alguien le ayudó marcar sus votos en la boleta, también será necesario que esta persona firme el sobre de entrega porque de otra forma su boleta no se incluirá en el conteo final. Falta por parte del asistente de proporcionar esta información es un delito y puede resultar en que su boleta sea rechazada.*

*REGLAS ESPECIALES EN CUANTO AL USO
DE TRASPORTISTAS O PORTADORES COMERCIALES*

1. *Si decide contratar un transportista o portador comercial para enviar su boleta electoral, éste deberá ser de una empresa de fines de lucro cuya razón principal es el transporte y la entrega de documentos y bienes por paga.*
2. *Si dicho transportista fuere a recoger su boleta en: la sede de un partido político, la sede de una campaña electoral, las oficinas de un comité político, ya sea de interés general o específico, que tenga algún interés en estas elecciones o el domicilio de cualquiera de los candidatos, su boleta no se incluirá en el conteo final a menos que el domicilio del candidato es igual al suyo.*
3. *Si opta enviar su sobre de entrega por portador o transportista comercial al secretario de Votación Adelantada asegúrese que éste lleve un acuso de recibo individual. El recibo debe indicar el nombre y dirección de la persona que entrego el sobre de entrega al portador o transportista comercial y la fecha, hora, y dirección de donde el portador o transportista comercial recibió el sobre de entrega.*
4. *Si la entrega de su boleta no cumple con toda la norma, su voto no se incluirá en el conteo final.*

Si tiene alguna pregunta en cuanto a cómo devolvernos su sobre de entrega por favor comuníquese con la oficina de la Secretaría de Votación por Adelantado más cercano llamando al (____)_____.

Si siente que sus derechos electorales han sido violado o abusado, puede hacer un reporte con la oficina del Secretario del Estado al 1-800-252-8683 (VOTE).

Warning: Knowingly possessing another person's ballot or carrier envelope may be a crime unless you provide your signature, printed name and address on the other side of this envelope.

Aviso: Intencionalmente en posesión de una boleta o sobre portador de otra persona puede ser un delito si no proporciona su firma, nombre en letra de molde y dirección de domicilio en el otro lado de este sobre.

CARRIER ENVELOPE FOR EARLY VOTING BALLOT
(SOBRE OFICIAL PARA ENVÍO DE BOLETAS DE VOTACIÓN ADELANTADA)

TO (A):

Name of Early Voting Clerk (Nombre de la Secretaría de votación adelantada)

Official Title (Título Oficial)

P.O. Address (Dirección Postal)

Texas Zip (Zona Postal)

4065.21 12/07

<p>Warning: Knowingly possessing another person's ballot or carrier envelope may be a crime, unless you provide your signature, printed name and address.</p> <p>Aviso: Intencionalmente en posesión de una boleta o sobre portador de otra persona puede ser un delito si no proporciona su firma, nombre en letra de molde y dirección de domicilio.</p> <p>NOTE: This envelope must be sealed by the voter before it leaves the voter's hand. Seal envelope before signing. Do not sign this envelope unless the ballot has been marked by you or at your direction.</p> <p>NOTA: Antes de entregar el sobre, el votante mismo tiene que hacerlo sellado. Antes de firmar el sobre, asegúrese que ya está. Ex. prohibido firm. r. este sobre a menos que usted haya completado la boleta electoral o ésta se completó por su intervención.</p>	
<p>INSTRUCTIONS TO VOTER: Complete all applicable spaces. The carrier envelope must be signed by the voter in the appropriate space. If the voter cannot sign, the voter's mark must be witnessed and the witness block must be completed. The carrier envelope may not be used to return more than one ballot. The carrier envelope may be delivered in another envelope and must be delivered by mail or by courier or contract carrier. Only one carrier envelope shall be placed in another envelope. However, more than one carrier envelope may be placed together in another envelope if the additional carrier envelope(s) belong to a person registered to vote at the same address.</p>	
<p>OATH OF ASSISTANCE: If you assisted the voter in any way with the ballot or witnessed the signature of the voter on the carrier envelope, you must sign the oath. If you are going to deposit the carrier envelope in the mail for the voter or deliver it to a courier or contract carrier, you must provide your signature, printed name, and address in the space provided.</p>	
<p>INSTRUCCIONES PARA EL VOTANTE: Proporcione toda la información solicitada usando las espacios apropiados. Procure firmar el sobre en el renglón apropiado. Si no sabe firmar, un testigo tiene que presenciar su marca y la información en cuanto al testigo deberá ser proporcionada. Es prohibido colocar más de una boleta dentro de cada sobre. Aunque se permite colocar el sobre oficial dentro de otro sobre, nunca se debe colocar más de un sobre oficial dentro de un mismo sobre, y éste deberá ser entregado por correo o por medio de un portador o transportista comercial. No obstante lo anterior, si en el mismo domicilio vive otro votante inscrito a votar bajo la misma dirección, se permite que su sobre oficial sea colocado dentro del mismo segundo sobre.)</p> <p>PRECAUTION: Toda persona que haga ayudado al votante en la preparación de su boleta, no obstante cómo, o que le entregue cuando éste firmó el sobre oficial deberá firmar y someterse al siguiente juramento. Cualquier individuo que va a depositar el sobre oficial en el correo o llevarlo a un portador comercial en vez de el votante mismo deberá proporcionar su firma, nombre en letra de molde y dirección de domicilio en el renglón provisto.)</p>	
<p>To be completed by early Voting Clerk: (A ser completado por un representante de la Secretaría de Elección por Adelantado)</p>	
<p>Name of Voter (Nombre del votante)</p>	<p>Name of Election (Tipo de elección)</p>
<p>Date of Election (Fecha de Elección)</p>	
<p>APR 21 12 PM</p>	
<p>Residence Address of person named above. (Dirección de domicilio de las personas indicadas arriba.)</p>	
<p>Printed names and Signatures of all Assistants, Witnesses or Persons handling ballot or carrier envelope. (Escribir en letra de molde y, firmar de todas que ayudaron al votante, testigos, o personas manejando una boleta o sobre portador.)</p>	
<p>SIGNATURE OF VOTER (FIRMA DEL VOTANTE)</p>	
<p>OATH OF PERSON ASSISTING VOTER: I swear (or affirm) that I will not suggest by word, sign, or gesture how the voter shall vote. I will continue my assistance to answering the voter's questions, to stating propositions on the ballot, and to naming candidate and, if listed, their political parties; and I will prepare the voter's ballot as the voter directs. (GUARANTEE TO AL QUE SE SOMETE LA PERSONA QUE AYUDA AL VOTANTE. Juro o afirmo que, al por palabra, signos o acciones, le sugeriré al votante cómo deberá votar. Me limitaré a contestar sus preguntas y a preparar las papeletas que aparecen en la boleta y las nombres de los candidatos y los partidos políticos a que estos pertenecen, si es que ella que ella información está incluida en la boleta según sus instrucciones.)</p>	
<p>Assistant/Witness: Assistant must sign, voter's mark must be witnessed. If voter cannot make mark, witness must check here. If the voter is unable to read and/or mark the ballot, the assistant must fill out the information below. (Si el votante no sabe firmar, deberá hacer su marca ante un testigo. Si el votante no sabe poner su marca, el testigo deberá marcar aquí)</p>	

AW5-20
Prescribed by Secretary of State
Section 86.012, Texas Election Code
12/07

BALLOT ENVELOPE

INSTRUCTIONS TO VOTER:

1. Mark ballot, place ballot in envelope marked "BALLOT ENVELOPE," and seal ballot envelope.
2. Place ballot envelope in carrier envelope, seal carrier envelope, sign carrier envelope, and return carrier envelope to the early voting clerk either by mail or common or contract carrier. A ballot may not be returned to the early voting clerk by any other method. (See instructions on carrier envelope and the important information enclosure for additional information.)
3. Be sure to mail your ballot so it will be received by the early voting clerk before 7:00 p.m. on election day. If you are voting from outside the United States, the late counting ballot rules may apply to you.

INSTRUCTIONS TO ASSISTANTS:

1. A voter may be assisted to vote only if the voter is physically unable to write or see and/or unable to read the ballot.
2. Assisting a voter includes the following conduct by a person other than the voter that occurs while the person is in the presence of the voter's ballot or carrier envelope: (a) reading the ballot to the voter; (b) directing the voter to read the ballot; (c) marking the voter's ballot; or (d) directing the voter to mark the ballot.
3. A voter may choose an assistant as long as that assistant is not the voter's employer or an agent of the voter's employer, or officer or agent of the voter's labor union.
4. It is a Class A misdemeanor: (a) to provide assistance to a voter who is not qualified to receive assistance; (b) to prepare the ballot for the voter other than as the voter directs or without direction from the voter; (c) to suggest to the voter by word, sign, or gesture, how the voter should vote; or (d) to provide assistance to a person that has not requested assistance or selected the person to assist the voter. It is also a Class A misdemeanor to assist a voter in violation of #3 above.
5. Knowingly possessing another person's ballot or carrier envelope may be a crime unless you provide your signature, printed name and address on the carrier envelope.
6. If the voter allows a person to mail his or her ballot or deliver the ballot to a carrier/delivery service, that person must sign the carrier envelope and include their printed name and address. Failure to provide this information is a crime. The person mailing or delivering the ballot must do so immediately. It is a crime for a person to collect and store carrier envelopes at another location for subsequent delivery to the early voting clerk.
7. Any ballot cast with assistance in violation of any of the above instructions may not be counted.

12/07

EL SOBRE DE LA BOLETA

INSTRUCCIONES PARA EL VOTANTE:

1. *Marque su boleta, meta la boleta en el sobre marcado "SOBRE DE LA BOLETA", y cierre el sobre de la boleta.*
2. *Meta el sobre de la boleta en el sobre portador, ciérrelo, firmelo, y mándelo al secretario de votación adelantada por correo o por transporte común o bajo contrato. No está permitido devolver la boleta al secretario de votación adelantada de ninguna otra manera. (Vea las instrucciones en el sobre portador para información adicionales.)*
3. *El secretario de la votación adelantada deberá recibir el sobre portador con la boleta incluso antes de las 7 de la noche el día de la elección. No es suficiente solamente enviar el sobre para esta fecha. Si esta votando fuera de los Estado Unidos las reglas de contar boletas pueden aplicar a Udsted.*

INSTRUCCIONES PARA LAS PERSONAS DANDO AYUDA:

1. *Un votante puede recibir ayuda solamente si es físicamente incapaz de escribir o ver o no puede leer la boleta.*
2. *Ayudar a un votante incluye la siguiente conducta por una persona, no el votante, que ocurre durante la presencia de la boleta de votar ó sobre de entrega: a) leer la boleta al votante; b) dirigiendo al votante a leer la boleta; c) marcando la boleta del votante; ó d) dirigiendo al votante que marque la boleta.*
3. *Un votante puede escoger un ayudante con tal de que ese ayudante no sea la persona que lo(a) emplea, o un agente de la persona que lo(a) emplea, o un oficial o agente de la unión de obreros de la cual el votante es socio.*
4. *Es un delito menor de la Clase A preparar una boleta para un votante que no está autorizado para recibir ayuda, o preparar la boleta para el votante diferente al modo en que dirija el votante, o sugerir por palabra, seña o acción cómo debiera de votar el votante. Es un delito menor de la Clase A ayudarle a un votante que no ha cumplido con las condiciones del #3 mencionado arriba.*
5. *Intencionalmente en posesión de una boleta o sobre portador de otra persona puede ser un delito si no proporcione su firma, nombre en letra de molde y dirección de domicilio una boleta o sobre portador.*
6. *Si el votante permite a alguna persona enviar su boleta o entrega las boleta por transporte común o bajo contrato, esa person debe firmar el sobre de entrega incluyendo su nombre en letra de molde y dirección. Falta de proporcionar esta información es un delito. La persona enviando o entregando la boleta debe hacer lo inmediatamente. Es un delito que una persona colecte y guarde sobre sde entrega en otro local para entrega subsucuentemente al secretario de votación adelantada.*
7. *No se deberá contar ninguna boleta que fue votada con ayuda de un modo en violación de alguna de las instrucciones mencionadas arriba.*

Exhibit 2

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December 20, 2007

Via Overnight Delivery

Charles R. Fulbruge III, Clerk
United States Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130-3408

Re: Case No. 06-41573, *Ray, et al., Plaintiffs-Appellees v. Abbott, et al., Defendants-Appellants*

Dear Mr. Fulbruge:

Plaintiffs-Appellees ("Plaintiffs") submit this post-submission letter as directed by the Court, in response to the letter submitted by Defendants-Appellants ("State") on December 14, 2007. Please forward this letter to the panel assigned to this case.

**TO THE HONORABLE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT:**

During the rebuttal portion of the State's oral argument of this case on December 4, 2007, the State asserted – for the first time – that it intended to alter the carrier envelope that Texas uses for the return of mail-in ballots. Plaintiffs welcome the State's effort at attempting to begin to rectify the failings of Texas election law identified by Plaintiffs in this case. However, the State's eleventh-hour effort to alter the carrier envelope does not address the basis for the District Court's narrow injunction of a portion of Sections 86.006(f) and (h) of the Texas Election Code. To the contrary, the State's proposed changes to the carrier envelope do not alter the problematic underlying statute. That statute imposes criminal liability for mere possession of another's mail-in ballot and it does not

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exempt from liability all individuals who have signed the carrier envelope, including those providing assistance or incidentally possessing the ballot or carrier envelope. Moreover, as explained below, the State's proposed changes do not provide adequate notice of the underlying criminal provisions – including the fact that certain possession of the ballot or carrier envelope can never be cured by merely signing the envelope. Nor do these proposed changes take immediate, or even certain, effect, including for the upcoming primary elections.

Accordingly, the State's proposed changes to the carrier envelope provide no basis for reversing the District Court's injunction. That injunction should be affirmed. To the extent that the State intends to alter the carrier envelope, Plaintiffs respectfully submit that a factual record concerning those proposed changes, as well as concerning the many other aspects of Texas election law at issue in this case, should be developed fully in the first instance by the trial court. The District Court can make any necessary modifications to its injunctive order. Notably, since oral argument before this Court, the District Court has scheduled a status conference for January 8, 2008, indicating its intention to move the case along. Attached to this letter as Exhibit A is a copy of the District Court's Notice of Scheduling Conference and Proposed Deadlines for litigating this case in advance of the 2008 general election. As the proposed schedule makes clear, the District Court stands ready to adjudicate this case in a speedy manner, including disposition of any issues concerning the carrier envelope.

I. The State's Proposed Revision Of The Carrier Envelope Does Not Provide A Basis For Overturning The District Court's Injunction, Which Was Based On The Deficiency Of The Underlying Statute.

Section 86.006(f) of the Texas Election Code subjects individuals to criminal liability for the consensual possession of the mail-in ballot or carrier envelope of another person, subject to only six narrow categories of exemption. In full, Section 86.006(f) provides:

(f) A person commits an offense if the person knowingly possesses an official ballot or official carrier envelope provided under this code to another. Unless the person possessed the ballot or carrier envelope

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with intent to defraud the voter or the election authority, this subsection does not apply to a person who, on the date of the offense, was:

(1) related to the voter within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code;

(2) registered to vote at the same address as the voter;

(3) an early voting clerk or a deputy early voting clerk;

(4) a person who possesses the carrier envelope in order to deposit the envelope in the mail or with a common or contract carrier and who provides the information required by Section 86.0051(b) in accordance with that section;

(5) an employee of the United States Postal Service working in the normal course of the employee's authorized duties; or

(6) a common or contract carrier working in the normal course of the carrier's authorized duties if the official ballot is sealed in an official carrier envelope that is accompanied by an individual delivery receipt for that particular carrier envelope.

Tex. Elec. Code § 86.006(f).¹

¹ This text is the version of Section 86.006(f) as amended effective September 1, 2007. The State claimed in its Reply Brief and at oral argument that the recent amendment of Section 86.006(f) corrects the problem rectified by the District Court's preliminary injunction. As Plaintiffs have argued, the State is incorrect. The only difference between the previous and current versions of Section 86.00(f) is that what had been six categories of affirmative defenses are now six categories of exemptions. The amendment is a welcome change for individuals who fall within those six categories, as they no longer bear the burden of proving an affirmative defense. However, the amendment does not address at all the problem identified by the District Court: that Section 86.006(f) subjects to criminal liability all individuals (other than those in the six narrow categories of exemption) who consensually possess another's mail-in ballot or carrier envelope, including those providing legitimate assistance, and provides no means for such individuals to "cleanse" their possession, including by signing the carrier envelope. *See infra*.

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Punishment for violation of Section 86.006(f) ranges from, at the “low” end, up to 180 days in jail and up to a \$2,000 fine for consensual possession of a single ballot or carrier envelope, through the “high” end of a term of 180 days to two years in jail and up to a \$10,000 fine for consensual possession of 20 or more ballots or envelopes. *See id.* § 86.006(g); Tex. Penal Code §§ 12.22, 12.35. In addition, any ballot returned in violation of this Section “may not be counted.” *Id.* § 86.006(h). For the Court’s reference, a copy of the current version of the entirety of Chapter 86 of the Texas Election Code is attached as Exhibit B.

The District Court’s injunction addressed a narrow but significant problem with Section 86.006(f). As Plaintiffs explained in their briefs and at oral argument, the District Court partially enjoined Section 86.006(f) because that provision criminalizes all consensual possession of the mail-in ballot or ballot envelope of another person, unless a possessor happens to fall into one of the six narrow categories of exemption. Critically – and contrary to the State’s claims – the clear terms of Section 86.006(f) do not authorize all consensual possessors to provide identifying information on the carrier envelope. Nor does the statute provide exemption from criminal liability so long as consensual possessors provide such information. Rather, the only individuals who are authorized by Section 86.006(f) to provide identifying information as a means of exempting themselves from criminal liability are those who “possess[] the carrier envelope *in order to deposit the envelope in the mail or with a common or contract carrier* and who provide[] the information required by Section 86.0051(b).” Tex. Elec. Code § 86.006(f)(4) (emphasis added).

Thus, under the plain terms of Section 86.006(f), individuals are not exempted from liability – even if they provide identifying information – unless they are a mailer of a ballot or fall within one of the other five narrow categories of exemption. Thus, for example, a person is subject to liability under Section 86.006(f) and has no exemption from criminal prosecution: (1) if she provided “assistance” to an elderly voter and provided identifying information on the carrier envelope, *see* Tex. Elec. Code § 86.010, but did not mail the ballot for the voter, or (2) if she handed the unmarked ballot and carrier envelope to a disabled voter and provided identifying information on the carrier envelope, but did not mail the ballot for the voter.

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At oral argument, the panel posed hypothetical questions to counsel regarding assistance to a person in a nursing home. If a janitor or nursing home attendant hands an elderly or disabled voter a piece of mail containing the person's unmarked mail-in ballot, then such a handler of the ballot is not exempt from prosecution under Section 86.006(f), even if the handler signs the carrier envelope. That is so because a person merely handling the ballot with the voter's consent does not fit within any of the categories of exemption. Under the District Court's narrow injunction, such an inadvertent non-mailer of the mail-in ballot of another would be exempt from prosecution. The District Court's injunction equally protects someone who provides actual assistance in voting to a nursing home resident and signs the carrier envelope, but does not mail the ballot. Such an individual would otherwise be susceptible to prosecution under Section 86.006(f).

Notably, the District Court's injunction did not prohibit enforcement of Sections 86.006(f) and (h) against non-consensual possessors. 4.R.843; 2.R.E.843. Moreover, the District Court expressly held that its injunction does not bar enforcement of Section 86.0051 of the Texas Election Code, which separately criminalizes mailing a ballot for another person without providing identifying information. 4.R.843-44; 2.R.E.843-44.² Indeed, the relatively limited scope of the District Court's injunction was grounded in its view, based on the limited preliminary record, "that a disclosure provision of reasonable scope is necessary to prevent voting fraud occurring in connection with early mail-in voting." 4.R.857¶19; 3.R.E.857¶19. However, as the District Court recognized, while the statute authorizes a mechanism of providing identifying information by which mailers can legally possess the ballot or carrier envelope with the consent of the voter, *see* Tex. Elec. Code § 86.0051, the statute went "too far" by providing no means of exemption for all consensual possessors, 4.R.857¶19; 3.R.E.857¶19.

At oral argument, counsel for the State asserted that the State would not prosecute any consensual possessor who signs the carrier envelope – regardless

² As the District Court correctly recognized, in light of the existence of Section 86.0051 and the many other provisions of Texas law regulating and criminalizing aspects of the mail-in balloting process – provisions unaffected by the preliminary injunction – the State would not suffer harm from the District Court's narrow partial injunction of Sections 86.006(f) and (h).

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whether such an individual actually has any statutory basis for an exemption from prosecution. Of course, the state statute challenged here provides that such a person may be prosecuted; that is why the injunction should be affirmed. The District Court properly enjoined, in part, Section 86.006(f) because of its excessive breadth, and due to the absence of exemptions for all consensual possessors, including for non-mailers who provide identifying information on the carrier envelope. Particularly in light of the credible evidence of a chilling effect on constitutional rights caused by Section 86.006(f), 4.R.852¶27; 3.R.E.852¶27 – a factual finding by the District Court which is not clearly erroneous – and the State’s history of discriminatory implementation identified by Plaintiffs, 1.R.21¶30; 1R.81¶14, it is the statutory language and the practical effect of the State’s enforcement history that was properly the touchstone of the District Court’s narrow injunction.

As noted, the District Court’s injunction was based on the terms and effect of Section 86.006(f) – not the format of the carrier envelope. Accordingly, the State’s surprise declaration at oral argument of its intent to change the carrier envelope, as well as the State’s subsequent proposed changes, do not alter the basis for the District Court’s injunction: the excessive breadth of Section 86.006(f). Indeed, the State’s entire submission concerning the carrier envelope is based on the false premise that the State’s proposed changes to the carrier envelope merely reflect what is “explicit on the face of the statute: that anyone possessing another person’s ballot or carrier envelope (and not falling within the statutory exceptions) must put his or her printed name, signature, and residence address on the carrier envelope to avoid committing a crime.” State Letter at 4. But Section 86.006(f) provides no such thing – either explicitly or implicitly. Rather, the statute provides that mailers alone may sign the carrier envelope to cleanse their possession.

Thus, the only change that could alter the basis for the District Court’s injunction is a change of the statute itself, not merely a change in the carrier envelope. It is the overly broad criminal prohibition, combined with the State’s enforcement history, that has caused an unwarranted chilling effect on constitutional rights. Put simply, regardless whether the carrier envelope informs all consensual possessors to sign it, the statute does not exempt all such individuals

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from prosecution. That deficiency is what the District Court's injunction addressed, and that deficiency persists.³

II. The State's Proposed Changes To The Carrier Envelope Do Not Take Immediate Or Certain Effect And Thus Provide No Basis For Overturning The District Court's Injunction.

Even if the State's proposed changes to the carrier envelope were relevant to the injunction under review, they would provide no basis for overturning the injunction because the proposed changes do not take immediate or even certain effect. As the State explains at the end of its letter, it does not intend to implement the proposed changes to the carrier envelope for the "upcoming primary season." State Letter at 6.⁴ The State asserts that its proposed changes "may be subject" to preclearance requirements under Section 5 of the Voting Rights Act, *id.* – a process that ordinarily takes up to 60 days. *See* 28 C.F.R. Part 51; http://www.usdoj.gov/crt/voting/sec_5/making.htm. The State has not divulged whether it has yet submitted its proposed changes for preclearance.

Because the State's proposed changes have not yet taken effect and will not take effect either imminently or at any time certain, they provide no basis for overturning the District Court's injunction. As noted above, the District Court has scheduled a status conference in this matter for early 2008 and has proposed an aggressive schedule for litigating all issues in this case. The District Court issued its narrow injunctive order based on the factual circumstances that were before it at the time, and those conditions have not changed, even with the changes to the

³ The State's own proposed changes continue to reflect the flaws of the underlying statute. Although the State now apparently contemplates that all possessors may sign the carrier envelope to avoid liability, the statute does not exempt such individuals from prosecution unless they also mail the envelope. *See* Tex. Elec. Code § 86.006(f). That reality of the underlying law is reflected in the bold language that the State proposes adding to the instruction form, which demonstrates that the Election Code only authorizes certain individuals – assistants or mailers – to sign the carrier envelope. *See* State Exhibit A (Carrier-Envelope Instructions) ¶ 2. Moreover, as explained above, even assistants who sign the envelope under Tex. Elec. Code § 86.010, have no means of exemption from liability under Section 86.006(f) because they do not all within any of the categories of exemption.

⁴ Texas' primary is on March 4, 2008. *See* <http://www.sos.state.tx.us/elections/index.shtml>.

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carrier envelope proposed by the State. In any event, Plaintiffs respectfully submit that the District Court is best positioned to assess whether the State's proposed changes provide any basis for altering the injunction previously entered – when and if those changes to the carrier envelope actually do go into effect.

III. The State's Proposed Changes To The Carrier Envelope Do Not Provide Reasonable Notice Of The Statutory Prohibitions Or A Sufficient Means Of Compliance.

Plaintiffs do not seek to engage in a detailed critique of the State's carrier envelope or the proposed revisions thereto, particularly given that the carrier envelope's redesign does not cure the basis for the District Court's injunction. Plaintiffs respectfully submit that issues concerning the carrier envelope's design should be developed before the trial court before being addressed on appeal. In any event, Plaintiffs note that the State's proposed revisions do not cure the problems with the carrier envelope, for at least two reasons.

First, the carrier envelope does not provide accurate or reasonable notice of the underlying criminal prohibition in Section 86.006(f). Most significantly, neither the envelope nor the instructions state that there is no statutory exemption for prosecution under Section 86.006(f) for individuals who sign the carrier envelope, but who are not mailers. As explained above, and as recognized by the District Court's injunction, the statutory language plainly provides no such exemption. Indeed, the carrier envelope, as revised by the State to suggest that all possessors are required to provide identifying information, will likely mislead some consensual possessors who are not mailers into believing (incorrectly) that they will be exempt from prosecution simply by signing the carrier envelope. The proposed revision to the carrier envelope is also confusing: the new bolded language and the revisions to the signature area suggest that mere possession is enough to require identifying information, whereas the preexisting language on the carrier envelope (which will not be changed) continues to suggest that only assistants or mailers must provide information. Moreover, the envelope as revised continues to block off an area in the lower right that suggests that it is assistants and witnesses who are to sign the envelope. Thus, the State's proposed revisions

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neither “improve clarity,” State Letter at 2, nor provide accurate notice of the statutory basis for criminal liability.⁵

Second, despite the State’s proposed revisions, the carrier envelope does not provide a reasonable means for multiple individuals to provide identifying information. According to the State, all individuals who possess the ballot or envelope (other than the voter) must supply their (1) printed names, (2) signatures, and (3) residence addresses. As Plaintiffs have explained, the current carrier envelope used by the State does not provide room for more than one assistor or mailer to supply identifying information. The only revision proposed by the State relevant to this point is the addition of two hash marks on the name-signature line, and two hash marks on the residence address line. State Letter at 2-3. According to the State, these hash marks “signify separate compartments for up to three different individuals to include their identifying information.” *Id.* at 3. Plaintiffs respectfully submit that the State’s proposed cure is insufficient: the envelope does not clearly “signify separate compartments” for different individuals, and the already tiny area for providing identifying information has become even smaller for each supposed “compartment.” If an assistor, for example, inserts her full first, middle, and last name in the three compartments, or inserts her printed name and signature (both of which are required) in two separate compartments, there would be no space left for the information of a mailer or a witness. The State’s proposed fix simply does not reasonably address Plaintiffs’ concern that multiple individuals will not be able to provide the required information on the carrier envelope.

Plaintiffs do not seek to nit-pick at the State’s attempted revisions. We welcome any effort to make the carrier envelope more user-friendly and do not question the State’s motives. But the revisions to the envelope, we submit, make it neither more user-friendly nor clearer. Plaintiffs seek to point out, by way of

⁵ The State’s proposed revision to the carrier envelope does not state outright that all possessors must provide identifying information – likely because the applicable Texas Election Code provision does not contain any such requirement. Not only does the State’s new language provide uncertain and incorrect statements of the underlying criminal prohibition, but the State has used bolded “warning” language that suggests that there is something dangerous or wrong about providing assistance to voters; such language is thus likely to further deter individuals from providing lawful assistance or other aid to voters.

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example, genuine concerns with the hastily redesigned envelope. Plaintiffs respectfully submit that the prudent course, pending a full merits adjudication, is to leave the District Court's injunction in place, thus allowing time for the State to propose a carrier envelope redesign, along with other necessary measures, that respond fully to all of the concerns at issue in this lawsuit.

IV. The State's Purported Supplemental Authority Concerning The Practices Of Other States Is Not Properly Before The Court, And, In Any Event, Does Not Support The State's Arguments.

As the State recognizes, the Court requested that the State file a supplemental letter to advise the Court of any proposed modifications to the carrier envelope, because those modifications were first proposed by the State in its rebuttal at oral argument. State Letter at 1. The Court did not make a more general request for new arguments or authorities in support of the parties' claims. Yet the State inappropriately has attempted to use its letter as a basis for presenting new argument and extensive citations concerning the election laws of states nationwide. *See id.* at 4-6. This presentation has nothing to do with the State's proposed revisions to the carrier envelope, and it is not, as the State claims, a "related point[]." *Id.* at 1. Rather, it is argument that the State could have made in prior briefing but chose not to. Accordingly, the State's new argument and citations should be disregarded by the Court. *See, e.g.,* Fed. R. App. P. 28(j); Fifth Cir. Rule 28.4 (explaining that supplemental authority may be provided by letter at the Court's request, or if related to "intervening decisions or new developments").

In any event, the State's new submission does nothing to undermine the District Court's injunction. It is true and unsurprising that many states have promulgated regulations concerning mail-in balloting, including with respect to who may help the voter receive and return the ballot. *See* State Letter at 4-6 & nn.9-14. However, what is remarkable about Section 86.006(f) is that – unlike nearly every other state statute cited by the State in its letter – Texas has attempted to subject nearly all consensual possession of another's mail-in ballot or carrier envelope to severe criminal penalties. Unlike nearly all of the other state laws cited, Section 86.006(f): (1) applies to possession in all contexts (not just possession that is incidental to the more involved tasks of assisting, mailing, or

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personal delivery of a ballot), (2) authorizes substantial criminal liability; (3) is not limited to situations involving fraud, tampering, or otherwise nefarious conduct; and (4) applies to all carrier envelopes and ballots, whether unmarked or marked.

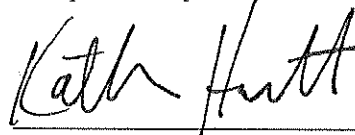
The State claims that, of the 30 States that allegedly “significantly restrict” the possession of mail-in ballots, “many of them make it a criminal offense to unlawfully possess a mail-in ballot and provide penalties for a violation.” State Letter at 6. The State’s citations, *see id.* at 6 n.15, do not support this bold and inaccurate claim, as explained here by way of example only. Some of the State’s citations do not even concern criminal prohibitions. *See, e.g.*, Conn. Gen. Stat. Ann. § 9-140b(d); Ga. Code Ann. § 21-2-385(a). Other statutes cited by the State as supposedly applying to mere possession pertain only to situations involving nefarious activity beyond mere possession, such as ballot tampering. *See, e.g.*, Me. Rev. Stat. Ann. tit. 21-A, § 791; Mass. Gen. Laws ch. 54, § 27; Minn. Stat. § 203B.08. Several of the provisions cited by the State do not broadly outlaw possession, but rather more narrowly regulate certain activities related to mail-in balloting, such as providing actual voting assistance, mailing, or personal delivery. *See, e.g.*, Md. Code Ann., Elec. Law §§ 9-307, 9-308, 9-312; Nev. Rev. Stat. Ann. § 293.330(4); S.C. Code Ann. §§ 7-15-385, 7-25-190; Wash. Rev. Code Ann. §§ 29A.40.080, 29A.84.680. And some of the statutory prohibitions cited by the State apply, at most, to election officials, not individuals helping mail-in voters. *See, e.g.*, Mont. Code Ann. §§ 13-13-214, 13-35-103. In sum, the State’s newly provided authority does not rebut the fact that Texas’ statutory criminalization of nearly all consensual possession makes Texas one of the most restrictive jurisdictions concerning assistance in mail-in balloting. Although that fact is not dispositive, it weighs heavily in favor of the injunction issued by the District Court. *See Appellees’ Br.* at 45-46.⁶

⁶ Moreover, and notably, Plaintiffs do not challenge Section 86.006(f) in isolation, but rather in context of all of Texas’ statutory prohibitions, combined with Section 86.006(f)’s demonstrated chilling effect on protected activity and the history of discriminatory enforcement against racial minorities and Democrats. Thus, whether Section 86.006(f) is constitutionally problematic – as the District Court correctly held – does not hinge on the practices in the few other states that also have criminalized possession of mail-in ballots in certain limited circumstances.

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For the foregoing reasons, and all others apparent to the Court, the preliminary injunction should be affirmed.

Respectfully submitted,



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cc: R. Ted Cruz and Philip A. Lionberger (via overnight delivery)

Exhibit A

**To Plaintiffs-Appellees' December 20, 2007 Post-Submission
Letter in Case No. 06-41573, *Ray et al. v. Abbott, et al.***

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WILLIE RAY, ET AL.	§	
	§	
V.	§	CIVIL NO. 2:06-CV-385(TJW)
	§	
STATE OF TEXAS, ET AL.	§	

**NOTICE OF SCHEDULING CONFERENCE,
PROPOSED DEADLINES FOR DOCKET CONTROL ORDER
AND DISCOVERY ORDER**

The court, *sua sponte*, issues this Notice of Scheduling Conference, Proposed Deadlines for Docket Control Order and Discovery Order.

Notice of Scheduling Conference

Pursuant to Fed. R. Civ. P. 16 and Local Rule CV-16, the Scheduling Conference in this case is set for **January 8, 2008, at 2:30 p.m. in Marshall, Texas.** The parties are directed to meet and confer in accordance with Fed. R. Civ. P. 26(f) no later than fourteen (14) days before the conference. The parties are excused from the requirement of filing a written proposed discovery plan in this case.

Proposed Deadlines for Docket Control Order

The proposed deadlines for docket control order set forth in the attached Appendix A shall be discussed at the Scheduling Conference. The court will not modify the proposed trial date except for good cause shown.

Discovery Order

After a review of the pleaded claims and defenses in this action and in furtherance of the management of the court's docket under Fed. R. Civ. P. 16, it is ORDERED AS FOLLOWS:

1. **Disclosures.** Except as provided by paragraph 1(j), and, to the extent not already disclosed, within thirty (30) days after the Scheduling Conference, each party shall disclose to every other party the following information:
 - (a) the correct names of the parties to the lawsuit;
 - (b) the name, address, and telephone number of any potential parties;
 - (c) the legal theories and, in general, the factual bases of the disclosing party's claims or defenses (the disclosing party need not marshal all evidence that may be offered at trial);
 - (d) the name, address, and telephone number of persons having knowledge of relevant facts, a brief statement of each identified person's connection with the case, and a brief, fair summary of the substance of the information known by any such person;
 - (e) any indemnity and insuring agreements under which any person or entity carrying on an insurance business may be liable to satisfy part or all of a judgment entered in this action or to indemnify or reimburse for payments made to satisfy the judgment;
 - (f) any settlement agreements relevant to the subject matter of this action;
 - (g) any statement of any party to the litigation;
 - (h) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills that are reasonably related to the injuries or damages asserted or, in lieu thereof, an authorization permitting the disclosure of such medical records and bills;
 - (i) in a suit alleging physical or mental injury and damages from the occurrence that is the subject of the case, all medical records and bills obtained by the disclosing party by virtue of an authorization furnished by the requesting party; and

(j) for any testifying expert, by the date set by the court in the Docket Control Order, each party shall disclose to the other party or parties:

- a. the expert's name, address, and telephone number;
- b. the subject matter on which the expert will testify;
- c. if the witness is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the disclosing party regularly involve giving expert testimony:
 - (a) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
 - (b) the disclosures required by Fed. R. Civ. P. 26(a)(2)(B) and Local Rule CV-26.
- d. for all other experts, the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them or documents reflecting such information; and
- e. Upon request, any party shall be excused from furnishing an expert report of treating physicians.

2. **Protective Orders.** Upon the request of any party before or after the Scheduling Conference, the court shall issue the Protective Order in the form attached as Appendix B. Any party may oppose the issuance of or move to modify the terms of the Protective Order for good cause.
3. **Additional Disclosures.** In addition to the disclosures required in Paragraph 1 of this Order, at the Scheduling Conference, the court shall amend this discovery order and require each

party, within forty-five (45) days after the Scheduling Conference and without awaiting a discovery request, to provide, to the extent not already provided, to every other party the following:

- (a) a copy of all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to the pleaded claims or defenses involved in this action. By written agreement of all parties, alternative forms of disclosure may be provided in lieu of paper copies. For example, the parties may agree to exchange images of documents electronically or by means of computer disk; or the parties may agree to review and copy disclosure materials at the offices of the attorneys representing the parties instead of requiring each side to furnish paper copies of the disclosure materials;
- (b) a complete computation of any category of damages claimed by any party to the action, making available for inspection and copying as under Rule 34, the documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and
- (c) those documents and authorizations described in Local Rule CV-34;

The court shall order the disclosures set forth in Paragraph 3(a)(b) and (c) in the absence of a showing of good cause by any party objecting to such disclosures.

4. **Discovery Limitations.** At the Scheduling Conference, the court shall also amend this discovery order to limit discovery in this cause to the disclosures described in Paragraphs 1 and 3 together with 25 interrogatories, 25 requests for admissions, the depositions of the parties, depositions on written questions of custodians of business records for third parties, and **depositions of two expert witnesses per side.** "Side" means a party or a group of

parties with a common interest. Any party may move to modify these limitations for good cause.

5. **Privileged Information.** There is no duty to disclose privileged documents or information. However, the parties are directed to meet and confer concerning privileged documents or information after the Scheduling Conference. Within sixty (60) days after the Scheduling Conference, the parties shall exchange privilege logs identifying the documents or information and the basis for any disputed claim of privilege in a manner that, without revealing information itself privileged or protected, will enable the other parties to assess the applicability of the privilege or protection. Any party may move the court for an order compelling the production of any privileged documents or information identified on any other party's privilege log. If such a motion is made, the party asserting privilege shall file with the Court within thirty (30) days of the filing of the motion to compel any proof in the form of declarations or affidavits to support their assertions of privilege, along with the documents over which privilege is asserted for *in camera* inspection. If the parties have no disputes concerning privileged documents or information, then the parties shall inform the court of that fact within sixty (60) days after the Scheduling Conference.
6. **Pre-trial disclosures.** Absent a showing of good cause by any party, the court shall require the following additional disclosures:

Each party shall provide to every other party regarding the evidence that the disclosing party may present at trial as follows:

 - (a) The name and, if not previously provided, the address and telephone number, of each witness, separately identifying those whom the party expects to present at trial and those whom the party may call if the need arises.

- (b) The designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony.
- (c) An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise directed by the court, these disclosures shall be made at least 30 days before trial. Within 14 days thereafter, unless a different time is specified by the court, a party may serve and file a list disclosing (1) any objections to the use under Rule 32(a) of a deposition designated by another party under subparagraph (B) and (2) any objections, together with the grounds therefor, that may be made to the admissibility of materials identified under subparagraph (C). Objections not so disclosed, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the court for good cause shown.

- 7. **Signature.** The disclosures required by this order shall be made in writing and signed by the party or counsel and shall constitute a certification that, to the best of the signer's knowledge, information and belief, such disclosure is complete and correct as of the time it is made. If feasible, counsel shall meet to exchange disclosures required by this order; otherwise, such disclosures shall be served as provided by Fed. R. Civ. P. 5. The parties shall promptly file a notice with the court that the disclosures required under this order have taken place.
- 8. **Duty to Supplement.** After disclosure is made pursuant to this order, each party is under a duty to supplement or correct its disclosures immediately if the party obtains information on the basis of which it knows that the information disclosed was either incomplete or

incorrect when made, or is no longer complete or true.

9. **Disputes.**

(a) Except in cases involving claims of privilege, any party entitled to receive disclosures may, after the deadline for making disclosures, serve upon a party required to make disclosures a written statement, in letter form or otherwise, of any reason why the party entitled to receive disclosures believes that the disclosures are insufficient. The written statement shall list, by category, the items the party entitled to receive disclosures contends should be produced. The parties shall promptly meet and confer. If the parties are unable to resolve their dispute, then the party required to make disclosures shall, within fourteen (14) days after service of the written statement upon it, serve upon the party entitled to receive disclosures a written statement, in letter form or otherwise, which identifies (1) the requested items that will be disclosed, if any, and (2) the reasons why any requested items will not be disclosed. The party entitled to receive disclosures may thereafter file a motion to compel.


(b) Counsel are directed to contact the chambers of the undersigned for any "hot-line" disputes before contacting the Discovery Hotline provided by Local Rule CV-26(e). If the undersigned is not available, the parties shall proceed in accordance with Local Rule CV-26(e).

10. **No Excuses.** A party is not excused from the requirements of this Discovery Order because it has not fully completed its investigation of the case, or because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures. Absent court order to the contrary, a party is not excused from disclosure

because there are pending motions to dismiss, to remand or to change venue.

11. **Filings.** Any filings in excess of twenty (20) pages, counsel is directed to provide a courtesy copy to Chambers, simultaneously with the date of filing.

SIGNED this 13th day of December, 2007.



T. JOHN WARD
UNITED STATES DISTRICT JUDGE

APPENDIX A

PROPOSED DEADLINES FOR DOCKET CONTROL ORDER

PROPOSED DEADLINES TO BE DISCUSSED AT THE SCHEDULING CONFERENCE JANUARY 8, 2008

Monday, August 4, 2008	Jury Selection - 9:00 a.m. in Marshall, Texas
July 30, 2008	Pretrial Conference - 9:30 a.m. in Marshall, Texas
July 25, 2008	Joint Pretrial Order, Joint Proposed Jury Instructions and Form of the Verdict.
July 25, 2008	Motions in <i>Limine</i> due The parties are ordered to meet and confer on their respective motions <i>in limine</i> and advise the court of any agreements in this regard by 3:00 p.m. the business day before the pretrial conference. The parties shall limit their motions <i>in limine</i> to those issues which, if improperly introduced into the trial of the case would be so prejudicial that the court could not alleviate the prejudice with appropriate instruction(s).
July 7, 2008	Notice of Request for Daily Transcript or Real Time Reporting of Court Proceedings. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Susan Simmons, at lssimmons@yahoo.com .
July 7, 2008	Pretrial Disclosures due
July 21, 2008	Pretrial Objections due

June 9, 2008	Response to Dispositive Motions (including <i>Daubert</i> Motions). Responses to dispositive motions filed prior to the dispositive motion deadline, including <i>Daubert</i> Motions, shall be due in accordance with Local Rule CV-7(e). Motions for Summary Judgment shall comply with Local Rule CV56.
May 26, 2008	For Filing Dispositive Motions and any other motions that may require a hearing; including <i>Daubert</i> motions.
April 21, 2008	Discovery Deadline
May 23, 2008	Defendant to Identify Trial Witnesses
May 9, 2008	Plaintiff to Identify Trial Witnesses
April 25, 2008	Defendant to Answer Amended Pleadings
April 11, 2008	Amend Pleadings (It is not necessary to file a Motion for Leave to Amend before the deadline to amend pleadings. It is necessary to file a Motion for Leave to Amend after April 11, 2008).
To be discussed at the Scheduling Conference	Mediation to be completed If the parties agree that mediation is an option, the Court will appoint a mediator or the parties will mutually agree upon a mediator. If the parties choose the mediator, they are to inform the Court by letter the name and address of the mediator. The courtroom deputy will immediately mail out a "mediation packet" to the mediator for the case. The mediator shall be deemed to have agreed to the terms of Court Ordered Mediation Plan of the United States District Court of the Eastern District of Texas by going forth with the mediation. General Order 99-2.
March 14, 2008	Defendant to Designate Expert Witnesses Expert witness report due Refer to Local Rules for required information.

March 7, 2008 Plaintiff to Designate Expert Witnesses
Expert witness report due
Refer to Local Rules for required information.

March 7, 2008 Privilege Logs to be exchanged by parties
(or a letter to the Court stating that there are no disputes as to claims of privileged documents).

February 7, 2008 Join Additional Parties

January 8, 2008 Scheduling Conference (All attorneys are directed to Local Rule CV-16 for scope of the Scheduling Conference).

The parties are directed to Local Rule CV-7(d), which provides in part that “[i]n the event a party fails to oppose a motion in the manner prescribed herein the court will assume that the party has no opposition.” Local Rule CV-7(e) provides that a party opposing a motion has **12 days, in addition to any added time permitted under Fed. R. Civ. P. 6(e)**, in which to serve and file a response and any supporting documents, after which the court will consider the submitted motion for decision.

OTHER LIMITATIONS

1. All depositions to be read into evidence as part of the parties’ case-in-chief shall be **EDITED** so as to exclude all unnecessary, repetitious, and irrelevant testimony; **ONLY** those portions which are relevant to the issues in controversy shall be read into evidence.
2. The Court will refuse to entertain any motion to compel discovery filed after the date of this Order unless the movant advises the Court within the body of the motion that counsel for the parties have first conferred in a good faith attempt to resolve the matter. See Eastern District of Texas Local Rule CV-7(h).
3. The following excuses will not warrant a continuance nor justify a failure to comply with the discovery deadline:
 - (a) The fact that there are motions for summary judgment or motions to dismiss pending;

- (b) The fact that one or more of the attorneys is set for trial in another court on the same day, unless the other setting was made prior to the date of this order or was made as a special provision for the parties in the other case;
- (c) The failure to complete discovery prior to trial, unless the parties can demonstrate that it was impossible to complete discovery despite their good faith effort to do so.

Exhibit B

**To Plaintiffs-Appellees' December 20, 2007 Post-Submission
Letter in Case No. 06-41573, *Ray et al. v. Abbott, et al.***

CHAPTER 86. CONDUCT OF VOTING BY MAIL

Sec. 86.001. REVIEWING APPLICATION AND PROVIDING BALLOT.

(a) The early voting clerk shall review each application for a ballot to be voted by mail.

(b) If the applicant is entitled to vote an early voting ballot by mail, the clerk shall provide an official ballot to the applicant as provided by this chapter.

(c) Except as provided by Section 86.008, if the applicant is not entitled to vote by mail, the clerk shall reject the application, enter on the application "rejected" and the reason for and date of rejection, and deliver written notice of the reason for the rejection to the applicant at both the residence address and mailing address on the application. A ballot may not be provided to an applicant whose application is rejected.

(d) If the application does not include the applicant's correct voter registration number or county election precinct of residence, the clerk shall enter the appropriate information on the application before providing a ballot to the applicant.

(e) If the applicant does not have an effective voter registration for the election, the clerk shall reject the application unless the clerk can determine from the voter registrar that the applicant has submitted a voter registration application and the registration will be effective on election day.

(f) If the clerk receives an application for an election for which the clerk is not serving as early voting clerk, the clerk shall reject the application for that election and notify the applicant of the rejection in accordance with Section 86.008.

(g) If a ballot is provided to the applicant, the clerk shall indicate beside the applicant's name on the list of registered voters that a ballot to be voted by mail was provided to the applicant and the date of providing the ballot unless the form of the list makes it impracticable to do so.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1987, 70th Leg., ch. 472, Sec. 26, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, Sec. 2.12; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1381, Sec. 13, eff. Sept. 1, 1997.

Sec. 86.002. ADDITIONAL BALLOTING MATERIALS.

(a) The early voting clerk shall provide an official ballot envelope and carrier envelope with each ballot provided to a voter. If the voter's name appears on the list of registered voters with the notation "S", or a similar notation, or the residence address on the voter's early voting ballot application is not the same as the voter's residence address on the list of registered voters, the clerk shall provide a form for a statement of residence to the voter.

(b) Before providing the balloting materials to the voter, the clerk shall enter on the carrier envelope the identity and date of the election.

(c) The clerk shall enter on a carrier envelope the voter's name in printed form, a notation that a statement of residence is enclosed, if applicable, and any other information the clerk determines necessary for proper processing of the ballot.

(d) The secretary of state shall prescribe instructions to be printed on the balloting materials for the execution and return of a statement of residence. The instructions must include an explanation of the circumstances under which the ballot must be rejected with respect to the statement.

(e) If the clerk determines that the carrier envelope and other balloting materials will weigh more than one ounce when returned by mail to the clerk, the clerk shall include with the balloting materials a notice of the amount of first class postage that will be required for the return by mail of the carrier envelope and enclosed materials.

(f) The clerk shall include with the balloting materials a notice of the clerk's physical address for purposes of return by common or contract carrier.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1987, 70th Leg., ch. 54, Sec. 8(b), eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 472, Sec. 27, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, Sec. 2.12; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 916, Sec. 25, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 797, Sec. 41, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 620, Sec. 1, eff. Sept. 1, 2003;

Acts 2003, 78th Leg., ch. 1315, Sec. 43, eff. Jan. 1, 2004.

Sec. 86.003. METHOD OF PROVIDING BALLOT TO VOTER: REQUIRED ADDRESS. (a) The balloting materials for voting by mail shall be provided to the voter by mail. A ballot provided by any other method may not be counted.

(b) Subject to Subsection (c), the balloting materials shall be addressed to the applicable address specified in the voter's application. The election officer providing the ballot may not knowingly mail the materials to an address other than that prescribed by this section.

(c) The address to which the balloting materials must be addressed is the address at which the voter is registered to vote, or the registered mailing address if different, unless the ground for voting by mail is:

(1) absence from the county of residence, in which case the address must be an address outside the voter's county of residence;

(2) confinement in jail, in which case the address must be the address of the jail or of a relative described by Section 84.002(a)(4); or

(3) age or disability and the voter is living at a hospital, nursing home or other long-term care facility, or retirement center, or with a relative described by Section 84.002(a)(3), in which case the address must be the address of that facility or relative.

(d) If the applicable address specified in a voter's application is an address other than that prescribed by Subsection (c), the voter's application shall be rejected in accordance with Section 86.001(c).

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1991, 72nd Leg., ch. 203, Sec. 2.12; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 565, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1381, Sec. 14, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1316, Sec. 23, eff. Sept. 1, 2003.

Sec. 86.004. TIME FOR PROVIDING BALLOT TO VOTER.

(a) Except as provided by Subsection (b), the balloting materials for voting by mail shall be mailed to a voter entitled to vote by mail not later than the seventh calendar day after the later of the date the clerk accepts the voter's application for a ballot to be voted by mail or the date the ballots become available for mailing, except that if that mailing date is earlier than the 45th day before election day, the balloting materials shall be mailed not later than the 38th day before election day.

(b) For the general election for state and county officers, the balloting materials for a voter who indicates on the application for a ballot to be voted by mail or the federal postcard application that the voter is eligible to vote early by mail as a consequence of the voter's being outside the United States shall be mailed on or before the later of the 45th day before election day or the seventh calendar day after the date the clerk receives the application. However, if it is not possible to mail the ballots by the deadline of the 45th day before election day, the clerk shall notify the secretary of state within 24 hours of knowing that the deadline will not be met. The secretary of state shall monitor the situation and advise the clerk, who shall mail the ballots as soon as possible in accordance with the secretary of state's guidelines. Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1991, 72nd Leg., ch. 203, Sec. 2.12; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 393, Sec. 12, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1109, Sec. 1, eff. September 1, 2005.

Sec. 86.005. MARKING AND SEALING BALLOT. (a) A voter must mark a ballot voted by mail in accordance with the instructions on the ballot envelope.

(b) A voter may mark the ballot at any time after receiving it.

(c) After marking the ballot, the voter must place it in the official ballot envelope and then seal the ballot envelope, place the ballot envelope in the official carrier envelope and then seal the carrier envelope, and sign the certificate on the carrier envelope.

(d) Failure to use the official ballot envelope does not

affect the validity of the ballot.

(e) After the carrier envelope is sealed by the voter, it may not be opened except as provided by Chapter 87.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1991, 72nd Leg., ch. 203, Sec. 2.12; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 1315, Sec. 44, eff. Jan. 1, 2004.

Sec. 86.0051. CARRIER ENVELOPE ACTION BY PERSON OTHER THAN VOTER; OFFENSES. (a) A person commits an offense if the person acts as a witness for a voter in signing the certificate on the carrier envelope and knowingly fails to comply with Section 1.011.

(b) A person other than the voter who deposits the carrier envelope in the mail or with a common or contract carrier must provide the person's signature, printed name, and residence address on the reverse side of the envelope.

(c) A person commits an offense if the person knowingly violates Subsection (b). It is not a defense to an offense under this subsection that the voter voluntarily gave another person possession of the voter's carrier envelope.

(d) An offense under this section is a Class B misdemeanor, unless the person is convicted of an offense under Section 64.036 for providing unlawful assistance to the same voter in connection with the same ballot, in which event the offense is a state jail felony.

(e) Subsections (a) and (c) do not apply if the person is related to the applicant within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, or is registered to vote at the same address as the applicant.

Added by Acts 2003, 78th Leg., ch. 393, Sec. 13, eff. Sept. 1, 2003.

Sec. 86.006. METHOD OF RETURNING MARKED BALLOT. (a) A marked ballot voted under this chapter must be returned to the early voting clerk in the official carrier envelope. The carrier envelope may be delivered in another envelope and must be transported and delivered only by mail or by common or contract carrier.

(b) Except as provided by Subsection (c), a carrier envelope may not be returned in an envelope or package containing another carrier envelope.

(c) The carrier envelopes of persons who are registered to vote at the same address may be returned in the same envelope or package.

(d) Each carrier envelope that is delivered by a common or contract carrier must be accompanied by an individual delivery receipt for that particular carrier envelope that indicates the name and residence address of the individual who actually delivered the envelope to the carrier and the date, hour, and address at which the carrier envelope was received by the carrier. A delivery of carrier envelopes is prohibited by a common or contract carrier if the delivery originates from the address of:

(1) an office of a political party or a candidate in the election;

(2) a candidate in the election unless the address is the residence of the early voter;

(3) a specific-purpose or general-purpose political committee involved in the election; or

(4) an entity that requested that the election be held, unless the delivery is a forwarding to the early voting clerk.

(e) Carrier envelopes may not be collected and stored at another location for subsequent delivery to the early voting clerk. The secretary of state shall prescribe appropriate procedures to implement this subsection and to provide accountability for the delivery of the carrier envelopes from the voting place to the early voting clerk.

(f) A person commits an offense if the person knowingly possesses an official ballot or official carrier envelope provided under this code to another. Unless the person possessed the ballot or carrier envelope with intent to defraud the voter or the election authority, this subsection does not apply to a person who, on the date of the offense, was:

(1) related to the voter within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code;

(2) registered to vote at the same address as the voter;

(3) an early voting clerk or a deputy early voting clerk;

(4) a person who possesses the carrier envelope in order to deposit the envelope in the mail or with a common or contract carrier and who provides the information required by Section 86.0051(b) in accordance with that section;

(5) an employee of the United States Postal Service working in the normal course of the employee's authorized duties; or

(6) a common or contract carrier working in the normal course of the carrier's authorized duties if the official ballot is sealed in an official carrier envelope that is accompanied by an individual delivery receipt for that particular carrier envelope.

(g) An offense under Subsection (f) is:

(1) a Class B misdemeanor if the person possesses at least one but fewer than 10 ballots or carrier envelopes unless the person possesses the ballots or carrier envelopes without the consent of the voters, in which event the offense is a state jail felony;

(2) a Class A misdemeanor if the person possesses at least 10 but fewer than 20 ballots or carrier envelopes unless the person possesses the ballots or carrier envelopes without the consent of the voters, in which event the offense is a felony of the third degree; or

(3) a state jail felony if the person possesses 20 or more ballots or carrier envelopes unless the person possesses the ballots or carrier envelopes without the consent of the voters, in which event the offense is a felony of the second degree.

(h) A ballot returned in violation of this section may not be counted. If the early voting clerk determines that the ballot was returned in violation of this section, the clerk shall make a notation on the carrier envelope and treat it as a ballot not timely returned in accordance with Section 86.011(c). If the ballot is returned before the end of the period for early voting by personal appearance, the early voting clerk shall promptly mail or otherwise deliver to the voter a written notice informing the voter that:

(1) the voter's ballot will not be counted because of a violation of this code; and

(2) the voter may vote if otherwise eligible at an early voting polling place or the election day precinct polling place on presentation of the notice.

(i) In the prosecution of an offense under Subsection (f):

(1) the prosecuting attorney is not required to negate the applicability of the provisions of Subsections (f)(1)-(6) in the accusation charging commission of an offense;

(2) the issue of the applicability of a provision of Subsection (f)(1), (2), (3), (4), (5), or (6) is not submitted to the jury unless evidence of that provision is admitted; and

(3) if the issue of the applicability of a provision of Subsection (f)(1), (2), (3), (4), (5), or (6) is submitted to the jury, the court shall charge that a reasonable doubt on the issue requires that the defendant be acquitted.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1987, 70th Leg., ch. 431, Sec. 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 472, Sec. 28, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, Sec. 1.18; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1381, Sec. 15, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 393, Sec. 14, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 238, Sec. 1, eff. September 1, 2007.

Sec. 86.007. DEADLINE FOR RETURNING MARKED BALLOT.

(a) Except as provided by Subsection (d), a marked ballot voted by mail must arrive at the address on the carrier envelope before the time the polls are required to close on election day.

(b) If the early voting clerk cannot determine whether a ballot arrived before the deadline, the ballot is considered to have arrived at the time the place at which the carrier envelopes are deposited was last inspected for removal of returned ballots. The clerk shall check for returned ballots, at least once before the deadline, after the normal delivery time on the last day at the place at which the carrier envelopes are deposited.

(c) A marked ballot that is not timely returned may not be counted.

(d) A marked ballot voted by mail that arrives after the time prescribed by Subsection (a) shall be counted if:

(1) the ballot was cast from an address outside the United States;

(2) the carrier envelope was placed for delivery before the time the ballot is required to arrive under Subsection (a); and

(3) the ballot arrives at the address on the carrier envelope not later than the fifth day after the date of the election, except that if that date falls on a Saturday, Sunday, or legal state or national holiday, then the deadline is extended to the next regular business day.

(e) A delivery under Subsection (d)(2) is timely, except as otherwise provided by this title, if the carrier envelope or, if applicable, the envelope containing the carrier envelope:

(1) is properly addressed with postage or handling charges prepaid;

(2) is sent from an address outside the United States; and

(3) bears a cancellation mark of a recognized postal service or a receipt mark of a common or contract carrier or a courier indicating a time before the deadline.

(f) If the envelope does not bear the cancellation mark or receipt mark as required by Subsection (e)(3), a delivery under Subsection (d)(1) is presumed to be timely if the other requirements under this section are met. Section 1.006 does not apply to Subsection (d)(3).

(g) The secretary of state shall prescribe procedures as necessary to implement Subsection (d).

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1987, 70th Leg., ch. 472, Sec. 29, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, Sec. 2.12; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1349, Sec. 38, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1316, Sec. 24, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 1, Sec. 4, eff. Jan. 11, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 1062, Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1107, Sec. 1.18, eff. September 1, 2005.

Sec. 86.008: DEFECTIVE APPLICATION. (a) If on reviewing an application for a ballot to be voted by mail that was received on or before the 12th day before election day the early voting clerk determines that the application does not fully comply with the applicable requirements prescribed by this title, the clerk shall mail or otherwise deliver an official application form to the applicant.

(b) The clerk shall include with the application form mailed or delivered to the applicant a written notice containing:

(1) a brief explanation of each defect in the noncomplying application;

(2) a statement informing the voter that the voter is not entitled to vote an early voting ballot unless the application complies with all legal requirements; and

(3) instructions for submitting the second application.

(c) If an application that does not fully comply with the applicable requirements prescribed by this title is received after the 12th day before election day and before the end of the period for early voting by personal appearance, the clerk shall mail or otherwise deliver a notice to the voter containing the information prescribed by Subdivisions (1) and (2) of Subsection (b), including a statement that the application was late, if applicable.

(d) Notwithstanding any other provisions of this code, the clerk may deliver in person to the voter a second application if the defective original application is timely and may receive, before the deadline, the corrected application in person from the voter. If a procedure authorized by this subsection is used, it must be applied uniformly to all applications covered by this subsection. The clerk shall enter a notation on the application indicating any information added by the clerk under this subsection. A poll watcher is entitled to accompany the clerk and observe the procedures under this subsection. The secretary of state may prescribe any other procedures necessary to implement this

subsection including requirements for posting notice of any deliveries.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1987, 70th Leg., ch. 472, Sec. 30, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, Sec. 2.12; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, Sec. 75, eff. Sept. 1, 1997.

Sec. 86.009. PROVIDING CORRECTED BALLOT TO VOTER. (a) If, after a ballot to be voted by mail is provided to a voter, the official ballot is changed in a way that affects the choices available to the voter in the election or the validity of the ballot provided to the voter if cast, the early voting clerk shall mail a corrected ballot and corresponding balloting materials to the voter unless in the clerk's opinion there is not sufficient time for the voter to timely return the corrected ballot to the clerk.

(b) The clerk shall include with the balloting materials provided to the voter a written notice containing:

(1) a brief explanation of the reason for providing another ballot; and

(2) an instruction to destroy the defective ballot if it has not already been returned to the clerk.

(c) Before mailing the corrected ballot to the voter, the clerk shall place a notation on the carrier envelope indicating that the ballot is a corrected ballot being provided under this section. The clerk shall also indicate on the voter's application that the voter was provided a corrected ballot.

(d) The clerk shall prepare a list containing the name of each voter who is provided a corrected ballot under this section. The clerk shall preserve the list for the period for preserving the precinct election records.

(e) A voter's defective ballot that is timely returned to the clerk as a marked ballot shall be treated as:

(1) a marked ballot not timely returned if the corrected ballot is timely returned as a marked ballot; or

(2) as the voter's ballot for the election if the corrected ballot is not timely returned.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1991, 72nd Leg., ch. 203, Sec. 2.12; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, Sec. 76, eff. Sept. 1, 1997.

Sec. 86.010. ASSISTING VOTER. (a) A voter casting a ballot by mail who would be eligible under Section 64.031 to receive assistance at a polling place may select a person as provided by Section 64.032(c) to assist the voter in preparing the ballot.

(b) Assistance rendered under this section is limited to that authorized by this code at a polling place.

(c) The person assisting the voter must sign a written oath prescribed by Section 64.034 that is part of the certificate on the official carrier envelope.

(d) If a voter is assisted in violation of Subsection (a) or (b), the voter's ballot may not be counted.

(e) A person who assists a voter to prepare a ballot to be voted by mail shall enter the person's signature, printed name, and residence address on the official carrier envelope of the voter.

(f) A person commits an offense if the person knowingly fails to provide the information on the official carrier envelope as required by Subsection (e).

(g) An offense under this section is a Class A misdemeanor unless the person is convicted of an offense under Section 64.036 for providing unlawful assistance to the same voter, in which event the offense is a state jail felony.

(h) Subsection (f) does not apply if the person is related to the applicant within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, or is registered to vote at the same address as the applicant.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1991, 72nd Leg., ch. 203, Sec. 2.12; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1381, Sec. 16, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 393, Sec. 15, eff. Sept. 1, 2003.

Sec. 86.011. ACTION BY CLERK ON RETURN OF BALLOT. (a) The early voting clerk shall determine whether the return of a voter's official carrier envelope for a ballot voted by mail is timely.

(b) If the return is timely, the clerk shall enclose the

carrier envelope and the voter's early voting ballot application in a jacket envelope.

(c) If the return is not timely, the clerk shall enter the time of receipt on the carrier envelope and retain it for the period for preserving the precinct election records. The clerk shall destroy the unopened envelope and its contents after the preservation period.

(d) Notwithstanding any other provisions of this code, if the clerk receives a timely carrier envelope that does not fully comply with the applicable requirements prescribed by this title, the clerk may deliver the carrier envelope in person or by mail to the voter and may receive, before the deadline, the corrected carrier envelope from the voter, or the clerk may notify the voter of the defect by telephone and advise the voter that the voter may come to the clerk's office in person to correct the defect or cancel the voter's application to vote by mail and vote on election day. If the procedures authorized by this subsection are used, they must be applied uniformly to all carrier envelopes covered by this subsection. A poll watcher is entitled to observe the procedures under this subsection. The secretary of state may prescribe any other procedures necessary to implement this subsection including requirements for posting notice of any deliveries.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1987, 70th Leg., ch. 472, Sec. 31, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 203, Sec. 1.19; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, Sec. 77, eff. Sept. 1, 1997.

Sec. 86.012. OFFICIAL BALLOT ENVELOPE. (a) "Ballot Envelope" must be printed on the face of each officially prescribed ballot envelope for a ballot to be voted by mail.

(b) The following textual material, as prescribed by the secretary of state, must be printed on the face of each official ballot envelope and may be continued on the reverse side if necessary:

(1) instructions for marking the ballot and returning the marked ballot to the early voting clerk;

(2) the deadline for returning the marked ballot to the clerk;

(3) limitations on assistance to the voter; and

(4) criminal penalties for unlawful assistance in preparing the ballot.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1991, 72nd Leg., ch. 203, Sec. 2.12; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991.

Sec. 86.013. OFFICIAL CARRIER ENVELOPE. (a) "Carrier Envelope for Early Voting Ballot," the name and official title of the early voting clerk as addressee, and the clerk's official mailing address must be printed on the face of each official carrier envelope for a ballot to be voted by mail.

(b) Spaces must appear on the reverse side of the official carrier envelope for:

(1) indicating the identity and date of the election; and

(2) entering the signature, printed name, and residence address of a person other than the voter who deposits the carrier envelope in the mail or with a common or contract carrier.

(c) A certificate in substantially the following form must be printed on the reverse side of the official carrier envelope in a manner that requires the voter to sign across the flap of the envelope:

"I certify that the enclosed ballot expresses my wishes independent of any dictation or undue persuasion by any person.

Signature of voter

By: _____

Signature of person assisting voter, if applicable (see Ballot Envelope for restrictions and penalties)

Printed name of person assisting voter, if applicable

Residence address of person assisting voter, if applicable"

(d) The following textual material, as prescribed by the secretary of state, must be printed on the reverse side of the official carrier envelope or on a separate sheet accompanying the carrier envelope when it is provided:

- (1) the prohibition prescribed by Section 86.006(b);
- (2) the conditions for delivery by common or contract carrier prescribed by Sections 81.005 and 86.006;
- (3) the requirements for the legal execution and delivery of the carrier envelope;
- (4) the prohibition prescribed by Section 86.006(e); and
- (5) the offenses prescribed by Sections 86.006(f) and 86.010(f).

(e) The following notice must be printed on the reverse side of the official carrier envelope, near the space provided for the voter's signature: "This envelope must be sealed by the voter before it leaves the voter's hands. Do not sign this envelope unless the ballot has been marked by you or at your direction."

(f) The oath of a person assisting a voter must be included on the official carrier envelope as part of the certificate prescribed by Subsection (c).

(g) The secretary of state by rule shall require that a notice informing voters of the telephone number established under Section 31.0055 and the purpose of the telephone number be printed on:

- (1) the official carrier envelope; or
 - (2) an insert enclosed with the balloting materials for voting by mail sent to the voter.
- Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1991, 72nd Leg., ch. 203, Sec. 1.20; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1381, Sec. 17, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 393, Sec. 16, eff. Sept. 1, 2003.

Sec. 86.014. PUBLIC INSPECTION OF EARLY VOTING RECORDS.

(a) A copy of an application for a ballot to be voted by mail may be obtained from the early voting clerk:

- (1) 72 hours after the time a ballot is mailed to the voter; or
- (2) 48 hours after the time a ballot is mailed to the voter if the mailing occurs on the fourth day before election day.

(b) Originals of the applications and carrier envelopes are not available for public inspection until those materials are delivered to the general custodian of election records after the election.

Added by Acts 1987, 70th Leg., ch. 472, Sec. 32, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 203, Sec. 2.12; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 565, Sec. 5, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1381, Sec. 18, eff. Sept. 1, 1997.

Exhibit 3

CONDENSED TRANSCRIPT

ORAL DEPOSITION OF

ANN MCGEEHAN

April 17, 2008

Julie A. Jordan & Company
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WILLIE RAY, JAMILLAH JOHNSON,)
GLORIA MEEKS, REBECCA)
MINNEWEATHER, REUBEN ROBINSON,)
EDDIE JACKSON, and THE TEXAS)
DEMOCRATIC PARTY,)
Plaintiffs,)

VS.) Civil Action No. 2-06CV-385

STATE OF TEXAS, a State of the)
United States; GREG ABBOTT,)
Attorney General of the State)
Of Texas; and PHIL WILSON,)
Secretary of State for the)
State of Texas,)
Defendants.)

ORAL DEPOSITION OF
ANN MCGEEHAN
APRIL 17, 2008

ORAL DEPOSITION OF ANN MCGEEHAN, produced as a witness at
the instance of the Plaintiffs, and duly sworn, was taken in the
above-styled and numbered cause on the 17th day of April, 2008,
from 9:07 a.m. to 3:56 p.m., before AMBER KIRTON, CSR in and for
the State of Texas, reported by machine shorthand, at the
Secretary of State's Office, 208 East 10th Street, Room 209,
Austin, Texas, pursuant to the Federal Rules of Civil Procedure.

Austin, Texas 78756
info@jordanreporting.com

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<p>1 Q. When you first joined the Secretary of State's Office 2 in 1989 what was your title? 3 A. I was a staff attorney. 4 Q. And how long did you stay in that position? 5 A. I was in that position until July of 1991 when I 6 became the legal director. 7 Q. What are the duties of a staff attorney? 8 A. Staff attorney answers inquiries via telephone from 9 election officials and the general public and also prepares 10 written correspondence answering questions from election 11 officials on election procedures, prepares justice department 12 submissions, attends legislative hearings. 13 Q. And in terms of the chain of command, who does the 14 staff attorney in the Secretary of State's Office -- who would 15 be their supervisor? Would it be the legal director? 16 A. Legal director, yes. 17 Q. And now if you could answer the same question with 18 regard to the duties of the legal director, those 19 responsibilities. 20 A. Legal director oversees all the staff attorneys and 21 any administrative staff that supports the legal division, and 22 so oversees all the written correspondence, justice department 23 submissions, monitors litigation and then advises the director 24 of elections on legal issues. 25 Q. When you became the legal director in July of '91,</p>	<p>1 Q. Okay. Let's start with the legal division that you 2 oversee. How many employees are in the legal division, roughly? 3 A. Eight including the legal director. 4 Q. And that would include clerical staff as well? 5 A. Yes. 6 Q. How many attorneys are in the legal division? 7 A. Seven. 8 Q. Is the director an attorney? 9 A. Yes. 10 Q. And who is that at the present time? 11 A. Elizabeth Winn. 12 Q. And the voter registration office that you oversee, 13 what are their duties? What kind of activities do they -- are 14 they responsible for? 15 A. Their primary duty is administering TEAMS, which is 16 the statewide voter registration system under HAVA. It stands 17 for the Texas Elections Administration Management System. And 18 so they oversee that process and work directly with counties 19 that use the application. 20 Q. So they are responsible for the statewide voter 21 registration database that's required by HAVA? 22 A. Yes. 23 Q. And they essentially have no other responsibilities 24 other than that, which I know is a large one? 25 A. Yeah. I mean, they -- you know, they will also</p>
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<p>1 roughly -- 2 A. Yes. 3 Q. -- about how many staff attorneys were there at that 4 time in the Secretary of State's Office roughly? 5 A. I think about six. 6 Q. And you stayed in the legal director position for how 7 long? 8 A. Until September of 1995. 9 Q. And what became your position in September of '95? 10 A. Then I became the director of the elections division. 11 Q. So you've held the position of director of the 12 elections division since 1995? 13 A. Yes. 14 Q. And that's your present position? 15 A. Yes. 16 Q. And what are the duties of the director of elections? 17 A. The director of election oversees the entire elections 18 division, so that includes the legal section, includes the voter 19 registration department. It includes the election funds 20 management section. It includes what we call election 21 administration and it includes special projects, like voter 22 education. And it now includes HAVA grant funds and HAVA 23 activities. 24 Q. Implementing HAVA at the state level? 25 A. Yes.</p>	<p>1 respond to requests for public information, for voter 2 registration and they will also assist voters who are, you know, 3 having a problem getting registered or something like that. But 4 their primary responsibility is working with counties and 5 supporting the TEAMS application. 6 Q. Election funds management division, what are their 7 responsibilities? 8 A. There are two state funds that this office manages and 9 one is the primary finance fund and that's money that the State 10 appropriates that goes directly to the county chairs to 11 administer -- pay for the costs of the primary elections. And 12 then the second fund they administer is what we call Chapter 19 13 and that refers to Chapter 19 in the election code and it is 14 money that goes directly to the county voter registrars based on 15 a formula of the number of registered voters in each county. 16 Q. I assume that the more voters you have registered the 17 more money you get? 18 A. Correct. 19 Q. So there's some incentive there? 20 A. Right. 21 Q. Election administration, that's a pretty good 22 catch-all term these days. What are their responsibilities? 23 A. Their responsibilities are designing forms, certifying 24 the ballot, you know, administrative duties associated with 25 elections.</p>

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<p>1 Q. The special projects division -- I'm going to come 2 back to the election administration division in a minute. But 3 the special projects division, if you could tell me what 4 they -- what kind of special projects they are responsible for. 5 A. They run our seminars. We put on three seminars in 6 even numbered years and four seminars in odd numbered years. So 7 they organize those seminars. They track legislation. They 8 design some of our voter education materials and they implement 9 a project we call Project Vote, which is a curriculum for 10 students in kindergarten through 12th grade about elections and 11 mock elections. 12 Q. When you say that they design voter materials for 13 voters, what kind of materials would those be? 14 A. Very basic information about how to be registered in 15 Texas, how to vote early, how to vote by mail. I mean, 16 they -- I guess what I would say is they would take the initial 17 draft and then it would of course go through other review. But 18 they would design the graphics and the basic material. 19 Q. Now, there is a letter I know -- and I'm going to mark 20 one as an exhibit later. But there is a letter that goes out in 21 a packet to every voter who votes by mail that says, you know, 22 thank you for voting by mail and here are some instructions and 23 it's usually a one-pager. Do you know what I'm talking about? 24 A. Yes. 25 Q. Who would draft that initially?</p>	<p>1 you look on the lower right I see it says Primary '03 and I'm 2 just assuming that this is from 2003? 3 A. Yeah. 4 Q. And this would have been drafted by the legal division 5 in the first instance, you think? 6 A. Yes. 7 Q. Who else would review it besides legal and I assume 8 you would have reviewed it? 9 A. Yes. It might also go through Melinda Nickless, who 10 was our assistant director. She's in charge of election 11 administration. 12 Q. Melinda -- what was her last name? 13 A. Nickless, N-i-c-k-l-e-s-s. 14 Q. So she is not the assistant director of the elections 15 division; she is just within the election administration? 16 A. She is the assistant -- she is the assistant director, 17 but her primary duties are kind of oversee election 18 administration. But if I'm not here she also serves as 19 director. 20 Q. So she's in charge when you're not here? 21 A. Yeah. 22 Q. Exhibit 2, if you would look at that. And again, is 23 this identical to Exhibit 1 except it's -- you know, in that it 24 is a letter sent to voters that is drafted by the Secretary of 25 State's Office and sent to the county election officials for</p>
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<p>1 A. That came out of the legal section initially. 2 Q. So legal also, in addition to other duties, also 3 designs forms for voters or instructions for voters in addition 4 to special projects and I guess election administration? 5 A. Yeah. I mean, we're a small shop so there is a lot of 6 crossover. 7 Q. I'm not trying to pigeonhole one over the other. I 8 just want to make sure I know who is doing what at least to some 9 degree. All right. 10 MR. HEBERT: Let's mark this one as Number 1. 11 This one is Number 2, Number 3, Number 4. 12 (Exhibit Nos. 1 through 4 marked.) 13 Q. (BY MR. HEBERT) Let's start with Exhibit 1. Describe 14 what Exhibit 1 is. 15 A. This is a letter that the Secretary of State's Office 16 has prescribed and it's designed to be included with the voting 17 by mail materials that is sent to a voter. So we send this to 18 the county officials and we also make it available to cities and 19 schools as well, but we concentrate more on the county early 20 voting clerk and encourage them to include it with the ballot 21 when they mail the ballot out to the voter. 22 Q. Do most counties send this along with their materials 23 to voters, do you know? 24 A. I think so. 25 Q. Can you tell by looking at this what year it is? If</p>	<p>1 inclusion in the materials they send to voters who request 2 ballots by mail? 3 A. Yes. 4 Q. And would this be May of '04 in the lower right? 5 A. Yes. That's what it says. 6 Q. So this would have been 2004. Let's go to the next 7 one, which I think is 2006. And this one I think is identified 8 2006 because it has it actually in the text. 9 A. Early voting period, right. 10 Q. And this, again, as with Exhibits 1 and 2, this also 11 would have been prepared in the first instance by the legal 12 division you think? 13 A. Yes. 14 Q. And if you would look at Exhibit 4, the 2008. Now, is 15 this the one that was just sent out earlier this year for the 16 primary? 17 A. Yes. 18 Q. And again, that would have been prepared you believe 19 in the first instance by legal and then reviewed by you or your 20 deputy? 21 A. Yes. 22 Q. The Secretary of State in Texas is appointed by the 23 governor? 24 A. Yes. 25 Q. How long a term is the appointment?</p>

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<p>1 A. It varies.</p> <p>2 Q. According to what?</p> <p>3 A. Well, really according to the will of the governor. I</p> <p>4 think the average is about 18 months.</p> <p>5 Q. So they serve at the pleasure of the governor?</p> <p>6 A. Yes.</p> <p>7 Q. And is there any confirmation process in the</p> <p>8 legislature?</p> <p>9 A. Yes.</p> <p>10 Q. By the senate?</p> <p>11 A. Yes.</p> <p>12 Q. And since Governor Perry is still the governor in</p> <p>13 Texas, has he appointed all of the Secretary of State's while</p> <p>14 he's been in office?</p> <p>15 A. Yes.</p> <p>16 Q. And who have they been?</p> <p>17 A. They have been Henry Cuellar, Gwen Shea, Geoff Connor,</p> <p>18 Roger Williams and Phil Wilson.</p> <p>19 Q. The Secretary of State's position, is it supposed to</p> <p>20 be a non-critical, non-partisan position or is it a partisan</p> <p>21 position?</p> <p>22 A. I mean, the statutes don't really address that</p> <p>23 directly. I mean, it's a gubernatorial appointment.</p> <p>24 Q. Mr. Cuellar, I believe, was a Democrat, correct, when</p> <p>25 he was appointed? The others were Republicans, Mr. Shea,</p>	<p>1 Q. Mr. Ben Stool was there. He's an assistant DA from</p> <p>2 Dallas. And they did the same thing with him. Actually, when</p> <p>3 they didn't know the answer and he was there, he stood up. Do</p> <p>4 you remember that?</p> <p>5 A. I vaguely remember that.</p> <p>6 Q. There was some testimony during that -- one of those</p> <p>7 hearings in the elections committee and Terry Hodge was one of</p> <p>8 the witnesses. The testimony was somewhat lengthy. The State</p> <p>9 actually provided these documents to us as part of the motion</p> <p>10 for preliminary injunction. So this would have been probably</p> <p>11 around February of '03.</p> <p>12 A. And this is a legislative hearing?</p> <p>13 Q. Yes, the committee on elections. And the Chairperson</p> <p>14 Denny --</p> <p>15 A. Uh-huh.</p> <p>16 Q. It says Chairperson Denny in 2003. Was Chairperson</p> <p>17 Denny the chair of the elections committee?</p> <p>18 A. Yes.</p> <p>19 Q. And there was some testimony given by Representative</p> <p>20 Garnet Coleman regarding different voting traditions in the</p> <p>21 black community. Do you remember that?</p> <p>22 A. Vaguely. I mean, I believe I was at that hearing.</p> <p>23 Q. Do you happen to know whether or not in Texas it has</p> <p>24 been a practice in the black communities in particular for</p> <p>25 elderly and disabled voters to be assisted in voting by their</p>
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<p>1 Mr. Williams and Mr. Wilson?</p> <p>2 A. Ms. Shea, actually.</p> <p>3 Q. Ms. Shea, sorry.</p> <p>4 A. Yes.</p> <p>5 Q. But the appointment is made by the governor and if the</p> <p>6 governor is a Democrat they can appoint whoever they want? If</p> <p>7 the governor is a Republican they can appoint whoever they want?</p> <p>8 A. Right.</p> <p>9 Q. Now, in 2003 when the Texas Legislature passed various</p> <p>10 amendments to the election code, did you testify at all before</p> <p>11 the legislature or any of the committees in connection with</p> <p>12 those bills? And I'm going to, for shorthand, refer to kind of</p> <p>13 the collection of bills as the Wolens Bill just for ease.</p> <p>14 A. I probably did. I don't -- my regular -- I usually do</p> <p>15 testify at every -- in every session. So I don't know if I was</p> <p>16 the one to testify on the Wolens amendments or not.</p> <p>17 Q. And I don't know if you did either.</p> <p>18 A. It could have also been our legal director as well.</p> <p>19 Q. I know that you did attend a hearing and in response I</p> <p>20 think to one question you did -- I know it's somewhat informal</p> <p>21 in those committees to where if somebody has a question and the</p> <p>22 witness doesn't know and somebody in the back happens to be a</p> <p>23 Secretary of State employee that the legislatures know they'll</p> <p>24 call on you to answer the question.</p> <p>25 A. Yes.</p>	<p>1 neighbors or friends?</p> <p>2 A. I don't know that I would say that was exclusively in,</p> <p>3 you know, African American groups. I think there is a tradition</p> <p>4 of that all over the state and that's why we have voting by mail</p> <p>5 for people that can't vote in person.</p> <p>6 Q. But is it not true that in the black community in</p> <p>7 particular that has been an important part of their</p> <p>8 get-out-the-vote effort traditionally in Texas?</p> <p>9 A. I mean, I guess I have some anecdotal information on</p> <p>10 that. We don't have any studies or real data on something like</p> <p>11 that.</p> <p>12 Q. But your anecdotal information that you have would</p> <p>13 confirm, would it not, that that has been an important part of</p> <p>14 the get-out-the-vote for black communities?</p> <p>15 A. I mean, I think there were statements along those</p> <p>16 lines made at some of these hearing so that may be where I've</p> <p>17 heard that.</p> <p>18 Q. And you have no reason -- you have no information that</p> <p>19 would contradict that, would you?</p> <p>20 A. No.</p> <p>21 Q. Did the 2003 legislation that eventually passed and</p> <p>22 amended the election code, would you have -- would you</p> <p>23 characterize those as minor changes to the election code,</p> <p>24 moderate changes to the election code or major changes to the</p> <p>25 election code in 2003, from your perspective?</p>

5 (Pages 14 to 17)

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<p>1 A. I guess from my perspective I would say moderate.</p> <p>2 Q. One of the things said by Representative Wolens at the</p> <p>3 hearing -- and I'm going to read it verbatim and then I'm going</p> <p>4 to ask you a question about whether or not it's accurate or not.</p> <p>5 In describing the assistance that voters would get there was</p> <p>6 some testimony and I'll give you kind of the context here.</p> <p>7 Terry Hodge said that, you know, she was concerned that she</p> <p>8 wouldn't be able to go out and help some of the elderly people</p> <p>9 in her community vote anymore if this bill would pass and he</p> <p>10 countered that by saying that wasn't the case.</p> <p>11 And he goes on -- and I'll read it verbatim to</p> <p>12 say, "The only requirement is that you need to help them if they</p> <p>13 want you to help. So you still ask them, quote, do you want me</p> <p>14 to help you? Would you like me to assist you, closed quote.</p> <p>15 And if the community -- they say, quote, I'd like for you to</p> <p>16 assist me, send me what y'all have, closed quote, then it's</p> <p>17 okay. And then the only thing that's different is that you have</p> <p>18 to write your name on there and you have to put your address.</p> <p>19 They have to consent to you being there to help them. They have</p> <p>20 to request. They have to request direction. They have to</p> <p>21 request your help. They've got to request assistance and they</p> <p>22 have to request you. It can be any one of those. I mean, there</p> <p>23 is nothing magical. And if you say, quote, would you like my</p> <p>24 help the way I've always been helping you, closed quote, all</p> <p>25 they have to say is, quote, yes, closed quote. But if they say,</p>	<p>1 qualify that answer with the -- you know, the bill -- because</p> <p>2 this was in February. The bill probably changed a little bit</p> <p>3 from how it was filed in February. I mean, it's natural that</p> <p>4 there were changes. The way he describes the voter requesting</p> <p>5 assistance, I think he's trying to make a point there that, you</p> <p>6 know, you can't impose yourself on somebody. But I also want to</p> <p>7 make it clear that there's no magic words. The voter doesn't</p> <p>8 have to say I request you to assist me. So I just want to make</p> <p>9 that clear.</p> <p>10 Because if someone wants to campaign or someone</p> <p>11 is knocking door to door, they can knock on a door and offer</p> <p>12 themselves to help someone. They don't have to wait for the</p> <p>13 voter to initiate that. So that's just to clarify that.</p> <p>14 Q. Well, I'd like to pull out a copy of the assistance</p> <p>15 statute that we're really talking about, 64.036A4. Are you</p> <p>16 familiar with that?</p> <p>17 A. Yes.</p> <p>18 Q. Do you have a copy of the election code in your office</p> <p>19 here that you could put your hands on?</p> <p>20 A. Well, we might have one in here too actually.</p> <p>21 Q. Can I buy one of these?</p> <p>22 A. We don't make them. We don't publish them.</p> <p>23 Q. Who publishes those? Hart?</p> <p>24 A. Hart.</p> <p>25 64.036?</p>
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<p>1 quote, no, closed quote, then you can't do it. But if they say,</p> <p>2 quote, yes, I want you to do it because you've been helping me</p> <p>3 for 30 years and Terry, please come help me, closed quote, then</p> <p>4 it's fine. And the only thing else that we have to do is to</p> <p>5 sign it. That's it. So I do not contemplate marriage changes.</p> <p>6 I mean, I think these are minor changes. These are just</p> <p>7 procedural."</p> <p>8 That's the end of the statement by Representative</p> <p>9 Wolens. It does continue with additional testimony for quite</p> <p>10 some time. Is what I read to -- is that an accurate description</p> <p>11 of the way you understand the assistance legislation to work</p> <p>12 today in Texas?</p> <p>13 MS. WILSON: I'm going to request before she</p> <p>14 answers that question that you let her read the transcript</p> <p>15 itself.</p> <p>16 MR. HEBERT: No problem. I'm glad to do that.</p> <p>17 Q. (BY MR. HEBERT) This is Representative Wolens'</p> <p>18 statement in its entirety. There's more statements by</p> <p>19 Representative Wolens later and earlier.</p> <p>20 MS. WILSON: What was your question?</p> <p>21 Q. (BY MR. HEBERT) My question was, is what</p> <p>22 Representatives Wolens described in terms of what's permitted</p> <p>23 and what's not permitted, is that consistent with your</p> <p>24 understanding of what Texas laws allows an assistor to do?</p> <p>25 A. I think it's generally correct. I guess I'd like to</p>	<p>1 Q. Yes. Would you look that over for me?</p> <p>2 A. Okay.</p> <p>3 Q. May I see it just for a moment before I ask you a</p> <p>4 question about it? Thank you.</p> <p>5 So -- and I'm going to read the statute verbatim.</p> <p>6 Section 64.036.</p> <p>7 MR. HEBERT: And I'll read it in front of you,</p> <p>8 Counsel, so you can see I'm not missing any words.</p> <p>9 Q. (BY MR. HEBERT) Entitled Unlawful Assistance, Subpart</p> <p>10 A. A person commits an offense if the person knowingly: 1,</p> <p>11 provides assistance to a voter who is not eligible for</p> <p>12 assistance; 2, while assisting a voter prepares the voter's</p> <p>13 ballot in a way other than the way the voter directs or without</p> <p>14 direction from the voter; 3, while assisting a voter suggests by</p> <p>15 word, sign, or gesture how the voter should vote; or 4, provides</p> <p>16 assistance to a voter who has not requested assistance or</p> <p>17 selected the person to assist the voter.</p> <p>18 That's the end of Subpart A. There are Subparts B, C and D,</p> <p>19 which we are not reading, that deal with the violations of the</p> <p>20 offense.</p> <p>21 And what I'd like to ask you is, it strikes me in</p> <p>22 reading Subpart 4 that that could be read to say that a voter</p> <p>23 must request somebody to assist them or take some affirmative</p> <p>24 step to select the voter, in other words, that they can't be</p> <p>25 prompted to do it. Would you agree that it could be read that</p>

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<p>1 way?</p> <p>2 A. I guess a person could read it that way. I don't</p> <p>3 think that's how it has been read.</p> <p>4 Q. Right. And do you know of anyone who has been</p> <p>5 prosecuted in the State of Texas for providing illegal</p> <p>6 assistance under Subpart D that we just read?</p> <p>7 A. I don't think so.</p> <p>8 Q. So you're not aware of whether or not someone who may</p> <p>9 have assisted voters by mailing their ballots, for example, and</p> <p>10 not having signed the carrier envelope and provided their name</p> <p>11 and address, that they might not also have been charged in their</p> <p>12 indictment with violating that section of the code? You're not</p> <p>13 aware of any of those provisions?</p> <p>14 A. I really don't know the answer I guess is the better</p> <p>15 response.</p> <p>16 Q. You know, this was -- this was one of the sections</p> <p>17 that was amended in 2003, correct?</p> <p>18 A. Yes.</p> <p>19 Q. So this came out of the Wolens Bill?</p> <p>20 A. Yes.</p> <p>21 Q. So this is a new category of unlawful assistance,</p> <p>22 Subpart D, correct, that was added?</p> <p>23 A. Well, I know that the definition of assistance was</p> <p>24 added. I believe that this statute existed before House Bill</p> <p>25 54.</p>	<p>1 going on or if it was just someone who was familiar with the</p> <p>2 process, you know, I don't really know, to be honest. I think</p> <p>3 we'd need more facts.</p> <p>4 Q. The facts are that I go up to a voter that I know has</p> <p>5 received a ballot by mail -- because there is a public record of</p> <p>6 who gets mailed ballots, correct?</p> <p>7 A. Yes.</p> <p>8 Q. So I can check down at the clerk's office to see who</p> <p>9 has requested a mail-in ballot and I see that Ms. Jones has</p> <p>10 requested a mail-in ballot and I know her. She may not know me</p> <p>11 very well but she knows me. And I go to her house and I knock</p> <p>12 on the door and I ask her if she's sent her ballot in yet and</p> <p>13 she says no. And then I say can I assist you in voting, and she</p> <p>14 doesn't answer but she lets me in. I say, oh, there is your</p> <p>15 ballot. Why don't we fill it out and I'll take care of it for</p> <p>16 you right here. And she never says yes, but we sit down and I</p> <p>17 assist her in filling out the ballot and then we seal it up and</p> <p>18 we mail it -- she mails it. Have I provided technically</p> <p>19 assistance within the meaning of Subpart D there that would be a</p> <p>20 violation?</p> <p>21 A. Well, I think it depends what -- you know, what the</p> <p>22 voter's state of mind is. I mean, if the voter wanted the help</p> <p>23 but didn't say affirmatively yes, I want you to assist me, that</p> <p>24 doesn't necessarily mean there has been a violation of the</p> <p>25 statute. But if the voter is intimidated and doesn't feel like</p>
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<p>1 Q. Yeah, but Subpart D --</p> <p>2 A. The criminal offense.</p> <p>3 Q. Providing assistance to somebody who didn't request it</p> <p>4 or selected the person to assist the voter, that language was</p> <p>5 added new in 2003 because as I recall Representative Wolens was</p> <p>6 concerned about, quote, pushy people, closed quote. Do you</p> <p>7 remember that?</p> <p>8 A. Yeah. My recollection is that what was added in House</p> <p>9 Bill 54 was a definition of what would constitute unlawful</p> <p>10 assistance. I think that there was a -- I think that the</p> <p>11 statute and this prohibition existed before and then House Bill</p> <p>12 54 defined what it was.</p> <p>13 Q. So prior to 2003 there was a provision that</p> <p>14 criminalized unlawful assistance, but as of 2003 they actually</p> <p>15 defined what was meant by unlawful assistance?</p> <p>16 A. That's my recollection.</p> <p>17 Q. I think you're correct. Now, if I haven't been asked</p> <p>18 to provide assistance and I approach a voter and I ask that</p> <p>19 voter if I can assist them in voting and the voter doesn't say</p> <p>20 anything but let's me do it, acquiesces -- many elderly just go</p> <p>21 along, frankly, or disabled people might just go along -- and</p> <p>22 then I provide assistance, wouldn't I be in technical violation</p> <p>23 of Subpart D?</p> <p>24 A. I don't know. I mean, I guess it would really depend</p> <p>25 on what those particular facts were. If there was any coercion</p>	<p>1 disagreeing and just acquiesces, then perhaps it would be a</p> <p>2 violation.</p> <p>3 Q. And what if the voter feels intimidated but says yes</p> <p>4 affirmatively that feels that I'm putting pressure on them to</p> <p>5 let me assist them, that would be a violation, would it not, if</p> <p>6 it depends on the voter's state of mind?</p> <p>7 A. I don't know if it would be a violation of this</p> <p>8 provision. I mean, if a voter says yes, you can assist me but</p> <p>9 doesn't really mean that, then I don't know how the assistant</p> <p>10 would know that.</p> <p>11 Q. Well, let me go back to the other subpart. It</p> <p>12 says -- there was another section of the code that talks about</p> <p>13 influencing or undue influence of a voter or intimidating a</p> <p>14 voter, is there not, that I would be violating if I said to a</p> <p>15 voter I want to assist you. They didn't want me to but they</p> <p>16 felt intimidated by that and so they said yes, go ahead and</p> <p>17 assist me, but they really didn't like it and they didn't want</p> <p>18 it but they said yes because, as you just said a minute ago,</p> <p>19 maybe they just felt pressured to say yes. Is there not some</p> <p>20 provision in the election code that would make me an election</p> <p>21 code violator in that instance?</p> <p>22 A. I don't think there is anything in the election code</p> <p>23 on that.</p> <p>24 Q. Well, what would there be?</p> <p>25 A. I mean, possibly under the penal code under coercion</p>

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<p>1 perhaps.</p> <p>2 Q. Does the penal code coercion apply in voting?</p> <p>3 A. I think it does.</p> <p>4 Q. So I would be violating that provision even though the</p> <p>5 voter said yes?</p> <p>6 A. If it was a situation where there was, you know, some</p> <p>7 kind of coercion going on.</p> <p>8 Q. Would you turn your attention to 84.003B for me,</p> <p>9 please? And after you read that I'd like to take a look as</p> <p>10 well. Have you looked at that?</p> <p>11 A. Yes, just B.</p> <p>12 Q. Right. Now, the first part of B deals with a person</p> <p>13 who acts as a witness and the second part of B talks about a</p> <p>14 person who in the presence of the applicant otherwise assists an</p> <p>15 applicant in completing a ballot, correct, so they apply to two</p> <p>16 different types of people?</p> <p>17 A. Yes.</p> <p>18 Q. And I'm sorry to go back to 64.036A, but I meant to</p> <p>19 ask one final question on this just because I'm still not clear.</p> <p>20 If you --</p> <p>21 MS. WILSON: Object to sidebar.</p> <p>22 Q. (BY MR. HEBERT) If I go to a voter hypothetically as</p> <p>23 a Texas assistor and I am in the business of helping people and</p> <p>24 I go to somebody's home. And I -- the voter has not requested</p> <p>25 my assistance and I go with three or four other people. We all</p>	<p>1 of that Part B. What do you understand that to mean?</p> <p>2 A. If a person assists a voter in the presence of the</p> <p>3 voter, completes their application to vote by mail, then that</p> <p>4 person needs to provide their name, sign their name and their</p> <p>5 address just like a witness would.</p> <p>6 Q. But it doesn't say a person who provides assistance</p> <p>7 within the meaning of the Texas Election Code on assistance. It</p> <p>8 says instead a person who in the presence of the applicant</p> <p>9 otherwise assists an applicant. I mean, isn't that vague?</p> <p>10 MS. WILSON: Objection, argument.</p> <p>11 Q. (BY MR. HEBERT) I mean, is that clear that that's</p> <p>12 the --</p> <p>13 MS. WILSON: Objection, legal conclusion.</p> <p>14 MR. HEBERT: Are you finished?</p> <p>15 MS. WILSON: Yes. Thank you.</p> <p>16 Q. (BY MR. HEBERT) Isn't the term "otherwise</p> <p>17 assist" -- what exactly does that mean?</p> <p>18 A. I think that means assist the voter in a capacity</p> <p>19 other than as witness.</p> <p>20 Q. But it doesn't say that.</p> <p>21 A. I think it does.</p> <p>22 Q. It says otherwise assist. Otherwise in what way</p> <p>23 besides assistance?</p> <p>24 MS. WILSON: Objection, argument.</p> <p>25 MR. HEBERT: That's not argument at all. I'm</p>
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<p>1 go to the door and we say, hey, we're here to help people vote</p> <p>2 and want to help you vote. They haven't asked me for help.</p> <p>3 They say, well, y'all come in. So we all go in and one of us</p> <p>4 helps them.</p> <p>5 If you would turn your attention back to</p> <p>6 64.036A4. I have provided assistance to a voter or someone in</p> <p>7 my group did and the voter did not request our assistance,</p> <p>8 correct, under my hypothetical?</p> <p>9 A. Right.</p> <p>10 Q. And they haven't selected a person to assist them.</p> <p>11 They simply let somebody help them. Wouldn't that be a</p> <p>12 violation of that provision, this hypothetical, because it</p> <p>13 doesn't fall into either category? They neither requested</p> <p>14 assistance or selected a person to assist them.</p> <p>15 A. Well, again, I think it would really kind of depend on</p> <p>16 what the voter's frame of mind was.</p> <p>17 Q. But it could be depending on what the voter's frame of</p> <p>18 mind --</p> <p>19 A. Possibly.</p> <p>20 Q. Now, back to 84.0003B. It says, a person who in the</p> <p>21 presence of the applicant otherwise assists an applicant in</p> <p>22 completing an early voting application commits an offense if the</p> <p>23 person knowingly fails to comply with Section 1.011, small D, in</p> <p>24 parentheses, in the same manner as a witness, closed quote.</p> <p>25 What do you understand that to mean? That's the second sentence</p>	<p>1 asking her for what otherwise means.</p> <p>2 Q. (BY MR. HEBERT) Why not simple -- why wouldn't the</p> <p>3 statute simply say a person who assists rather than otherwise</p> <p>4 assist?</p> <p>5 MS. WILSON: Objection, argument.</p> <p>6 Q. (BY MR. HEBERT) I mean, is there a way to assist and</p> <p>7 then a way to otherwise assist?</p> <p>8 A. Well, you have to read it in the context. So the</p> <p>9 first sentence is saying witness. If you're witnessing the</p> <p>10 application, then you have to provide the information required</p> <p>11 by 1011, or if you otherwise assist -- so I think it's clear</p> <p>12 that, you know, witness is a specific process, but if you do any</p> <p>13 other kind of assistance other than witnessing then you also</p> <p>14 have to provide your name and address.</p> <p>15 Q. So this reads that a person who is a witness and</p> <p>16 witnesses somebody's signature, they are a person in the</p> <p>17 presence of the application, correct?</p> <p>18 A. Right.</p> <p>19 Q. And then they go and assist the applicant in filling</p> <p>20 out the ballot. I assumed they helped them with their ballot.</p> <p>21 That would be a person who otherwise assists an applicant in the</p> <p>22 presence of a voter completing an early voting ballot. That</p> <p>23 would be one person who would fall in that category. So a</p> <p>24 witness could fall into this category is what I'm saying, the</p> <p>25 second sentence.</p>

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<p>1 A. Yeah. I mean, clearly they do. Clearly that's the 2 first type of assistance that's mentioned in Subsection B, is 3 witnessing. But then it goes on to say any other kind of 4 assistance you also have to provide your name and address. 5 Q. Any other kind of assistance at all? 6 A. In the presence of the voter. 7 Q. Is it -- and what does that mean? What kind of 8 assistance would require a person to then have to follow the 9 same instructions as a witness? What are the various ways that 10 I could assist the voter or an assistor could assist the voter 11 and be subject to this provision? 12 A. In helping the voter complete the entire application. 13 So witnessing first if you can't sign your name, but if the 14 voter needed -- or if you assisted the voter in completing that 15 application in any other -- for any other portion that's 16 required, then you would have to provide your name and address. 17 Q. As an assistor? 18 A. Yes. 19 Q. And assume that I'm -- assume somebody else -- there 20 has been no witness and I just come along as an assistor. What 21 I'm asking is, what are the various things that I would do -- 22 what are all of the things that people could do as an assistor 23 that would subject me to this provision that we've just read in 24 84.003B? What are the types of conduct that would constitute 25 otherwise assist?</p>	<p>1 that has to check off which reason they are voting early, over 2 65, out of the county, disabled, and they ask me, they say, I 3 think even though I'm not 65 and I'm going to be here on 4 election day, I think I constitute somebody who is disabled 5 because I have the following disability and they describe it to 6 me, and I say to them, you know, you're probably right. Is that 7 providing assistance within the meaning of Subpart B? Yes, no, 8 maybe? 9 A. Yeah. It's kind of a weak example, but I guess 10 strictly speaking that would be assisting. 11 Q. It would be assisting within the meaning of Subpart B 12 of 84.003? 13 A. Right. 14 Q. And obviously I think you said earlier if I were 15 actually to take the application and to physically write their 16 name, address, the reason for their disability or the reason for 17 them voting early by mail, that would constitute assistance? 18 A. Yes. 19 Q. And yet if I fill all that information out on an 20 application for them as I'm in their driveway and then walk into 21 their house, that's not providing assistance even though I've 22 already filled out all the information, correct? 23 A. Correct. 24 Q. I have to do it in their presence? 25 A. Correct.</p>
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<p>1 A. Basically it means helping the voter complete that 2 application. So filling out the voter's name and address, 3 indicating what election they're requesting a ballot for, 4 indicating the reason they're eligible to vote by mail. 5 Q. So when you say indicating the reason they are voting 6 by mail, you mean marking the application for them or just 7 telling them how to do it? 8 A. I think the intent here is if they actually help them 9 fill out the application, mark it for them, or, you know, I 10 guess sitting right next to them as they're filling it out. 11 Again, it kind of depends -- I mean, if you're -- well, that's 12 my answer. 13 Q. Well, let's take -- we're going to have to spend a 14 little time on this, I think, because I'm not -- if I'm sitting 15 next to the voter when they fill it out and I'm verbally 16 assisting them and when they ask me a question saying, well, it 17 says here, you know, that I have to either be over 65 or 18 disabled and I think I'm disabled enough even though I'm not 19 over 65 because I have the following disability, and I say, 20 yeah, I think that's probably right, I think you're right on 21 that, does that constitute assistance, otherwise assist? 22 A. I'm sorry, could you -- I was reading the statute 23 again. 24 Q. I'm sitting next to the voter. The voter is filling 25 out their early ballot application and they come to the part</p>	<p>1 Q. Now, going back to my example. If the voter asks me, 2 well, you think that I'm disabled enough to constitute disabled 3 within the meaning of the code so that I can vote by mail and I 4 shrug my shoulders, is that assistance? 5 A. If you don't give an answer, I guess you really 6 haven't given assistance. 7 Q. So if you answer any question from the voter that 8 would constitute assistance? 9 A. If you're in the presence of the voter and the voter 10 is asking for your help in completing the application, then 11 you'd be assisting that voter in completing their application. 12 Q. So if they say to you, do you mind dropping it in the 13 mail for me, you know, I'm stuck here at home, and you offer to 14 assist in that way, does that constitute otherwise assist? 15 A. I believe it does not. Actually dropping it in the 16 mail, the application, is not considered assistance. 17 Q. But I'm helping the voter within the presence of the 18 voter, am I not? 19 MS. WILSON: Objection, argument. You can answer 20 it if you -- 21 A. I mean, the intent here -- I mean, all of this was 22 worked through the legislative process, and my understanding was 23 the legislature didn't -- wasn't going to apply this to people 24 who actually pick up the applications, only those that actually 25 help them complete the application.</p>

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<p>1 Q. (BY MR. HEBERT) And where does it say that in the 2 statute, that it would not apply to people who merely pick up 3 the application and assist the voter by picking it up for them 4 and dropping it in the mail?</p> <p>5 A. Well, because it says in completing the application. 6 So the intent there is to complete filling it out.</p> <p>7 Q. So if I show up to a voter's home and they have done 8 everything except sign the application when I get there and I've 9 called them and told them I'm coming by to pick it up and when I 10 go there they say, oh, let me finish, and they sign it in my 11 presence and seal it and give it to me and I take it, wouldn't 12 that constitute assistance? Because I provided assistance to 13 the voter in the presence of the voter when they have been 14 completing the application.</p> <p>15 MS. WILSON: Objection, argument. You can 16 answer.</p> <p>17 A. I don't think it does.</p> <p>18 Q. (BY MR. HEBERT) Why not?</p> <p>19 A. Because that voter has completed that application 20 without your assistance. I mean, your example, the voter said 21 oh, I forgot to sign it, let me sign it. So they sign it and 22 then it's completed and they hand it over to you and then you 23 drop it in the mailbox or whatever. I don't think that comes 24 under the statute.</p> <p>25 Q. So the early voting ballot application, is it not</p>	<p>1 Q. If you could look at 64.0321.</p> <p>2 A. Okay.</p> <p>3 Q. This is the provision of the election code that 4 defines assisting a voter, correct?</p> <p>5 A. Yes.</p> <p>6 Q. I'm going to read it into the record here. Section 7 64.0321. Definition. For purposes of this subchapter and 8 Section 85.035 and 86.010, assisting a voter includes the 9 following conduct by a person other than the voter that occurs 10 while the person is in the presence of the voter's ballot or 11 carrier envelope: 1, reading the ballot to the voter; 2, 12 directing the voter to read the ballot; 3, marking the voter's 13 ballot; or 4, directing the voter to mark the ballot, period.</p> <p>14 Now, I noticed that this provision does not apply 15 to 84.003B, correct?</p> <p>16 A. Right.</p> <p>17 Q. So any -- this is only for people who are in the 18 presence of somebody with the ballot or the carrier envelope, 19 correct?</p> <p>20 A. Right.</p> <p>21 Q. Now, what if I'm in the presence of a voter and they 22 have the carrier envelope but they don't have the ballot at that 23 point in the same place. Does that -- can I still provide 24 assistance within the meaning of this provision if they only 25 have one or the other but not both?</p>
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<p>1 complete until it's received by the county clerk, the process of 2 filling one out and applying?</p> <p>3 A. No. I think completing it refers to the process of 4 completing the application. Delivery is something else.</p> <p>5 Q. So delivering an application for an early voting 6 ballot pre-filled out to a voter where they simply have to sign 7 it and they do that in my presence and then seal it up in an 8 envelope -- the early ballot application envelope and I put a 9 stamp on it as an assistor and mail it, that does not constitute 10 assistance within 84.003?</p> <p>11 A. Well, it would depend what happens there. I mean, if 12 you're coming to pick it up and you say, okay, let me look at 13 your application, oh, you didn't sign, you need to sign here, 14 then you're providing some assistance. But if you're merely 15 collecting the application after it's been completed, then that 16 would not fall under 84.003.</p> <p>17 Q. And you think that this language here, "otherwise 18 assists an applicant," covers the kind of situation you just 19 described where I walk in and I look over the ballot application 20 and I say, oh, you left something blank here and I don't mark it 21 for them and I don't tell them how to answer it but they go 22 ahead and say, oh, thanks and they check off the right box and 23 then they seal it up and give it to me, I've provided assistance 24 in that instance?</p> <p>25 A. I think so.</p>	<p>1 A. So you're saying you'd be assisting a voter and the 2 voter would just have their carrier envelope?</p> <p>3 Q. Yes.</p> <p>4 A. That doesn't really make a lot of sense to me because 5 that's mailed as a package to the voter. So I don't see --</p> <p>6 Q. How you'd have one and not the other?</p> <p>7 A. Right.</p> <p>8 Q. Well, assume that I get my ballot to vote by mail 9 along with the carrier envelope and the other packet of 10 information and for whatever reason I've left my ballot -- I've 11 taken my ballot next door along with my papers and when I came 12 back home I brought only the carrier envelope and the other 13 papers but I left the ballot next door by mistake at my 14 neighbor's house or my sister's house or my mother's house.</p> <p>15 And then somebody comes in and has the intent of 16 assisting that voter vote by mail and they say to the person, 17 I'm here to help you vote by mail. And they say, well, let me 18 get my ballot out. And they say, you know, I can't find it 19 right now but I have a question for you about that, do I have to 20 sign my ballot? And I say, yes, of course you have to sign it. 21 And they say, okay, I wasn't sure about that, it said something 22 about make your mark and I didn't know what that meant, but I 23 can sign it so I'll sign it. And I leave.</p> <p>24 And then they go get their ballot and they 25 actually bring it back to their house and they vote it</p>

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<p>1 themselves. I'm not there and they send it in. Is that 2 providing assistance within the meaning of 64.0321? 3 A. So in your example you said ballot is not in the home 4 of the voter. The assistor comes to the voter's home and tells 5 them to -- 6 Q. Make sure they sign it. 7 A. Sign the carrier envelope? 8 Q. No, to make sure they sign their ballot. 9 A. Of course the ballot isn't signed. 10 Q. That's right. The carrier envelope. They have to 11 sign it. So I say, yes, you have to sign the envelope. And 12 they're confused. They say, well, you know, on the ballot I 13 didn't see a place for me to sign. And I say to them, that's 14 right, you don't sign it, you sign the carrier envelope after 15 you seal it. 16 A. Then I don't think that would be a violation, that 17 hypothetical, of -- or that would be not be considered 18 assistance under 64.0321. 19 Q. And why not? 20 A. Because the assistance in 64.0321 refers to the ballot 21 itself. 22 Q. And assisting a voter with their ballot? 23 A. Right. 24 Q. So I would not be directing the voter to mark the 25 ballot in that instance if I directed them to sign the carrier</p>	<p>1 directing the voter to read the ballot, marking the voter's 2 ballot directing the voter to mark the ballot. So what you 3 described if the voter hands you the ballot to look at I don't 4 think, strictly speaking, it falls under this definition. 5 Q. You don't think it could technically be a violation of 6 that provision if I read the ballot and then say to the voter 7 I've looked it over, it looks like you did everything correct. 8 Or if they say -- yeah, go ahead. I guess I'll stop there. 9 A. I don't think so. 10 Q. What if they say to me did I vote a straight 11 Democratic ticket, can you tell me if I did that? And I look at 12 that and I say no, you didn't. And they say, well, I meant to. 13 And I say, well, here's your ballot back. Does that constitute 14 assistance within 64.0321 if they then remark their ballot in my 15 presence? 16 A. If you direct them how to remark the ballot, then it 17 would be a violation. 18 Q. But I tell them simply that -- answer their question 19 that they didn't vote a straight Democratic party ticket and 20 they meant to -- they told me they meant to and I give them back 21 their ballot. Your testimony is that unless I show them how to 22 mark a straight Democratic ballot then that isn't assistance? 23 A. That's what I believe the statute says. 24 Q. And if I were to look over the ballot at the voter's 25 request and I were to note that they didn't vote in all of the</p>
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<p>1 envelope, correct? 2 A. Right. 3 Q. Now, if hypothetically the voter didn't take the 4 ballot next door, they actually have it when I get to their 5 house, and I say I'm here to pick it up and mail it for you; and 6 the person has the ballot all filled out, seals it up in an 7 envelope and then they give it to me and I say, you need to sign 8 the envelope, you didn't sign the envelope, and I do that in the 9 presence of the voter and they have the ballot and the envelope, 10 is that providing assistance within 64.0321, Subpart 4 in 11 particular? 12 A. Again, I don't think that falls under this definition, 13 this statute, because this statute is aimed at assistance about 14 the ballot itself. So if you're assisting the voter, you know, 15 completing the carrier envelope, I don't think that falls under 16 this definition. 17 Q. And if -- okay. I accept your answer. And let's go 18 back and change the hypothetical slightly so that when I get 19 there the ballot is not sealed up in the envelope yet and the 20 voter asks me to look over the ballot and make sure that they 21 have filled it out correctly. And I look it over for them and I 22 say, yeah, it looks okay to me, and then they seal it up, they 23 sign it and they mail it themselves. Am I providing assistance 24 within the meaning of 64.0321 or could I be? 25 A. 64.0321 discusses for reading the ballot to the voter,</p>	<p>1 races, all of the contests, and I were to inform the voter, you 2 know, you didn't vote in all the contests, at what point would 3 my engaging in that conversation become assistance? If I told 4 them that they didn't vote all the contests, would that 5 constitute assistance? 6 A. I think if you -- you know, actions that go toward 7 directing the voter to mark the ballot. So if you show the 8 voter, oh, you didn't vote for this office, then you'd be 9 directing the voter. 10 Q. So that would be violation if I did that and didn't 11 sign as an assistor? 12 A. Yes. 13 Q. Even though I didn't say you should vote in all the 14 contests, correct? 15 A. Correct. 16 Q. Simply pointing out that they didn't is enough to 17 constitute assistance? 18 MS. WILSON: Objection, mischaracterization. 19 Q. (BY MR. HEBERT) I'm not trying to mischaracterize. 20 I'm trying to truly understand what you just said. If I show a 21 voter a ballot -- they ask me to look over their ballot to make 22 sure they have voted for all the -- in the right way and I look 23 over the ballot and I say, I note that you didn't vote for some 24 of these other offices here, and they say, oh, and they take it 25 back and they vote those other offices, I don't direct them who</p>

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<p>1 to vote for, I don't tell them that they should vote in all the</p> <p>2 contests, I simply point out that they have blanks on there,</p> <p>3 that constitutes assistance as you're telling me within the</p> <p>4 meaning of 64.0321?</p> <p>5 A. Well, if you point out on the ballot and show them</p> <p>6 which offices and say, oh, you missed this, You need to vote for</p> <p>7 this office, you need to vote for this office, then I think that</p> <p>8 clearly falls under this statute.</p> <p>9 Q. So I have to do something -- some movement to direct</p> <p>10 some affirmative -- I have to take some affirmative action of</p> <p>11 direction. I simply can't say, I looked over your ballot here</p> <p>12 and I note that you didn't vote in all the races and I hand it</p> <p>13 back to them. That's okay. Is that what you're saying?</p> <p>14 A. Pursuant to this statute, yes.</p> <p>15 Q. Is there any other statute that I would be violating</p> <p>16 in that instance?</p> <p>17 A. I guess I'd like to look at the specific statutes on</p> <p>18 voting by mail to see if there was something that might</p> <p>19 encompass that. This is the general provision that would also</p> <p>20 apply when you're voting in a polling place.</p> <p>21 Q. Right. But if you wouldn't mind taking just a couple</p> <p>22 of minutes to see if anything quickly jumps out at you and if it</p> <p>23 does, fine, and if it doesn't, you can reserve the right to go</p> <p>24 back and pull it out later.</p> <p>25 A. Okay. Well, I can't find anything else.</p>	<p>1 voting by mail or assisting voters by mail. There have been</p> <p>2 complaints from voters regarding that. But as far as official</p> <p>3 records or evidence, we don't really have anything.</p> <p>4 Q. (BY MR. HEBERT) So anything that you would know would</p> <p>5 have been brought before the legislature. Is that what you're</p> <p>6 saying?</p> <p>7 A. Or phone calls to our office from voters, things like</p> <p>8 that.</p> <p>9 Q. As I recall -- and I could be recalling incorrectly.</p> <p>10 But as I recall, the Dallas example that you gave and that</p> <p>11 Mr. Stool and Mr. Wolens were concerned, at least what their</p> <p>12 statements said, was that there had been people pressuring</p> <p>13 elderly people and disabled people to vote by mail and going to</p> <p>14 their homes and kind of assisting them without their consent.</p> <p>15 Does that strike you as what you remember as well?</p> <p>16 A. Generally.</p> <p>17 Q. So I guess my question is, was there any evidence --</p> <p>18 were there any examples that you were aware of as of 2003 that</p> <p>19 you either received phone calls here or in the legislature where</p> <p>20 people were complaining that someone, in filling out their early</p> <p>21 vote ballot application, had pressured them in some way to sign</p> <p>22 their application?</p> <p>23 A. I believe we did have some complaints of that nature</p> <p>24 and that's why the Dear Voter letter originated. I don't think</p> <p>25 we have anything in writing on that. I think that was more just</p>
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<p>1 Q. What record of -- if you know, what record of illegal</p> <p>2 assistance existed as of 2003 that would -- that existed as of</p> <p>3 2003 and was the basis for amending the election code to make it</p> <p>4 illegal for a person to otherwise assist an applicant in</p> <p>5 completing an early vote ballot application without signing the</p> <p>6 application? What example -- do you know of any?</p> <p>7 MS. WILSON: Objection, vague.</p> <p>8 Q. (BY MR. HEBERT) Do you understand what I'm asking?</p> <p>9 A. Well, what do you mean by record?</p> <p>10 Q. What either prosecutions were there or what evidence</p> <p>11 of misconduct was there that existed as of 2003 that you're</p> <p>12 personally aware of either through observing legislative hearing</p> <p>13 or your official capacity here in the Secretary of State's</p> <p>14 Office that the legislature was trying to get at, I guess, in</p> <p>15 enacting this particular provision? What examples were there of</p> <p>16 people assisting early vote ballot applicants and engaging in</p> <p>17 improper conduct that the legislature would then require them to</p> <p>18 sign in the same manner as a witness?</p> <p>19 MS. WILSON: Objection, lack of personal</p> <p>20 knowledge. Answer the question to the extent that you can.</p> <p>21 A. I would be -- I guess I'm aware of some anecdotal</p> <p>22 evidence. We don't have any official records here. There was</p> <p>23 no requirement that people file that sort of thing with us.</p> <p>24 There were some issues in Dallas County. I believe that the</p> <p>25 DA's office tried to prosecute some folks for abuses of early</p>	<p>1 calls from voters and election officials.</p> <p>2 Q. What's the purpose of the Dear Voter letter, then, to</p> <p>3 let voters know their rights?</p> <p>4 A. Right.</p> <p>5 Q. And does the Dear Voter letter talk about how they can</p> <p>6 prevent somebody from unduly influencing them at the application</p> <p>7 process? I thought the Dear Voter letter went out with the</p> <p>8 ballot.</p> <p>9 A. Right. That's right.</p> <p>10 Q. So if somebody were causing problems with voters at</p> <p>11 the application stage, they wouldn't have gotten that letter</p> <p>12 yet, would they?</p> <p>13 A. Correct.</p> <p>14 Q. Have you ever done such a voter advisory letter that</p> <p>15 goes out with the early vote application?</p> <p>16 A. No.</p> <p>17 Q. It seems like -- do you think that would be a good</p> <p>18 idea?</p> <p>19 A. I think it would be hard to accomplish something like</p> <p>20 that because those forms -- the voter can receive those</p> <p>21 applications from anybody. So unlike the ballot where it has to</p> <p>22 come from the early voting clerk, the application is readily</p> <p>23 available.</p> <p>24 Q. And the applications -- do you have a -- does the</p> <p>25 Secretary of State prescribe what the application looks like?</p>

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<p>1 A. Yes. We prescribe an official form, but voters don't 2 have to use that form. 3 Q. But most of them do; isn't that correct? 4 A. I don't know. I mean, there are a lot of informal 5 applications that are designed as well. 6 Q. Can you apply for an early vote ballot by mail over 7 the phone? 8 A. No. 9 Q. Can you do it over the Internet? 10 A. No. 11 Q. You have to write in? 12 A. Yes. 13 MR. HEBERT: I think we can get one more section, 14 Kathy, before you have to feed your meter. 15 MS. WILSON: Thank you for noticing. 16 MR. HEBERT: That's what being in a big city for 17 35 years will do to you. You pay attention to parking meters. 18 Q. (BY MR. HEBERT) 86.006, I believe it's C. I can't 19 read my own handwriting. Is there an E? 20 A. Yeah. There is a whole bunch. 21 Q. It's E. You read that provision? 22 A. Yeah. 23 Q. I'll read it verbatim. This is Section 86.006. The 24 section is entitled Method of Returning Marked Ballot and we're 25 reading Subpart E, which reads as follows.</p>	<p>1 any personal knowledge of what problems existed with regard to 2 people collecting and storing at another location early voting 3 ballots by mail that existed as of 2003 when the legislature 4 enacted this provision? 5 A. I really don't have any personal knowledge on that. 6 Q. You saved us a lot of time. Thank you. 7 If I am a person who goes around and mails 8 ballots for people and I go to an apartment building where 9 several people I know have applied for and received early voting 10 ballots -- mailed ballots and they have them there and they ask 11 me to mail them for them and I agree to do so and I sign the 12 carrier envelope and put my name and address on it, and I am on 13 Floor 12 and I now have to go down on Floor 6 to see another 14 neighbor and they give me one and I put it in my suit coat 15 jacket, go down to 6, pick up another one and then go down to 16 the mailbox and mailed them both, have I stored and 17 collected -- have I collected and stored ballots within the 18 meaning of 86.006E? 19 A. And where do you go after you leave the apartment 20 building? 21 Q. I go to a mailbox and drop them in the mail. 22 A. I don't think so. 23 Q. What if I were to take them and put them in my car and 24 then go into the coffee shop and eat lunch and then mail them 25 after lunch, wouldn't that be storing and collecting at another</p>
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<p>1 Quote, Carrier envelopes may not be collected and 2 stored at another location for subsequent delivery to the early 3 voting clerk, period. The Secretary of State shall prescribe 4 appropriate procedures to implement this subsection and to 5 provide accountability for the delivery of the Carrier envelopes 6 from the voting place to the early voting clerk, period, end of 7 quote. 8 So my first question is as to -- do you know what 9 problem that this particular provision, which was enacted in 10 2003 -- what problem this particular provision was enacted to 11 remedy? 12 MS. WILSON: Objection, assumes facts not in 13 evidence. 14 MR. HEBERT: So there was no problem. 15 MS. WILSON: Well, you're assuming there was one 16 problem. 17 MR. HEBERT: What problem or problems? Would you 18 accept that amendment, Counsel? 19 MS. WILSON: I would for that, but I still think 20 it's speculation and I think that it is -- this witness does 21 not -- you're asking this witness what the legislature meant. 22 To whatever extent she can -- let me just state my objection so 23 I won't -- my objection is that she lacks personal knowledge. 24 MR. HEBERT: I'll withdraw the question. 25 Q. (BY MR. HEBERT) Let me ask it this way. Do you have</p>	<p>1 location for subsequent delivery or could it be? 2 A. I don't really think so. 3 Q. Why not? 4 A. I guess it just depends if the assistor or the person 5 that's going to be delivering those ballots -- I mean, the 6 intent of the law is to make sure they collect those ballots and 7 get them into a mailbox right away. So whether that's an 8 unreasonable delay to go get a cup of coffee, you know, I don't 9 know. That's really a fact question. I'm not sure it's 10 appropriate for this office to really directly answer. But I 11 wouldn't think that would be a violation. 12 Q. But can you see how this statute could be read that 13 way that would bar somebody from collecting more than one ballot 14 and storing it in any location, even temporarily, like a car or 15 their glove compartment or their locked trunk? 16 A. I guess a person could read it that way. I don't 17 think that's how it's been interpreted in Texas. 18 Q. And it would be true even if I didn't -- even if my 19 hypothetical was changed such that I took one ballot from a 20 voter in a neighborhood and went down to my car and locked it in 21 the trunk but I knew I had others in the same building that also 22 needed my assistance in mailing and I went back to them and I 23 got two or three more but each time I got one I brought it back 24 down to the car. I'm not really mailing right away the very 25 first ballot I got because I'm making my trips back and forth</p>

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<p>1 because I'm concerned about collecting and storing more than one</p> <p>2 ballot in my pocket at one time. So I put them in the car but</p> <p>3 it takes me a couple of hours to do this. Technically would I</p> <p>4 not be in violation of this provision by doing that?</p> <p>5 A. Again, I don't think so. I mean, you're still kind of</p> <p>6 in this general location.</p> <p>7 Q. But it could be read that way?</p> <p>8 A. A person could read it that way. I don't think that's</p> <p>9 how it's been read in Texas.</p> <p>10 Q. And who has read it differently?</p> <p>11 A. I don't know, but you're suggesting today that a</p> <p>12 person could read it differently.</p> <p>13 Q. Right. And I guess what I'm asking you is, who has</p> <p>14 read that provision not to make what I described in my</p> <p>15 hypothetical a violation of Subsection E? Has your office</p> <p>16 interpreted that in any way that would say that if I collect</p> <p>17 ballots -- mail-in ballots and store them in my car for a few</p> <p>18 hours and then take them down to the post office all at one time</p> <p>19 that that does not constitute a violation of E?</p> <p>20 A. I don't think we've made that interpretation.</p> <p>21 Q. You haven't made that --</p> <p>22 A. I'm not aware of it if we have.</p> <p>23 Q. And has any state official in Texas made that</p> <p>24 interpretation that you're personally aware of?</p> <p>25 A. Not that I'm aware of.</p>	<p>1 Q. And I guess what I'm driving at, Ms. McGeehan, is how</p> <p>2 long in one place do I need to store the collected ballots in</p> <p>3 order to constitute a violation of this subsection? Is there a</p> <p>4 time limit? How would I interpret that?</p> <p>5 A. The statute doesn't prescribe a time limit, but what I</p> <p>6 believe the legislative intent is is that the carrier envelope</p> <p>7 is a very important piece of paper and it needs to get delivered</p> <p>8 into the official mail really as soon as possible. So the</p> <p>9 intent there is that you don't hold on to these things. You get</p> <p>10 them in the mail quickly.</p> <p>11 Q. And does that mean to you that once I have collected</p> <p>12 all the ballots that I am going to mail that I then go directly</p> <p>13 to the post office and nowhere else first?</p> <p>14 A. That would be, I think, the ideal behavior.</p> <p>15 Q. But if I didn't, it wouldn't necessarily be a</p> <p>16 violation of E, would it?</p> <p>17 A. If you had to go get a cup of coffee, use the</p> <p>18 restroom, I mean, I don't know.</p> <p>19 Q. Or pick up my kids at school and I then go to the post</p> <p>20 office, would that be okay under E?</p> <p>21 A. Probably.</p> <p>22 MR. HEBERT: We can take a break.</p> <p>23 (Break was taken from 10:31 a.m. to 11:04 a.m.)</p> <p>24 MS. WILSON: Ms. McGeehan has a clarification</p> <p>25 that she wanted to give you about one of your hypotheticals.</p>
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<p>1 Q. Now, if I were to collect ballots from three people</p> <p>2 say in a building and they all asked me to mail it and I sign</p> <p>3 the envelope, put my name and address on it, and I go home and I</p> <p>4 know that I'm going to be sending my own -- sending out my own</p> <p>5 bills the next morning at the post office so I take them home</p> <p>6 and I put them with my mail and then the next morning I go and I</p> <p>7 mail all the ballots, does that constitute a violation?</p> <p>8 A. I think that probably would.</p> <p>9 Q. Because I kept them overnight? Is that what makes it</p> <p>10 a violation as opposed to a couple of hours?</p> <p>11 A. I guess in my mind there's kind of an interruption</p> <p>12 there. You know, you -- the intent of the statute is that you</p> <p>13 gather those ballots and you deliver them pretty quickly so you</p> <p>14 don't hold on to them and store them at another location. So if</p> <p>15 you bring them home, seems to me you should be dropping them off</p> <p>16 in the mail before you ever get home.</p> <p>17 Q. So as long as I drop them off at the post office or in</p> <p>18 a mailbox before I do something else, some other chore --</p> <p>19 A. Well, I don't want to say that as a definitive rule</p> <p>20 necessarily, but the prohibition here is collecting them and</p> <p>21 storing them at another location. So in your -- in the last</p> <p>22 example you're storing them overnight in your home.</p> <p>23 Q. So that would constitute collecting and storing in</p> <p>24 violation of this statute?</p> <p>25 A. I think so.</p>	<p>1 A. I think the last hypothetical we were talking about</p> <p>2 was --</p> <p>3 MS. WILSON: Actually it may have been the second</p> <p>4 to the last. Describe it for him so we'll know what we're</p> <p>5 talking about.</p> <p>6 A. The hypothetical of the assistant in an apartment</p> <p>7 building going in and collecting a carrier envelope, bringing it</p> <p>8 to his car, leaving it in the trunk and then going back upstairs</p> <p>9 and picking another carrier envelope. And we were talking about</p> <p>10 was it a violation of the provision --</p> <p>11 Q. (BY MR. HEBERT) Part E?</p> <p>12 A. Part E, and I believe I said not necessarily, probably</p> <p>13 would not. But that was subject to the fact that the</p> <p>14 assistant -- assistant was putting their name and address on</p> <p>15 those carrier envelope. I think in the previous hypothetical</p> <p>16 you made it clear that the assistant is coming in, collecting</p> <p>17 and putting their name and address. I don't think it was clear</p> <p>18 in that second hypothetical. So just to clarify.</p> <p>19 Q. Well, for what's it worth, I was intending to have the</p> <p>20 same circumstances regarding the mailer, that he or she actually</p> <p>21 had signed the carrier envelope and provided their name and</p> <p>22 address. I wasn't trying to change that part of the</p> <p>23 hypothetical, but thanks for the clarification.</p> <p>24 I found one more of these Dear Voter letters that</p> <p>25 appears to be different than any of the other four. So I know</p>

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<p>1 that -- I know we've got -- I think we said we had 2003, 2004, 2 2006 and 2008. And I would like to show you this and have it 3 marked as Exhibit 5. 4 (Exhibit No. 5 marked.) 5 Q. (BY MR. HEBERT) And I'll give you the other four just 6 so maybe you can put it in context for me. If you can estimate 7 what year it would be. It obviously has Roger Williams' name on 8 it. If you know what years he's served as Secretary of State 9 that would certainly narrow it down. 10 A. Right. 11 Q. If you look here at the beginning -- 12 A. It's generic. 13 Q. And so unless you have the little script at the 14 end -- and this one doesn't have the date unfortunately so I'm 15 just asking you to estimate. 16 A. Well, Roger Williams took office in January of 2005 17 and continued through July -- June or July of 2007. 18 Q. So it would be sometime during that period? 19 A. Yeah. 20 Q. So sometime between '05 and '07? 21 A. Right. 22 Q. The only one that we have right now that is between 23 '05 and '07 is Exhibit 3, which we had from '06. And I'd like 24 you to just look at Exhibits 3 and 5 and see if you think that 5 25 might have been in '07 or whether it was also in '06, perhaps in</p>	<p>1 Q. So a witness is someone who is limited specifically to 2 either the person witnessing the person marking the X, visually 3 seeing that happen, or marking the X for the person? 4 A. Correct. 5 Q. And describe for me what an assistor is under Texas 6 election practice. 7 A. I think it depends under what context. There are 8 specific provisions on assisting voters by mail and then there 9 is a general statute. 10 Q. Well, we're going to limit it to just voter-by-mail 11 assistors. 12 A. And are you talking about the application part or the 13 ballot part? 14 Q. Let's start first with the application. What -- 15 describe an assistor -- what constitutes assistance or what 16 types of activities an assistor does to assist with an early 17 vote ballot application that would make them an assistor? 18 A. If they assist the voter to complete the application 19 in the presence of the voter, then they would be acting as an 20 assistor. 21 Q. We went through that earlier. And now describe what 22 an assistor would be for someone actually assisting with the 23 ballot, the early mail-in ballot. 24 A. That -- 25 Q. If you need to resort to the code, that's fine.</p>
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<p>1 the primary in '06 if you can tell. 2 A. Well, what we will do is sometimes make a generic 3 version of this letter so that we generally revise it with a 4 specific early voting date before a general election. So before 5 November general election and before a primary. And then we'll 6 have another form of this letter so that for any other election, 7 you know, early voting clerks can use this, take it from the web 8 and enclose it with the ballots. 9 Q. So this is likely to be either a special election or a 10 primary election, Number 5? And 3 would be a general election 11 voter advisory? 12 A. 3 would be a general election and 5 would be for 13 either a May election or any other special elections held that 14 year. 15 Q. So it still could be '05 through '07. We really 16 haven't narrowed it down much. 17 A. Correct. 18 Q. All right. We've been talking about assistors. We've 19 been talking about witnesses. Describe for me your 20 understanding of what a witness is. What constitutes a witness 21 under Texas election practice? 22 A. A witness is a person who can witness a voter's mark 23 if that voter can't write or can actually mark an X for the 24 voter if the voter can't make any mark at all on a document 25 that's required in the election code.</p>	<p>1 A. I think that would include reading -- you know, I'll 2 just go back to that section under 64.0321. So that could 3 include reading the ballot to the voter, directing the voter to 4 read the ballot, marking the voter's ballot or directing the 5 voter to mark the ballot. And it could also include assisting 6 the voter in delivering the voted ballot back to the early 7 voting clerk. 8 Q. Where is that? I know under Subsection F of 86.006 it 9 talks about a person committing an offense if a person knowingly 10 possesses the ballot of another unless they fall within certain 11 exceptions, but I'm not familiar with any provision myself that 12 talks about a person who delivers the ballot for another being 13 an assistor within the meaning of the Texas Election Code. 14 A. Under 86.0051B, the code provides that a person other 15 than the voter who deposits the carrier envelope in the mail or 16 with a common or contract carrier must provide the person's 17 signature, printed name and residence address on the reverse 18 side of the envelope. 19 Q. Correct. But it doesn't say -- it doesn't define that 20 person in that provision as an assistor like the assistance 21 language of 64.0321, correct? 22 MS. WILSON: I'm going to object to 23 mischaracterization of evidence, object to that the law is the 24 best evidence. I don't know -- I may be wrong. I don't know a 25 place where an assistor is defined and so I'm not sure -- and</p>

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<p>1 that's what I'm kind of objecting to. I don't want to mess up 2 your question or anything.</p> <p>3 MR. HEBERT: Well, assistance is defined.</p> <p>4 MS. WILSON: Assistance is defined. An 5 assistor -- I don't know that that's a term even used --</p> <p>6 THE WITNESS: Right.</p> <p>7 Q. (BY MR. HEBERT) Well, the way I'm using it is an 8 assistor is somebody who provides assistance as defined under 9 the Texas Election Code. What you just described in 86.0051 is 10 not an assistor as I've defined it, correct?</p> <p>11 A. As you've defined it now?</p> <p>12 Q. Yes.</p> <p>13 A. Okay. Because in the previous examples when you're 14 talking about collecting ballots, I thought you were talking 15 about those folks as assistors as well.</p> <p>16 Q. Well, I wasn't. They were providing -- that kind of 17 goes to the whole question that I want to ask. Somebody who is 18 mailing the ballot for somebody else and signing the carrier 19 envelope and providing the information, they are not rendering 20 assistance within the meaning of the Texas Election Code, 21 correct?</p> <p>22 A. They're not rendering assistance consistent with 23 64.0321.</p> <p>24 Q. But they are providing help to the voter under 25 86.0051?</p>	<p>1 marked ballot?</p> <p>2 A. Well, the first part of the statute. The title of the 3 statute is Method of Returning Marked Ballot.</p> <p>4 Q. That's just the title of the statute, though.</p> <p>5 A. Right. You know, the first section says a marked 6 ballot voted under this chapter must be returned. This is all 7 about returning the ballot.</p> <p>8 Q. And it uses the term "marked ballot" in Subsection A 9 but it does not use the term "marked ballot" in Subsection F, 10 does it?</p> <p>11 MS. WILSON: Objection, argument. Objection, the 12 statute -- the document speaks for itself. You can answer.</p> <p>13 A. I guess the way I look at it, Chapter 84 is the 14 chapter that defines how you apply for a ballot by mail. 15 Chapter 86 is talking about sending the ballot to the voter and 16 having the voter send the ballot back to the early voting clerk. 17 And 86.06 is the provision that talks -- directs how a voter can 18 return their marked ballot back to the early voting clerk.</p> <p>19 Q. (BY MR. HEBERT) But Subsection F does not contain the 20 words "marked ballot," does it?</p> <p>21 A. I know the first sentence doesn't, the one you just 22 read. Well, F6 talks about the official ballot sealed in the 23 official carrier envelope, and the official ballot is only 24 sealed in the carrier envelope after it's been voted.</p> <p>25 Q. But Sections 1 through 5 don't talk about the official</p>
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<p>1 A. Correct.</p> <p>2 Q. But isn't it true, though, that just as a witness is 3 different from an assistor or somebody who provides assistance 4 under 64.0321, so too is a person who mails the ballot for 5 another not like somebody who provides assistance?</p> <p>6 A. Well, I think there is several categories.</p> <p>7 Q. That's my point. You have a mailer of someone's 8 ballot. You have an assistor, somebody who provides assistance 9 within the meaning of 64.0321. You have another section that is 10 a witness. And you can have three different people perform each 11 of those functions or one person could provide all three of 12 those, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Now, in Subsection F of 86.006 it talks about a person 15 commits an offense if -- and it's called the method of returning 16 marked ballot. Subsection F provides that a person commits an 17 offense if the person knowingly possesses an official ballot or 18 official carrier envelope provided under the code to another 19 person or to another, period, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Now, it doesn't say in there, does it, whether the 22 ballot has to be marked or it could be an unmarked ballot, does 23 it?</p> <p>24 A. Not in the sentence you just read.</p> <p>25 Q. And where does it say it, that it would have to be a</p>	<p>1 ballot.</p> <p>2 MS. WILSON: The document speaks for itself.</p> <p>3 Q. (BY MR. HEBERT) And Section 6 does.</p> <p>4 A. Right.</p> <p>5 Q. So with respect to Section 6, the one that talks about 6 common carriers delivering ballots, it explicitly provides for 7 an official carrier envelope in circumstances where someone, 8 Federal Express, some other common carrier, is actually 9 transporting the ballot, whereas in the other instance it 10 doesn't use that same term, does it?</p> <p>11 MS. WILSON: Document speaks for itself.</p> <p>12 A. That term is not in the other provision, in Subsection 13 F.</p> <p>14 Q. (BY MR. HEBERT) That's all I'm asking.</p> <p>15 Now, originally in 2003 when Subsection F was 16 enacted and amended, it provided that the category of persons 17 listed in 1 through 6 were given affirmative defenses. And then 18 I believe it was in 2007 that the provisions were changed such 19 that it now is you're exempted if you fall into any of these 20 categories, correct?</p> <p>21 A. Correct.</p> <p>22 Q. And did you testify on that particular change before 23 the legislature or any committee thereof?</p> <p>24 A. I may have.</p> <p>25 Q. Were you supportive of such a change, do you remember?</p>

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<p>1 A. We don't support or oppose. We're been only resource. 2 Q. I see. You don't remember whether you testified on 3 that or not? 4 A. No, I don't. 5 Q. Now, under 86.006 I want to focus on Part F. As I 6 read this provision, it says that one of the defenses I have 7 is -- or the exemption if I'm a person who possesses the carrier 8 envelope in order to deposit the envelope in the mail or with a 9 common carrier and who provides the information required by 10 Section 86.0051B, which is name, address and signature on the 11 envelope, correct? 12 A. Yes. 13 Q. Now, the particular provision here of F that I'm 14 asking about, if I happen to possess the ballot but I don't 15 intend to mail it for someone, am I possessing the ballot within 16 the meaning of Subsection F that I would commit an offense? I'm 17 a consensual possessor non-mailer. 18 A. Your hypothetical is you're not the voter you possess 19 a voter's voted ballot in the carrier envelope and you have no 20 intention of putting it in the mail? 21 Q. Have I committed an offense if I possess -- 22 A. What are you going to do with it? Are you just going 23 to hold on to it? 24 Q. I don't know what I'm going to do with it. 25 A. I mean, it's hard for me to answer that question not</p>	<p>1 A. Okay. I didn't get -- so you're saying you don't fit 2 under any of these exemptions? 3 Q. Right. I'm a non-mailer, consensual possessor who is 4 not related to the voter. 5 A. And you knowingly possess the ballot. You know it's 6 my voted ballot and you have it. 7 Q. Yes. 8 A. I guess it would be an offense. 9 Q. It would be an offense you said, correct? 10 A. Based on the information you've given me. 11 Q. Right. So if I were to go up to a friend's home -- 12 I'm going to flush out the hypothetical for you. I go to a 13 friend's home and they say to me, hey, that's my mail that's 14 going out to the mailbox but I need it taken to the post office, 15 and I say, well, I'm not going that way, and they said, well, 16 Joe next door is going, he goes every day, take my mail next 17 door and give it to Joe, and he goes and I give it to Joe and 18 Joe goes to the post office five minutes later. I have 19 possessed the carrier envelope with an official ballot of 20 another person. I did not intend to mail it. I'm not related 21 to the person I took it from. I technically have committed a 22 violation of 86.006F, correct? 23 A. If you knew that you were possessing a ballot. I 24 mean, I think the way you stated your question was I have some 25 mail, can you mail it for me.</p>
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<p>1 knowing what you're going to do with that ballot. Now, if 2 you're just asking is it an offense under 86.006 F, Subsection 3 4, then -- and you're telling me you're not possessing it in 4 order to put it in the mail, then it's not a violation of F4. 5 But I can't tell you it's not a violation of something else. 6 Q. Right. No, I'm only asking about 86.006F, all of the 7 examples, all of the exemptions. 8 A. Well, the first sentence says a person commits an 9 offense if the person knowingly possesses an official ballot or 10 official carrier envelope provided under this code to another. 11 Q. Right. So I would be in violation, correct, because 12 I'm possessing the ballot of another? 13 A. It seems to me an incomplete question since I don't 14 know what's going to happen with that. 15 Q. Well, if I possess the official ballot of another 16 person and I don't fall into any of the exemptions, I have 17 committed a violation of 86.006F, correct? 18 A. Well, I don't have enough information. If, you know, 19 you're my spouse and you're at home and you happen to possess 20 it, then you're not -- you haven't violated anything. 21 Q. Well, that would be one of the exemptions. That would 22 be, I think, the first exemption. 23 A. Right. 24 Q. And I said that if I didn't fit in any of those 25 exemptions but possessed the ballot of another.</p>	<p>1 Q. Right. 2 A. So I don't know that -- 3 Q. Okay. And I say, oh, I notice one of the documents 4 here is your ballot. You're voting by mail this year? You 5 says, yes. I say, well, good for you and I take it next door. 6 A. Well, in that scenario if you knew that you were 7 transporting that ballot, then yes, you'd have to sign and put 8 your address. 9 Q. Now, assume that the voter I picked it up from had 10 their signature marked -- that they had done a mark and had it 11 witnessed. And then assume further that the voter also was 12 assisted by a second person and who had provided assistance 13 within the meaning of the Texas Election Code under 64.0321 and 14 actually helped them mark the ballot. And then assume further 15 that the person Joe next door is actually going to be the mailer 16 of the ballot. All three of those people would have to sign the 17 carrier envelope, correct? 18 A. Yeah. I mean, that's not a hypothetical I've run 19 into, but in theory -- 20 Q. And actually four of us would because you said that I 21 would have to sign also as the consensual non-mailer possessor. 22 A. Right. 23 Q. I'm looking to see if I could find -- 24 MS. WILSON: Do you want to go off the record? 25 MR. HEBERT: Sure.</p>

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<p>1 (Break was taken from 11:29 a.m. to 11:33 a.m.)</p> <p>2 Q. (BY MR. HEBERT) The procedures that your office</p> <p>3 follows in deciding whether to refer something to the attorney</p> <p>4 general, I want to ask you a series of questions about that.</p> <p>5 You receive a complaint from a voter alleging voter fraud. What</p> <p>6 are the criteria that you apply in this office to determine</p> <p>7 whether to send that complaint to the attorney general for</p> <p>8 prosecution or investigation?</p> <p>9 A. We review the complaint to see if there are any</p> <p>10 allegations of criminal violations in the election code. And</p> <p>11 if, you know, the facts as alleged constitute a crime, then we</p> <p>12 will make a referral to the Attorney General's Office.</p> <p>13 Q. And how long has that policy been in effect?</p> <p>14 A. Probably -- that's been the general policy, really,</p> <p>15 since, I guess I'd say the late '90s.</p> <p>16 Q. So if a voter sends in a letter and says I think that</p> <p>17 someone has been providing unlawful assistance to the elderly</p> <p>18 voters and intimidating them, those facts, if alleged, would</p> <p>19 constitute a crime, you're telling me that your policy would be</p> <p>20 to refer that to Attorney General for further action, correct?</p> <p>21 A. Right.</p> <p>22 MR. HEBERT: I'd like to have marked as</p> <p>23 Exhibit --</p> <p>24 THE COURT REPORTER: 6.</p> <p>25 MR. HEBERT: I'd really like to have it marked as</p>	<p>1 A. I don't know if there was affidavits. He sent</p> <p>2 correspondence. I don't know if some of that was affidavits or</p> <p>3 not.</p> <p>4 Q. Is there a requirement in your office that when people</p> <p>5 make a complaint that before you refer to the Attorney General</p> <p>6 you should request affidavits of some kind?</p> <p>7 A. It's not a requirement.</p> <p>8 Q. Have you employed that practice on occasion?</p> <p>9 A. We've never required it.</p> <p>10 Q. In some cases people supply affidavits. Some cases</p> <p>11 they don't. As long as it alleges criminal conduct you send it</p> <p>12 over. Is that your testimony?</p> <p>13 A. Yes.</p> <p>14 Q. I notice that there is a rush handwritten note on the</p> <p>15 clearance page. Who would have written that?</p> <p>16 A. It could have been several people.</p> <p>17 Q. But somebody within the secretary of state's office?</p> <p>18 A. Yes.</p> <p>19 Q. And do you know what the reason was for the rush?</p> <p>20 A. No.</p> <p>21 Q. And the Exhibit 8 complainant was the same Rusty Hicks</p> <p>22 as Exhibit 7, correct?</p> <p>23 A. Yes.</p> <p>24 MR. HEBERT: Let me mark this Exhibit 9.</p> <p>25 (Exhibit No. 9 marked.)</p>
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<p>1 7 and come back and do the carrier envelope as 6.</p> <p>2 (Exhibit No. 7 marked.)</p> <p>3 Q. (BY MR. HEBERT) Can you tell me what Exhibit 7 is</p> <p>4 after you've had a chance to look at it?</p> <p>5 A. Okay.</p> <p>6 Q. What is Exhibit 7?</p> <p>7 A. Exhibit 7 is the cover letter of a referral to the</p> <p>8 Attorney General's Office from October 26, 2004.</p> <p>9 Q. And the complainant was a Mr. Rusty Hicks?</p> <p>10 A. Yes.</p> <p>11 Q. And the -- does it say in there who he was complaining</p> <p>12 about?</p> <p>13 A. No.</p> <p>14 Q. All right.</p> <p>15 MR. HEBERT: I'd like to have this marked as</p> <p>16 Exhibit 8.</p> <p>17 (Exhibit No. 8 marked.)</p> <p>18 A. Okay.</p> <p>19 Q. (BY MR. HEBERT) And what is Exhibit 8?</p> <p>20 A. This is a referral letter to the Attorney General's</p> <p>21 Office dated April 27, 2006 making a referral for possible</p> <p>22 criminal conduct in connection with the March 7, 2006 primary</p> <p>23 election in Bowie County.</p> <p>24 Q. Do you know whether or not in either of these</p> <p>25 instances there were affidavits submitted by Mr. Hicks?</p>	<p>1 A. Okay.</p> <p>2 Q. (BY MR. HEBERT) I notice in that referral letter -- I</p> <p>3 mean, in that letter back to the complainant involving the City</p> <p>4 of McAllen that you have a statement in there that says -- if I</p> <p>5 could turn it upside down for just a moment. That says, quote,</p> <p>6 generally we look for affidavits from voters concerning criminal</p> <p>7 activity in connection with the election. If you have any</p> <p>8 statements from voters or, more specifically, allegations of</p> <p>9 criminal conduct in connection with the election, please submit</p> <p>10 them to us.</p> <p>11 And is it generally, then, your practice to</p> <p>12 obtain or try to obtain affidavits in support of complaints</p> <p>13 before you refer them to the Attorney General but not always</p> <p>14 uniformly so?</p> <p>15 A. Well, our advice to a complainant who wants us to make</p> <p>16 a referral, we encourage them to send us as much documentation</p> <p>17 as possible and would encourage affidavits, but it's not a</p> <p>18 requirement.</p> <p>19 Q. If I were to write in and allege that I was</p> <p>20 given -- that somebody I know was given absentee ballots by the</p> <p>21 election office so that people could go out and get people to</p> <p>22 vote for them, and if I were to further allege that candidates</p> <p>23 or individuals working for candidates had absentee ballots in</p> <p>24 their hands and were forcing citizens to vote for a certain</p> <p>25 person, wouldn't that constitute criminal activity?</p>

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<p>1 A. Yes.</p> <p>2 Q. So let me mark, then, as Exhibit 10 the actual</p> <p>3 complaint that you did not refer to the Attorney General. And I</p> <p>4 want to call your attention to Page 3, the paragraph that begins</p> <p>5 around the middle of the page with McAllen residents followed</p> <p>6 more specifically by CBS McAllen sources informed us.</p> <p>7 (Exhibit No. 10 marked.)</p> <p>8 A. Okay. I've looked at those two paragraphs.</p> <p>9 Q. (BY MR. HEBERT) Feel free to look through the rest of</p> <p>10 the letter. I know there is a lot of non-election related</p> <p>11 material in there, as your letter points out.</p> <p>12 MS. WILSON: Let's go off the record.</p> <p>13 (Break was taken from 11:43 a.m. to 11:44 a.m.)</p> <p>14 A. Okay.</p> <p>15 Q. (BY MR. HEBERT) My question is, since there are</p> <p>16 allegations within the letter of complaint that would appear to</p> <p>17 constitute criminal conduct, as you've acknowledged, why that</p> <p>18 was not referred to the Attorney General for prosecution, if you</p> <p>19 know?</p> <p>20 A. Well, I guess I would disagree with that</p> <p>21 characterization. This paragraph that talks about the 11</p> <p>22 complaints is talking about the early voting ballot board</p> <p>23 because they're talking about poll watchers for candidates Othal</p> <p>24 Brand, Sr. and Richard Cortez said that they saw absentee</p> <p>25 ballots accepted when the signature on the ballot did not match</p>	<p>1 A. That would be.</p> <p>2 Q. Make sure we get all these back.</p> <p>3 MR. HEBERT: This is 11 and this will be 12.</p> <p>4 (Exhibit Nos. 11 and 12 marked.)</p> <p>5 MR. HEBERT: We're off the record here.</p> <p>6 (Break was taken from 11:49 a.m. to 11:50 a.m.)</p> <p>7 A. Okay.</p> <p>8 Q. (BY MR. HEBERT) Exhibit 11 is a letter of complaint,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. Sent to your office in January of '06?</p> <p>12 A. Yes.</p> <p>13 Q. Involving a Fern MUD?</p> <p>14 A. Yes.</p> <p>15 Q. And there are allegations of criminal conduct there,</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. And Exhibit 12 shows that you referred those to the</p> <p>19 Attorney General for prosecution or investigation or further</p> <p>20 action?</p> <p>21 A. Well, I have a question about this. I'm wondering if</p> <p>22 this is the complete file. I'd have to look at it and see.</p> <p>23 Because the first letter on Fern Bluff was dated January 10th,</p> <p>24 2006 and then our referral is dated July 30th, 2007.</p> <p>25 Q. Right.</p>
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<p>1 that of the request form. That's part of the duties of the</p> <p>2 early voting ballot board, to compare those, and that's a fact</p> <p>3 determination. So we often get complaints even from voters</p> <p>4 sometimes that say my ballot was rejected and it shouldn't have</p> <p>5 been. So this in and of itself -- you know, it's always a</p> <p>6 judgment call, but when we reviewed this back in 2005 it didn't</p> <p>7 appear that that was necessarily a crime.</p> <p>8 And then the second paragraph that you mentioned</p> <p>9 that starts off with CBS McAllen talks about politiqueras had</p> <p>10 absentee ballots in hand forcing citizens to vote for</p> <p>11 Commissioner Rick Godinez. And, you know, the word "forcing"</p> <p>12 is, you know, I guess could imply a crime, but it could also</p> <p>13 simply be they were assisting voters as is allowed under the</p> <p>14 law. So there wasn't really any evidence that this was</p> <p>15 necessarily a crime.</p> <p>16 Q. So forcing voters can be assistance, legal assistance?</p> <p>17 A. Well, read in the connection with everything else in</p> <p>18 this letter, it wasn't -- at least when we read it and reviewed</p> <p>19 it in its entirety, it didn't necessarily appear that it was</p> <p>20 necessarily a crime. It could have just as easily have been</p> <p>21 assisting voters.</p> <p>22 Q. And what about the sentence that reads, quote, we were</p> <p>23 also informed that City Hall provided the absentee ballots to</p> <p>24 the politiqueras? It's the last sentence of that paragraph.</p> <p>25 That would be criminal activity, would it not?</p>	<p>1 A. Was there anything else with these letters? Because I</p> <p>2 feel like we're missing something here.</p> <p>3 Q. Well, I didn't want to have it marked as an exhibit,</p> <p>4 and I won't unless somebody insists. But the materials that</p> <p>5 were attached to the complainant letter are here and they relate</p> <p>6 to an '04 election, which is referenced in the complaint letter</p> <p>7 itself to you. And the other part of the file that was given to</p> <p>8 us shows that the Attorney General's Office declined to take any</p> <p>9 further action because the statute of limitations had passed.</p> <p>10 A. Can I?</p> <p>11 Q. You certainly may. In fact, go ahead and mark them</p> <p>12 all as Exhibit 13, the rest of the package involving the Fern</p> <p>13 MUD. Fern Bluff MUD, I should say.</p> <p>14 (Exhibit No. 13 marked.)</p> <p>15 MS. WILSON: I think we should have that as an</p> <p>16 exhibit since we're reviewing it.</p> <p>17 MR. HEBERT: I did mark it.</p> <p>18 MS. WILSON: Oh, you did?</p> <p>19 Q. (BY MR. HEBERT) Have you had a chance to look through</p> <p>20 all the documents, Exhibits 11, 12 and 13?</p> <p>21 A. Yes.</p> <p>22 Q. And can you tell me, do you know if there is any</p> <p>23 documents missing?</p> <p>24 A. I don't know. I mean --</p> <p>25 Q. I will represent to you that those were the documents</p>

19 (Pages 70 to 73)

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<p>1 produced by your office.</p> <p>2 A. Okay.</p> <p>3 Q. And it was a complaint received -- or sent to you in</p> <p>4 January of '06. You referred it over to the Attorney General's</p> <p>5 Office, according to Exhibit 12, in July of '07 and they</p> <p>6 declined prosecution as demonstrated in the e-mail of Exhibit</p> <p>7 13 -- contained in Exhibit 13, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And there were no affidavits that are referenced here</p> <p>10 that were submitted by the complainants, correct?</p> <p>11 A. There is a lot of other written correspondence but it</p> <p>12 doesn't look like any is in the form of an affidavit.</p> <p>13 Q. Okay. And you're looking through Exhibits 13 and 11,</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 MS. WILSON: Can we go off the record?</p> <p>17 MR. HEBERT: Sure.</p> <p>18 (Break was taken from 11:57 a.m. to 1:05 p.m.)</p> <p>19 Q. (BY MR. HEBERT) Back on the record after -- following</p> <p>20 a lunch break.</p> <p>21 (Exhibit No. 14 marked.)</p> <p>22 Q. (BY MR. HEBERT) I would like to hand you the next</p> <p>23 exhibit, Exhibit 14. Ask you to look that over for me, please.</p> <p>24 A. Okay.</p> <p>25 Q. In Exhibit 14 would you describe what essentially this</p>	<p>1 there? I mean, if you help just in the process of getting</p> <p>2 somebody registered to vote.</p> <p>3 A. By itself, no, assuming they follow the rules.</p> <p>4 Q. And it doesn't say anything other than what I just</p> <p>5 read. The candidate or worker assists the mail-in voter with</p> <p>6 getting registered to vote. That statement doesn't really</p> <p>7 contain any indication of illegality, right?</p> <p>8 A. Right. That's first out of 11.</p> <p>9 Q. Right. The candidate or workers requests and receives</p> <p>10 a current list of registered voters from the registrar. Nothing</p> <p>11 illegal about that, is there?</p> <p>12 A. No.</p> <p>13 Q. In looking over the various 3 through 11, wonder if</p> <p>14 you could point me to one that you think constitutes criminal</p> <p>15 conduct, if any, which would justify a referral?</p> <p>16 A. Well, there is a couple of things. Providing a stamp</p> <p>17 could possibly be a violation.</p> <p>18 Q. Of what?</p> <p>19 A. Of the penal code. Giving somebody something of value</p> <p>20 in exchange for their vote.</p> <p>21 Q. Not a violation of the election code, just a violation</p> <p>22 of the penal code?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. Let me stop you there. Do you refer every</p> <p>25 allegation of somebody giving somebody a stamp so they can mail</p>
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<p>1 is?</p> <p>2 A. This is a referral to the Attorney General's Office of</p> <p>3 allegations in Skidmore-Tynan Independent School District.</p> <p>4 Q. And it's dated in 2006?</p> <p>5 A. Yes, April 2006.</p> <p>6 Q. And I notice there is a rush on the cover sheet; is</p> <p>7 that correct?</p> <p>8 A. Yes.</p> <p>9 Q. And was that written by someone in your office?</p> <p>10 A. Probably.</p> <p>11 Q. And do you know why it was rushed?</p> <p>12 A. No.</p> <p>13 Q. Can't tell from looking at these documents, can you?</p> <p>14 A. No.</p> <p>15 Q. Looking over the complaint itself, I noticed that the</p> <p>16 allegations are primarily when it comes to voting -- the voting</p> <p>17 aspect of the complaint is that there were an unusual amount of</p> <p>18 mail-in ballots that went out and then they list a series of</p> <p>19 kind of how the process works for people getting the mail-in</p> <p>20 voters to vote, correct?</p> <p>21 A. Right.</p> <p>22 Q. In looking over the process here that is described by</p> <p>23 this complainant, it says -- the first complaint is that the</p> <p>24 candidate or worker assist the mail-in voter with getting</p> <p>25 registered to vote. There is no problem with doing that, is</p>	<p>1 their ballot? Do you refer every one of those to attorney</p> <p>2 general?</p> <p>3 A. Not aware that if we received any other complaints of</p> <p>4 that nature.</p> <p>5 Q. You're not aware of whether you have or not?</p> <p>6 A. Right. I don't recall any right now.</p> <p>7 Q. But if you get any complaints about somebody providing</p> <p>8 a stamp to a voter, would it be your policy to refer that matter</p> <p>9 to the Attorney General?</p> <p>10 A. We would look at it in the context of the entire</p> <p>11 complaint.</p> <p>12 Q. So if that was just the only thing in the complaint,</p> <p>13 then you wouldn't?</p> <p>14 A. You know, I don't know. Our legal division would</p> <p>15 review it, I would review it and our general counsel would</p> <p>16 review it.</p> <p>17 Q. And what is the penalty for violating the penal code</p> <p>18 by giving somebody a 41 cent stamp, if that is a violation?</p> <p>19 A. I don't recall.</p> <p>20 Q. What is the statute of limitations on prosecuting</p> <p>21 someone for mailing the ballot of another person without signing</p> <p>22 the carrier envelope and providing the other information?</p> <p>23 A. I don't really know. I mean, I know we saw something</p> <p>24 earlier today where the AG said the statute of limitations</p> <p>25 passed, but I don't recall what it is.</p>

20 (Pages 74 to 77)

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<p>1 Q. Please continue, if you would, if there were any other 2 allegations in this exhibit that would constitute criminal 3 conduct, Exhibit 14.</p> <p>4 MS. WILSON: I'm going to object on the basis of 5 the rule of optional completeness. You're asking her if there 6 is anything else in the exhibit but she's looking at only one 7 page.</p> <p>8 A. I mean, in this list from 1 to 11 I don't think I see 9 any other crimes, but I'm not sure that if anything else in this 10 letter -- other materials that they sent to us alleges any other 11 crimes.</p> <p>12 Q. (BY MR. HEBERT) Well, please take a moment to look 13 through it. It doesn't have many pages. And tell me, if you 14 can, to -- identify any other part of the complaint package that 15 alleges a violation -- criminal violation of the election code.</p> <p>16 A. Well, I guess here talking about soliciting votes from 17 Bee County Nursing Homes and soliciting elderly vote through 18 providers of social services. They're providing assistance that 19 hasn't been requested.</p> <p>20 Q. Right, but it doesn't say that the assistance hasn't 21 been requested, does it?</p> <p>22 A. Well, I would think soliciting would imply that 23 they're instigating -- well, it depends how you -- I would read 24 the word "soliciting" as it was not necessarily initiated by the 25 voter.</p>	<p>1 A. Now, someone else could read it --</p> <p>2 Q. Okay. I didn't mean to interrupt you. I thought you 3 were finished.</p> <p>4 A. I'm finished.</p> <p>5 Q. So you read "solicit" there as being pressuring 6 people?</p> <p>7 A. Right, and that's -- you know, reading this letter 8 today, you know, almost two years later trying to recollect what 9 our thought pattern was. But when the Office of the Secretary 10 of State reviewed this letter as a whole, we determined there 11 was enough allegations of criminal violations of election laws 12 that we decided to make a referral to the Attorney General.</p> <p>13 Q. And you've identified one so far, the solicit. Is 14 there any other?</p> <p>15 A. Well, and providing stamps.</p> <p>16 Q. Right. That was the penal code, but what about the 17 election code?</p> <p>18 A. Well, it's the penal code, but the penal code 19 specifically referencing voters.</p> <p>20 Q. Any others?</p> <p>21 A. I guess those would be the specific crimes that are 22 alleged.</p> <p>23 Q. And this is an unsworn complaint, correct?</p> <p>24 A. Correct.</p> <p>25 MR. HEBERT: The next exhibit is 15, I think.</p>
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<p>1 Q. Well, this morning we went through a series of 2 questions where I asked you about this and you said that if I 3 were to ask a voter is it okay if I assist you and they respond 4 yes, then I haven't done anything illegal, correct, just based 5 on what I just said? And so I could solicit all I want elderly 6 voters in a nursing home to assist and as long as they acquiesce 7 in letting me assist them --</p> <p>8 A. Right, but your --</p> <p>9 MS. WILSON: Objection, argument. Go ahead and 10 answer.</p> <p>11 A. Your question to me was there anything else in this 12 letter that would constitute crime and that could.</p> <p>13 Q. (BY MR. HEBERT) It could, but it --</p> <p>14 A. It doesn't necessarily, but it could. So I was 15 answering the question.</p> <p>16 Q. It could if you added facts to what's in the complaint 17 letter.</p> <p>18 A. Well, the --</p> <p>19 MS. WILSON: Objection, argument.</p> <p>20 Q. (BY MR. HEBERT) Isn't that true?</p> <p>21 A. I guess in the context of this letter which is 22 alleging fraud and misuse of assistance in voting by mail, the 23 word "solicit," at least when we read it, implied perhaps 24 forcing assistance.</p> <p>25 Q. So you read --</p>	<p>1 THE COURT REPORTER: Yes.</p> <p>2 (Exhibit No. 15 marked.)</p> <p>3 Q. (BY MR. HEBERT) I'd like to hand you a document 4 marked as Exhibit 15 to your deposition and ask you to look that 5 over.</p> <p>6 A. Okay.</p> <p>7 Q. I note in this letter it says that you're forwarding 8 this offense report that was sent to you based on an 9 understanding that your office had that there was an ongoing 10 investigation into election fraud activities in Robertson 11 County, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And are there any circumstances under which the 14 attorney general's office can conduct an investigation into 15 election fraud activities in any county without getting a 16 referral from your office?</p> <p>17 A. I believe that they can.</p> <p>18 Q. And how would that take place, do you know?</p> <p>19 A. Not really. I mean, that's within the Attorney 20 General's Office to decide.</p> <p>21 Q. You don't know yourself?</p> <p>22 A. I believe there is -- I mean, as far as how it would 23 happen, I don't know. I mean, the election code authorizes it. 24 When the Attorney General decides to do that, I don't know.</p> <p>25 Q. Do you recall how your office had an understanding</p>

21 (Pages 78 to 81)

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<p>1 that there was an ongoing investigation in Robertson County?</p> <p>2 Had you made a referral, do you know, prior to this?</p> <p>3 A. I think we had, but I don't remember exactly.</p> <p>4 Q. And I note also there was something in here about a</p> <p>5 fax had come in anonymously. Was that the fax from the DA's</p> <p>6 office?</p> <p>7 A. I don't remember. Was there anything with this</p> <p>8 letter?</p> <p>9 Q. I don't believe so, no. This is the only thing that</p> <p>10 was in there.</p> <p>11 A. Yeah, because I really don't remember. I would assume</p> <p>12 we -- we said we were enclosing a copy of the offense report.</p> <p>13 Q. Right.</p> <p>14 MR. HEBERT: We'll mark this as the next exhibit,</p> <p>15 Exhibit 16.</p> <p>16 Q. (BY MR. HEBERT) This is the rest of the packet and I</p> <p>17 believe it constitutes the anonymous fax and the report of the</p> <p>18 DA that you sent over as part of this referral.</p> <p>19 (Exhibit No. 16 marked.)</p> <p>20 Q. (BY MR. HEBERT) I'm not going to ask any questions</p> <p>21 about it other than to confirm what it is.</p> <p>22 A. I've taken a look at it.</p> <p>23 Q. And so it appears that these are the documents that</p> <p>24 you transmitted to the Attorney General with the cover letter</p> <p>25 that we identified as Exhibit 15.</p>	<p>1 A. That's my signature.</p> <p>2 Q. And so your question there is whether or not there is</p> <p>3 enough specificity here for a referral to the Attorney General?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And apparently your office concluded there</p> <p>6 wasn't so you didn't refer it. Is that a fair statement?</p> <p>7 A. Right. Yes.</p> <p>8 Q. One of the things that I noticed in the letter of</p> <p>9 complaint is that the complainant says that people are taking</p> <p>10 advantage of older citizens living in the community and then</p> <p>11 they fill out the ballot themselves for the voter and pick</p> <p>12 whatever candidates they want, which strikes me as being illegal</p> <p>13 because you're actually voting for somebody else. Is that not</p> <p>14 true?</p> <p>15 A. That would be true, but the letter doesn't say what</p> <p>16 election. You know, was it a county election, city election?</p> <p>17 There is really no frame of reference. It's just a general</p> <p>18 allegation that this goes on.</p> <p>19 Q. Would it be a crime if I did it in a city election but</p> <p>20 it wouldn't be a crime if I did it in a federal election?</p> <p>21 A. No. It would be a crime, but I don't know how the</p> <p>22 Attorney General could conduct an investigation. There is not</p> <p>23 very much information in that letter.</p> <p>24 Q. The letter was written in October of 2006. That would</p> <p>25 have been during the period of early voting.</p>
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<p>1 A. Yes.</p> <p>2 Q. And you can't tell from these documents whether or not</p> <p>3 there was any other prior information in your office</p> <p>4 from -- what county are we dealing with here, Robertson?</p> <p>5 A. Robertson. No.</p> <p>6 (Exhibit No. 17 marked.)</p> <p>7 Q. (BY MR. HEBERT) Let me hand you what's been marked</p> <p>8 Exhibit 17. Have you looked at that?</p> <p>9 A. Uh-huh.</p> <p>10 Q. What is Exhibit 17?</p> <p>11 A. This is a letter to a citizen in San Antonio in</p> <p>12 response to her letter to our office where she makes some</p> <p>13 general allegations about election fraud, specifically helping</p> <p>14 older citizens vote -- assisting older citizens in voting by</p> <p>15 mail. And we responded back to her explaining generally</p> <p>16 assistance is permitted but -- and we also talk about our</p> <p>17 authority to make referrals to the Attorney General's Office and</p> <p>18 we asked -- state that her letter was broadly stated, if she has</p> <p>19 additional information to forward it to us and we can make a</p> <p>20 referral at a subsequent time.</p> <p>21 Q. I note there is a handwritten note there that -- if</p> <p>22 you would look at Page 3, I believe. And there's a note to a</p> <p>23 Liz, and I assume that's Elizabeth Winn?</p> <p>24 A. Yes.</p> <p>25 Q. And whose signature is at the bottom?</p>	<p>1 A. Yes.</p> <p>2 Q. So doesn't it stand to reason that the person was</p> <p>3 complaining about the '06 election cycle?</p> <p>4 MS. WILSON: Objection, argument.</p> <p>5 Q. (BY MR. HEBERT) Isn't that a logical assumption?</p> <p>6 MS. WILSON: Objection, argument.</p> <p>7 A. We get complaints many times for May elections in</p> <p>8 October and you'll probably see that in some of the files.</p> <p>9 Q. (BY MR. HEBERT) So your answer is no?</p> <p>10 A. No, you couldn't assume that.</p> <p>11 (Exhibit No. 18 marked.)</p> <p>12 A. Okay.</p> <p>13 Q. (BY MR. HEBERT) Now, in this Exhibit 18, this is</p> <p>14 another complaint that was received, as it is turns out, from</p> <p>15 Robertson County again in 2005 and your office does not make a</p> <p>16 referral to the Attorney General. And there is a cover note on</p> <p>17 there that says, "Paul" -- and I assume that's Paul Miles?</p> <p>18 A. Yes.</p> <p>19 Q. Who is an attorney in the Secretary of State's Office?</p> <p>20 A. Yes.</p> <p>21 Q. -- "need to make both of these letters consistent with</p> <p>22 our policy of filing complaint with local prosecuting attorney</p> <p>23 first." And then apparently someone noted "has been noted" on</p> <p>24 it. Is that your handwriting?</p> <p>25 A. Yes.</p>

22 (Pages 82 to 85)

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<p>1 Q. So you wrote Paul a note to that effect. And the</p> <p>2 letter, in fact, back to the complainant suggests that as a</p> <p>3 first step that she should file a complaint with the local DA.</p> <p>4 And this is in 2005, correct?</p> <p>5 A. Correct.</p> <p>6 Q. I notice that in a lot of the other letters that we've</p> <p>7 been going through there is no statement like this to a person</p> <p>8 saying you should first go to the local DA. So could you</p> <p>9 explain to me why this one bears that?</p> <p>10 A. Yes. We had a policy for about a year or so</p> <p>11 where -- and we worked this out with the Attorney General's</p> <p>12 Office under Secretary of State Geoff Connor, that due to</p> <p>13 limited resources within the AG's office that we would -- in</p> <p>14 making these referrals, that first we would encourage a citizen</p> <p>15 to kind of exhaust their local remedies and that if they -- you</p> <p>16 know, if their local prosecuting attorney didn't look into it or</p> <p>17 do anything, then they could contact us after a period of 90</p> <p>18 days or something like that and we would make a referral at that</p> <p>19 point. And that policy was in effect for about -- I think we</p> <p>20 started at the end of '04 and probably stopped it sometime in</p> <p>21 2005 and we had a change in secretaries of state during that</p> <p>22 time and I believe the AG had some changes with resources during</p> <p>23 that time as well.</p> <p>24 Q. And were you part of the decision-making process that</p> <p>25 resulted in this change of policy?</p>	<p>1 which is, you know, if the complainant makes allegations of</p> <p>2 criminal election conduct and if it were true, you know, we'll</p> <p>3 review it and we will make the -- generally we'll refer those to</p> <p>4 the Attorney General for investigation.</p> <p>5 Q. If there's a -- but there are some instances that you</p> <p>6 don't?</p> <p>7 A. Right.</p> <p>8 Q. And you make a judgment based on the four corners of</p> <p>9 the complaint about whether to refer it or not even if it</p> <p>10 alleges a violation of a criminal --</p> <p>11 A. Right. The credibility of the complaint, the entire</p> <p>12 everything -- if any enclosures are sent in, any additional</p> <p>13 documentation we'll look at as a whole.</p> <p>14 Q. And the policy that got changed in roughly 2005, did</p> <p>15 that -- did that result in more referrals to the Attorney</p> <p>16 General? I assume it did.</p> <p>17 A. Yes.</p> <p>18 Q. Do you know what the numbers are, about how many more</p> <p>19 were -- do you know how many were referred to the Attorney</p> <p>20 General during the period in which you were advising</p> <p>21 complainants that they should take their cases to local DA's</p> <p>22 first in that one year?</p> <p>23 A. I don't know exactly.</p> <p>24 Q. You don't also know, I guess, how many people went to</p> <p>25 the local DA first?</p>
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<p>1 A. The change to this or the change from this to --</p> <p>2 Q. Well, let's go back and ask. First, when did the</p> <p>3 policy start where you indicated to a complainant that they</p> <p>4 should go to the local DA first?</p> <p>5 A. That was, I think, at the end of 2004, and yes, I was</p> <p>6 involved with that policy.</p> <p>7 Q. And who did you discuss that policy with in coming up</p> <p>8 with this new policy of referring -- suggesting that people go</p> <p>9 to their local prosecutor first?</p> <p>10 A. Ben Hanson, who was our general counsel at that time.</p> <p>11 Q. And no one else?</p> <p>12 A. We met with some folks with the AG's office, Barry</p> <p>13 McBee and a couple of other people maybe. I don't remember</p> <p>14 exactly who else from the AG's office.</p> <p>15 Q. And the new policy was that you would make these</p> <p>16 letters back first that you should go to your local DA?</p> <p>17 A. Right.</p> <p>18 Q. And then how long did that policy last, roughly a year</p> <p>19 or so?</p> <p>20 A. I think so.</p> <p>21 Q. And then the policy was changed to what, to what it is</p> <p>22 now?</p> <p>23 A. To what it is now.</p> <p>24 Q. And how would you describe that policy as it existed?</p> <p>25 A. Pretty much how I described it earlier this morning,</p>	<p>1 A. Right.</p> <p>2 Q. So there would be no way of you being able to say</p> <p>3 whether or not the number went up or down of the number of</p> <p>4 complaints that people were making, correct?</p> <p>5 A. Correct.</p> <p>6 Q. If I request a ballot for mail-in voting purposes and</p> <p>7 it comes to my house and I open the envelope and I see my ballot</p> <p>8 there, is that an official ballot? If I've requested that</p> <p>9 ballot and it's been sent --</p> <p>10 A. Yes.</p> <p>11 Q. I have a news clip I'd like you to look at next.</p> <p>12 (Exhibit No. 19 marked.)</p> <p>13 A. Okay.</p> <p>14 Q. (BY MR. HEBERT) All right. A couple of questions</p> <p>15 about the news article. It appears to be a news article from</p> <p>16 the Pecos Enterprise Tuesday, October 26, 2004, correct?</p> <p>17 A. Correct.</p> <p>18 Q. In here there is a reference to the DA in Reeves</p> <p>19 County deciding not to press voter fraud charges against a</p> <p>20 Reeves County woman. Do you remember reading that?</p> <p>21 A. Yes.</p> <p>22 Q. Now, there are some statements made here about the DA</p> <p>23 contacting the Secretary of State's Office. Did you see that?</p> <p>24 A. Yes.</p> <p>25 Q. And he said that -- he's quoted as saying in here that</p>

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<p>1 he reviewed the Texas Election Code and he believes the Texas 2 Election Code authorizes persons to assist voters in reading, 3 marking or mailing their ballots. Is that a correct statement 4 of law? 5 A. Yes. 6 Q. And it says the law further provides that the person 7 may possess a voter's ballot or carrier envelope in order to 8 deposit it in the mail. That's also correct, isn't it? 9 A. Yes. 10 Q. And he had conducted -- he had consulted with a staff 11 attorney in the elections division of the Secretary of State's 12 Office, he says in this article, that it is legal for a person 13 to assist a voter in this manner, closed quote. Do you know who 14 that staff attorney might have been? 15 A. No. 16 Q. It wasn't you? 17 A. I don't think so. 18 Q. I know you're not a staff attorney. 19 A. Well, yeah. I don't think it was me. 20 Q. This would have been October of '04. You had how many 21 people working here, like, half a dozen workers maybe? 22 A. Yeah, like, six or seven. 23 Q. Now, if the person who was doing the mailing here 24 that's referenced here had not signed the carrier envelope, then 25 it would be a violation of the code, correct?</p>	<p>1 voters to make sure that they sign the carrier envelope? 2 A. Most of our material on the web is really directed to 3 the voter, but I believe it does instruct that if the voter is 4 being assisted, we instruct the voter to make sure that the 5 assistant signs. 6 Q. And does it similarly tell the voter that if somebody 7 mails their ballot for them that they should make sure that 8 their mailer signs the carrier envelope? 9 A. I think it does. I think our Dear Voter letter says 10 that. I'd have to look at it. 11 Q. Do you think it should? Should the Dear Voter letter 12 say that to give people -- if you're providing information to 13 voters about the do's and don'ts? 14 A. I would need to see the language. I mean, it may 15 already be covered. When we say if you're getting assistance, 16 that may cover the fact that somebody is going to drop it in the 17 mailbox for you. 18 Q. I'm showing you what is marked Exhibit 2, and it is 19 the 2004 letter that was sent to voters that you identified 20 earlier. And it does in fact, I believe, contain language 21 regarding the assistor should sign and the mailer, I believe, 22 should sign also, the person -- 23 A. Yeah, we do have an instruction there. It says if you 24 can't get to the mailbox to mail your own ballot, give your 25 ballot to a family member or a trusted friend to mail for you.</p>
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<p>1 A. Correct. 2 Q. And if the person who assisted the voter didn't sign 3 the carrier envelope as an assistor, that would be a violation, 4 correct? 5 A. Right. 6 Q. And we really can't tell from this whether or not 7 those circumstances existed. 8 A. That's right. 9 Q. Now, it goes on -- the DA goes on to say he encourages 10 voters to vote, including the elderly, and that they should be 11 able to get any kind of assistance they need, including the 12 disabled. They should get any assistance they need. And then 13 he goes on to say -- he goes on to talk about the Secretary of 14 State's website, which says, according to him -- recommends to a 15 voter voting by mail, quote -- and I think this is actually on 16 your website or language virtually the same, if you need help 17 reading, marking or mailing your ballot, ask a trusted friend or 18 relative to help you. That website goes on to recommend that a 19 voter decline help that is offered by a stranger, closed quote. 20 That's roughly the same as your website has said for a number of 21 years now? 22 A. Uh-huh. 23 Q. Is that a yes? 24 A. Yes. 25 Q. Does the website also tell those who are assisting</p>	<p>1 That person must place his or her signature, printed name and 2 residence address on the carrier envelope. 3 Q. Why do you include that second sentence? I mean, you 4 said your office here drafted this. 5 A. Uh-huh. 6 Q. Why do you tell voters to make sure that if 7 somebody -- to first use a trusted friend, I understand that, or 8 a family member, somebody they know of, trust of. But then you 9 go on to say that person must place their signature, name and 10 residence on the carrier envelope. Why is that language in 11 there? 12 A. That's what the law requires. 13 Q. Why did you make a decision to put it in there? The 14 law requires a lot of things that aren't listed here. I'm 15 specifically asking why that's included. 16 A. This was our best effort to educate a voter who is 17 voting by mail. So within our discretion we thought that was 18 good advice to give a voter, if they're going to give their 19 ballot to have somebody mail it for them. We thought that was a 20 good thing to mention. 21 Q. And why would that be a good thing? That's what I'm 22 asking. Not why were other things left off. I'm asking is that 23 because you wanted to advise voters that their mailer should 24 sign the carrier envelope because if they didn't sign the 25 carrier envelope they'd get prosecuted? So weren't you trying</p>

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<p>1 to help voters?</p> <p>2 A. Yeah. This letter is for voters. Now, the voter is</p> <p>3 not going to get prosecuted for that.</p> <p>4 Q. Right. Well, the voter, though -- if the voter gives</p> <p>5 their ballot to be mailed for them to someone and that person</p> <p>6 doesn't sign the carrier envelope, isn't the voter's vote</p> <p>7 canceled?</p> <p>8 A. Not automatically.</p> <p>9 Q. If that's discovered that they received assistance in</p> <p>10 the form of a mailer and the mailer didn't sign, doesn't the</p> <p>11 election code provide that the voter's ballot is canceled in</p> <p>12 situation?</p> <p>13 A. Well, realistically that is what the election code</p> <p>14 says, but that's going to be in a court of law. So if there's</p> <p>15 an election contest or some sort of activity like that, then</p> <p>16 that could happen. But the intent of this mailer is to educate</p> <p>17 a voter about their rights to vote by mail and what the rules</p> <p>18 are of voting by mail.</p> <p>19 Q. And it's to also inform them that if they give their</p> <p>20 ballot to somebody to mail for them that that person, whoever</p> <p>21 their trusted friend or family member, should sign the envelope</p> <p>22 because that's what the law requires?</p> <p>23 A. Right.</p> <p>24 Q. And it doesn't go on to say that if they fail to do</p> <p>25 that then they violate the election code and could be subject to</p>	<p>1 Q. Or you or staff of yours prepared?</p> <p>2 A. Right.</p> <p>3 Q. And did you make this presentation in June of 2006?</p> <p>4 A. Yes.</p> <p>5 Q. And to whom?</p> <p>6 A. It was a CLE event hosted by a group called Campaigns</p> <p>7 and Elections, which is actually hosted through a law firm here</p> <p>8 in Austin.</p> <p>9 Q. Which firm is that?</p> <p>10 A. I can't think of their name right now.</p> <p>11 Q. Not Bickerstaff, Heath?</p> <p>12 A. No. I'd have to look it up.</p> <p>13 Q. And this was in Houston or where was it? Here?</p> <p>14 A. I think it was in Austin.</p> <p>15 Q. Austin. On Page 18 -- I'm sorry, 17 and 18, you have</p> <p>16 several PowerPoint slides here that talk about -- on Page 17</p> <p>17 witnessing an application for ballot by mail, and then</p> <p>18 continuing on Page 18 you talk about assistance to voters in</p> <p>19 marking the ballot. I just want you to look at those real quick</p> <p>20 for me, 17 and 18.</p> <p>21 A. Okay.</p> <p>22 Q. In your PowerPoint you differentiated between people</p> <p>23 who are witnesses and people who assist -- provide assistance to</p> <p>24 people in actually marking the ballot, correct?</p> <p>25 A. Right.</p>
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<p>1 prosecution. It doesn't go on to say that.</p> <p>2 A. Right.</p> <p>3 Q. So this was 2004. Now, let's look at 2008, which is</p> <p>4 the election that just happened. I want you to focus on</p> <p>5 Paragraph 3 of both letters and I want you to note, isn't it</p> <p>6 true that in 2008 you've taken out the language advising voters</p> <p>7 who are giving their ballot to a trusted friend or a family</p> <p>8 member, the language is no longer there that the trusted friend</p> <p>9 or family member needs to put their name, address and signature</p> <p>10 on the carrier envelope? Isn't that correct?</p> <p>11 A. It's not there.</p> <p>12 Q. So it's correct that it's been removed.</p> <p>13 Let me hand you 2006, which was Exhibit 3. It's</p> <p>14 not in the Dear Voter letter from 2006 either, is it?</p> <p>15 A. No, it's not.</p> <p>16 (Exhibit No. 20 marked.)</p> <p>17 Q. (BY MR. HEBERT) I'd like to hand you what I think is</p> <p>18 Exhibit 19.</p> <p>19 THE COURT REPORTER: 20.</p> <p>20 Q. (BY MR. HEBERT) 20. And I would ask you if you can</p> <p>21 identify this for me.</p> <p>22 A. This is a PowerPoint on campaigns and voter</p> <p>23 assistance.</p> <p>24 Q. And to whom -- is this something you prepared?</p> <p>25 A. Yes.</p>	<p>1 Q. Then when we talk about actually delivering the ballot</p> <p>2 by mail, you have a slide that says a person commits an offense</p> <p>3 if the person knowingly possesses an official ballot or carrier</p> <p>4 envelope other than his own ballot. But that's not a correct</p> <p>5 statement of law, is it?</p> <p>6 A. Can I see that? Yeah. I mean, this is a bullet point</p> <p>7 that's quoting part of the statute.</p> <p>8 Q. But the only reason it would be illegal to possess the</p> <p>9 ballot of another person would be if you deposited it in the</p> <p>10 mail and intended to deposit it in the mail and didn't sign</p> <p>11 your --</p> <p>12 A. I don't think we -- I don't think that was the</p> <p>13 conclusion we reached earlier.</p> <p>14 Q. Right. We said actually a non-possessor mailer could</p> <p>15 be in violation because they were not intending to drop it in</p> <p>16 the mail. Remember my example of the next-door neighbor Joe?</p> <p>17 A. Well, actually they're kind of running together. But</p> <p>18 a person commits an offense if the person knowingly possesses an</p> <p>19 official ballot or carrier envelope other than his own ballot.</p> <p>20 I believe that's quoting from the election code directly.</p> <p>21 Q. Right. But if you do that, the way to avoid violating</p> <p>22 the election code is if you fall into certain exception</p> <p>23 categories?</p> <p>24 A. Right.</p> <p>25 Q. And where are the exception categories listed? Are</p>

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<p>1 they listed on the next page? I don't know.</p> <p>2 A. Yes, under defenses.</p> <p>3 Q. Now, when you -- thank you for bringing that up. On</p> <p>4 Page 20 where you say that the person signs his name, what do</p> <p>5 you actually have to put on the carrier envelope if you're</p> <p>6 depositing it in the mail if you're not a family member? Don't</p> <p>7 you have to put your printed name, your address and your</p> <p>8 signature?</p> <p>9 A. Yes.</p> <p>10 Q. And yet this just says sign your name and print your</p> <p>11 address. So I was wondering why you didn't say print your name</p> <p>12 and address. I know it's a bullet point, but I'm just asking</p> <p>13 if -- if there was a reason for that.</p> <p>14 A. I can't think of a reason right now.</p> <p>15 Q. And who are the people who attend this conference?</p> <p>16 A. I think these were people who worked in campaigns.</p> <p>17 Q. Political campaigns?</p> <p>18 A. Political campaigns.</p> <p>19 Q. So would they have included people from political</p> <p>20 parties?</p> <p>21 A. Yes.</p> <p>22 Q. So the Republican -- state Republican party, state</p> <p>23 Democratic party, Green party, whatever other parties --</p> <p>24 A. Yes.</p> <p>25 Q. -- might be interested?</p>	<p>1 A. Yeah. I think it means the same thing. It means the</p> <p>2 language changed on the form.</p> <p>3 Q. On the carrier envelope?</p> <p>4 A. On the officially prescribed form for carrier</p> <p>5 envelope.</p> <p>6 Q. Now, is that authority that your office possesses, to</p> <p>7 make changes like that, or does that have to come through the</p> <p>8 legislature, changing what's on the carrier envelope?</p> <p>9 A. Well, our office is charged with prescribing all the</p> <p>10 election forms, and of course we have to do that consistent with</p> <p>11 state law. So if the state legislature makes a change, we're</p> <p>12 going to change the form.</p> <p>13 Q. And so your office is the office that actually decides</p> <p>14 what the carrier envelope is going to look like to match Texas</p> <p>15 state laws passed by the legislature?</p> <p>16 A. Yes.</p> <p>17 Q. Now, on this exhibit Page 3 it says -- it added</p> <p>18 additional language explaining the requirement of an assistant</p> <p>19 witness to provide signature, printed name and address even if</p> <p>20 the person is mailing the envelope for the voter or delivering</p> <p>21 the envelope to a common or contract carrier, closed quote. But</p> <p>22 in fact, the way this reads, does it not read that the carrier</p> <p>23 envelope language that's been added requires witnesses and</p> <p>24 assistants who mail ballots must sign the carrier envelope?</p> <p>25 A. I don't understand your question.</p>
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<p>1 A. Yes.</p> <p>2 (Exhibit No. 21 marked.)</p> <p>3 Q. (BY MR. HEBERT) Exhibit 21. And if you could</p> <p>4 identify what that is for me.</p> <p>5 A. Okay.</p> <p>6 Q. What is Exhibit 21?</p> <p>7 A. That's an advisory that our office sent out to cities,</p> <p>8 schools and other political subdivisions in April of 2004.</p> <p>9 Q. Now, I notice in this advisory -- what's the purpose</p> <p>10 of sending out an election advisory from your office?</p> <p>11 A. It's to provide guidance to local election authorities</p> <p>12 on how to follow election laws, make sure that it's followed</p> <p>13 consistently throughout the state.</p> <p>14 Q. Is it also to provide them notice of changes that have</p> <p>15 been made in various forms or the law itself?</p> <p>16 A. Yes.</p> <p>17 Q. Look at Page 3, the provision called Carrier Envelope.</p> <p>18 Just look that over for me and I'm going to ask a couple of</p> <p>19 questions about that.</p> <p>20 A. Okay.</p> <p>21 Q. It says that there is an updated carrier envelope</p> <p>22 form, updated form. Is that because there was a new carrier</p> <p>23 envelope that year or was there a new form related to the</p> <p>24 carrier envelope? It says updated form whereas it doesn't say</p> <p>25 new form, which some of the others do say.</p>	<p>1 Q. Well, if -- the carrier envelope did not say in 2004</p> <p>2 on it that if you were simply mailing the ballot for somebody</p> <p>3 you had to sign. That's a fact, isn't it? In 2004 the carrier</p> <p>4 envelope didn't say that if you were simply mailing the ballot</p> <p>5 for somebody else -- and I'll show you what's been marked</p> <p>6 Exhibit 6, the carrier envelope. It doesn't say anywhere that</p> <p>7 if you're mailing the ballot for somebody else, not witnessing</p> <p>8 and not assisting, you're simply mailing, it doesn't say</p> <p>9 anywhere on there that you're to sign, does it, on a carrier</p> <p>10 envelope?</p> <p>11 A. No, not on the carrier envelope.</p> <p>12 Q. Okay. So my question is that the way this advisory</p> <p>13 reads, it says to me that -- and I'm asking if this is a</p> <p>14 reasonable interpretation or what was meant here -- that it</p> <p>15 added additional language explaining the requirement of an</p> <p>16 assistant or a witness to provide their signature, printed name</p> <p>17 and address even if the person -- and I read that to mean the</p> <p>18 person assisting or witnessing -- is mailing the envelope for</p> <p>19 the voter or delivering the envelope to a common or contract</p> <p>20 carrier. Isn't that one reasonable way to read that?</p> <p>21 A. Well, I mean, the intent of this advisory is -- you</p> <p>22 know, the subject matter is new forms so it's four pages of new</p> <p>23 forms. It's not intended to describe the law behind each one of</p> <p>24 these changes and many of them were HAVA changes. So the intent</p> <p>25 of this was to say, cities, schools, these are the new forms and</p>

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<p>1 these are the changes. So the change here we do include space</p> <p>2 now for printed name, signature and residence address of</p> <p>3 assistant or witness. So that's how it's changed.</p> <p>4 I mean, that's what this advisory is for and it</p> <p>5 was enclosed with copies of all these new forms. It wasn't</p> <p>6 intended to explain the entire background of the underlying</p> <p>7 change.</p> <p>8 Q. And the advisory that was sent out with regard to the</p> <p>9 new form, would you agree that it's at least ambiguous about</p> <p>10 whether or not mailers who are not assistants or witnesses are</p> <p>11 the people being referred to as the person here?</p> <p>12 A. Yeah, because it wasn't intended to describe what the</p> <p>13 change was. It was intended to say these forms have all</p> <p>14 changed. You need to use these. We've provided other</p> <p>15 instructions on what the underlying change is.</p> <p>16 Q. It was intended, though, to inform people what the</p> <p>17 nature of the change was in the carrier envelope?</p> <p>18 A. Right, which is the case. I mean, it now contains a</p> <p>19 space for assistants to sign and put their residence address.</p> <p>20 Q. Assistants and witnesses?</p> <p>21 A. Right.</p> <p>22 Q. Now, the form that was included with the carrier</p> <p>23 envelope giving voters explanations of what they were supposed</p> <p>24 to do with their ballot when it comes to assistants, witnesses,</p> <p>25 and so on, you've got a provision here again at the bottom of</p>	<p>1 like you to look it over. It's a 2006 referral from your office</p> <p>2 to the Attorney General regarding the Fort Worth ISD.</p> <p>3 A. I've reviewed that letter.</p> <p>4 Q. Okay. Now, I notice that the referral here was based</p> <p>5 on a letter from a Ms. Benton who had requested confidentiality,</p> <p>6 or as she called it anonymity, stating that various elderly</p> <p>7 voters in the area may have been improperly influenced in</p> <p>8 filling out applications for a mail-in ballot or may have had</p> <p>9 their applications taken from them entirely and filled out by</p> <p>10 another individual not authorized by the voters. Do you</p> <p>11 remember seeing that?</p> <p>12 A. Yes.</p> <p>13 Q. And she also states that multiple applications for</p> <p>14 mail ballots included very similar handwriting and signature</p> <p>15 style. Do you remember that?</p> <p>16 A. Yes.</p> <p>17 Q. Again, this is an unsworn statement, correct?</p> <p>18 A. I think most of the referrals don't have sworn</p> <p>19 statements.</p> <p>20 Q. But this one I'm talking about.</p> <p>21 A. I didn't see a sworn statement on this one either.</p> <p>22 Q. Now, I guess what I can't quite figure out from these</p> <p>23 documents is that I don't really see in this complaint letter,</p> <p>24 which is really the only complaint letter -- part of the letter</p> <p>25 that really has substantive complaint in it is Page 3 -- I don't</p>
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<p>1 Page 3 that says, quote -- and again, it's an updated form.</p> <p>2 Important information about returning your marked ballot in the</p> <p>3 carrier envelope: Updated form - added additional language</p> <p>4 explaining the requirement of an assistant/witness to provide</p> <p>5 signature, printed name and address even if the person is</p> <p>6 mailing the envelope for the voter or delivering the envelope to</p> <p>7 a common or contract carrier. That's almost identical to the</p> <p>8 language we saw above with carrier envelope, isn't it?</p> <p>9 A. Yes.</p> <p>10 Q. So the form that was used from 2004 until the present</p> <p>11 actually or until you have free clearance, I guess, is a form</p> <p>12 that instructs voters that assistants or witnesses must sign the</p> <p>13 carrier envelope. And the carrier envelope from 2004 to the</p> <p>14 present similarly says that assistants or witnesses must sign</p> <p>15 the carrier envelope, correct?</p> <p>16 A. Well, I don't know if you have a copy of this other</p> <p>17 form, but you reference this important information.</p> <p>18 Q. The instruction to voters form, right?</p> <p>19 A. I'd like to see that before I answer your question.</p> <p>20 MS. WILSON: Gerry, when you get to a logical</p> <p>21 stopping place.</p> <p>22 MR. HEBERT: Okay. Let me try to get there right</p> <p>23 after I ask this next series of questions.</p> <p>24 (Exhibit No. 22 marked.)</p> <p>25 Q. (BY MR. HEBERT) This is Exhibit 22. And again, I'd</p>	<p>1 really see in there anything stating that elderly voters were</p> <p>2 improperly influenced in filling out their applications or they</p> <p>3 maybe had been taken from them in their entirety. And I'd ask</p> <p>4 you to look at Page 3 and see if you can direct me to language</p> <p>5 that -- in the complaint letter that suggests that that's what</p> <p>6 is being alleged here. There is the whole packet. And we're</p> <p>7 looking now at Exhibit 21, I believe.</p> <p>8 A. 22.</p> <p>9 Q. 22. Thank you.</p> <p>10 A. So I guess this was --</p> <p>11 Q. Yeah, that's Page 3 of --</p> <p>12 A. Okay.</p> <p>13 Q. Right.</p> <p>14 A. There's also an allegation that the signatures on</p> <p>15 these applications for ballot -- you know, she indicates that</p> <p>16 she was contacted by someone in the Tarrant County Election</p> <p>17 Administrator's Office and said that 45 mail requests were all</p> <p>18 in the same handwriting and the signatures were in the same</p> <p>19 handwriting and she provided the name of the employee who called</p> <p>20 to tell her that.</p> <p>21 Q. Isn't that for the early ballot board to decide</p> <p>22 whether the signatures match up?</p> <p>23 A. It is, but, I mean, if the county election office is</p> <p>24 reviewing it and sees something strange -- I mean, that is also</p> <p>25 forgery. So, I mean, it wouldn't necessarily affect the</p>

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<p>1 validity of that ballot, but it could certainly institute or 2 begin a criminal investigation. 3 Q. But the county elections office didn't refer it to 4 you, they referred it to the candidate. 5 A. That's what the letter says. 6 Q. Or maybe some friend of the candidates who works at 7 the elections office. 8 A. Possibly. 9 Q. Maybe her daughter. 10 A. But then she referred it to us. 11 Q. But the point is, though, that earlier when I showed 12 you a complaint that you did not refer, you indicated that you 13 did not refer it because the allegations were that the 14 signatures were different on the voters' forms on the 15 application from the ballots that were received and you didn't 16 refer that because you said that's a matter for the early voting 17 ballot board to decide. 18 A. I believe what I said was when we considered that 19 other complaint in its entirety, we didn't see that it rose to 20 the level of making a referral. It was general allegations. 21 And again, just because the ballot board -- what the ballot 22 board does or doesn't do is not necessarily a crime. This is 23 specifically alleging forgery on 45 applications for ballot by 24 mail that are all in the same handwriting. 25 Q. By a candidate who has a stake in the election?</p>	<p>1 you, the state rep from that area? 2 A. No. 3 MR. HEBERT: Good breaking point. 4 (Break was taken from 2:15 p.m. to 2:29 p.m.) 5 (Exhibit Nos. 23 through 28 marked.) 6 Q. (BY MR. HEBERT) I asked you to produce for me and you 7 found it, as did I, instructions that were included to voters 8 along with their ballot and their carrier envelopes. We 9 previously went through, Ms. McGeehan, a series of questions 10 about whether the carrier envelope noted that if somebody were 11 mailing the ballot only but not assisting or witnessing there 12 was no indication on the mail-in ballot -- the carrier envelope, 13 that is, that they should be doing that, correct? We 14 established that already, correct? 15 MS. WILSON: Objection, vague. 16 Q. (BY MR. HEBERT) You understand my question? 17 A. I understand your question. 18 Q. All right. I'm going to go through it again because I 19 want to make sure that there is no confusion about this. 20 MS. WILSON: My problem with your question is 21 that it ended with there is no indication they should be doing 22 that without explaining what that is. And so I'm not saying we 23 need to go back to another exhibit and go over previous 24 testimony, and, in fact, I will say that that's asked and 25 answered. All I wanted you to do was clean up that one question</p>
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<p>1 A. That's true. 2 Q. And there are references in there that former State 3 Representative Glenn Lewis was involved in getting this 4 complaint to your attention. Did you see that? 5 A. I saw that in some e-mail. 6 Q. And he indicated that he was a friend of the Secretary 7 of State's. Did you see that? 8 A. I saw that. 9 Q. Do you think that had anything to do with you 10 referring it to the Attorney General for prosecution rather than 11 following a course different? 12 A. Not really. I mean, it's pretty common for somebody 13 to go to a state representative for guidance on, you know, how 14 do I get something done. So that's pretty common that a state 15 representative will send a constituent to us or they might call 16 us first to find out what the steps are. 17 Q. Wasn't Glenn Lewis out of the legislature by '06? 18 A. I think that's what these e-mails indicate. 19 Q. He was no longer a state -- 20 A. It said he was a former state representative or 21 something like that, yeah. 22 Q. So he wasn't the state rep. Mark Veezy (sic) was the 23 state representative from that area at that time. 24 A. I don't know. I don't dispute you, but I don't know. 25 Q. You don't see anything in there from Mark Veezy, do</p>	<p>1 and try to make it clear what you're referring to when you said 2 that. 3 MR. HEBERT: And that's what I'm going to try to 4 do. 5 MS. WILSON: Great. 6 Q. (BY MR. HEBERT) Exhibit 6, the carrier envelope that 7 we identified earlier that has been used at least between 2004 8 and 2008 does not contain any place on it indicating that if a 9 person is simply mailing the ballot for another person that they 10 should sign the carrier envelope. 11 MS. WILSON: This has been asked and answered. 12 Q. (BY MR. HEBERT) Isn't that correct? 13 MS. WILSON: This has been asked and answered. 14 A. That's correct. 15 MS. WILSON: This has been asked and answered and 16 the document speaks for itself. 17 A. Right. It says that -- it talks about the assistant 18 or witness. An assistant -- part of assistance could include 19 mailing the ballot. 20 Q. (BY MR. HEBERT) But the definition of assistance in 21 the election code doesn't say mailing a ballot as assistance, 22 does it, 64.0321? 23 A. The general definition of assistance, right. That 24 applies for, you know, all aspects of election. Early voting 25 election day, polling --</p>

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<p>1 Q. Does not include mailing a ballot as a form of 2 assistance?</p> <p>3 A. Correct.</p> <p>4 Q. Now, I want to show you a document marked Exhibit 28 5 and ask you to identify that for me.</p> <p>6 A. This is the insert that goes with the balloting 7 materials when the early voting clerk mails the balloting 8 materials to the voter.</p> <p>9 Q. And is there any instruction on there to voters that 10 if someone mails the ballot for them that they need to make sure 11 that the mailer signs the carrier envelope and provides their 12 name and address?</p> <p>13 MS. WILSON: The document speaks for itself.</p> <p>14 A. Yes.</p> <p>15 Q. (BY MR. HEBERT) And where is that on that 16 instruction?</p> <p>17 A. It's Number 2 under important information about 18 returning your marked ballot in the carrier envelope.</p> <p>19 Q. Okay. And it specifically says that if a person helps 20 you in marking your ballot or deposits your carrier envelope in 21 the mail and delivers it to a common or contract carrier, that 22 person must sign your carrier envelope and include their printed 23 name and address, correct?</p> <p>24 A. Yeah. I think we say if a person, and then in 25 parentheses we say assistant, helps you in marking your ballot</p>	<p>1 A. Right. No, it doesn't. It says if a person helps 2 you.</p> <p>3 Q. (BY MR. HEBERT) And then I want to show you a series 4 of other Exhibits, 23 through 27. And I'm going to hand each of 5 them to you and ask you to look at them and to also note at the 6 bottom we've pulled these off the archive of the Secretary of 7 State's website starting with 2004, 2005, 2006, 2007 and 2009. 8 And ask you to just look those over for me. And I'm going to 9 ask you what they are.</p> <p>10 A. Okay.</p> <p>11 Q. In these various Exhibits 23 through 27, I noted that 12 in 23 and then subsequently in each of the other exhibits, 13 there's a section on there that gives an example about a 14 stranger might show up on your doorstep. Do you remember that?</p> <p>15 A. Yes.</p> <p>16 Q. And there are instructions there and I'm going to ask 17 you some questions about that. But first let me ask you, what 18 are these documents? They're instructions, I know, about early 19 voting but to whom do they go to? Who prepared them?</p> <p>20 MS. WILSON: Objection, compound.</p> <p>21 Q. (BY MR. HEBERT) So let's start with does your office 22 prepare this?</p> <p>23 A. Yes.</p> <p>24 Q. So the 23 through 27?</p> <p>25 A. Yes.</p>
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<p>1 or deposits your carrier envelope in the mail, that person must 2 sign your carrier envelope and include a printed name and 3 address.</p> <p>4 Q. Now, is it possible that if somebody got this they 5 might believe that -- because the way you've put the word 6 "assistant" in there, that that only requires an assistant to do 7 that if an assistant is mailing the ballot rather than a 8 non-assistor mailer?</p> <p>9 MS. WILSON: Objection, vague.</p> <p>10 Q. (BY MR. HEBERT) You see what I'm asking?</p> <p>11 A. Well, I don't know. I think it clearly puts the voter 12 on notice that if somebody deposits your carrier envelope in the 13 mail that person has to sign your carrier envelope.</p> <p>14 Q. But it's telling the voter that that person, and you 15 put in parentheses assistant, isn't that suggesting to the voter 16 that if an assistant is helping you in marking your ballot or 17 deposits the ballot in the mail then they must put their name on 18 the envelope?</p> <p>19 A. I think it's saying as an example but it's not 20 exclusive.</p> <p>21 Q. But it doesn't say if somebody is not an assistant but 22 is mailing a ballot for you and that's all they're doing, is 23 mailing a ballot for you, that they must put their name on the 24 envelope, does it?</p> <p>25 @ATTY2: Document speaks for itself.</p>	<p>1 Q. And what is the purpose of these documents?</p> <p>2 A. These are pamphlets that are designed for voters and 3 then we also posted them on our website.</p> <p>4 Q. Do they get mailed to voters, do you know?</p> <p>5 A. Yes.</p> <p>6 Q. And how is it decided who gets one?</p> <p>7 A. This is based on a voter calling our office and saying 8 I'd like some more information on early voting. We'll get their 9 name and number or name and address and send it to them.</p> <p>10 Q. And does this ever get handed to voters -- county 11 election offices, I mean? Does it get distributed to county 12 election offices other than on the web?</p> <p>13 A. In 2004 we -- 2004 I believe was the last year that we 14 printed these pamphlets, and when we printed them, yes, we would 15 send maybe 20 pamphlets to each county office so they could have 16 them on hand. Since 2005 it's been a web-only publication so we 17 don't send it out to the counties.</p> <p>18 Q. Was the paragraph I referenced in Exhibit 23 -- which 19 also appears, I believe, in all of the subsequent exhibits, does 20 it not?</p> <p>21 A. Yes.</p> <p>22 Q. That is to say 23 through 27. That language was 23 actually added in 2004, was it not, after the 2003 amendments to 24 the election code?</p> <p>25 A. I don't think so. We've had various pamphlets through</p>

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<p>1 the years and I believe this language was taken from another</p> <p>2 pamphlet that we had.</p> <p>3 Q. Well, let me show you what's been marked Exhibit 29,</p> <p>4 which is the pamphlet from 2001, and I don't see the paragraph</p> <p>5 referencing hand in your ballot -- mail-in ballot to a stranger</p> <p>6 for mailing in there, but I may have missed it.</p> <p>7 A. Well, we used to have a separate pamphlet --</p> <p>8 Q. Well, what is Exhibit 28?</p> <p>9 A. 29?</p> <p>10 Q. I'm sorry. 29, yes.</p> <p>11 A. Well, this shows it's taken from our web archive.</p> <p>12 Q. From 2001 it indicates at the bottom?</p> <p>13 A. Yes. This was off our website apparently.</p> <p>14 Q. Right. And is it similar to the other documents, 23</p> <p>15 through 27, in the sense that it is early voting instructions</p> <p>16 that are published by your office as a voter information packet?</p> <p>17 A. Yeah. It's general information about early voting in</p> <p>18 Texas.</p> <p>19 Q. And that's essentially what the other documents are,</p> <p>20 23 through 27, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And 23 through 27, however, contain more detail than</p> <p>23 23 -- 29, rather?</p> <p>24 A. Yes.</p> <p>25 Q. Now, I want to call your attention to the provision of</p>	<p>1 accordance with that section, closed quote. And that's that</p> <p>2 section you just read, 86.0051B.</p> <p>3 So the exception is that the person who is doing</p> <p>4 the mailing has to put their name, address and signature on the</p> <p>5 carrier envelope if they are possessing the ballot -- an</p> <p>6 official ballot or official carrier envelope of another,</p> <p>7 correct?</p> <p>8 MS. WILSON: The document speaks for itself. You</p> <p>9 can answer the question.</p> <p>10 A. Yes.</p> <p>11 Q. (BY MR. HEBERT) Now, let's take any one of these</p> <p>12 exhibits from 23 to 28, and let's look at the paragraph in</p> <p>13 question. They're all, I believe, the same so if you would take</p> <p>14 26. I'll take 27. Ms. Wilson, if she wants, can take 25 or 24.</p> <p>15 And I would like to go to the example for example. Now, the</p> <p>16 part that I want to focus in on is from the "Remember," the last</p> <p>17 three sentences. "Remember" -- now this is going to voters.</p> <p>18 "remember, you" -- I'm going to quote here.</p> <p>19 "Remember, you must put each helper's name and</p> <p>20 address on the carrier envelope, which is the one used to return</p> <p>21 your ballot to the early voting clerk. The helpers must also</p> <p>22 sign the carrier envelope." And then it notes, quote, failure</p> <p>23 to provide required assistance information may constitute a</p> <p>24 criminal offense, closed quote. So this is really not accurate,</p> <p>25 is it?</p>
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<p>1 the election code 86.0051 and in particular Subpart B. And I</p> <p>2 would ask you to read that out loud for me.</p> <p>3 A. "A person other than the voter who deposits the</p> <p>4 carrier envelope in the mail or with a common or contract</p> <p>5 carrier must provide the person's signature, printed name and</p> <p>6 residence address on the reverse side of the envelope."</p> <p>7 Q. Now, what do you understand that to mean?</p> <p>8 A. That if you take the voter's carrier envelope and</p> <p>9 deliver it in the mail or give it to a common or contract</p> <p>10 carrier, then you need to sign your name, provide your name and</p> <p>11 address.</p> <p>12 Q. All right. And if you don't you commit an offense,</p> <p>13 correct?</p> <p>14 A. Right, unless you fall into one of the exceptions.</p> <p>15 Q. Right. And one of the exceptions is that a person</p> <p>16 commits an offense if the person knowingly possesses an official</p> <p>17 ballot or official carrier envelope provided under this code to</p> <p>18 another, period. And then it says the exceptions, unless the</p> <p>19 person possessed the ballot or carrier envelope with intent to</p> <p>20 defraud the voter or the election authority. This subsection</p> <p>21 does not apply to a person who on the date of the offense was,</p> <p>22 and then it has six exceptions, one of which is Number 4, a</p> <p>23 person who possesses the carrier envelope in order to deposit</p> <p>24 the envelope in the mail or with a common or contract carrier</p> <p>25 and who provides the information required by 86.0051B in</p>	<p>1 A. How is that not accurate?</p> <p>2 Q. Because it is telling the voter that they must put the</p> <p>3 helper's name and address on the carrier envelope, and we just</p> <p>4 read the code and the code said that the helper must put their</p> <p>5 name, address and signature on the carrier envelope.</p> <p>6 A. I don't know that that really makes any difference. I</p> <p>7 mean, any --</p> <p>8 Q. But why, because --</p> <p>9 MS. WILSON: Please let my client finish her</p> <p>10 answer. Please go on and finish your answer.</p> <p>11 A. This is designed -- we try to design these so that</p> <p>12 they're understandable by the general public. So it's not</p> <p>13 designed as a legal document. It's not a direct quotation out</p> <p>14 of the law. It's designed for voters to understand what the</p> <p>15 process is. And it's not --</p> <p>16 Q. (BY MR. HEBERT) Does the law say that the voter must</p> <p>17 put the mailer's name and address on the ballot envelope or does</p> <p>18 it say that mailer must?</p> <p>19 A. Can I see it again?</p> <p>20 MS. WILSON: Asked and answered. The document</p> <p>21 speaks for itself.</p> <p>22 A. I disagree. I mean, 86.0051 says a person other than</p> <p>23 the voter must provide the person's signature, printed name and</p> <p>24 residence address. So there is nothing inconsistent with that</p> <p>25 in having the voter -- the only thing that the voter can't do is</p>

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<p>1 sign, but the voter could certainly write the assistant's</p> <p>2 name -- print their name and write their address. The</p> <p>3 requirement is that it be provided. So I don't know that it has</p> <p>4 to be -- there's nothing that says that it must be in the</p> <p>5 handwriting of the assistant.</p> <p>6 Q. (BY MR. HEBERT) I'm not talking about the</p> <p>7 handwriting. I'm asking doesn't the statute expressly provide</p> <p>8 that a person other than the voter --</p> <p>9 A. Right, and it's not -- this is not inconsistent. The</p> <p>10 assistant could provide their address to the voter and the voter</p> <p>11 can mark it on the carrier envelope.</p> <p>12 Q. So you're saying that a person other than the voter</p> <p>13 has to provide that information, can be the voter except the</p> <p>14 signature?</p> <p>15 A. I'm saying that the -- if a voter allowed somebody to</p> <p>16 take their ballot to have it be mailed for them, the voter can</p> <p>17 mark that person's name and address. That's not inconsistent</p> <p>18 with state law. And this is just letting the voter know that</p> <p>19 that part needs to be completed if they're going to give their</p> <p>20 ballot to somebody else to deliver.</p> <p>21 Q. Well, then how can you square that interpretation with</p> <p>22 the language of the statute itself, which says that the person</p> <p>23 mailing the ballot must provide that information?</p> <p>24 MS. WILSON: Asked and answered. You can answer</p> <p>25 again.</p>	<p>1 actually the envelope had information and sent them a subsequent</p> <p>2 envelope.</p> <p>3 A. No, that's not right.</p> <p>4 Q. Maybe I misread your letter.</p> <p>5 A. There is a copy of it right there. That's what we</p> <p>6 submitted and the front page.</p> <p>7 Q. Now, it says at the top -- we'll mark this.</p> <p>8 A. Oh, this was the old one, right.</p> <p>9 Q. You see where I'm confused -- and we'll go ahead and</p> <p>10 mark this as Exhibit 31. It's an excerpt from your Department</p> <p>11 of Justice submission.</p> <p>12 A. Where is the document that I gave you before lunch</p> <p>13 that Melinda Nickless brought in? Oh, that was this.</p> <p>14 Q. (BY MR. HEBERT) Yes.</p> <p>15 A. And that's what we made a copy of.</p> <p>16 Q. Correct, and that's Exhibit 6.</p> <p>17 A. I think what's going on here is we have an electronic</p> <p>18 file form and this is probably not exactly accurate. On this it</p> <p>19 says before November change, which is accurate for this front</p> <p>20 side, but the reverse side that has the extra spaces, that</p> <p>21 actually reflects the change that was made in '07 and it even</p> <p>22 says that on the bottom.</p> <p>23 Q. And it does on Exhibit 30 as well?</p> <p>24 A. Yeah.</p> <p>25 Q. And so the fact is, though, that prior to 2008 you</p>
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<p>1 A. Yeah. I think provide means provide the information.</p> <p>2 I don't know that it necessarily means that they themselves</p> <p>3 write it on the application other than the signature, which</p> <p>4 obviously can only be from the person who is going to be</p> <p>5 depositing the ballot.</p> <p>6 Q. (BY MR. HEBERT) So that's your interpretation?</p> <p>7 A. That's my interpretation.</p> <p>8 (Exhibit No. 30 marked.)</p> <p>9 Q. (BY MR. HEBERT) And can you tell me what we've marked</p> <p>10 as Exhibit 30?</p> <p>11 A. This is a carrier envelope, and I'm not sure -- is</p> <p>12 this the one we gave you?</p> <p>13 Q. Yes.</p> <p>14 A. I would think that this part needs to be -- we might</p> <p>15 have given you -- was this the one I gave you this morning?</p> <p>16 Q. Yes.</p> <p>17 A. Well, I'm just wondering if it's the right one because</p> <p>18 we were handing back and forth a couple of different ones. And</p> <p>19 the one -- if this is -- if you're wanting this to be an exhibit</p> <p>20 that shows the changes we made and submitted to the justice</p> <p>21 department, I don't think this is accurate because it doesn't</p> <p>22 have the change on the front side of the carrier envelope.</p> <p>23 Q. Okay. So originally when we made a submission to the</p> <p>24 justice department -- and I'm asking this because I don't</p> <p>25 know -- you submitted this envelope and then realized that</p>	<p>1 have not used this carrier envelope, correct?</p> <p>2 A. We've never used this carrier envelope.</p> <p>3 Q. Right. And this is the one that now contains a place</p> <p>4 for -- has two slashes on the signature line?</p> <p>5 A. Yes.</p> <p>6 Q. And that creates -- ostensibly creates a space for an</p> <p>7 assistant and a witness and what is called here, quote, persons</p> <p>8 handling the ballot or carrier envelope, close quote?</p> <p>9 A. Yes.</p> <p>10 Q. It doesn't say the mailer, does it?</p> <p>11 A. No.</p> <p>12 Q. And, in fact, the box that that is in only has the</p> <p>13 name assistant and witness in it. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. It doesn't say assistant slash witness slash person</p> <p>16 handling ballot, does it?</p> <p>17 A. It doesn't.</p> <p>18 Q. Now, if somebody were to be assisted in their voting,</p> <p>19 where would the assistor -- where would the witness sign? Let's</p> <p>20 start with the witness. Somebody's vote signature is going to</p> <p>21 be witnessed. Where does the witness sign on this Exhibit 30?</p> <p>22 A. They would sign one of these spaces.</p> <p>23 Q. And what if they interpreted that line to mean their</p> <p>24 first name, middle name and last name. Could they put that on</p> <p>25 there if they're a witness?</p>

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<p>1 A. They could.</p> <p>2 MS. WILSON: Objection, speculation.</p> <p>3 Q. (BY MR. HEBERT) And if they did that and then the</p> <p>4 person were assisted or subsequently a person came along who</p> <p>5 possessed the ballot, where would that person sign or put their</p> <p>6 name?</p> <p>7 A. The form has been designed so that there is three</p> <p>8 signature lines and underneath the lines it says printed names</p> <p>9 and signatures of all assistants, witnesses or persons handling</p> <p>10 the ballot or carrier envelope. So the intent here is that</p> <p>11 these would be separate places for signatures. Now, people can</p> <p>12 do anything they want to on a form, but that's clearly how it's</p> <p>13 been designed.</p> <p>14 Q. And the space here that's to the right of the X but</p> <p>15 before the first slash, someone is supposed to put their name --</p> <p>16 printed name and signature in that space, correct?</p> <p>17 A. Right.</p> <p>18 Q. If they are a witness or an assistor or a possessor?</p> <p>19 A. Right.</p> <p>20 Q. And similarly, somebody is supposed to -- if they come</p> <p>21 along as a second person who provides some form of either</p> <p>22 witnessing assistance or possessing a ballot, they have to put</p> <p>23 their name and printed address between the first and second</p> <p>24 slashes, correct?</p> <p>25 A. In the event that three separate people would be</p>	<p>1 Q. And if -- wouldn't one of the persons named above be</p> <p>2 the voter? Isn't the voter supposed to sign above that line?</p> <p>3 A. Well, it's a separate box.</p> <p>4 Q. Right.</p> <p>5 A. This is a box for assistants, witnesses.</p> <p>6 Q. But isn't the signature of the voter above the</p> <p>7 statement that says residence address of persons named above?</p> <p>8 A. Yeah. But, I mean, the intent was to keep it within</p> <p>9 that box.</p> <p>10 Q. There is no delineation in this line in difference in</p> <p>11 boldness or thickness from any of the other lines to indicate</p> <p>12 that it's a separate provision, is it?</p> <p>13 A. Well, you know, several lines don't go all the way so</p> <p>14 this is clearly demarking it as a separate box.</p> <p>15 Q. Well, the lines that don't go all the way are the ones</p> <p>16 where the voter is supposed to supply information like a</p> <p>17 signature --</p> <p>18 A. Right.</p> <p>19 Q. -- name and address?</p> <p>20 A. Within the context of direction, within that box.</p> <p>21 Q. I guess what I -- well, let's go ahead and mark this</p> <p>22 as Exhibit 31 so I can ask a couple of questions about it.</p> <p>23 (Exhibit No. 31 marked.)</p> <p>24 Q. (BY MR. HEBERT) This Exhibit 31, this was submitted</p> <p>25 to the justice department and it says before November of 2008.</p>
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<p>1 assisting a voter, which is not a scenario I'm familiar with.</p> <p>2 But in the event that three separate people assisted one voter</p> <p>3 to vote, then they could sign those three separate places.</p> <p>4 Q. But similarly you've seen all kinds of ways these</p> <p>5 forms have been filled out, I assume?</p> <p>6 A. Actually we don't get these forms. These go to the</p> <p>7 early voting clerks. So they're not mailed to our office.</p> <p>8 Q. But you have seen some?</p> <p>9 A. Yeah.</p> <p>10 Q. And when you do see them, you probably see all kinds</p> <p>11 of signatures in here of all kinds of ways people sign?</p> <p>12 A. I'm just saying generally on forms people don't always</p> <p>13 follow the instructions.</p> <p>14 Q. Precisely. Similarly they're supposed to put their</p> <p>15 residential address down below in the small space that's down</p> <p>16 here at the bottom, correct?</p> <p>17 A. Right.</p> <p>18 Q. And again, whereas at the top it says assistant and</p> <p>19 witness only must sign and put their printed name. Here for the</p> <p>20 address it says printed name and signatures of all assistants --</p> <p>21 I'm sorry, it doesn't. It says printed names and signatures of</p> <p>22 all assistants, witnesses or persons handling the ballot or</p> <p>23 carrier envelope here and then down below it simply says</p> <p>24 resident address of person named above, correct?</p> <p>25 A. Yes.</p>	<p>1 But, in fact, that ballot has never been used.</p> <p>2 A. That's correct.</p> <p>3 Q. So isn't there -- the justice department then doesn't</p> <p>4 have this ballot, which is really the ballot used before 2008.</p> <p>5 And by this ballot I mean Exhibit 6.</p> <p>6 A. Yeah. That sort of -- I realized that in just this --</p> <p>7 just a few minutes ago that this -- we tried to pull a sample of</p> <p>8 the old form and the new form so they could see what the change</p> <p>9 was and it looks like the wrong form was pulled to be an example</p> <p>10 of the old form. So we'll correct that right away.</p> <p>11 Q. We'll supplement your submission?</p> <p>12 A. Yes, another time.</p> <p>13 Q. I'm familiar with that process.</p> <p>14 Now, I noticed that in 86.0051 -- I'm sorry,</p> <p>15 86.006, if I have served as a witness for someone and witnessed</p> <p>16 their ballot and I sign as a witness and I, you know, note in my</p> <p>17 signature that I'm a witness, I don't mail the ballot for them,</p> <p>18 would I not still not be one of the people accepted under this</p> <p>19 86.006F, that there is no exception for a witness? Because a</p> <p>20 witness does possess the ballot of another person and is not</p> <p>21 mailing it, presumably under my hypothetical I'll tell you, is</p> <p>22 not related within the degree of affinity or consanguinity,</p> <p>23 doesn't live at the same address, is not a mail carrier.</p> <p>24 A. Well, I guess I would disagree with that</p> <p>25 characterization because to witness the carrier envelope you</p>

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<p>1 have to witness in the presence of the voter. So if I am 2 witnessing Kathy's -- say Kathy is the voter and I'm going to 3 witness -- let's say she marks her X and I witness that, I 4 wouldn't say that I'm in possession of the ballot. Kathy's in 5 possession of the ballot. I'm witnessing it. 6 Q. Well, if she says -- well, how are you going to sign 7 it without possessing it? Don't you have to take the document 8 in order to sign it as a witness? 9 MS. WILSON: Objection, argument. 10 Q. (BY MR. HEBERT) How can you possess something -- how 11 can you sign a document without possessing it? 12 A. In that situation I don't think I've possessed it. 13 I'm witnessing it. Witnessing is not the same thing as 14 possessing, in my opinion. Witnessing is a specific act, you 15 know, defined in the election code and that's what I would be 16 doing, is witnessing. I don't think I would be possessing the 17 ballot. 18 Q. But you could be, couldn't you? If you took the 19 ballot in your hand -- 20 A. If I took it away, then I wouldn't be witnessing 21 anymore. 22 Q. No. I mean, if you picked it up from Kathy and put it 23 in front of you to sign. Would you not be at least in temporary 24 possession of that ballot? 25 MS. WILSON: Objection, argument.</p>	<p>1 to any document that's witnessed. Any document required under 2 the election code comes under this. So I would say that 86.006 3 talks about returning the marked ballot. It's not about 4 witnessing. So there are two separate provisions. I would say 5 witnessing is governed by 1.011. 6 Q. Is there anything in 1.011 that states explicitly or 7 implicitly that a witness does not possess a ballot envelope 8 when witnessing? 9 A. No, but it does explicitly say that the procedure 10 prescribed by this section witnessing must be conducted in the 11 presence of the person who cannot sign. 12 Q. In 2003 when the Texas Election Code was amended, you 13 then made a Section 5 submission to the justice department, 14 correct? 15 A. Yes. 16 Q. And that was a submission of all the voting changes 17 occasioned by the new law? 18 A. Yes. 19 Q. And you obtained pre-clearance of those changes, 20 correct? 21 A. Yes. 22 Q. Did you supply to the justice department at that time 23 the names of any minority persons who were going to have 24 knowledge of the provisions and how they would operate the 25 proposed provisions?</p>
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<p>1 A. I don't think that's possession as defined in 86.006. 2 Q. (BY MR. HEBERT) Where does it say that in 86? 3 A. It doesn't reference witnessing at all in 86. It 4 talks about possessing, which I think witnessing and possessing 5 are two separate activities. 6 Q. And they're two separate activities. So you don't see 7 witnessing as ever involving the possession of a ballot? 8 A. Right, because witnessing has to be in the presence of 9 the voter. So you can't possess another person's ballot if the 10 voter is right there. You're witnessing, really, what the voter 11 has done in the presence of the voter so you're not separately 12 possessing that ballot. 13 Q. But if you're a witness and you sign the ballot as a 14 witness, the envelope, and then you start to take the ballot and 15 say, hey, I'll mail it for you, but then you get to the door and 16 you say, you know what, why don't you go ahead and have your 17 husband take it to the post office, have you possessed in that 18 example for a few minutes or for a moment? 19 A. Maybe. I mean, when you're not acting as a witness. 20 Q. And where in 86.006 does it describe possession in a 21 way that would exclude someone who actually takes control of the 22 envelope long enough to witness somebody's signature? 23 A. Well, I would like to refer to the definition of 24 witness. So witnessing is a defined process in Section 1.011 of 25 the Election Code. So I think that controls witnessing applies</p>	<p>1 A. I don't remember. We usually do, but I don't 2 remember. 3 Q. Do you know if any were contacted by the justice 4 department? 5 A. No. 6 Q. In 2003 after you obtained pre-clearance -- and I 7 assume it was probably in 2003, correct? 8 A. Probably. 9 Q. What steps did you take at that point as the director 10 of elections to publicize the changes that were made in 2003 11 other than what we've described in these various Dear Voter 12 letters and websites and so on in the various exhibits? 13 A. We also covered all those changes in our election law 14 seminars that we hold for county officials and updated the 15 materials that we give at that -- those seminars, which are 16 basically outlines and I think we provided you those. 17 Q. You did. Let me hand one and I'll take the blue tabs 18 off since I put them on there. 19 (Exhibit Nos. 32 & 33 marked.) 20 Q. (BY MR. HEBERT) I'm going to hand you two documents, 21 Exhibit 32 and Exhibit 33. 22 (Exhibit No. 34 marked.) 23 Q. (BY MR. HEBERT) I'm going to add another Exhibit 34. 24 And if you can identify those three documents for me. 25 A. These are the outlines for early voting by mail that</p>

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<p>1 we include in our seminar book that we give out to the attendees</p> <p>2 of our seminar. And these all look like they were the county</p> <p>3 clerk seminar for July 2003, 2005 and 2006.</p> <p>4 Q. And who attends these seminars again?</p> <p>5 A. These would be for the county clerks and county</p> <p>6 election administrators.</p> <p>7 Q. And the county clerks generally are the people who run</p> <p>8 the elections?</p> <p>9 A. Yes.</p> <p>10 Q. Now, do you -- did you do any other seminars</p> <p>11 specifically in 2003 or 2004 to advise people in Texas about the</p> <p>12 election law changes occasioned in 2003 besides these seminars?</p> <p>13 A. Well, we would have also had a seminar for city and</p> <p>14 school election officials in November or December.</p> <p>15 Q. And would the -- would that have been a similar</p> <p>16 document to these?</p> <p>17 A. Yes, except slightly tweaked for city and schools.</p> <p>18 And maybe, depending on how you asked, we probably --</p> <p>19 Q. Didn't interpret it that way?</p> <p>20 A. Maybe we didn't interpret it that way.</p> <p>21 Q. Okay. That's fine. Any other ways of publicizing the</p> <p>22 changes in 2003 other than to the county clerks, county</p> <p>23 administrators and these Exhibits 32 through 34 and in the</p> <p>24 seminars you conducted with municipal and school election</p> <p>25 officials?</p>	<p>1 party event?</p> <p>2 A. It was, like, '95. It was a long time ago.</p> <p>3 Q. Do you remember which party it was?</p> <p>4 A. I think it was the Democratic party in the Hill</p> <p>5 Country somewhere.</p> <p>6 Q. Was it a county --</p> <p>7 A. It was a county.</p> <p>8 Q. So we've gone through kind of the Dear Voter letters.</p> <p>9 We've gone through the early vote instructions on the website.</p> <p>10 We've talked about the seminars now for both the county</p> <p>11 officials as well as municipal and schools officials. And is</p> <p>12 that the range of it other than the --</p> <p>13 A. I think that pretty well covers it.</p> <p>14 MR. HEBERT: If I could have five minutes. I</p> <p>15 think I'm almost finished.</p> <p>16 (Break was taken from 3:17 p.m. to 3:29 p.m.)</p> <p>17 (Exhibit No. 35 marked.)</p> <p>18 MR. HEBERT: Back on the record.</p> <p>19 Q. (BY MR. HEBERT) I know that when somebody who served</p> <p>20 as a witness to somebody's ballot under -- in the course of an</p> <p>21 election might also be the possessor of that ballot under</p> <p>22 86.006. And I now want to ask you kind of the same questions</p> <p>23 but with regard to an assistor, and I'm going to give you a</p> <p>24 hypothetical here.</p> <p>25 I go to a person's home who has asked me to</p>
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<p>1 A. We probably would have put out some kind of</p> <p>2 memo -- well, similar to the one you showed us on the city</p> <p>3 advisory with all the forms. When we redesign a form we usually</p> <p>4 send that out.</p> <p>5 Q. And that goes to county election officials?</p> <p>6 A. They would have received it as well.</p> <p>7 Q. Who else would have gotten it besides county election</p> <p>8 officials?</p> <p>9 A. It would be the county early voting clerks and then</p> <p>10 early voting clerks for cities, schools and others.</p> <p>11 Q. So election -- local election officials?</p> <p>12 A. Yeah. I mean, our training is geared toward election</p> <p>13 officials.</p> <p>14 Q. Have you ever conducted any training for the</p> <p>15 Republican party?</p> <p>16 A. No.</p> <p>17 Q. Or any county Republican party?</p> <p>18 A. Well, we have occasionally been asked to speak at</p> <p>19 a -- like, a county political party's event might ask us to</p> <p>20 speak for any party, Green party, Republican party, Democratic</p> <p>21 party. We don't -- that's not usual, but we will occasionally</p> <p>22 do that.</p> <p>23 Q. And have you done that?</p> <p>24 A. Yes.</p> <p>25 Q. And when was the last time you spoke at a political</p>	<p>1 assist. I take the ballot from them and I read it. I</p> <p>2 physically read the ballot. I'm holding it in my hands. I read</p> <p>3 it to them in and, in fact, they tell me who they want to vote</p> <p>4 for. I then take a pen out and I mark that ballot for them per</p> <p>5 their instructions. I have provided assistance within the</p> <p>6 meaning of the Texas Election Code, correct?</p> <p>7 A. Correct.</p> <p>8 Q. I have to then sign as an assistor and sign the</p> <p>9 carrier envelope, correct?</p> <p>10 A. Correct.</p> <p>11 Q. Have I ever been in possession of that ballot under my</p> <p>12 hypothetical?</p> <p>13 A. During the course of assisting the voter I don't think</p> <p>14 you're in possession as defined in 86.006, because 86.006, in my</p> <p>15 opinion, refers to possession of the voted ballot, voter's done.</p> <p>16 It's in the process of being returned to the early voting clerk.</p> <p>17 Q. All right. So if I were to be handed a ballot --</p> <p>18 completed ballot by the voter instead of taking it from them and</p> <p>19 marking and reading it and I were to take that ballot from them</p> <p>20 and they had filled it out completely and they asked me to look</p> <p>21 it over and I looked it over, and I said to them, oh, well, I</p> <p>22 see that you didn't vote all the races, that you missed one, and</p> <p>23 they said, oh, let me see that back, and then I give it back to</p> <p>24 them and they marked it again and then they said, okay, would</p> <p>25 you take another look, and I took it in my hands and I read it</p>

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<p>1 over and I said, yep, it looks like you've done this, under your 2 statement just now, that would be possessing the marked ballot 3 of another person?</p> <p>4 A. Well, I think that -- I would make a similar 5 distinction that we did on witnessing, that when you're in the 6 act of assisting that doesn't fall under 86.066. 86.006 is 7 concerned with being in possession of the voted ballot. And 8 possession -- it specifically says method of returning marked 9 ballot. So it's concerned of being in possession of the voted 10 ballot as it's being returned to your early voting clerk or 11 between -- that point between when the voter has completed 12 voting. So if you're in the process of assisting, then that's 13 not a completed ballot.</p> <p>14 Q. But the person had completed the ballot under my 15 hypothetical. They had marked all the --</p> <p>16 A. But they asked for your assistance, right? They asked 17 you to review it. You're still in the act of assisting that 18 voter.</p> <p>19 Q. All right. So then they seal it up in the envelope 20 and they hand it to me as an assistor and they say, if you're 21 going by the post office can you mail this. And I say sure and 22 I take it. And as I walk out, I say, you know, I'm not going by 23 the post office, but I'm happy to come back tomorrow and mail it 24 for you if you want me to. And they say, no, that's okay. I'll 25 take it back and get somebody else to do it. Have I possessed</p>	<p>1 correspondent there, that I was provided anyway.</p> <p>2 A. Right.</p> <p>3 Q. And do you know whose handwriting that is?</p> <p>4 A. This is my handwriting where it says no response due 5 to litigation, and the other note is from Elizabeth.</p> <p>6 Q. Did you consult with anybody in writing that note or 7 taking the position that you would not respond to the executive 8 director of the TDP, Texas Democratic Party?</p> <p>9 A. I don't remember. That would have been probably right 10 as Jay Dyer was becoming our general counsel and I don't 11 remember if we discussed this or not. This is the standard 12 policy of our office. If a matter is in litigation we don't 13 respond.</p> <p>14 Q. Did you consult with anybody in the Attorney General's 15 Office?</p> <p>16 A. No, I don't think so.</p> <p>17 Q. Now, in his letter he states that -- makes a number of 18 statements and he asks to verify whether his statements are 19 correct, and I want to read one to you. "A voter may only be 20 assisted in filling out the application for a ballot or a ballot 21 application" -- let me start over.</p> <p>22 "Definition of assistance. A voter may only be 23 assisted in filling out the application for a ballot or a ballot 24 if the voter is unable to read, write or is disabled and cannot 25 see the application or ballot." Is that an accurate statement?</p>
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<p>1 the marked ballot of another? Could I have possessed the marked 2 ballot of another?</p> <p>3 A. I guess. I mean, I guess the question there is was 4 that ballot really out of control of the voter. And I guess 5 it's not clear in that hypothetical. Because if you're still in 6 the voter's home, you're in the presence and you say, yes, I can 7 mail it; oh, no, I can't.</p> <p>8 Q. So if I walk outside and I'm on the front stoop and I 9 get outside the house and then I turn around while the voter is 10 saying goodbye to me at the door and say, you know, actually I'm 11 not going by the post office, does that constitute possession, 12 then, since I'm now outside the house? Could it?</p> <p>13 A. I guess it could. I mean, it would really be, you 14 know, very dependent on the facts and the voter's intent and 15 what your intent was.</p> <p>16 Q. Whether I intended to possess, you mean?</p> <p>17 A. Right.</p> <p>18 Q. And whether the voter intended for me to possess it?</p> <p>19 A. Right.</p> <p>20 Q. I've marked as Exhibit 35 a letter sent to your office 21 by the Texas Democratic Party in 2006. Ask you to look that 22 over.</p> <p>23 A. Okay.</p> <p>24 Q. Now, there's a note on there indicating no response 25 due to litigation and there was no response provided to the</p>	<p>1 A. Could I read?</p> <p>2 Q. Sure. I'll let you read it first.</p> <p>3 A. So your question to me is, is that an accurate 4 description of what the letter says or the definition of who's 5 eligible for assistance?</p> <p>6 Q. Is that an accurate definition of who is eligible for 7 assistance? I'm sorry.</p> <p>8 A. I believe that's accurate, but I'm getting tired so 9 I'm going to look at the code.</p> <p>10 Q. 64.0321 is the assistance definition. I don't know if 11 that helps guide you to where you're looking for.</p> <p>12 A. Yeah. That's what 64.031 says.</p> <p>13 Q. All right. Now, in 64.031 lists the persons eligible 14 to receive assistance; is that correct?</p> <p>15 A. Yes.</p> <p>16 MS. WILSON: I'm sorry, rule of optional 17 completeness. 64.031 says a voter is eligible to receive 18 assistance in marking the ballot.</p> <p>19 MR. HEBERT: I was reading the title of the 20 provision. Eligibility for assistance. I'm sorry, that's what 21 I was --</p> <p>22 MS. WILSON: Okay.</p> <p>23 MR. HEBERT: I wasn't trying to capture the 24 entire thing.</p> <p>25 Q. (BY MR. HEBERT) Is it a true statement that if you</p>

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<p>1 mail the application of a ballot on behalf of a voter that that</p> <p>2 does not qualify as assistance under this definition?</p> <p>3 A. Yes, that's true.</p> <p>4 Q. And -- but a person who mails the ballot for another</p> <p>5 person must complete the witness assistance section of the</p> <p>6 application on the carrier envelope, correct?</p> <p>7 A. Right.</p> <p>8 Q. Now, if this person is neither a witness or an</p> <p>9 assistant, what are they? Somebody who mails --</p> <p>10 A. You could call them a helper. You could call them an</p> <p>11 assistant. I mean, they're still -- they are someone who is</p> <p>12 helping that voter to vote.</p> <p>13 Q. Or a mailer. You could call them a mailer?</p> <p>14 A. I guess you could call them a mailer.</p> <p>15 Q. You could call them a knowing possessor. I'm using</p> <p>16 the language of the Secretary of State envelope. It says</p> <p>17 knowingly possesses.</p> <p>18 A. Okay.</p> <p>19 Q. So would that be another label that you could use to</p> <p>20 describe a person who takes a ballot?</p> <p>21 A. You could.</p> <p>22 Q. Applications for a ballot -- mail-in can be completely</p> <p>23 filled out by anyone, whether pre-printed or in handwriting,</p> <p>24 except for the signature which must be done by the voter</p> <p>25 applicant. That's a correct statement, isn't it?</p>	<p>1 A. Witness.</p> <p>2 Q. But assistance there is no restriction; is that right?</p> <p>3 A. There are restrictions --</p> <p>4 Q. On number, I mean.</p> <p>5 A. On number, no. There is no restriction on the number</p> <p>6 as long as the voter chooses them and they're not ineligible, if</p> <p>7 they're not the voter's employer or --</p> <p>8 Q. Union representative?</p> <p>9 A. Union rep, right.</p> <p>10 Q. And there is also -- you can also mail as many ballots</p> <p>11 as you want for other people so long as you do so with their --</p> <p>12 you're in possession of their ballot with their consent and you</p> <p>13 sign the carrier envelope and provide the residence information,</p> <p>14 correct?</p> <p>15 A. That's right.</p> <p>16 Q. There's no limit?</p> <p>17 A. Right.</p> <p>18 Q. Now, if somebody fills out a mail-in ballot</p> <p>19 application for someone else and then sends it to them for their</p> <p>20 signature and they call the person who sent the ballot -- the</p> <p>21 application to them and says, okay, I've signed it, and you go</p> <p>22 there to pick it up and take it to the voter registration</p> <p>23 office, do you have to complete the assistant/witness section of</p> <p>24 the application?</p> <p>25 A. No.</p>
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<p>1 MS. WILSON: This is all asked and answered, but</p> <p>2 go ahead and you can answer if you can.</p> <p>3 MR. HEBERT: I'm asking specifically with regard</p> <p>4 to this new exhibit, Exhibit 35.</p> <p>5 MS. WILSON: Well, this information has been gone</p> <p>6 over in some detail. You can tell him again.</p> <p>7 A. The question is can -- an application can be completed</p> <p>8 by somebody else but for the signature of the voter?</p> <p>9 Q. (BY MR. HEBERT) Pre-printed or in handwriting, I</p> <p>10 added this time, except for the signature, which must be done by</p> <p>11 the voter applicant.</p> <p>12 A. That's correct.</p> <p>13 Q. And they may be mailed to voters, right, these</p> <p>14 pre-filled forms?</p> <p>15 A. Yes.</p> <p>16 Q. And filling out the application before mailing it to</p> <p>17 the voter does not count as assistance under the Texas Election</p> <p>18 Code, does it?</p> <p>19 MS. WILSON: Asked and answered.</p> <p>20 A. That's right.</p> <p>21 Q. (BY MR. HEBERT) Now, I know that there is a</p> <p>22 restriction you can only assist one voter per election unless</p> <p>23 you're related to them in some way, correct?</p> <p>24 A. No.</p> <p>25 Q. Witness, I meant.</p>	<p>1 Q. So that type of assistance doesn't require you to --</p> <p>2 A. On the application, right.</p> <p>3 Q. Now, if I -- is it -- if I assist a voter who is</p> <p>4 voting by mail and then I agree to mail that ballot for the</p> <p>5 voter, do I have to sign twice, once as an assistant and once as</p> <p>6 a person in possessing the ballot and mailing it?</p> <p>7 A. No.</p> <p>8 Q. How do you know that? Doesn't the law say that an</p> <p>9 assistant has to sign and a person mailing the ballot has to</p> <p>10 sign?</p> <p>11 A. Right, but it doesn't say if it's the same person that</p> <p>12 they have to sign multiple times. It doesn't seem to be very</p> <p>13 practical to have the person and provide their name and address</p> <p>14 twice.</p> <p>15 Q. Well, wouldn't you want to know -- if you're</p> <p>16 investigating election fraud, wouldn't you want to know who</p> <p>17 provided assistance and whether they also mailed the ballot if</p> <p>18 there is an allegation that people are mailing ballots for other</p> <p>19 people illegally?</p> <p>20 A. I guess it doesn't really make any difference as long</p> <p>21 as you know that this person -- this is where they live, you can</p> <p>22 find that out later on. The main point is that you've got --</p> <p>23 you know who is helping that voter.</p> <p>24 Q. But you don't know who's mailing it?</p> <p>25 A. You don't know in what capacity necessarily, but you</p>

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<p>1 know who has touched that ballot, who has helped that voter</p> <p>2 vote.</p> <p>3 Q. So prior to this, when we looked at the envelope and</p> <p>4 it said signature of witness -- assistant or witness and you</p> <p>5 didn't have to describe whether you were the witness or the</p> <p>6 assistant, did you? You just had to sign or did you have to</p> <p>7 actually say what you did?</p> <p>8 A. Prior to what?</p> <p>9 Q. Prior to the new envelope being developed now when</p> <p>10 there was only --</p> <p>11 A. So this envelope?</p> <p>12 Q. This envelope, Exhibit 6. Did you have to, after your</p> <p>13 signature, indicate whether you were signing as a witness or</p> <p>14 signing as an applicant -- an assistant, I mean? I'm sorry.</p> <p>15 A. If a person is acting as a witness because the voter</p> <p>16 couldn't make a mark, then the witness had to check under the</p> <p>17 line saying if voter cannot sign, voter's mark must be</p> <p>18 witnessed. So the witness would have to check there to indicate</p> <p>19 that it was being witnessed.</p> <p>20 Q. And then sign where it says assistant or witness?</p> <p>21 A. Right.</p> <p>22 Q. But do you have to designate what you've done? In</p> <p>23 other words, do you have to put after your name witness? What</p> <p>24 if you've assisted and witnessed both?</p> <p>25 MS. WILSON: Asked and answered.</p>	<p>1 Q. Did you ask how he found out?</p> <p>2 A. No. He told me sort of the background as to why.</p> <p>3 Q. And that there was litigation over this issue? You</p> <p>4 mean that background?</p> <p>5 A. Yes.</p> <p>6 Q. Did you think the change made sense from a -- as the</p> <p>7 director of elections?</p> <p>8 A. Yes.</p> <p>9 Q. Why is that?</p> <p>10 A. Well, it removed instead of having it automatically be</p> <p>11 a crime requiring a person to assert a defense, there were</p> <p>12 specific exemptions. So I think it clarified the statute,</p> <p>13 because I believe that was the legislature's intent.</p> <p>14 Q. If a voter calls your office and says -- this is</p> <p>15 hypothetical. I have no evidence that your office has done this</p> <p>16 and I don't want you to think that I'm suggesting that and it's</p> <p>17 purely hypothetical. But if a voter calls your office and says,</p> <p>18 I've received assistance in the past from people who have mailed</p> <p>19 my ballot for me, I'm disabled, and they say is that still</p> <p>20 legal, would you advise anybody in your office to tell that</p> <p>21 voter you should mail your ballot yourself?</p> <p>22 MS. WILSON: Objection, speculation.</p> <p>23 A. I mean, if the voter is telling us that they're</p> <p>24 disabled, I don't think we're going to tell them to do something</p> <p>25 they may not be able to do. We would explain the general rules</p>
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<p>1 A. Well, if you witnessed, you've checked that line to</p> <p>2 indicate that you witnessed but then you provide your name and</p> <p>3 address and sign.</p> <p>4 Q. (BY MR. HEBERT) No other information is required?</p> <p>5 A. Right.</p> <p>6 Q. And that was Exhibit 6 we were referring to. In 2007</p> <p>7 when the legislature changed 86.006 to provide that instead of</p> <p>8 having an affirmative defense you would now have an exemption</p> <p>9 for possessing the ballot of another, did you play any role in</p> <p>10 the legislation itself, that is to say, did you appear as a</p> <p>11 witness? Did you write any memoranda to legislators? Did you</p> <p>12 field questions from people in state government, play any role</p> <p>13 whatsoever in that change.</p> <p>14 A. Yes.</p> <p>15 Q. Could you describe what that is?</p> <p>16 A. I know I discussed it with our general counsel</p> <p>17 briefly. I was not heavily involved in that, but I know that I</p> <p>18 looked at -- certainly looked at the statute once it was</p> <p>19 proposed, but I believe I also discussed it with our general</p> <p>20 counsel before that as well.</p> <p>21 Q. And was this before the legislation was enacted?</p> <p>22 A. Yes.</p> <p>23 Q. How did it come to your attention that this was being</p> <p>24 proposed?</p> <p>25 A. Our general counsel told me that.</p>	<p>1 of assistance.</p> <p>2 Q. (BY MR. HEBERT) Would you ever tell a voter that they</p> <p>3 should mail their ballot themselves, not knowing their physical</p> <p>4 disability?</p> <p>5 MS. WILSON: Objection, speculation.</p> <p>6 A. Well, I believe that's what our Dear Voter letter</p> <p>7 says. I mean, we encourage the voter to vote in person if</p> <p>8 possible. Or they vote by mail, to mail it themselves or give</p> <p>9 it to a trusted friend.</p> <p>10 Q. (BY MR. HEBERT) Or a family member?</p> <p>11 A. Or family member.</p> <p>12 Q. But you don't tell voters simply to vote the ballot</p> <p>13 themselves by mail, that they should mail it themselves in the</p> <p>14 Dear Voter letter?</p> <p>15 MS. WILSON: The document speaks for itself.</p> <p>16 We've been over those letters. I'm sorry, document speak for</p> <p>17 itself. That's my objection.</p> <p>18 Q. (BY MR. HEBERT) Do any of your letters -- and I'll</p> <p>19 bring them back out if we have to because it's important --</p> <p>20 A. I thought we did say that in the Dear Voter letter.</p> <p>21 Q. Here is the 2008 letter.</p> <p>22 A. Mail your own ballot.</p> <p>23 Q. Right. "If you can't get to the mailbox to mail your</p> <p>24 ballot, give your ballot to a family member or a trusted friend</p> <p>25 to mail for you." So you actually say to the voter that if they</p>

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<p style="text-align: right;">Page 146</p> <p>1 have some kind of a disability such that they can't get to the 2 mailbox themselves, that they should give that ballot to 3 somebody else; isn't that right?</p> <p>4 A. Yes.</p> <p>5 Q. So your office, not knowing somebody was able to mail 6 the ballot themselves or not, wouldn't tell a voter, not knowing 7 whether they could or they couldn't, to mail the ballot 8 themselves, that they should always mail the ballot themselves, 9 would they?</p> <p>10 MS. WILSON: Objection, vague.</p> <p>11 A. If you could restate the question.</p> <p>12 Q. (BY MR. HEBERT) If a voter calls and says, I have had 13 assistance in the past with mailing my ballot and is that still 14 legal for me to have somebody mail my ballot, just knowing that 15 information alone, would you ever tell a voter, as the director 16 of elections, you should always mail your ballot yourself?</p> <p>17 A. Under those fact scenario where the voter is telling 18 me that they're disabled and that they've needed help in the 19 past to mail their ballot, I don't think I would tell them you 20 need to mail it yourself.</p> <p>21 Q. Okay. And if you didn't know whether they were 22 disabled but they told you that they had in the past needed to 23 have somebody mail their ballot for them but they didn't say 24 they were disabled but they needed to have somebody mail the 25 ballot for them, would you assume that they weren't disabled and</p>	<p style="text-align: right;">Page 148</p> <p>1 Q. If the voter is unable to mail the ballot themselves, 2 would you, as the director of elections fielding that call, tell 3 the voter that the only person who they should give their ballot 4 to for mailing would be a family member?</p> <p>5 MS. WILSON: Objection, speculation.</p> <p>6 A. Yeah. I mean, I don't know. I mean, I might 7 encourage -- depending, I might encourage that voter to give it 8 to a family member. I know I wouldn't say the only person you 9 can give it to is a family member, but I might encourage them to 10 give it to a family member.</p> <p>11 Q. (BY MR. HEBERT) And another person you might 12 encourage them to, if they had no family, would be a trusted 13 friend?</p> <p>14 A. Right.</p> <p>15 Q. Is it accurate to say that you can't assist more than 16 one voter unless they're family members?</p> <p>17 A. You can't -- that's not accurate.</p> <p>18 Q. And that is both with regard to applications for 19 mail-in ballots and mail-in ballots themselves, correct?</p> <p>20 A. Right. The only restriction is on witnessing as far 21 as the number.</p> <p>22 MR. HEBERT: That's all I have.</p> <p>23 MS. WILSON: We'll reserve our questions for the 24 time of trial. 25 (Deposition concluded at 3:56 p.m.)</p>
<p style="text-align: right;">Page 147</p> <p>1 tell them to mail the ballot themselves?</p> <p>2 A. Based on those facts, no, I wouldn't.</p> <p>3 Q. Would you ever tell a voter that the only persons who 4 should come by and pick up your ballot are family members to 5 mail for you?</p> <p>6 MS. WILSON: Objection, speculation.</p> <p>7 Q. (BY MR. HEBERT) If a voter called and said, I want to 8 know about mailing a ballot in, would you ever tell a voter that 9 if you're going to have somebody mail your ballot, it should 10 only be a family member?</p> <p>11 MS. WILSON: Objection, speculation.</p> <p>12 A. I mean, I guess you need to put it in context in that 13 we take calls -- you know, we have a toll-free number, take 14 calls all the time. Our general advice is to encourage people 15 to vote independently in secret. So that's the general advice 16 that's going to come out of this office. So -- and of course, 17 you know, our written advice sort of speaks for what the general 18 policy is.</p> <p>19 Q. (BY MR. HEBERT) And in your general policy you say, 20 according to Exhibits --</p> <p>21 A. We say mail your own ballot. That's what is bolded. 22 I mean, that's the preference, is that a voter mail their own 23 ballots. And it's hard -- your hypothetical is very narrow. 24 Without having more facts, it's really hard to say how you're 25 going to necessarily respond.</p>	<p style="text-align: right;">Page 149</p> <p>1 STIPULATIONS 2 DEPOSITION(S) OF ANN MCGEEHAN 3 TAKEN ON APRIL 17, 2008 BY Mr. J. Gerald Hebert 4 1. THIS DEPOSITION IS TAKEN PURSUANT TO: 5 XXXXXXXX (a.) Notice 6 _____ (b.) Notice and Subpoena 7 _____ (C.) Agreement 8 _____ (d.) Court Order 9 10 2. OBJECTIONS: 11 XXXXXXX (a.) Objections will be made pursuant to the Texas 12 Rules of Civil Procedure. 13 _____ (b.) All objections will be made at the time of 14 taking of the deposition. 15 _____ (c.) All objections are reserved. 16 _____ (d.) Other: _____ 17 18 3. SIGNATURE AND DELIVERY: 19 XXXXXXX (a.) The original transcript will be submitted to _____ 20 the witness or XXXX the witness' attorney, who will forward the 21 signed deposition, including any changes made, to Julie A. 22 Jordan & Company within 30 days of submission. 23 _____ (b.) Signature is waived and the reporter will 24 deliver the original transcript and exhibits to the Custodial 25 Attorney. 26 _____ (c.) The original transcript will remain in the court 27 reporter's office for signature for _____ days from date of 28 submission. 29 _____ (d.) The original signature page, along with a copy 30 of transcript, will be submitted to _____ for 31 submission to the witness for signature, and thereafter will 32 forward the executed signature page, along with any changes 33 made, within _____ days to the offices of Julie A. Jordan & 34 Company for inclusion in the original transcript. 35</p>

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1 HIRING ATTORNEY ORIGINAL AND CERTIFIED COPY ORDER:
 2 In the event that the original transcript cannot for any reason
 3 be produced, it is understood and agreed that the attorney
 4 asking the first question will be responsible for the expense of
 5 the production of a transcript and the safekeeping of same for
 6 use at trial. The shorthand notes may be destroyed after three
 7 years. This is an agreement for services. We, the undersigned,
 8 do hereby agree to the stipulations as indicated herein and do
 9 agree that any lawyer or other individual signing below will be
 10 responsible for the payment of all services requested and that
 11 payment for these services rendered is not contingent upon any
 12 other matter. Rush services are available only by request and
 13 implies an agreement to pay rush rates. On all orders placed,
 14 venue for any actions for collection on services lie in Austin,
 15 Travis County, Texas,
 16 By: J. Gerald Hebert Firm: The Campaign Legal Center
 17 Representing Plaintiffs
 18 E-Transcript XXXX E-mail address ghebert@campaignlegalcenter.org
 19 Full Copy XXXX Condensed Copy XXXXXXXX ASCII _____
 20 Condensed Copy Only _____ (*same cost as full copy)
 21 Exhibits in B/W only XXXXXX Exhibits in B/W & Color _____
 22 Video in VHS format _____ DVD (Movie File) Format _____
 23 M-PEG in CD or DVD format _____ Video sync _____
 24
 25 CERTIFIED COPY ORDER:
 We, the undersigned, do hereby agree to the stipulations as
 indicated herein and do agree that any lawyer or other
 individual signing below will be responsible for the payment of
 all services requested and that payment for these services
 rendered is not contingent upon any other matter. Rush services
 are available only by request and implies an agreement to pay
 rush rates. On all orders placed, venue for any actions for
 collection on services shall lie in Austin, Travis County,
 Texas,
 By: Kathryn C. Wilson Firm: Attorney General of Texas
 Representing Defendant
 E-Transcript XXXXX E-Mail address kcw@oag.state.tx.us
 Full Copy XXXXXXX Condensed Copy XXXXXXX Ascii _____
 Condensed Copy Only _____ (*same cost as full copy)
 Exhibits in B/W Only XXXXXX Exhibits in B/W & Color _____
 Video in VHS format _____ DVD (Movie File) format _____
 M-PEG in CD or DVD format _____ Video sync _____
 JOB NO. 08-115

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1 I, ANN MCGEEHAN, have read the foregoing deposition and
 2 hereby affix my signature that same is true and correct, except
 3 as noted above.
 4
 5 _____
 6 ANN MCGEEHAN
 7
 8 THE STATE OF _____)
 9
 10 COUNTY OF _____)
 11
 12 Before me, _____, on this day personally
 13 appeared ANN MCGEEHAN, known to me (or proved to me under oath
 14 or through _____) to be the person whose name is
 15 subscribed to the foregoing instrument and acknowledged to me
 16 that they executed the same for the purposes and consideration
 17 therein expressed.
 18
 19 Given under my hand and seal of office this _____ day of
 20 _____, _____.
 21
 22 _____
 23 NOTARY PUBLIC IN AND FOR THE
 24 STATE OF _____
 25

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1 CHANGES AND SIGNATURE
 2 WITNESS NAME: ANN MCGEEHAN DATE OF DEPOSITION APRIL 17, 2008
 3 PAGE LINE CHANGE REASON
 4 _____
 5 _____
 6 _____
 7 _____
 8 _____
 9 _____
 10 _____
 11 _____
 12 _____
 13 _____
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 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 _____
 23 _____
 24 _____
 25 _____

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1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE EASTERN DISTRICT OF TEXAS
 3 MARSHALL DIVISION
 4 WILLIE RAY, JAMILLAH JOHNSON,)
 5 GLORIA MEEKS, REBECCA)
 6 MINNEWEATHER, REUBEN ROBINSON,))
 7 EDDIE JACKSON, and THE TEXAS)
 8 DEMOCRATIC PARTY,)
 9 Plaintiffs,)
 10)
 11 V.) Civil Action No. 2-06CV-385
 12)
 13)
 14 STATE OF TEXAS, a State of the)
 15 United States; GREG ABBOTT,)
 16 Attorney General of the State)
 17 of Texas; and PHIL WILSON,)
 18 Secretary of State for the)
 19 State of Texas,)
 20 Defendants.)
 21
 22 REPORTER'S CERTIFICATION
 23 DEPOSITION OF
 24 ANN MCGEEHAN
 25 APRIL 17, 2008
 I, AMBER KIRTON, Certified Shorthand Reporter in and for
 the State of Texas, hereby certify to the following:
 That the witness, ANN MCGEEHAN, was duly sworn by the
 officer and that the transcript of the oral deposition is a true
 record of the testimony given by the witness;
 That the deposition transcript was submitted on
 _____ to Ms. Kathryn C. Wilson, attorney
 for Defendants for examination, signature and return to me by
 _____;
 That the amount of time used by each party at the

39 (Pages 150 to 153)**Julie A. Jordan & Company
(512) 451-8243 phone****4420 Marathon Boulevard
(512) 451-7583 fax****Austin, Texas 78756
info@jordanreporting.com**

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1 deposition is as follows:
 2 Mr. J. Gerald Hebert - 04 hours: 35 minutes
 3 Ms. Kathlyn C. Wilson - 00 hours: 00 minutes
 4 That pursuant to information given to the deposition
 5 officer at the time said testimony was taken, the following
 6 includes all parties of record:
 7 Mr. J. Gerald Hebert, Attorney for Plaintiffs
 8 Ms. Kathlyn C. Wilson, Mr. Jay Dyer and Ms. Rosemarie
 9 Donnelly, Attorneys for Defendants
 10 I further certify that I am neither counsel for, related
 11 to, nor employed by any of the parties or attorney in the action
 12 in which this proceeding was taken, and further that I am not
 13 financially or otherwise interested in the outcome of the
 14 action.

15 Certified to by me this _____ day of April, 2008.
 16
 17

18 _____
 19 Amber Kirton, CSR
 20 Texas CSR #8110
 21 Expiration Date: 12/31/09
 22 Firm Registration No. 280
 23 Julie Jordan & Company
 24 4420 Marathon Boulevard
 25 Austin, Texas 78756
 (512) 451-8243
 (512) 451-7583 (Fax)
 E-MAIL: info@jordanreporting.com

40 (Page 154)**Julie A. Jordan & Company
(512) 451-8243 phone****4420 Marathon Boulevard
(512) 451-7583 fax****Austin, Texas 78756
info@jordanreporting.com**

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STATE OF TEXAS, ET AL**

**ANN MCGEEHAN
April 17, 2008**

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Exhibit 4

ORAL AND VIDEOTAPED DEPOSITION OF REUBEN ROBINSON

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WILLIE RAY, JAMILLAH JOHNSON,)
GLORIA MEEKS, REBECCA)
MINNEWEATHER, REUBEN)
ROBINSON, EDDIE JACKSON,)
and THE TEXAS DEMOCRATIC)
PARTY,)

Plaintiffs,)

v.)

) Civil Action No.
) 2-06CV-385
) Judge T. John Ward
)
)

STATE OF TEXAS, a State of)
the United States; GREG)
ABBOTT, Attorney General)
of the State of Texas;)
PHIL WILSON, Secretary of)
State for the State of Texas,)

Defendants.)

ORAL AND VIDEOTAPED DEPOSITION OF

REUBEN ROBINSON

APRIL 21, 2008

Reported by: Jill E. McFadden

Job No. 69501

ORAL AND VIDEOTAPED DEPOSITION OF REUBEN ROBINSON

Page 2	Page 4
<p>1 ORAL AND VIDEOTAPED DEPOSITION of REUBEN 2 ROBINSON, produced as a witness at the instance of the 3 PLAINTIFFS, and duly sworn, was taken in the 4 above-styled and numbered cause on April 21, 2008, 5 from 1:43 p.m. to 2:14 p.m., before Jill E. McFadden, 6 CSR in and for the State of Texas, reported by Machine 7 Stenography, at the Robison Terrace Apartments, 1611 8 N. Robison Road, Texarkana, Texas, pursuant to the 9 Federal Rules of Civil Procedure and the provisions 10 stated on the record or attached hereto.</p> <p>11 A P P E A R A N C E S</p> <p>12 FOR THE PLAINTIFFS:</p> <p>13 Mr. Eric Albritton 14 Albritton Law Firm 15 111 W. Tyler Street 16 Longview, Texas 75601 17 Phone: 903.757.8449</p> <p>18 FOR THE DEFENDANTS:</p> <p>19 Ms. Kathryn C. Wilson 20 Assistant Attorney General 21 General Litigation Division 22 300 W. 15th Street, 14th Floor 23 Austin, Texas 78701 24 Phone: 512.463.2120</p> <p>25 ALSO PRESENT:</p> <p>Mr. Doug Rankin, Video Technician</p>	<p>1 THE VIDEOGRAPHER: Today is April the 2 21st of 2008. The time is approximately 1:43 p.m. We 3 are now on the record.</p> <p>4 (Witness sworn.)</p> <p>5 REUBEN ROBINSON, 6 having been first duly sworn, testified as follows:</p> <p>7 EXAMINATION</p> <p>8 BY MR. ALBRITTON:</p> <p>9 Q. Mr. Robinson, how old a man are you?</p> <p>10 A. I'm 61 year old.</p> <p>11 Q. And where do you live?</p> <p>12 A. Robison Court. 203 Robison Court.</p> <p>13 Q. That's here in --</p> <p>14 A. Robison Terrace.</p> <p>15 Q. Robison Terrace. Okay. And is that here in 16 Texarkana?</p> <p>17 A. Yes. Texarkana, Texas.</p> <p>18 Q. And how long have you lived in this 19 apartment complex?</p> <p>20 A. Oh, about -- about 10, 11 years.</p> <p>21 Q. Okay. It's a -- it's a high-rise apartment 22 complex, right?</p> <p>23 A. Right, ten-story.</p> <p>24 Q. Ten stories. What floor do you live on?</p> <p>25 A. I live on the second floor, south side.</p>
Page 3	Page 5
<p>1 I N D E X</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>Appearances..... PAGE 2</p> <p>Examination by Mr. Albritton..... 4</p> <p>Examination by Ms. Wilson..... 15</p> <p>Changes and Signature..... 29</p> <p>Reporter's Certification..... 31</p> <p>Reporter's Further Certification..... 32</p> <p>* * * * *</p>	<p>1 Q. Now, Mr. Robertson -- Robinson, excuse me, 2 have you ever had a stroke?</p> <p>3 A. Yes, I had three.</p> <p>4 Q. Okay. When did you have your first stroke?</p> <p>5 A. Approximately 1999. If my memory serves me 6 right, it was '99 -- last of '98, '99.</p> <p>7 Q. Okay. And when was the last time you -- 8 your last stroke, when did that occur?</p> <p>9 A. Oh, about a year ago.</p> <p>10 Q. Okay.</p> <p>11 A. About a year ago. I don't remember the 12 exact date.</p> <p>13 Q. Okay. As a result of these strokes, have 14 you had -- do you have any physical limitations?</p> <p>15 A. Quite a few.</p> <p>16 Q. Okay. If you would, just briefly tell the 17 judge about your physical limitations.</p> <p>18 A. Well, I'm a paralyzed veteran, and my right 19 side is out.</p> <p>20 Q. So --</p> <p>21 A. And I had two strokes on my right side and 22 one on my left.</p> <p>23 Q. Okay.</p> <p>24 A. And which affected my mouth and my hand; I 25 have no feeling in my hand.</p>

2 (Pages 2 to 5)

ORAL AND VIDEOTAPED DEPOSITION OF REUBEN ROBINSON

Page 6	Page 8
<p>1 Q. Can you use your right hand at all?</p> <p>2 A. No.</p> <p>3 Q. And I notice you're in one of those electric</p> <p>4 scooters. Is that how you get around here in the</p> <p>5 building?</p> <p>6 A. Yes. I have a wheelchair but it, you</p> <p>7 know -- by my right leg being out and my left leg</p> <p>8 being available, it's hard to maneuver in the</p> <p>9 wheelchair.</p> <p>10 Q. Yes, sir. I notice by your hat it says</p> <p>11 "Vietnam Veteran." Did you serve our country?</p> <p>12 A. Yes, I did, about -- about 17 years.</p> <p>13 Q. Okay. And did you -- did you see active</p> <p>14 duty?</p> <p>15 A. Yes, I did.</p> <p>16 Q. And where did you see active duty?</p> <p>17 A. In -- well, active duty as far as combat was</p> <p>18 in Vietnam in '67 and '68, and the rest of the time it</p> <p>19 was in the United States.</p> <p>20 Q. Okay.</p> <p>21 A. And Germany.</p> <p>22 Q. Okay. When -- were you ever wounded or</p> <p>23 injured when you were in the service?</p> <p>24 A. Yes, I have scrap metal in my -- yes, sir.</p> <p>25 Yes.</p>	<p>1 Q. Okay.</p> <p>2 A. At times.</p> <p>3 Q. Now, do you have any kids that live here in</p> <p>4 the Texarkana area?</p> <p>5 A. I have a boy and a girl live here, and I</p> <p>6 have -- in Texarkana, and I have two girls that live</p> <p>7 afar.</p> <p>8 Q. Live far away?</p> <p>9 A. I have one in Dallas, one in Pontiac,</p> <p>10 Michigan.</p> <p>11 Q. Okay. Now, do those kids -- the ones that</p> <p>12 live here in Texarkana, are they able to do for you</p> <p>13 everything you need when you need it, or do you have</p> <p>14 to rely on other people sometimes?</p> <p>15 A. I have to rely on other people. My</p> <p>16 daughter's going to school and she's trying to work,</p> <p>17 and when I need her, she be tied up.</p> <p>18 Q. Okay.</p> <p>19 A. And, you know, she don't come over very</p> <p>20 often, unless I'm real sick or something.</p> <p>21 Q. Now, do you regularly vote?</p> <p>22 A. Yes, I try to.</p> <p>23 Q. Now, do you normally vote by mail?</p> <p>24 A. Yes.</p> <p>25 Q. Why is that, Mr. Robinson?</p>
Page 7	Page 9
<p>1 Q. You have shrapnel?</p> <p>2 A. Yeah.</p> <p>3 Q. Okay.</p> <p>4 A. And that was in the United States, though,</p> <p>5 on active duty.</p> <p>6 Q. Okay. That was at Fort Hood where you got</p> <p>7 that injury?</p> <p>8 A. Yes, uh-huh.</p> <p>9 Q. Mr. Robinson, do you have a provider that</p> <p>10 comes to your apartment here that helps you with</p> <p>11 cooking and cleaning and transporting you to</p> <p>12 appointments?</p> <p>13 A. Yes, I do.</p> <p>14 Q. And about how many days a week does that</p> <p>15 person come?</p> <p>16 A. Five days a week.</p> <p>17 Q. Okay. How many hours a day does that person</p> <p>18 stay?</p> <p>19 A. Approximately, four hours a day.</p> <p>20 Q. Do you rely on that care provider?</p> <p>21 A. She's my right arm.</p> <p>22 Q. She's your right arm. I understand.</p> <p>23 Have you ever had to rely on her to get</p> <p>24 your mail and to mail things for you?</p> <p>25 A. At times.</p>	<p>1 A. Well, I can't get -- I don't drive and I</p> <p>2 can't get out, and I have to depend on my provider to</p> <p>3 take me here and there. And when -- when I get my</p> <p>4 mail -- most of the time I get my mail, my provider be</p> <p>5 gone. And Ms. -- Ms. Ray, she -- she's convenient,</p> <p>6 and she helps me a lot.</p> <p>7 Q. And you're talking about Ms. Willie Ray?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Now, do you -- is voting something</p> <p>10 that's important to you?</p> <p>11 A. Yes, it is.</p> <p>12 Q. Tell the judge about that.</p> <p>13 A. Well, I'm very patriotic, and voting means a</p> <p>14 lot to me because I'm interested in what happens and</p> <p>15 how things are done in the Whitehouse. And -- and I</p> <p>16 even pray for the President when they make a decision</p> <p>17 and everything, but it's -- it means so much to me if</p> <p>18 I couldn't vote. I'd just have to take anything come</p> <p>19 along, and I'm not that type person.</p> <p>20 Q. Yes, sir.</p> <p>21 A. It's just in my system.</p> <p>22 Q. Yes, sir. Now, when you vote, do you make</p> <p>23 up your own mind about who's the best candidate or</p> <p>24 does somebody tell you that?</p> <p>25 A. I make up my own mind.</p>

3 (Pages 6 to 9)

ORAL AND VIDEOTAPED DEPOSITION OF REUBEN ROBINSON

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<p>1 Q. Okay. Is there a lady that used to live 2 here in the building with you that helped you mail one 3 of your ballots before?</p> <p>4 A. Yes.</p> <p>5 Q. And who was that?</p> <p>6 A. She don't live here anymore.</p> <p>7 Q. Yes, sir. What was her name, though?</p> <p>8 A. If no mistake, her name was Linda -- Linda 9 Hunter.</p> <p>10 Q. Linda Hunter?</p> <p>11 A. Yeah.</p> <p>12 Q. Okay.</p> <p>13 A. If I'm not mistaken, that's her name.</p> <p>14 Q. Now, you said that you have a hard time, you 15 can't use your right arm and your right hand; is that 16 right?</p> <p>17 A. Yeah.</p> <p>18 Q. Now, is it -- do you have to have somebody 19 help you fold up your ballot to put it in the 20 envelope?</p> <p>21 A. No, I can do that one hand (demonstrating).</p> <p>22 Q. Okay. Are you able to put it in the 23 envelope by yourself, or do you have to have somebody 24 help you?</p> <p>25 A. Sometime I have to have someone to help me</p>	<p>1 envelope, would it be hard for you to mail something?</p> <p>2 A. Yes, it would. It would be hard, but I 3 believe I can get it done.</p> <p>4 Q. Now, Ms. Willie Ray, you talked about her a 5 few minutes ago. I want to talk to you back before 6 the law changed.</p> <p>7 Did Ms. Willie Ray -- or right when the 8 law changed, did Ms. Willie Ray ever help you mail a 9 ballot?</p> <p>10 A. No, she -- she really never did except her 11 helpers, you know. She provide helpers, her daughters 12 and stepdaughter -- daughters and --</p> <p>13 Q. Her granddaughter?</p> <p>14 A. Granddaughters, you know, they do a lot of 15 work. Make sure they be at point A and point B when 16 they need to be.</p> <p>17 Q. So you know Jamillah Johnson? Is that 18 Willie Ray's granddaughter?</p> <p>19 A. I -- she much younger than I am, but I don't 20 know all her grandkids.</p> <p>21 Q. Yes, sir, I understand.</p> <p>22 A. I've been here so long and been disabled so 23 long, I -- I'm way older than them.</p> <p>24 Q. Well, if Ms. --</p> <p>25 A. But I think so.</p>
Page 11	Page 13
<p>1 put it in the envelope.</p> <p>2 Q. Okay.</p> <p>3 A. I fold up, but I can't hold a envelope and 4 put it in there, too. It's sometime -- you know, it's 5 just like I have arthritis, too, and it goes -- 6 there's Ms. Hunter right there.</p> <p>7 Q. Okay.</p> <p>8 A. It just -- it just goes and come. It 9 goes -- and my hand, just -- this is really all I got 10 (demonstrating).</p> <p>11 Q. Yes, sir.</p> <p>12 A. This hand, this leg.</p> <p>13 Q. So if somebody wasn't able to help you get 14 that folded ballot in the envelope, would it mean you 15 couldn't vote by mail sometimes?</p> <p>16 A. Well, I don't -- I wouldn't -- I wouldn't 17 say so as long as I had help there, you know. Like 18 now, I sent off my prescription back through VA, and 19 sometime I have to get my provider to put it in there. 20 I make sure and check my prescription and put them in 21 there and have her put them in envelope, and then I 22 can seal it and take it outside and put it in the drop 23 box.</p> <p>24 Q. Yes, sir. If you didn't have your provider 25 to help you, you know, fold -- or to put mail in an</p>	<p>1 Q. Okay. You think so.</p> <p>2 Well, has Ms. Willie or her 3 granddaughter, or one of her family members, ever 4 helped you apply for a ballot for your mail-in ballot?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Now, if Ms. Willie wasn't able or her 7 family wasn't able to help you back then get those, 8 would it have impacted your ability to vote?</p> <p>9 A. Probably would. Probably would, because I 10 don't know anybody that would take time out to help 11 me, 'cause I don't go anywhere. I don't go; I be here 12 most of the time.</p> <p>13 And I don't -- it's hard -- it's hard 14 to get around, you know, because my provider don't be 15 here all the time. And if I need to go somewhere and 16 she's here, then she'll take me.</p> <p>17 Q. Now, the woman we were talking about that 18 used to live in this building that mailed that ballot 19 for you, did she get in trouble for helping you mail 20 that ballot?</p> <p>21 MS. WILSON: Objection, lack of 22 foundation.</p> <p>23 A. I really don't know. All I know is that -- 24 that somebody said something. I don't know what was 25 said, and I never dug into it.</p>

4 (Pages 10 to 13)

ORAL AND VIDEOTAPED DEPOSITION OF REUBEN ROBINSON

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<p>1 MS. WILSON: Objection, hearsay.</p> <p>2 MR. ALBRITTON: Excuse me.</p> <p>3 Can we go off the record --</p> <p>4 MS. WILSON: Sorry.</p> <p>5 MR. ALBRITTON: -- for one second?</p> <p>6 THE VIDEOGRAPHER: Going off the</p> <p>7 record. The time is approximately 1:55 p.m.</p> <p>8 (Discussion had off record.)</p> <p>9 THE VIDEOGRAPHER: We're back on the</p> <p>10 record. The time is approximately 1:56 p.m.</p> <p>11 Q. (By Mr. Albritton) Now, Mr. Robinson,</p> <p>12 your -- your provider, we talked about her earlier,</p> <p>13 and she helps you five days a week with your -- with</p> <p>14 your errands and the like?</p> <p>15 A. Yeah, and clean up apartment.</p> <p>16 Q. Clean up the apartment and stuff?</p> <p>17 A. Yeah.</p> <p>18 Q. And I think you said she helps you with your</p> <p>19 mail sometimes?</p> <p>20 A. Yes, when I ask her.</p> <p>21 Q. Okay. How do you normally go about applying</p> <p>22 for your application to vote by mail? Does somebody</p> <p>23 help you do that?</p> <p>24 A. They -- they call -- call me. And because I</p> <p>25 ask them -- I ask Ms. Ray, you know, when I found out</p>	<p>1 A. Yes, when I have -- when I -- when I need</p> <p>2 her to.</p> <p>3 Q. Okay.</p> <p>4 A. But most of the time, that's all the</p> <p>5 exercise I get; so, I'd rather do it myself 'cause</p> <p>6 that -- you know, I need the exercise myself 'cause I</p> <p>7 can't get out and exercise. So I do everything I can</p> <p>8 do for myself.</p> <p>9 Q. I see.</p> <p>10 A. And when I feel real bad and in pain and</p> <p>11 stuff, well, then I ask her to check my mail, somebody</p> <p>12 to check my mail for me.</p> <p>13 Q. All right. Now, is this somebody who's paid</p> <p>14 to help you out?</p> <p>15 A. Yes.</p> <p>16 Q. Is this somebody who's worked with you for a</p> <p>17 long time?</p> <p>18 A. Yes.</p> <p>19 Q. All right. Is this somebody you trust?</p> <p>20 A. Very much.</p> <p>21 Q. Okay. So, if you asked her to help you fill</p> <p>22 out an application for a ballot, do you think she'd do</p> <p>23 it?</p> <p>24 A. I don't -- now my personal thought --</p> <p>25 Q. Yes.</p>
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<p>1 that they help people like myself, I told her -- I</p> <p>2 asked, you know, would they continue to help me 'cause</p> <p>3 I didn't know anybody that would, and she help --</p> <p>4 she -- she said okay.</p> <p>5 And when the time come to vote, you</p> <p>6 know, what I have to do to get -- the -- the --</p> <p>7 register to vote, then I get a paper and register to</p> <p>8 vote, and then they'll -- they'll see I get every --</p> <p>9 all the paperwork that I need.</p> <p>10 Q. And she helps you fill out the application</p> <p>11 to get the ballot mailed to you?</p> <p>12 A. She -- I don't see what she -- what she do,</p> <p>13 but it come to my mail box, you know, because I let</p> <p>14 her know that I want -- I want to vote.</p> <p>15 Q. Okay. And without that help --</p> <p>16 A. I don't know that process.</p> <p>17 Q. Okay. But without her help, would you be</p> <p>18 less likely to vote?</p> <p>19 A. Yeah, I'd be less likely.</p> <p>20 MR. ALBRITTON: Pass the witness.</p> <p>21 EXAMINATION</p> <p>22 BY MS. WILSON:</p> <p>23 Q. Mr. Robinson, I'm going to ask you some</p> <p>24 questions. First of all, this provider that you have,</p> <p>25 you say she helps you with your mail sometimes?</p>	<p>1 A. -- I don't think so. I don't think her</p> <p>2 company allow her to do that.</p> <p>3 Q. Oh, I see. All right.</p> <p>4 A. 'Cause that make them liable for whatever.</p> <p>5 'Cause, you know, like they can't even iron my</p> <p>6 clothes.</p> <p>7 Q. All right.</p> <p>8 A. That's their policy. Their policy is to</p> <p>9 stay away from lawsuits and stuff.</p> <p>10 Q. Now, how do you arrange it -- does Ms. Ray</p> <p>11 come by when you -- when it's time to apply for a</p> <p>12 ballot?</p> <p>13 A. Yes, because I ask her to.</p> <p>14 Q. So, do you -- do you call her on the phone?</p> <p>15 Does she come by and you just -- you just ask her? Or</p> <p>16 does she visit periodically, I guess is my question?</p> <p>17 A. Yes, she visit periodically.</p> <p>18 Q. All right.</p> <p>19 A. And see if everything going right and, you</p> <p>20 know, that I get -- that I get my papers and whatever,</p> <p>21 envelope.</p> <p>22 Q. Now, this Robison Terrace where you live, is</p> <p>23 that an assisted living community?</p> <p>24 A. Yes. No, no. It's not assisted; it's</p> <p>25 government-subsidized.</p>

5 (Pages 14 to 17)

ORAL AND VIDEOTAPED DEPOSITION OF REUBEN ROBINSON

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<p>1 Q. I see. All right. So they don't have a 2 service here to help you vote; is that right? 3 A. No. 4 Q. All right. Besides Ms. Ray and 5 Ms. Robinson, do you know anybody you can call -- I'm 6 sorry -- Ms. Ray and Ms. Johnson, do you know anybody 7 you can call to help you vote? 8 A. No. 9 Q. All right. 10 A. That made me think, I need to -- I need to 11 turn my phone off. 12 Q. Now, Mr. Robinson, have you ever complained 13 to anybody about a lack of help in voting? 14 A. No. 15 Q. All right. And when did you first hear 16 about this lawsuit? 17 A. I think it was last year sometime. 18 Q. All right. And just generally, what do you 19 understand the lawsuit's about? 20 A. I don't really know. I -- I don't -- to be 21 honest, I don't really know because I haven't seen 22 none of them do nothing wrong. But I don't know all 23 the rules. 24 Q. All right. Do you recall what years you 25 voted and what years you didn't vote?</p>	<p>1 scared? 2 A. No. 3 Q. All right. Do you remember how you knew 4 Ms. Hunter was scared, or where you heard that, or if 5 it's even true? 6 A. Well, I just guess it from a conversation I 7 had with her 'cause I -- you know, I know it's coming 8 up close to time to vote and I hadn't got my paper 9 yet. 10 Q. Uh-huh. 11 A. And she say, "Huh-uh, I don't want to do 12 that no more." And I just -- from that reaction, I 13 figured she was scared. 14 Q. All right. 15 A. Or, you know, 'cause -- you know. And then 16 shortly after was when I heard about it. 17 Q. All right. 18 A. But I don't -- to the day, I still don't 19 know what she done wrong. 20 Q. All right. Do you remember if it was harder 21 to vote in -- well, let me -- let me preface this. 22 The Texas Democratic Party gave me your voting record, 23 and I've got it right here. 24 A. Uh-huh. 25 Q. This says you voted in 2000 and you didn't</p>
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<p>1 A. No, I don't recall. 2 Q. Can you -- can you tell if it's been harder 3 to vote after, say, 2003 than it used to be? 4 A. I can't say it was hard to vote. I know the 5 lady that used to help me, she -- she don't help me 6 anymore. I think that was Ms. Hunter. 7 Q. All right. 8 A. I just take whoever she sends. 9 Q. Whoever who sends? 10 A. Ms. Ray. 11 Q. All right. 12 A. Or whoever she brings -- 13 Q. All right. 14 A. -- to cover everybody that need covering. 15 Q. Do you know why Ms. Hunter doesn't help you 16 anymore? 17 A. All I know is that somebody scared her and 18 she -- you know, most people, when they don't -- 19 they -- you know, when they try to help somebody and 20 they -- they figure out they -- somebody say did 21 something wrong or whatever, well, then they don't 22 want to help no more. And that attitude, there's a 23 lot of people that don't want to help you 'cause they 24 scared they get in trouble. 25 Q. Did Ms. Hunter ever tell you that she was</p>	<p>1 vote in 2002 and you voted in 2004. Do you have any 2 memory of that at all? 3 A. I remember when I didn't vote, I wasn't 4 staying here. 5 Q. I see. 6 A. Which I was staying here before then, but I 7 left and moved to Houston, and I came back -- and I 8 came back here. 9 Q. Okay. 10 A. And I didn't have no help. 11 Q. In Houston? 12 A. Well, I didn't have no help in Houston. And 13 at that time, I wasn't up here. I was -- I was 14 staying with a friend and that's -- I think that's the 15 year -- if my memory serve me right, that's the year I 16 didn't vote. 17 Q. Was that about 2002 then? 18 A. I can't say when. 19 Q. All right. 20 A. But I know it was somewhere back there. 21 Q. All right. Did you live in the Reagan 22 Terrace -- did you live in -- I'm sorry -- Robison 23 Terrace in 2006? 24 A. Yes. 25 Q. Okay. This -- this piece of paper here says</p>

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<p>1 you didn't vote in 2006. Do you remember that?</p> <p>2 A. No.</p> <p>3 Q. All right.</p> <p>4 A. I don't remember.</p> <p>5 Q. Okay. Do you know why you didn't vote in</p> <p>6 2006?</p> <p>7 A. No, I -- during that time I was -- my body</p> <p>8 was going through a lot of changes --</p> <p>9 Q. So you --</p> <p>10 A. -- and I had had a stroke.</p> <p>11 Q. So you think it was because of your physical</p> <p>12 problems?</p> <p>13 A. Yes.</p> <p>14 Q. All right. Do you remember if Ms. --</p> <p>15 A. If no mistake, that's when I had a -- I</p> <p>16 think that's when I had a stroke on my left side.</p> <p>17 Q. All right. And your left side was the side</p> <p>18 that was working before that --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- is that right?</p> <p>21 A. Left side still working now --</p> <p>22 Q. All right.</p> <p>23 A. -- except it just ain't got no feeling --</p> <p>24 Q. Okay.</p> <p>25 A. -- in my hand and up here (indicating).</p>	<p>1 with your brains.</p> <p>2 Q. All right, sir.</p> <p>3 A. And you can't remember everything --</p> <p>4 Q. All right.</p> <p>5 A. -- 'cause your mind don't be functioning,</p> <p>6 you know. It don't be functioning a hundred percent.</p> <p>7 Q. Okay. When you have help to vote, you know,</p> <p>8 do you know that the helper has to sign the outside of</p> <p>9 the envelope? Do you know anything about that?</p> <p>10 A. No, I don't.</p> <p>11 Q. All right. Well --</p> <p>12 A. To me, that don't concern me. 'Cause after</p> <p>13 I do -- all that sheet inside is all I do.</p> <p>14 Q. I see.</p> <p>15 A. And then they do the rest because I don't</p> <p>16 know -- you know, I don't know what they -- what they</p> <p>17 have to do on the outside --</p> <p>18 Q. Okay. So --</p> <p>19 A. -- with the envelope. And all I know is</p> <p>20 that -- that I watch them dump it in the mail box, or</p> <p>21 either I'll put it in the mail box.</p> <p>22 Q. Yes, sir. Well, so if they had to sign the</p> <p>23 outside of the envelope, that wouldn't keep you from</p> <p>24 voting, would it?</p> <p>25 A. No.</p>
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<p>1 Q. Yes, sir. Do you remember voting in the</p> <p>2 primary last March?</p> <p>3 A. I got so much stuff going on in my life I</p> <p>4 can't remember, but if I -- if I knew who was running</p> <p>5 and what they were doing, I probably could tell you.</p> <p>6 Q. Do you remember the -- it says you voted in</p> <p>7 the Democratic primary and the two major candidates</p> <p>8 were Hillary Clinton and Barack Obama. Do you</p> <p>9 remember that -- that race?</p> <p>10 A. They'll still running.</p> <p>11 Q. Sir?</p> <p>12 A. They're still running.</p> <p>13 Q. They are still running. But we voted in</p> <p>14 Texas on that -- I'm sorry -- we voted in March in</p> <p>15 Texas on that.</p> <p>16 Do you remember voting in that race?</p> <p>17 I'm not asking you who you voted for; I'm just asking</p> <p>18 you if you remember voting.</p> <p>19 A. I don't -- I can't recall right now.</p> <p>20 Q. All right. So you don't remember if anybody</p> <p>21 helped you get a ballot and mail it off in -- last</p> <p>22 March?</p> <p>23 A. I can't remember.</p> <p>24 Q. All right, sir.</p> <p>25 A. When you have a stroke, you have -- it mess</p>	<p>1 Q. All right, sir.</p> <p>2 A. That's -- that's not really my concern. My</p> <p>3 concern is make sure it get in the mail box and get</p> <p>4 off because that's my vote.</p> <p>5 Q. Yes, sir.</p> <p>6 A. That's just like a million dollars to me.</p> <p>7 Q. Yes, sir. Has anybody -- have you ever</p> <p>8 heard anybody complain that somebody told them how to</p> <p>9 vote?</p> <p>10 A. No.</p> <p>11 Q. Do you agree that elderly and disabled</p> <p>12 people can be taken advantage of?</p> <p>13 A. Probably -- probably some of the older</p> <p>14 people --</p> <p>15 Q. Okay.</p> <p>16 A. -- that -- you know --</p> <p>17 Q. Yes, sir.</p> <p>18 A. -- they probably could. But a bit younger,</p> <p>19 you know, you -- you pretty well be on top of things.</p> <p>20 Q. Yes, sir. Do you agree that it's a good</p> <p>21 idea to have a family member or a trusted friend to</p> <p>22 send in your ballot for you?</p> <p>23 A. Well, I trust Ms. Ray because I know she</p> <p>24 going to do it.</p> <p>25 Q. Yes, sir. And --</p>

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<p>1 A. And, you know, she have help. She have</p> <p>2 aides and -- and plus, we don't have to go but just to</p> <p>3 the front of the building and drop it in the thing.</p> <p>4 Q. Yes, sir.</p> <p>5 A. Drop it in the mail box. So that's that.</p> <p>6 That's, you know, (unintelligible).</p> <p>7 Q. Do you think it's better to have somebody</p> <p>8 you trust to help you with your ballot?</p> <p>9 A. Yes. Yes, I do. Because, you know, it's</p> <p>10 just like trusting somebody with your money that you</p> <p>11 don't know.</p> <p>12 Q. They could change your ballot without you</p> <p>13 knowing it; is that right?</p> <p>14 A. It might -- if they don't -- if you don't</p> <p>15 see them dump it, they can do anything. Throw it in</p> <p>16 the trash can.</p> <p>17 Q. They could throw it away?</p> <p>18 A. Yeah.</p> <p>19 Q. And your -- and so whoever's touching that</p> <p>20 ballot, you feel like that needs to be somebody you</p> <p>21 trust?</p> <p>22 A. Yes.</p> <p>23 Q. Did you ever hear about any new laws being</p> <p>24 passed in 2003 about mail-in voting?</p> <p>25 A. No, I haven't been informed. I haven't...</p>	<p>1 Q. And do you want -- you would want to know</p> <p>2 who's responsible for putting it in that mail box,</p> <p>3 wouldn't you?</p> <p>4 A. Yes.</p> <p>5 MS. WILSON: I'll pass the witness.</p> <p>6 MR. ALBRITTON: I have nothing further.</p> <p>7 THE VIDEOGRAPHER: Going off the</p> <p>8 record. The time is approximately 2:14 p.m.</p> <p>9 {Deposition concluded.}</p>
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<p>1 Q. But --</p> <p>2 A. I haven't been informed about new law. But</p> <p>3 what that -- but like I say, what they do on -- if</p> <p>4 they have to write something on the envelope or</p> <p>5 whatever, I didn't know. You know, that's -- that's</p> <p>6 their job --</p> <p>7 Q. Yes, sir.</p> <p>8 A. -- you know. As far as I'm concerned,</p> <p>9 that's their job. And I figure they know what they</p> <p>10 supposed to do.</p> <p>11 Q. All right. To your knowledge, have you ever</p> <p>12 had a ballot sent back to you or rejected in any way?</p> <p>13 A. No, I haven't. I can't say I have -- I had</p> <p>14 ones that come back. I hope they went through.</p> <p>15 Q. Do you think it's a good idea to have that</p> <p>16 person who helps you, to have them sign on the back of</p> <p>17 your envelope so people will know who helped you?</p> <p>18 A. Well, personally to me, it don't make any</p> <p>19 difference as long as I see them dump it.</p> <p>20 Q. I see. All right. If it was somebody you</p> <p>21 didn't know?</p> <p>22 A. I couldn't sleep good.</p> <p>23 Q. All right.</p> <p>24 A. I couldn't sleep good 'cause I -- I want to</p> <p>25 know that it's gone, sent it off, you know.</p>	<p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: DATE OF DEPOSITION:</p> <p>3 REUBEN ROBINSON APRIL 21, 2008</p> <p>4 PAGE LINE CHANGE REASON</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>

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1 I, REUBEN ROBINSON, have read the foregoing	1 COUNTY OF BOWIE
2 deposition and hereby affix my signature that same is	2 STATE OF TEXAS
3 true and correct, except as noted above.	3 REPORTER'S SUPPLEMENTAL CERTIFICATE
4	4 I hereby certify that the witness was notified on
5 REUBEN ROBINSON	5 _____ that the witness has 30 days after
6 Job No. 69501	6 being notified by the officer that the transcript is
7 THE STATE OF _____ *	7 available for review by the witness, and if there are
8 COUNTY OF _____ *	8 changes in form or substance to be made, then the
9 Before me, _____, on this	9 witness will sign a statement reciting such changes
10 day personally appeared REUBEN ROBINSON, known to me	10 and the reasons given by the witness for making them;
11 (or proved to me under oath of _____ or	11 That the witness signature was/was not
12 through _____) (description of identity card or	12 returned as of _____.
13 other document), to be the person whose name is	13 Subscribed and sworn to on this the _____
14 subscribed to the foregoing instrument and	14 day of _____, 2008.
15 acknowledged to me that they executed the same for the	15
16 purposes and consideration therein expressed.	16
17 Given under my hand and seal of office this	17 JILL E. McFADDEN, Texas CSR 3392
18 the _____ day of _____, _____.	18 My Commission Expires: 12/31/08
19	19
20	20
21 NOTARY PUBLIC IN AND FOR	21
22 THE STATE OF _____	22
23	23
24	24
25	25

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1 COUNTY OF BOWIE
2 STATE OF TEXAS
3 I, Jill E. McFadden, Certified Shorthand
4 Reporter in and for the State of Texas, hereby certify
5 that this transcript is a true record of the testimony
6 given.
7 I further certify that I am neither attorney
8 nor counsel for, related to, nor employed by any of
9 the parties to the action in which this testimony was
10 taken.
11 Further, I am not a relative or employee of
12 any attorney of record in this cause, nor do I have a
13 financial interest in the action.
14 Subscribed and sworn to on this the 28th day
15 of April, 2008.
16
17
18 JILL E. McFADDEN, Texas CSR 3392
19 My Commission Expires: 12/31/08
20
21
22
23
24
25

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Exhibit 5

ORAL AND VIDEOTAPED DEPOSITION OF EDDIE BUCHANAN

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WILLIE RAY, JAMILLAH JOHNSON,)
GLORIA MEEKS, REBECCA)
MINNEWEATHER, REUBEN)
ROBINSON, EDDIE JACKSON,)
and THE TEXAS DEMOCRATIC)
PARTY,)

Plaintiffs,)

v.)

Civil Action No.
2-06CV-385
Judge T. John Ward

STATE OF TEXAS, a State of)
the United States; GREG)
ABBOTT, Attorney General)
of the State of Texas;)
PHIL WILSON, Secretary of)
State for the State of Texas,)

Defendants.)

ORAL AND VIDEOTAPED DEPOSITION OF

EDDIE BUCHANAN

APRIL 15, 2008

Reported by: Jill E. McFadden

Job No. 69404

ORAL AND VIDEOTAPED DEPOSITION OF EDDIE BUCHANAN

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<p>1 ORAL AND VIDEOTAPED DEPOSITION of EDDIE 2 BUCHANAN, produced as a witness at the instance of the 3 PLAINTIFFS, and duly sworn, was taken in the 4 above-styled and numbered cause on April 15, 2008, 5 from 9:03 a.m. to 9:23 a.m., before Jill E. McFadden, 6 CSR in and for the State of Texas, reported by Machine 7 Stenography, at the Karnack Community Center, 15642 8 Farm-to-Market Road 134, Karnack, Texas, pursuant to 9 the Federal Rules of Civil Procedure and the 10 provisions stated on the record or attached hereto.</p> <p>11 12 A P P E A R A N C E S 13 FOR THE PLAINTIFFS: 14 Mr. Eric Albritton 15 Albritton Law Firm 16 111 W. Tyler Street 17 Longview, Texas 75601 18 Phone: 903.757.8449 19 FOR THE DEFENDANTS: 20 Ms. Kathlyn C. Wilson 21 Assistant Attorney General 22 General Litigation Division 23 300 West 15th Street, 14th floor 24 Austin, Texas 78701 25 Phone: 512.463.2120</p> <p>ALSO PRESENT:</p> <p>Mr. Doug Rankin, Video Technician Mr. Todd L. Parish</p>	<p>1 THE VIDEOGRAPHER: Today is April the 2 15th of 2008. The time is approximately 9:03 a.m. We 3 are now on the record. 4 (Witness sworn.) 5 MR. ALBRITTON: Do you want us to state 6 our names for the record? Eric Albritton for the 7 Plaintiffs. 8 MS. WILSON: Kathy Wilson for the 9 Defendants. 10 EDDIE BUCHANAN, 11 having been first duly sworn, testified as follows: 12 EXAMINATION 13 BY MR. ALBRITTON: 14 Q. Mr. Buchanan, my name is Eric Albritton. 15 You and I met yesterday, didn't we? 16 A. Right. 17 Q. If you would, tell the judge what your full 18 name is. 19 A. Eddie Buchanan. 20 Q. Mr. Buchanan, how old a man are you? 21 A. 68. 22 Q. 68 years old? 23 A. Right. 24 Q. Where do you currently live? 25 A. 162 Private Road 2623, Karnack, Texas.</p>												
Page 3	Page 5												
<p>1 I N D E X 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <table> <tr> <td>Appearances.....</td><td>2</td></tr> <tr> <td>Examination by Mr. Albritton.....</td><td>4</td></tr> <tr> <td>Examination by Ms. Wilson.....</td><td>8</td></tr> <tr> <td>Changes and Signature.....</td><td>21</td></tr> <tr> <td>Reporter's Certification.....</td><td>23</td></tr> <tr> <td>Reporter's Further Certification.....</td><td>24</td></tr> </table> <p>* * * * *</p>	Appearances.....	2	Examination by Mr. Albritton.....	4	Examination by Ms. Wilson.....	8	Changes and Signature.....	21	Reporter's Certification.....	23	Reporter's Further Certification.....	24	<p>1 Q. And how long have you lived here in Karnack, 2 Texas? 3 A. 68 years. 4 Q. 68 years? 5 A. Right. 6 Q. Did you go to school here in Karnack? 7 A. I did. 8 Q. Now, Mr. Buchanan, do you have some physical 9 disabilities? 10 A. I have. 11 Q. If you would, just tell the judge briefly 12 what happened to you. 13 A. I had a stroke 15 years ago, and I cannot 14 walk without assistance. 15 Q. Okay. A stroke 15 years ago? 16 A. Right. 17 Q. Actually, today's the anniversary. 18 A. Today, the 15th day of April. 19 Q. Do you also, as a result of that stroke, 20 have a little bit difficulty seeing? 21 A. Right. 22 Q. Are you a regular voter, Mr. Buchanan? 23 A. I am. 24 Q. Do you -- is voting something that's 25 important to you?</p>
Appearances.....	2												
Examination by Mr. Albritton.....	4												
Examination by Ms. Wilson.....	8												
Changes and Signature.....	21												
Reporter's Certification.....	23												
Reporter's Further Certification.....	24												

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<p>1 A. I feel like, yes.</p> <p>2 Q. Why is it important to you?</p> <p>3 A. Voting is one of my rights, and I like to</p> <p>4 preserve it.</p> <p>5 Q. Are you a married man?</p> <p>6 A. Yes, I am.</p> <p>7 Q. And what's your wife's name?</p> <p>8 A. Georgie Buchanan.</p> <p>9 Q. And how long have you and Ms. Buchanan been</p> <p>10 married?</p> <p>11 A. 42 years.</p> <p>12 Q. Does she live with you?</p> <p>13 A. Yes.</p> <p>14 Q. Do you have any children that live in the</p> <p>15 house?</p> <p>16 A. Two daughters.</p> <p>17 Q. Do they live in the Karnack/Harrison County</p> <p>18 area?</p> <p>19 A. No. No.</p> <p>20 Q. Do you -- when you vote, do you typically</p> <p>21 vote by mail?</p> <p>22 A. Sometimes, yes.</p> <p>23 Q. Now, why do you vote by mail?</p> <p>24 A. Because I have go to the voting place.</p> <p>25 Q. It's too hard for you to go to the polling</p>	<p>1 A. No.</p> <p>2 Q. After you mark your ballot, your mail-in</p> <p>3 ballot, does your wife help you mail it?</p> <p>4 A. Yes.</p> <p>5 Q. Now, if your wife weren't able to help you</p> <p>6 mail it, do you have any other relatives here that</p> <p>7 could help you mail it?</p> <p>8 A. No.</p> <p>9 Q. If your wife weren't able to help you mail</p> <p>10 it, is Eddie Jackson somebody that you would trust to</p> <p>11 help mail your ballot?</p> <p>12 A. I would. I would.</p> <p>13 Q. If you didn't have somebody to help you mail</p> <p>14 your ballot, do you think that you wouldn't be able to</p> <p>15 vote?</p> <p>16 A. I wouldn't.</p> <p>17 Q. Okay. Is that something that upsets you?</p> <p>18 A. Yes.</p> <p>19 Q. Would it upset you if you couldn't vote?</p> <p>20 A. I would say yes.</p> <p>21 Q. Okay. How old is your wife?</p> <p>22 A. 66.</p> <p>23 MR. ALBRITTON: Pass the witness.</p> <p>24 EXAMINATION</p> <p>25 BY MS. WILSON:</p>
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<p>1 place?</p> <p>2 A. It is difficult.</p> <p>3 Q. Okay. Do you know Eddie Jackson?</p> <p>4 A. Yes.</p> <p>5 Q. How long have you known Eddie Jackson?</p> <p>6 A. We went to school together.</p> <p>7 Q. You went to school together here in Karnack?</p> <p>8 A. Yes.</p> <p>9 Q. Mr. Jackson helped you apply for your mail</p> <p>10 ballot before?</p> <p>11 A. Yes.</p> <p>12 Q. Is Mr. Jackson somebody that you trust?</p> <p>13 A. Yes.</p> <p>14 Q. I came to your house yesterday, didn't I?</p> <p>15 A. Right.</p> <p>16 Q. Now, your mailbox isn't right there at the</p> <p>17 front of your house, is it?</p> <p>18 A. No. No.</p> <p>19 Q. Is it up on the -- on the farm-to-market</p> <p>20 road --</p> <p>21 A. Right.</p> <p>22 Q. -- or the county road, whatever that is?</p> <p>23 A. Uh-huh.</p> <p>24 Q. Are you able to get yourself up to your own</p> <p>25 mail box?</p>	<p>1 Q. Morning, Mr. Buchanan. I'm going to ask you</p> <p>2 some questions now.</p> <p>3 A. All right.</p> <p>4 Q. Did you vote in the 2008 general primary?</p> <p>5 A. I -- yes.</p> <p>6 Q. Okay. How did you vote? By mail?</p> <p>7 A. Voted.</p> <p>8 Q. All right. And did your wife mail that for</p> <p>9 you?</p> <p>10 A. Yes.</p> <p>11 Q. Did you vote in the 2008 runoff?</p> <p>12 A. Yes.</p> <p>13 Q. All right. And did your wife mail that for</p> <p>14 you?</p> <p>15 A. That's right.</p> <p>16 Q. All right. Now, I've got a -- I got a piece</p> <p>17 of paper here that I got from the Democratic party.</p> <p>18 In 2006, it said you early voted. Do you have any</p> <p>19 memory of early voting in 2006?</p> <p>20 A. That far back I don't remember.</p> <p>21 Q. Excuse me?</p> <p>22 A. That far back --</p> <p>23 Q. You don't remember?</p> <p>24 A. I don't -- I remember voting -- like you</p> <p>25 say, I remember talking about it, but I don't remember</p>

3 (Pages 6 to 9)

ORAL AND VIDEOTAPED DEPOSITION OF EDDIE BUCHANAN

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<p>1 what the year was.</p> <p>2 Q. I see. Was it possible in 2006 that</p> <p>3 somebody drove you to the polls and you voted early?</p> <p>4 A. I doubt it.</p> <p>5 Q. You doubt it? Okay. Because this piece of</p> <p>6 paper has you down with an "E," which I'm told means</p> <p>7 that you early voted.</p> <p>8 Do you have any reason to say</p> <p>9 otherwise? Do you -- you don't have any --</p> <p>10 A. No.</p> <p>11 Q. Okay.</p> <p>12 A. No. Early vote (unintelligible), it slipped</p> <p>13 my mind.</p> <p>14 Q. Okay. And you know what, I have a hard time</p> <p>15 remembering two years back, too.</p> <p>16 A. Right.</p> <p>17 Q. And this says in 2004 you early voted as</p> <p>18 well. Do you recall that or --</p> <p>19 A. No.</p> <p>20 Q. All right.</p> <p>21 A. Do early voting mean I went to the poll?</p> <p>22 Q. Sir?</p> <p>23 A. Does early voting mean I went to the poll?</p> <p>24 Q. Does it -- I'm assuming it does. That's --</p> <p>25 they told me that an -- now there's an "M" under</p>	<p>1 Q. All right. I see. Where do you live now?</p> <p>2 A. 162 Private Road 2623.</p> <p>3 Q. Okay. And you live there with your wife?</p> <p>4 A. Right.</p> <p>5 Q. Does anyone else live with you?</p> <p>6 A. No.</p> <p>7 Q. Do you receive any help? Does anybody come</p> <p>8 by and do any cooking, anything like that --</p> <p>9 A. Yes.</p> <p>10 Q. -- or does your wife --</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Who does that?</p> <p>13 A. Annette Hicks. Annette Hicks.</p> <p>14 Q. Addette Hicks?</p> <p>15 A. Annette. Annette.</p> <p>16 Q. Annette Hicks?</p> <p>17 A. Right.</p> <p>18 Q. Okay. Are you related to Ms. Hicks?</p> <p>19 A. No.</p> <p>20 Q. Is she a friend of yours?</p> <p>21 A. No.</p> <p>22 Q. Does a county service send her by there?</p> <p>23 A. Right, yeah, send her by there.</p> <p>24 Q. Okay. About how often does Ms. Hicks come</p> <p>25 by?</p>
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<p>1 "2002," and they tell me that means mail.</p> <p>2 A. Uh-huh.</p> <p>3 Q. You don't have -- but you don't have any</p> <p>4 recollection of that --</p> <p>5 A. No.</p> <p>6 Q. -- either, do you?</p> <p>7 A. That far back, no.</p> <p>8 Q. Now, Mr. Buchanan, have you needed help</p> <p>9 voting since you had your stroke 15 years ago?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Were you -- was there a period when</p> <p>12 you were better? Like in 2006, were you better than</p> <p>13 you are today and maybe got around more?</p> <p>14 A. Only difficulty I have is seeing.</p> <p>15 Q. Sir?</p> <p>16 A. Only difficulty I have, talking about</p> <p>17 vision.</p> <p>18 Q. I see. All right. Has it -- have you been</p> <p>19 able to drive since your stroke?</p> <p>20 A. No.</p> <p>21 Q. All right. So, if you went to the polls in</p> <p>22 2006, somebody drove you there; is that right?</p> <p>23 A. Somebody would carry me.</p> <p>24 Q. All right.</p> <p>25 A. I didn't drive.</p>	<p>1 A. Five days a week.</p> <p>2 Q. Okay. Now, since you -- I got this question</p> <p>3 down, and the way lawyers are, I'm going to ask it</p> <p>4 anyway even though I think I know the answer.</p> <p>5 Since you don't have any memory of</p> <p>6 whether or not you went to the polls in 2004 or 2006,</p> <p>7 do you have any idea of who might have driven you to</p> <p>8 the polls?</p> <p>9 A. Most of the time the only way I get a ride</p> <p>10 is my wife drive.</p> <p>11 Q. You think your wife did?</p> <p>12 A. That's the only way I get a ride I remember.</p> <p>13 Q. You just don't remember?</p> <p>14 A. I don't remember getting there.</p> <p>15 Q. You don't remember getting there?</p> <p>16 A. I'm not saying I didn't.</p> <p>17 Q. Yes, sir.</p> <p>18 A. I just don't remember it.</p> <p>19 Q. All right. Now, when you -- when you use</p> <p>20 the mail-in kind of ballot, your wife always helps you</p> <p>21 with that?</p> <p>22 A. Right.</p> <p>23 Q. And so you haven't had any difficulty over</p> <p>24 the years with the mail-in ballot, have you?</p> <p>25 A. Not that I can remember.</p>

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<p>1 Q. Not that you can remember?</p> <p>2 A. No.</p> <p>3 Q. 'Cause this says -- let's see, this says you</p> <p>4 voted in 2000 and 2002, and 2004 and 2006, and you</p> <p>5 didn't have any trouble voting any of those years; is</p> <p>6 that right?</p> <p>7 A. Maybe. I don't know.</p> <p>8 Q. All right. Mr. Buchanan, if your wife</p> <p>9 weren't able to help you, is there somebody you could</p> <p>10 call to help you with your ballot?</p> <p>11 A. No.</p> <p>12 Q. All right.</p> <p>13 A. I had to call Eddie Jackson, I guess.</p> <p>14 Q. All right. How do you know Eddie Jackson?</p> <p>15 A. We went to school together.</p> <p>16 Q. I see. So you've known him all your life?</p> <p>17 A. Right.</p> <p>18 Q. And can you see -- can you actually see your</p> <p>19 ballot to mark it, or does somebody have to mark it</p> <p>20 for you?</p> <p>21 A. Yeah, I can see it. If somebody points --</p> <p>22 points to the line, I'll see it.</p> <p>23 Q. So if they point to it, you can see it?</p> <p>24 A. Right.</p> <p>25 Q. And you tell them which one you want to vote</p>	<p>1 A. He had to go to a meeting to learn more</p> <p>2 about it.</p> <p>3 Q. He had to go to a --</p> <p>4 A. Meeting --</p> <p>5 Q. Meeting.</p> <p>6 A. -- to learn more about it.</p> <p>7 Q. So Mr. Jackson went to a meeting to learn</p> <p>8 more about the mail-in ballots?</p> <p>9 A. Right.</p> <p>10 Q. Okay. Did he tell anything else?</p> <p>11 A. No.</p> <p>12 Q. All right. Did he explain the laws to you,</p> <p>13 or he just said, "There's a new law and I" --</p> <p>14 A. No.</p> <p>15 Q. -- "got to go learn about it"?</p> <p>16 A. No.</p> <p>17 Q. All right. Just -- so he just said,</p> <p>18 "There's a new law;" is that right?</p> <p>19 A. Right.</p> <p>20 Q. All right. Thank you.</p> <p>21 A. Uh-huh.</p> <p>22 Q. Mr. Buchanan, when you get your mail-in</p> <p>23 ballot, there's a lot of -- have you seen -- there's</p> <p>24 some writing on the back.</p> <p>25 A. Yes.</p>
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<p>1 for?</p> <p>2 A. Right. Right.</p> <p>3 Q. All right. Do you ever remember a time when</p> <p>4 you didn't vote because you couldn't get help to vote?</p> <p>5 A. No.</p> <p>6 Q. Mr. Buchanan, has anybody talked to you</p> <p>7 about some new laws about helping people voting by</p> <p>8 mail?</p> <p>9 A. I heard it. I heard it.</p> <p>10 Q. You heard something?</p> <p>11 A. Yeah.</p> <p>12 Q. All right. Do you remember who talked to</p> <p>13 you about that?</p> <p>14 A. I heard Eddie talk about the law try to</p> <p>15 change.</p> <p>16 Q. Oh, you heard Mr. Jackson talk about it?</p> <p>17 A. Yes.</p> <p>18 Q. Do you remember what Mr. Jackson said about</p> <p>19 it?</p> <p>20 A. Said the law was -- it was trying -- was</p> <p>21 about to change, and they had to go to a meeting about</p> <p>22 it. That's all was said.</p> <p>23 Q. The law was about to change and --</p> <p>24 A. Yeah.</p> <p>25 Q. -- what?</p>	<p>1 Q. Can you read that?</p> <p>2 A. The fine writing I can't.</p> <p>3 Q. Okay. Has anybody ever read you the back of</p> <p>4 the envelope?</p> <p>5 A. Yes.</p> <p>6 Q. All right. Is that your wife?</p> <p>7 A. Right.</p> <p>8 Q. Okay. Now, if the back of the envelope said</p> <p>9 "Possession of this ballot may be a crime," would that</p> <p>10 scare you at all?</p> <p>11 A. No.</p> <p>12 Q. How did you get to the Karnack Community</p> <p>13 Center today Mr. Buchanan?</p> <p>14 A. Mr. -- I can't -- I can't think of his</p> <p>15 name -- drove me down.</p> <p>16 Q. Okay. Do you know who --</p> <p>17 A. The private eye.</p> <p>18 Q. The private eye?</p> <p>19 A. Yeah.</p> <p>20 Q. Do you know who arranged your transportation</p> <p>21 today?</p> <p>22 A. He did.</p> <p>23 Q. Pardon me?</p> <p>24 A. The guy I'm talking about.</p> <p>25 Q. I'm sorry, I didn't understand you.</p>

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<p>1 A. I'm talking about the private detective, he</p> <p>2 told me the day before (unintelligible) he would pick</p> <p>3 you up today.</p> <p>4 MR. ALBRITTON: If you let me, I'll ask</p> <p>5 some follow-up questions. I can clear it up, I think.</p> <p>6 MS. WILSON: That'll be great.</p> <p>7 MR. ALBRITTON: Okay.</p> <p>8 MS. WILSON: All right.</p> <p>9 Q. (By Ms. Wilson) Are you saying that the</p> <p>10 lawyer on the other side of the table arranged it?</p> <p>11 A. Yes. Yes.</p> <p>12 Q. Okay. Okay.</p> <p>13 A. Uh-huh.</p> <p>14 Q. When did you learn you were going to be a</p> <p>15 witness in this trial, Mr. Buchanan?</p> <p>16 A. About -- about two or three days ago.</p> <p>17 Q. Okay. Is that the first you ever heard of</p> <p>18 this trial?</p> <p>19 A. Yes.</p> <p>20 Q. And did somebody come and talk to you about</p> <p>21 it, or did they call you on the phone?</p> <p>22 A. He came and talked to me.</p> <p>23 Q. All right. What did he say?</p> <p>24 A. Just said there would be a meeting, and I</p> <p>25 might be picked.</p>	<p>1 Q. Does anybody ever call you to make sure you</p> <p>2 voted?</p> <p>3 A. Never have.</p> <p>4 MS. WILSON: I'm going to pass the</p> <p>5 witness. I'm done.</p> <p>6 THE WITNESS: Thank you.</p> <p>7 MR. ALBRITTON: We have no more</p> <p>8 questions.</p> <p>9 THE VIDEOGRAPHER: Going off the</p> <p>10 record. The time is approximately 9:23 a.m.</p> <p>11 {Deposition concluded.}</p>
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<p>1 Q. You might be picked?</p> <p>2 A. Yeah.</p> <p>3 Q. All right. All right.</p> <p>4 A. To testify.</p> <p>5 Q. All right. If Mr. Jackson weren't around,</p> <p>6 do you have another friend that you could call to help</p> <p>7 you vote?</p> <p>8 A. I don't remember the one.</p> <p>9 Q. All right. Do you ever ask either -- either</p> <p>10 one of the parties to come and help you vote?</p> <p>11 A. No.</p> <p>12 Q. Did Mr. Jackson ever tell you that he might</p> <p>13 not be able to help you vote because of these new</p> <p>14 laws, or did he just say "I'm going to go --</p> <p>15 A. No.</p> <p>16 Q. -- "learn about them"? Okay.</p> <p>17 A. No.</p> <p>18 Q. He never -- okay. And I'm going to have to</p> <p>19 ask that question again because we kind of talked over</p> <p>20 each other.</p> <p>21 A. Okay.</p> <p>22 Q. All right. Did Mr. Jackson ever tell you</p> <p>23 that he might not be able to help you vote because of</p> <p>24 these laws?</p> <p>25 A. No.</p>	<p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: DATE OF DEPOSITION:</p> <p>3 EDDIE BUCHANAN APRIL 15, 2008</p> <p>4 PAGE LINE CHANGE REASON</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>

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1 I, EDDIE BUCHANAN, have read the foregoing	1 COUNTY OF HARRISON
2 deposition and hereby affix my signature that same is	2 STATE OF TEXAS
3 true and correct, except as noted above.	3 REPORTER'S SUPPLEMENTAL CERTIFICATE
4	4 I hereby certify that the witness was notified on
5 EDDIE BUCHANAN	5 _____ that the witness has 30 days after
6 Job No. 69404	6 being notified by the officer that the transcript is
7 THE STATE OF _____ *	7 available for review by the witness, and if there are
8 COUNTY OF _____ *	8 changes in form or substance to be made, then the
9 Before me, _____, on this	9 witness will sign a statement reciting such changes
10 day personally appeared EDDIE BUCHANAN, known to me	10 and the reasons given by the witness for making them;
11 (or proved to me under oath of _____ or	11 That the witness signature was/was not
12 through _____) (description of identity card or	12 returned as of _____.
13 other document), to be the person whose name is	13 Subscribed and sworn to on this the _____
14 subscribed to the foregoing instrument and	14 day of _____, 2008.
15 acknowledged to me that they executed the same for the	15
16 purposes and consideration therein expressed.	16
17 Given under my hand and seal of office this	17 JILL E. McFADDEN, Texas CSR 3392
18 the _____ day of _____, ____.	18 My Commission Expires: 12/31/08
19	19
20	20
21 NOTARY PUBLIC IN AND FOR	21
22 THE STATE OF _____	22
23	23
24	24
25	25

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1 COUNTY OF HARRISON
2 STATE OF TEXAS
3 I, Jill E. McFadden, Certified Shorthand
4 Reporter in and for the State of Texas, hereby certify
5 that this transcript is a true record of the testimony
6 given.
7 I further certify that I am neither attorney
8 nor counsel for, related to, nor employed by any of
9 the parties to the action in which this testimony was
10 taken.
11 Further, I am not a relative or employee of
12 any attorney of record in this cause, nor do I have a
13 financial interest in the action.
14 Subscribed and sworn to on this the 25th day
15 of April, 2008.
16
17
18 JILL E. McFADDEN, Texas CSR 3392
19 My Commission Expires: 12/31/08
20
21
22
23
24
25

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ORAL AND VIDEOTAPED DEPOSITION OF EDDIE BUCHANAN

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Exhibit 6

Oral Deposition of **Jane Hamilton**

Date: April 30, 2008

Volume:

Case: Willie Ray v. State of Texas

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Jane Hamilton

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

WILLIE RAY, JAMILLAH JOHNSON,)
GLORIA MEEKS, REBECCA)
MINNEWEATHER, REUBEN ROBINSON,)
EDDIE JACKSON and THE TEXAS)
DEMOCRATIC PARTY,)
) CIVIL ACTION
Plaintiffs,) NO.
) 2-06CV-385
vs.)
)
STATE OF TEXAS, a State of the)
United States; GREG ABBOTT,)
Attorney General of the State of)
Texas; and PHIL WILSON, Secretary)
of State for the State of Texas,)
)
Defendants.)

ORAL DEPOSITION OF

JANE HAMILTON

April 30th, 2008

ANSWERS AND DEPOSITION of JANE HAMILTON,
taken at the instance of the Defendants, on the 30th
day of April, A.D., 2008, between the hours of 9:14
a.m. and 10:25 a.m., in the above styled and numbered
cause at the offices of United American Reporting
Services, Inc., 5220 Renaissance Tower, 1201 Elm
Street, in Dallas, Dallas County, Texas, before Jerry

Jane Hamilton

Page 2	Page 4
<p>1 L. Callaway, RDR, a Certified Shorthand Reporter in and 2 for the State of Texas, pursuant to the Federal Rules 3 of Civil Procedure and the provisions stated on the 4 record. 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>APPEARING FOR THE PLAINTIFFS:</p> <p>Mr. Otis W. Carroll, Jr. IRELAND, CARROLL & KELLEY 6101 S. Broadway, Suite 500 Tyler, Texas 75703</p> <p>APPEARING FOR THE DEFENDANTS:</p> <p>Ms. Rosemarie Donnelly Special Assistant Attorney General 808 Travis, Suite 300 Houston, Texas 77002</p>	<p>1 the political work is? 2 A. It could be -- we really -- we are all about 3 building a -- towards a Democratic majority in the 4 state, let's say that, yes. 5 Q. Okay. What are your duties in particular? 6 A. It depends. It really changes. It's never 7 the same. You know, sometimes it could be helping out 8 a person who's running in a particular part of the 9 state, various -- it's various things. 10 Q. So you are not limited to the Dallas area? 11 A. Oh, no. 12 Q. Okay. 13 A. Not at all. It's a statewide PAC. 14 Q. Okay. And when you say "a statewide PAC," can 15 you tell me what that means? 16 A. What a statewide political action committee 17 is? 18 Q. Yes. 19 A. It is just a -- I mean, I don't know. No one 20 has ever asked me to describe that before. I don't 21 know. 22 Q. What do they do? What's the purpose of the 23 organization? 24 A. The purpose of The Democratic Trust is to work 25 towards a Democratic majority.</p>
Page 3	Page 5
<p>1 JANE HAMILTON, 2 having been first duly sworn, testified as follows: 3 EXAMINATION 4 BY MS. DONNELLY 5 Q. Ms. Hamilton, good morning. My name is 6 Rosemarie Donnelly. I represent Defendants Greg Abbott 7 and Phil Wilson in this lawsuit, and I just wanted to 8 let you know, appreciate you coming to visit with us 9 this morning. 10 Could you tell me what you do for a 11 living? 12 A. Gosh, that's always so -- I work on campaigns. 13 Q. Okay. I notice on the Internet that you're 14 political director for something called The Democratic 15 Trust? 16 A. The Texas Democratic Trust, right. 17 Q. Yeah, what's that about? 18 A. It's a statewide PAC here, and what we do is 19 we pretty much do campaigns throughout the state, 20 various -- well, I shouldn't really say campaigns, 21 that's not really accurate, but we do political work 22 throughout the state. 23 Q. Okay. 24 A. Yeah. 25 Q. Can you be a little more descriptive of what</p>	<p>1 Q. And how do they do that? 2 A. We do it in various ways by helping candidates 3 with things that they need. 4 Q. What kinds of things do they need? 5 A. Well, I'm a political director. You would 6 probably do better calling Matt Angle who is director 7 talk to him about it. 8 Q. Okay. 9 A. I just -- 10 Q. So what are your sort of day-to-day 11 activities? Describe a day to day. 12 A. It changes, it changes all the time. 13 Q. Okay. Well, do you have anything to do 14 with -- I noticed in your deposition that you ran a 15 phone bank in your previous occupation? 16 A. No, because the thing is, when I -- the reason 17 why this is kind of -- I didn't start this particular 18 job until '07, January '07. 19 Q. Okay. 20 A. And so what happens is if I am to work on a 21 campaign, then technically I am -- I will not be 22 working for the trust anymore. I will be working for 23 that campaign. 24 So, for example, when I worked in, you 25 know, like -- I guess it was '01 when I started working</p>

2 (Pages 2 to 5)

Jane Hamilton

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<p>1 for Martin Frost back in the day, I would like go -- I</p> <p>2 would leave that job, and then I would go work on the</p> <p>3 campaign, and then I might go back to D.C. then I would</p> <p>4 leave that. I'm like a campaign person. So I am</p> <p>5 always in different spots. So for me that's what I am</p> <p>6 doing right now, but tomorrow it could be something</p> <p>7 different.</p> <p>8 Q. Okay.</p> <p>9 A. It's just kind of how we jump around.</p> <p>10 Q. You are a full-time political consultant;</p> <p>11 would that be fair description?</p> <p>12 A. Yes. That is fair, even though I hate that</p> <p>13 now since everybody is political consultants, and they</p> <p>14 sometimes -- but sure, you can call me a political</p> <p>15 consultant.</p> <p>16 Q. And how are you paid for your work?</p> <p>17 A. Right now I am paid from The Democratic Trust.</p> <p>18 Q. And that's -- I just know what I read on the</p> <p>19 Internet, that's funded by -- primarily Mr. Fred Baron?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And are you paid a salary?</p> <p>22 A. Yes.</p> <p>23 Q. And have you been paid this salary --</p> <p>24 A. Though it could change, yeah.</p> <p>25 Q. Okay. Have you been paid by salary since</p>	<p>1 Q. And what is the coordinated campaign of</p> <p>2 Dallas?</p> <p>3 A. It is -- well, it's nothing now. We just</p> <p>4 called it that. It -- I worked for the Dallas --</p> <p>5 actually, technically, that's wrong. I worked for the</p> <p>6 Dallas County Democratic Party.</p> <p>7 Q. And you were paid a salary?</p> <p>8 A. I was, yes, from the Dallas County Democratic</p> <p>9 Party.</p> <p>10 Q. Okay. And what was your title?</p> <p>11 A. Was campaign coordinator.</p> <p>12 Q. How long were you in that position?</p> <p>13 A. From July '06 to whatever election day is,</p> <p>14 November -- it was November 6th or -- well, November,</p> <p>15 just say November '06, July '06 to November '06 is</p> <p>16 fine.</p> <p>17 Q. What did you do after November '06 to January</p> <p>18 '07?</p> <p>19 A. Took a break.</p> <p>20 Q. Fair enough.</p> <p>21 MR. CARROLL: You did what?</p> <p>22 A. I took a break. It was a hard campaign, and I</p> <p>23 ended up doing all kinds of stuff, but that's okay.</p> <p>24 Q. (BY MS. DONNELLY) Okay. What did you do</p> <p>25 before July of '06?</p>
Page 7	Page 9
<p>1 January of '07?</p> <p>2 A. Oh, yes, I have.</p> <p>3 Q. And when you are working just for the --</p> <p>4 A. But I am not --</p> <p>5 Q. Sorry.</p> <p>6 A. Okay. Let me say this. It is -- I am paid a</p> <p>7 salary, but I am a 1099 employee. So it's not like --</p> <p>8 I don't get a W-2 from them.</p> <p>9 Q. Okay.</p> <p>10 A. Okay.</p> <p>11 Q. But when you receive money for the work that</p> <p>12 you do, you receive it from The Democratic Trust?</p> <p>13 A. Yes, if I'm working for them at the time,</p> <p>14 that's correct.</p> <p>15 Q. Okay. And have you been working for The</p> <p>16 Democratic Trust continuously since January '07?</p> <p>17 A. Yes.</p> <p>18 Q. And you have been in this position of</p> <p>19 political director since then?</p> <p>20 A. Yes, that is correct.</p> <p>21 Q. And what did you do before January of '07?</p> <p>22 A. Before January '07, immediately before?</p> <p>23 Q. Uh-huh.</p> <p>24 A. I was the campaign manager for the coordinated</p> <p>25 campaign here in Dallas.</p>	<p>1 A. I should have just given y'all my resume.</p> <p>2 This is hard for me to talk about, because I go in and</p> <p>3 out, and when you look at my resume, it could be very</p> <p>4 confusing as well. But before July '06, where was I?</p> <p>5 Oh, my gosh, I was in D.C., and -- what did I do? I</p> <p>6 was working for Public Strategies from, I think I want</p> <p>7 to say like May '05 to probably June '06, or -- yeah,</p> <p>8 something like that.</p> <p>9 Q. That was in D.C.?</p> <p>10 A. Uh-huh, Washington, D.C.</p> <p>11 Q. How about before May '05?</p> <p>12 A. Before May '05, I worked for the House</p> <p>13 Committee on Rules for Martin Frost. Technically, that</p> <p>14 was up until January '05 -- well, no, not really.</p> <p>15 Okay. I need to see my resume. I can't -- it's all in</p> <p>16 like these little -- I'm a campaign person, so I always</p> <p>17 go off and on.</p> <p>18 May '05 -- actually -- yeah, I worked for</p> <p>19 the House Rules Committee, that would be correct; but</p> <p>20 in between that time I also took a leave, and I came</p> <p>21 to -- back here to Dallas to do Martin Frost's</p> <p>22 campaign.</p> <p>23 Q. Okay. I saw that you gave a deposition --</p> <p>24 A. Uh-huh.</p> <p>25 Q. -- in October of 2006 in this case.</p>

3 (Pages 6 to 9)

Jane Hamilton

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<p>1 A. Right.</p> <p>2 Q. And in that deposition you talked about the</p> <p>3 work that you did in connection with a phone bank here</p> <p>4 in Dallas.</p> <p>5 A. Yes, '06.</p> <p>6 Q. Yes.</p> <p>7 A. And -- yes, '06. Now, let me say this, this</p> <p>8 will probably help you out with spacing out things.</p> <p>9 Okay. 2000 I did a campaign for former State Senator</p> <p>10 David Cane. '02 I did a coordinated campaign for -- in</p> <p>11 Fort Worth, and that is -- these are only the campaign</p> <p>12 months, so when I say campaigns, I mean like July to</p> <p>13 November. So from July to November of every even year</p> <p>14 since 2000 I have been on a campaign. Does that help?</p> <p>15 Q. That's very helpful.</p> <p>16 A. Okay. Sorry.</p> <p>17 Q. That's very helpful.</p> <p>18 A. It's confusing I know, and sometimes I can't</p> <p>19 explain it.</p> <p>20 Q. Okay. Since 2000 your work on -- in even</p> <p>21 numbered years on campaigns, --</p> <p>22 A. Yes.</p> <p>23 Q. -- what has that work entailed? What have</p> <p>24 been your duties?</p> <p>25 A. Okay. It's various duties. I first started</p>	<p>1 didn't -- that's pretty much what we did, those two</p> <p>2 things. So calling -- so one was 65 and older, and</p> <p>3 anybody who needed an application, we helped them. And</p> <p>4 then the other was actually calling people and saying,</p> <p>5 okay, you can vote, starting this time, have you voted,</p> <p>6 blah, blah, so on and so forth. And '04 I was just a</p> <p>7 field person then, and I ran a volunteer phone bank in</p> <p>8 '04.</p> <p>9 Q. Where?</p> <p>10 A. This was -- I want to say -- it was 65 and</p> <p>11 Preston Road, here in Dallas -- 635, sorry. And it was</p> <p>12 a different kind of phone bank. That was Martin Frost</p> <p>13 who was running against Pete Sessions at the time, and</p> <p>14 it was more of like calling people and seeing where</p> <p>15 they were, you know, who they were going to vote for.</p> <p>16 Some of it was persuasion, so it was completely</p> <p>17 different from anything I had ever done. It was -- it</p> <p>18 wasn't really GOTV at all.</p> <p>19 Q. What about '06?</p> <p>20 A. '06, I was the director for -- or technically</p> <p>21 was called a campaign coordinator for the -- the Dallas</p> <p>22 County Democratic Party, and so was various field</p> <p>23 activities, implementation of the campaign plan that we</p> <p>24 had. I really -- actually there I was in charge of</p> <p>25 getting out the base vote.</p>
Page 11	Page 13
<p>1 out as a field coordinator, and in 2000 that was</p> <p>2 basically anything, but I had a certain number --</p> <p>3 amount -- number of precincts, and I had to pretty much</p> <p>4 go out and, you know, get people to vote pretty much.</p> <p>5 So I did -- I helped out with -- at the time there was</p> <p>6 a phone bank that I helped out with. I got volunteers.</p> <p>7 I registered voters, everything that you do to get out</p> <p>8 the vote. And that was 2000.</p> <p>9 Q. That was in Texas.</p> <p>10 A. In Texas.</p> <p>11 Q. Okay.</p> <p>12 A. Yes. My campaign experience is here in Texas,</p> <p>13 and that was here in Dallas 2000. And in '02 over at</p> <p>14 Town Center in Fort Worth for those four months, July</p> <p>15 to November, I was the phone bank director for that</p> <p>16 particular campaign.</p> <p>17 Q. Okay. What did that entail?</p> <p>18 A. And what that entails is various things.</p> <p>19 Anything -- any particular phone banking activities</p> <p>20 such as helping people with their applications, their</p> <p>21 mail-in applications --</p> <p>22 Q. Okay.</p> <p>23 A. -- over the phone, and also getting out the</p> <p>24 vote, so have you voted today, are you planning to</p> <p>25 vote, who are you voting for. So we did some -- we</p>	<p>1 Q. Okay. So would it be sort of a fair summary</p> <p>2 of what you do that you are a full-time paid consultant</p> <p>3 for various Democratic campaigns and PACs since 2000?</p> <p>4 A. Various campaigns, yeah. This is actually the</p> <p>5 first time I've ever worked for a PAC.</p> <p>6 Q. Okay.</p> <p>7 A. So I am actually still in the learning stage</p> <p>8 of what it is that I do right now, because this is my</p> <p>9 first experience working for a PAC and doing work that</p> <p>10 I do now, so, yeah.</p> <p>11 Q. Okay. You have been a full-time --</p> <p>12 A. Campaign person.</p> <p>13 Q. -- campaigning person until you started</p> <p>14 working -- you have been a full-time Democratic</p> <p>15 political consultant for Democratic campaigns in Texas</p> <p>16 since 2000 up until the time you started working for</p> <p>17 the Democratic Trust in January of '07?</p> <p>18 A. No. Full time is not a good way to say it.</p> <p>19 Q. Okay.</p> <p>20 A. Because it's -- because it's -- it's not</p> <p>21 accurate. Only in the even years through those months</p> <p>22 full time, yes.</p> <p>23 Q. Okay. What do you do when you are not working</p> <p>24 on the campaigns?</p> <p>25 A. I look for a job.</p>

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<p>1 Q. Okay. Fair enough.</p> <p>2 A. That's what I do. No, I -- yeah, pretty much</p> <p>3 that's accurate. You just go wherever there is an</p> <p>4 opening.</p> <p>5 Q. All right. Fair enough.</p> <p>6 A. And hopefully you don't get left on the</p> <p>7 streets, but -- no, I am just kidding.</p> <p>8 MS. DONNELLY: Let me ask the court</p> <p>9 reporter to mark, please.</p> <p>10 (Deposition Exhibit 1 marked.)</p> <p>11 Q. (BY MS. DONNELLY) To move things along, I'll</p> <p>12 just say for the record it's an article that I printed</p> <p>13 off the Internet. It's dated April 18th, 2008. It's</p> <p>14 an article in the Texas Observer, and the title of the</p> <p>15 article is "Vote By Mail, Go to Jail." Do you see</p> <p>16 where it says that?</p> <p>17 A. Yes.</p> <p>18 Q. Who contacted you -- you are quoted in this</p> <p>19 article.</p> <p>20 A. Uh-huh.</p> <p>21 Q. Do you recall the interview?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Who contacted you about being</p> <p>24 interviewed for this article?</p> <p>25 A. Steven Rosenfeld, a reporter.</p>	<p>1 A. Yes.</p> <p>2 Q. It says, "We would get phone calls from older</p> <p>3 ladies who wanted to vote, Hamilton said," and that's</p> <p>4 you, right?</p> <p>5 A. Uh-huh.</p> <p>6 Q. "They would ask, a lot of times, for people</p> <p>7 that they trusted, their neighbors, to come over to</p> <p>8 help. I would then say, well, I don't know her, but</p> <p>9 how about us helping you over the phone?" And then</p> <p>10 there is a close quote. Do you see where it says that?</p> <p>11 A. Uh-huh.</p> <p>12 Q. Is that a quote that you gave to</p> <p>13 Mr. Rosenfeld?</p> <p>14 A. Yes.</p> <p>15 Q. I wanted to ask you a few questions about that</p> <p>16 quote.</p> <p>17 A. Sure.</p> <p>18 Q. When you say "We would get phone calls from</p> <p>19 older ladies who wanted to vote," --</p> <p>20 A. Uh-huh.</p> <p>21 Q. -- now the phone bank, as I understood it, is</p> <p>22 that what you are talking about here?</p> <p>23 A. Yes.</p> <p>24 Q. The phone bank that you were in charge of in</p> <p>25 2006?</p>
Page 15	Page 17
<p>1 Q. And did you talk to Mr. Gerry Hebert about</p> <p>2 this article?</p> <p>3 A. I don't know. I don't think so. I think -- I</p> <p>4 don't remember if I talked to him or not.</p> <p>5 Q. Okay.</p> <p>6 A. I talked to one of my coworkers.</p> <p>7 Q. All right. And when Mr. Rosenthal called you,</p> <p>8 what did he say?</p> <p>9 A. He said -- he asked me if I would interview</p> <p>10 with him, if I would mind interviewing with him about</p> <p>11 Greg Abbott's voter mail issues, and I said sure.</p> <p>12 Q. Okay. By the way, in your current duties for</p> <p>13 The Texas Democratic Trust, --</p> <p>14 A. Uh-huh.</p> <p>15 Q. -- do any of those duties involve running this</p> <p>16 phone bank?</p> <p>17 A. No.</p> <p>18 Q. You don't do that. Okay.</p> <p>19 A. No. Yeah, the PAC is completely different</p> <p>20 from campaign stuff.</p> <p>21 Q. Okay. Let me ask you to turn to page 4, if</p> <p>22 you would, in the second paragraph --</p> <p>23 A. Uh-huh.</p> <p>24 Q. And I've marked it there, "We would get phone</p> <p>25 calls..." Do you see where it says that?</p>	<p>1 A. Well, yes. I mean, yeah, sure.</p> <p>2 Q. And where it says "They would ask, a lot of</p> <p>3 times, for people that they trusted, their neighbors,</p> <p>4 to come over to help."</p> <p>5 A. Uh-huh.</p> <p>6 Q. "I would then say, 'I don't know her, but how</p> <p>7 about us helping you over the phone?'"</p> <p>8 A. Uh-huh.</p> <p>9 Q. So by "us," who are you referring to there?</p> <p>10 A. The people who were working the phone bank,</p> <p>11 the callers -- the people who were taking the calls,</p> <p>12 calling others.</p> <p>13 Q. Now, did you talk with any of the voters</p> <p>14 directly, or is this something that's coming from the</p> <p>15 callers?</p> <p>16 A. No. I've talked to voters, absolutely, yeah.</p> <p>17 Q. Okay. During your time that you worked with</p> <p>18 the phone bank folks?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Okay. And why were you suggesting that the</p> <p>21 phone bank callers help them over the phone rather than</p> <p>22 having a neighbor or a person they trusted come over to</p> <p>23 help them?</p> <p>24 A. Well, because I didn't want to get anyone in</p> <p>25 trouble.</p>

5 (Pages 14 to 17)

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<p>1 Q. You mean callers?</p> <p>2 A. No, I mean -- I'm sorry.</p> <p>3 Q. Do we need to take a break?</p> <p>4 A. No. I always get emotional about this every</p> <p>5 time. It's been very hard on, I would say, the older</p> <p>6 African-American community lately with this particular,</p> <p>7 and I know that people who are far away from what's</p> <p>8 happening don't really understand what's going on, and</p> <p>9 I'm going to try my best to explain.</p> <p>10 People call in, and they have been used</p> <p>11 to for a certain amount of years people being able to</p> <p>12 help them. Some people are people that maybe have</p> <p>13 problems reading at a certain grade level. Other</p> <p>14 people -- and these are all people who can vote by mail</p> <p>15 at this age group, what I call the elderly, which my</p> <p>16 dad says don't call them elderly anymore, because he's</p> <p>17 now 61.</p> <p>18 But anyway, others are people who are</p> <p>19 just old, and they are just at home by themselves.</p> <p>20 Others are people who are shut in. Some people have</p> <p>21 disabilities, various people that call. Sometimes they</p> <p>22 find out, you know, where they'll get a number or</p> <p>23 something, and they'll say, oh, you know, such and such</p> <p>24 is working a campaign again. If you need any help,</p> <p>25 call this number. They will call us.</p>	<p>1 you over the phone, because I wasn't going to have it</p> <p>2 on my conscience sending anyone out to help anyone, and</p> <p>3 then for some technicality that no one understood and</p> <p>4 no one really knew about because it's not like it's --</p> <p>5 we don't -- you don't know where to get the</p> <p>6 information. No one came out to explain -- I mean, how</p> <p>7 do you go to, you know, however many counties to a</p> <p>8 certain group of people who are usually</p> <p>9 African-American elderlies who get help and say,</p> <p>10 okay -- to knock on every door and say, okay, this is</p> <p>11 how it's going to work now.</p> <p>12 So it's not like anyone really understood</p> <p>13 the process. So you just had -- you had and you still</p> <p>14 have people that call in and want help. I didn't want</p> <p>15 it on my plate and so, therefore, it would break my</p> <p>16 heart to tell people, listen, I can try and help you</p> <p>17 over the phone, but I can't do anything else. And it</p> <p>18 wouldn't always be me, of course, because I had other</p> <p>19 things to do. But it would be a lot of the phone</p> <p>20 bankers, and they would look at me being frustrated</p> <p>21 because they have these older ladies or older gentlemen</p> <p>22 on the phone, and they can't hear, and they say, well,</p> <p>23 I don't know what you are talking about, can somebody</p> <p>24 come show me.</p> <p>25 And it was a constant back and forth of</p>
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<p>1 Sometimes through our phone banks and</p> <p>2 just calling people who we know will be voting by -- or</p> <p>3 will need an application, we'll have someone who says,</p> <p>4 you know, I do have an application, but I can't fill it</p> <p>5 out or, you know, I need help reading it, or I don't</p> <p>6 know where to sign it or various things.</p> <p>7 When I did this in 2002, it wasn't a</p> <p>8 problem. We would get these calls. They would ask</p> <p>9 for, you know, for example, Ms. Brown, and we would</p> <p>10 say, okay, no problem. Ms. Brown will go out, they</p> <p>11 would help. It wasn't a big deal.</p> <p>12 Then when I came back in '04, I was told</p> <p>13 that the law had changed. The problem is that the need</p> <p>14 was still there. I was also told by a lot of</p> <p>15 African-American elderly people that they were hearing</p> <p>16 rumors that people were being -- going to jail and</p> <p>17 getting in trouble for helping them vote. And because</p> <p>18 of that, I wasn't clear on what was going on. The</p> <p>19 people who had been helpers in their community, they</p> <p>20 weren't clear what was going on. And all we knew is</p> <p>21 that Greg Abbott felt like there was some sort of fraud</p> <p>22 going on; and, therefore, you couldn't help people vote</p> <p>23 anymore. That was our understanding.</p> <p>24 And so when we would get these calls in</p> <p>25 last -- 2006, I would have to say, all I can do is help</p>	<p>1 something that in '02 I would have just said, okay, you</p> <p>2 know, maybe you should just go -- you know, just go</p> <p>3 over and help her. It's fine. Or someone would have</p> <p>4 already been at her house to help her. But these</p> <p>5 people -- no one does it anymore because they are</p> <p>6 afraid. So that -- all of that -- all of this -- this</p> <p>7 paragraph, it was really referring to all of what I</p> <p>8 just explained.</p> <p>9 MS. DONNELLY: Nonresponsive.</p> <p>10 Q. (BY MS. DONNELLY) Why -- why would you</p> <p>11 suggest that they not have their neighbors or someone</p> <p>12 they trusted come over and help them? Why did you --</p> <p>13 let me rephrase it.</p> <p>14 Why did you suggest that the phone bank</p> <p>15 caller help over the phone rather than they have a</p> <p>16 neighbor or trusted person come over?</p> <p>17 A. Because if their neighbor is the same person</p> <p>18 that helps their neighbor, that helps their neighbor,</p> <p>19 and so on and so forth around the block, and that</p> <p>20 neighbor is helping all of these neighbors, if it's</p> <p>21 that -- I don't know if it's the same person.</p> <p>22 According to Greg Abbott, if it's the same person, then</p> <p>23 that one neighbor can -- because of whatever, which I</p> <p>24 still don't understand to this day, I wish someone</p> <p>25 would explain it to me, could possibly go to jail. So</p>

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<p>1 I wasn't going to risk having Ms. Brown say -- you</p> <p>2 know, I wasn't going to risk having any one person end</p> <p>3 up helping more people just because they live in a</p> <p>4 certain community, if that makes sense.</p> <p>5 Q. And that was your understanding of the law,</p> <p>6 that they could get in trouble for helping more than</p> <p>7 one person?</p> <p>8 A. Absolutely.</p> <p>9 Q. Okay.</p> <p>10 A. That is -- that is the general understanding.</p> <p>11 Q. No, I really wanted to know your</p> <p>12 understanding.</p> <p>13 A. That's my understanding, and that is the</p> <p>14 general understanding. I mean, at the time -- and the</p> <p>15 reason why I say that is because I am familiar with</p> <p>16 certain things that have happened that I personally</p> <p>17 think because of technicalities that person is now</p> <p>18 indicted, and so I am not going to risk someone who was</p> <p>19 fine tooth combing whatever of -- okay. I'm not going</p> <p>20 to have that on my conscience. So, yeah.</p> <p>21 Q. Okay. And since your deposition in 2006, what</p> <p>22 is your understanding -- let me back up.</p> <p>23 What is your understanding of what is</p> <p>24 required for a person to assist a person with a mail-in</p> <p>25 ballot?</p>	<p>1 more than one ballot application?</p> <p>2 A. It's a problem for a lot of reasons. It's a</p> <p>3 problem, number 1, because -- first of all, it was</p> <p>4 never a problem, just starting off with a situation</p> <p>5 that was never a problem, and now saying it's a</p> <p>6 problem, to me that's an issue. That's the first</p> <p>7 thing.</p> <p>8 Number 2, it's a problem because you have</p> <p>9 people who fought for my right to vote who I have to</p> <p>10 turn around now and say I can't help you.</p> <p>11 Number 3, I think it's a problem because</p> <p>12 the attorney general's office thought it was so much of</p> <p>13 an issue that they would investigate, but they didn't</p> <p>14 think enough to go out into the community and explain</p> <p>15 to the community that the people that it's actually</p> <p>16 affecting what this is about, what it means, who it</p> <p>17 affects, what someone can do, what someone cannot do,</p> <p>18 who they can call, who they can't call. None of this</p> <p>19 ever happened.</p> <p>20 I also think it's a problem because when</p> <p>21 you talk about people who are in nursing homes, those</p> <p>22 assistants, they are confused.</p> <p>23 I got a call last cycle from a lady who</p> <p>24 was a nursing home attendant, or whatever the people</p> <p>25 are called. And she was like, you know, I don't know</p>
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<p>1 A. Now my understanding is that -- at first what</p> <p>2 it was that we thought that you couldn't help any --</p> <p>3 you couldn't help more than one person. Now they say</p> <p>4 that -- now it is my understanding that you can, and</p> <p>5 that what -- but you cannot be a witness, signing as a</p> <p>6 witness for more than one person, which creates a whole</p> <p>7 nuther element of problems.</p> <p>8 Q. Okay.</p> <p>9 A. Because, like I said, if you're have -- if you</p> <p>10 have someone that's sick and shut in and doesn't have</p> <p>11 family that comes over and they call their neighbor and</p> <p>12 that neighbor says, okay, sure, I'll come and help you,</p> <p>13 let's say, for example, they sign on as a witness.</p> <p>14 What if another neighbor calls and says, okay, I need</p> <p>15 your help, and then they sign on, too? That person is</p> <p>16 now breaking the law which is absolutely crazy and</p> <p>17 ridiculous and unnecessary.</p> <p>18 So I don't get involved in it anymore,</p> <p>19 and frankly, I feel -- I'm very torn because I feel</p> <p>20 like I have a duty to help people who need help; but,</p> <p>21 at the same time, I am not going to risk anyone's</p> <p>22 criminal -- or give -- you know, aid in having someone</p> <p>23 with a criminal record because of it.</p> <p>24 Q. Okay. So what I heard you say that it's a</p> <p>25 problem in your mind because neighbors can't witness</p>	<p>1 what, you know -- I know that -- because she -- like</p> <p>2 other people, she was the granddaughter of, you know,</p> <p>3 someone in one of these communities that called and got</p> <p>4 help, and she didn't understand what to do.</p> <p>5 I mean, I just think it's a problem</p> <p>6 because, one, it's not clear; two, the community never</p> <p>7 got any information on it; and three, you have a lot of</p> <p>8 people who need help voting who have been going to the</p> <p>9 same trusted people. Those trusted people could be</p> <p>10 the -- it could be, you know, two or three or four</p> <p>11 people per community. So, therefore, you have these</p> <p>12 same people who they don't trust anyone else helping</p> <p>13 them except for these people, and now they can't help.</p> <p>14 Because they can't help, they can't help -- because</p> <p>15 people don't really understand what to do.</p> <p>16 MS. DONNELLY: Nonresponsive.</p> <p>17 THE WITNESS: What's "nonresponsive"?</p> <p>18 MR. CARROLL: What that means is that</p> <p>19 under the rules either side can make or can point out</p> <p>20 to the judge problems they think that the answer</p> <p>21 creates from a procedural standpoint. It's no</p> <p>22 criticism of you, doesn't have anything to do with what</p> <p>23 you said or how you said it. It's just what lawyers</p> <p>24 have to do. So don't --</p> <p>25 THE WITNESS: Okay.</p>

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<p>1 MR. CARROLL: -- be concerned about that.</p> <p>2 THE WITNESS: And I just want to</p> <p>3 apologize on the record, because I am emotional about</p> <p>4 it, and I am trying very hard to not be and get through</p> <p>5 this. But it's -- it's hard.</p> <p>6 Q. (BY MS. DONNELLY) Yeah, you understand I am</p> <p>7 not here to upset you.</p> <p>8 A. No, I know. I know.</p> <p>9 Q. That's not what this is for.</p> <p>10 A. And I don't -- I don't think that this -- I</p> <p>11 don't think that this whole thing purposely, you know,</p> <p>12 was intended to upset people. I think that if Greg</p> <p>13 Abbott really understood what was going on and really</p> <p>14 understood the impact on the community, that maybe</p> <p>15 he -- I think he's very far away, and he doesn't get</p> <p>16 it. That's what I think.</p> <p>17 Q. I am just trying to drill down on what, number</p> <p>18 one, your understanding of what's required to assist</p> <p>19 someone with a voting ballot -- excuse me, with a</p> <p>20 mail-in ballot.</p> <p>21 A. I think I have answered that.</p> <p>22 Q. And is your understanding that a person may</p> <p>23 assist more than one person with a mail-in ballot as</p> <p>24 long as he or she provides his or her name, address,</p> <p>25 and signature?</p>	<p>1 assistance with a mail-in ballot.</p> <p>2 A. I can tell you this. Because I come in and</p> <p>3 because I come in and fulfill a role of a campaign, you</p> <p>4 know, whatever my job is with the campaigns, the people</p> <p>5 who will be able to answer those questions are the</p> <p>6 people who have been helping them for years. So I</p> <p>7 think personally if you are asking me for specific</p> <p>8 names, you are asking the wrong person in terms of --</p> <p>9 the people who you -- who you should ask that question</p> <p>10 to are the people that this is affecting, and the</p> <p>11 people who are helpful -- who are actually -- who</p> <p>12 actually were the ones who were out there helping</p> <p>13 people.</p> <p>14 I can tell you this, Ms. Dorothy Dean,</p> <p>15 because she is 74 years old, she will be able to answer</p> <p>16 that question, I am sure, just, you know -- I don't --</p> <p>17 I can't give you names, because for me, I'm not -- I</p> <p>18 didn't grow up here. I'm -- you know, I'm -- I just</p> <p>19 come in and help out with campaigns, and I try to help</p> <p>20 as much as I can. But I would say, in general, they</p> <p>21 are people that call into the phone banks.</p> <p>22 Q. Okay. But you just -- you can't answer that</p> <p>23 today?</p> <p>24 A. No, I can't today.</p> <p>25 Q. Okay.</p>
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<p>1 A. And signs as a witness.</p> <p>2 Q. Yes.</p> <p>3 A. Yes.</p> <p>4 Q. Can you identify any voters that have been</p> <p>5 disenfranchised because they were unable to obtain</p> <p>6 assistance with a mail-in ballot?</p> <p>7 A. Yes, I can.</p> <p>8 Q. Okay. Can you --</p> <p>9 A. Many.</p> <p>10 Q. Okay. Can you name some for me?</p> <p>11 A. I will have problems with names, because I may</p> <p>12 know first names, and I won't know last names. I may</p> <p>13 know last names, I won't know first names. But what I</p> <p>14 do know is this, consistently, consistently since I</p> <p>15 have ever done any campaign work, people always call</p> <p>16 in, and they always need help with their mail ballots.</p> <p>17 And this population is the same population that needs</p> <p>18 help sometimes eating and reading and writing. That's</p> <p>19 who these people are.</p> <p>20 Q. Okay. I am just trying to look for, you know,</p> <p>21 folks that you know personally --</p> <p>22 A. That's -- that's who -- those are the people</p> <p>23 that I know personally.</p> <p>24 Q. The names of folks you know personally who</p> <p>25 have been disenfranchised because they could not get</p>	<p>1 A. But they are -- yes. But, I mean, there are</p> <p>2 several, a lot of people.</p> <p>3 Q. Can I refer you to the next paragraph? I</p> <p>4 think we have already gone over that.</p> <p>5 That last paragraph on page 4, see where</p> <p>6 it's -- the sentence beginning with "they, the callers,</p> <p>7 were afraid"?</p> <p>8 A. Uh-huh.</p> <p>9 Q. That's another quote of you?</p> <p>10 A. Yes.</p> <p>11 Q. You see where it says that? The sentence</p> <p>12 reads, "They, the callers, were afraid because they</p> <p>13 also started hearing about the attorney general's</p> <p>14 office prosecuting."</p> <p>15 Do you see where it says that?</p> <p>16 A. Uh-huh.</p> <p>17 Q. What were the callers afraid about?</p> <p>18 A. They -- what I mean by that is that a lot of</p> <p>19 times, you know, I think -- this whole thing is very</p> <p>20 interesting to me in terms of trying to get my mind</p> <p>21 around it, to think about it in a rational, logical</p> <p>22 way, because I am so emotional about it. But what I</p> <p>23 mean by that is this case and this thing, problem that</p> <p>24 has been created is very broad, and it's very -- it's a</p> <p>25 very wide problem, honing in on a very narrow or small</p>

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<p>1 group of -- of community, group of people. And what I 2 mean by that is the African-American community, and 3 especially this age group, no matter where you are and 4 no matter how many people you are talking about, in a 5 sense is small in terms of if this person in -- on, you 6 know, Filmer Street, I don't know the name of the 7 street, whatever street you want to say, Bexar Street, 8 hears that Ms. Brown three blocks over or in another 9 small community is -- has gotten in trouble for helping 10 someone with the process like the mail ballot 11 applications, then there is a deep-rooted fear that 12 takes over in an entire community. And everyone 13 literally is -- became paralyzed. It was just -- it 14 was like a train just came to a halting stop, pretty 15 much.</p> <p>16 I mean, when these calls -- what I mean 17 specifically by the callers were afraid. The callers 18 are the community. These are the same people. I think 19 sometimes we try to separate this. You can't separate 20 it. A lot of times in the African-American community 21 when I am looking for workers, it's the same community. 22 I'm not -- you know, I mean, if you go somewhere to 23 campaign, you are within that community now.</p> <p>24 So the people that you hire, they are a 25 part of that community. Naturally, these are the same</p>	<p>1 A. I'm -- I'm telling you that it is a chilling 2 effect in the community.</p> <p>3 Q. What I'm trying to drill down on is it -- was 4 it a generalized fear, or is there something specific 5 in the statute that was causing this fear you are 6 talking about in the article?</p> <p>7 A. The -- what -- the fear is --</p> <p>8 Q. Was it generalized?</p> <p>9 A. General, the fear is general.</p> <p>10 Q. Okay. That's all I want to know.</p> <p>11 A. The fear is also specific.</p> <p>12 Q. What are the specifics?</p> <p>13 A. The specifics concern the unknown.</p> <p>14 Q. Okay.</p> <p>15 A. Okay? Because if today you say that I can do 16 something and tomorrow you say I can't do something, 17 but no one has explained the difference in those two 18 days, why, how, when, and you are just hearing things, 19 then, yeah, it's general and it's specific. It's both.</p> <p>20 Q. Do you know of any specific part of the 21 statute that caused fear that you are referring to in 22 the article?</p> <p>23 A. What do you mean? I'm not referring to a 24 statute in the article. What are you talking -- can 25 you show me that?</p>
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<p>1 people. So just like -- just like the people who -- 2 the elderly who need help are hearing the rumors, the 3 phoners are also hearing the rumors. This is all -- 4 these are all the same group of people who are all 5 hearing that people are going to jail, hearing that 6 there was a private investigator that peeked into 7 someone's window. Next thing you know she has a 8 stroke. Next thing you know she is in a nursing home. 9 Next thing you know she is not the same person that she 10 was years ago.</p> <p>11 We all hear about these things, and 12 everyone has been affected by it. And I don't think 13 that that is what is being understood in something that 14 is unnecessary and never had to happen.</p> <p>15 Q. Would you describe the fear, then, as sort of 16 a generalized fear of the changes in the law?</p> <p>17 A. It's a chilling effect. I mean, that's what 18 it is. That's the best way to describe it.</p> <p>19 Q. Where did you hear that term "chilling 20 effect"?</p> <p>21 A. That's what it is.</p> <p>22 Q. Where did you first hear that?</p> <p>23 A. That's how I'm describing it.</p> <p>24 Q. Did you hear that from the lawyers in the 25 case, or did you hear that from someone else?</p>	<p>1 Q. Okay. Let me rephrase it, then.</p> <p>2 A. Okay.</p> <p>3 Q. Was there a specific part of the change in the 4 law that caused people to be afraid? Is that what you 5 are referring to in your comment?</p> <p>6 A. You said -- hold on, you are saying was there 7 a specific part of the change in the law, what law?</p> <p>8 Q. Well, the change in the law from 2002 -- you 9 said before there weren't these restrictions --</p> <p>10 A. Uh-huh.</p> <p>11 Q. -- and then afterward there were. What in 12 particular were people afraid of?</p> <p>13 A. People were hearing that there were federal 14 investigators out in our community, and I say "our" 15 because I am African-American. And I do not believe 16 that I can give -- and that's another thing that's 17 interesting, that I don't know -- you know, I feel like 18 I don't know that it affects any -- I don't know if it 19 affects any other community but the African-American 20 community the way in that -- the way in which it is 21 affecting my community. And I'm saying "my" because I 22 am African-American.</p> <p>23 MS. DONNELLY: Okay. Nonresponsive.</p> <p>24 Thank you.</p> <p>25 Q. (BY MS. DONNELLY) Have you ever personally</p>

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<p>1 talked with a voter who said that they would not be</p> <p>2 voting because they could not get ahold of their</p> <p>3 mail-in ballot?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know --</p> <p>6 A. Several.</p> <p>7 Q. Do you know the name of that person?</p> <p>8 A. No, I do not. Now, if you had asked me this</p> <p>9 question the same -- that specific question during --</p> <p>10 during a campaign, I would have been able to give you a</p> <p>11 lot of names of people who say, oh, well, I guess I</p> <p>12 can't vote this year because I don't have anyone help</p> <p>13 me. Yes, I could have given you a lot of names.</p> <p>14 And I don't think I'm just -- I mean, I</p> <p>15 think that, you know, we see that -- I think that if</p> <p>16 you-all looked at it, you probably could see the</p> <p>17 effects. I mean, if anyone looked at the numbers and</p> <p>18 compared them from when there were people who were able</p> <p>19 to be out in the community and helping until now, I am</p> <p>20 sure the number has declined. And that's in the</p> <p>21 same -- in the same group, African-American community.</p> <p>22 I would put -- I would bet anyone that that is the</p> <p>23 case. I don't know that for sure right now. I don't</p> <p>24 know the numbers, but from the calls that I get in, I</p> <p>25 would -- I feel comfortable in saying that it has had</p>	<p>1 it wasn't clear.</p> <p>2 Q. The question was when, do you recall when?</p> <p>3 A. I thought I answered that. Right after --</p> <p>4 right when the law changed.</p> <p>5 Q. 2003?</p> <p>6 A. No, well, it would have been -- for me it</p> <p>7 would have been '04.</p> <p>8 Q. Okay. And what clarification did you seek?</p> <p>9 A. The impact and what it meant, what the changes</p> <p>10 were.</p> <p>11 Q. What were you told?</p> <p>12 A. It was a while ago. I don't remember. I</p> <p>13 mean, I would just be talking in generalities. I don't</p> <p>14 want to do that right now.</p> <p>15 Q. So did that clear up your questions?</p> <p>16 A. No, it didn't.</p> <p>17 Q. Okay. And what questions did you still have</p> <p>18 after you talked to the Texas Democratic Party?</p> <p>19 A. Oh, I still had a lot of questions. I mean, I</p> <p>20 didn't -- I wasn't clear. I just wasn't clear. I</p> <p>21 didn't understand it.</p> <p>22 Q. Have you ever contacted the Secretary of State</p> <p>23 to seek clarification on what the law requires for a</p> <p>24 mail-in ballot assistance?</p> <p>25 A. No, I did not. There was someone who I worked</p>
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<p>1 an effect on -- on that community.</p> <p>2 MS. DONNELLY: I am going to object to</p> <p>3 everything nonresponsive after "no."</p> <p>4 Q. (BY MS. DONNELLY) Were you aware that the</p> <p>5 Texas Democratic Party on its Web site provides</p> <p>6 training for mail-in ballot assistance?</p> <p>7 A. No.</p> <p>8 Q. Have you contacted the Texas Democratic Party</p> <p>9 for -- ever contacted the Texas Democratic Party for</p> <p>10 training for volunteers with respect to mail-in ballot</p> <p>11 assistance?</p> <p>12 A. Oh, yeah, I mean, there are trainings. There</p> <p>13 have always been trainings.</p> <p>14 Q. Did you personally contact them for that</p> <p>15 training?</p> <p>16 A. No.</p> <p>17 Q. Have you ever sought clarification from the</p> <p>18 Texas Democratic Party regarding the law on mail-in</p> <p>19 ballot assistance?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. When was that?</p> <p>22 A. That was when the law first -- that was when</p> <p>23 the law first was -- was changed, and from what I can</p> <p>24 remember, there was something that changed again, or</p> <p>25 maybe was just revised. I don't know. But at the time</p>	<p>1 with who -- who did.</p> <p>2 Q. Okay. Who was that?</p> <p>3 A. It was just someone that worked on a campaign.</p> <p>4 Q. What clarification were they seeking?</p> <p>5 A. We just wanted to be able to understand it,</p> <p>6 the law.</p> <p>7 Q. Okay. So did you talk to a human being there?</p> <p>8 A. No, it was my coworker.</p> <p>9 Q. I'm sorry, did someone talk to someone live at</p> <p>10 the Secretary of State's office?</p> <p>11 A. As opposed to?</p> <p>12 Q. Looking on the Web site.</p> <p>13 A. I don't remember. I can't remember.</p> <p>14 Q. And when did that occur?</p> <p>15 A. That -- this was all around the same time,</p> <p>16 '04.</p> <p>17 Q. Okay.</p> <p>18 A. In '04 we were -- or I was, or I say the</p> <p>19 community was, probably much more interested, or I</p> <p>20 don't even know if I should say interested, but open to</p> <p>21 trying to understand what was going on. Not that we</p> <p>22 are not now, but in the meantime, I think in between</p> <p>23 '04, I'd say '04 and '06, I think that's when a lot of</p> <p>24 the rumors really ramped up as far as people saying</p> <p>25 that there were, you know, private investigators or</p>

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<p>1 federal investigators out in communities. And I think 2 once that started and everybody started hearing about 3 that, it -- people just became less likely to want to 4 be involved at all. Like, at first I think that there 5 may have been more -- more open -- people may have been 6 wanting to be more open. And even myself, I have to 7 admit that on my -- I feel bad about that because, I 8 mean, I know I feel like I should, you know, for lack 9 of a better term, know better.</p> <p>10 But once people started, for lack of a 11 better term, being harassed, I was hands off, and I 12 think a lot of people in the community were hands off, 13 like just not wanting to deal with it, like just 14 wanting to -- it wasn't as much of an eagerness to 15 really even know just, more so just not wanting to be 16 involved with any of it.</p> <p>17 MS. DONNELLY: Objection, nonresponsive.</p> <p>18 Q. (BY MS. DONNELLY) Can you identify for me all 19 of the people that you know who have refused to assist 20 voters with mail-in ballots?</p> <p>21 A. Mail-in ballots?</p> <p>22 Q. Yes. Name all of the folks that you know 23 personally who have refused to assist voters with 24 mail-in ballots.</p> <p>25 A. I don't -- you know, honestly, I don't -- I</p>	<p>1 A. I think it is because I think in the community 2 you have people who just assist with various things, 3 whether it is going to the grocery store, or whether it 4 is, you know, going into someone's mailbox to get their 5 mail because they are homebound, and they can't get 6 their wheelchair out of their door, or their mailbox is 7 how ever many feet away, and they say, okay, can you 8 get my mail. They say okay, yeah. I mean, for example 9 that.</p> <p>10 For example, whether it is helping 11 someone fix something in their yard, on their home, I 12 think anything that is saying in order to help someone, 13 you need to do X, Y, and Z, but there is no explanation 14 or there is no clear understanding I think is 15 unreasonable.</p> <p>16 Q. Okay. Not X, Y, and Z. I want to be clear on 17 my question.</p> <p>18 A. Uh-huh.</p> <p>19 Q. Do you think it's unreasonable for the state 20 to require --</p> <p>21 A. Yes, I do. I do.</p> <p>22 Q. Okay. Let me finish my sentence -- to require 23 a person who assists a mail-in voter with a mail-in 24 ballot to provide their name, address, and signature?</p> <p>25 A. I do.</p>
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<p>1 don't really want to name anyone. I don't feel 2 comfortable. I know a lot of people. I don't feel 3 comfortable, though.</p> <p>4 Q. Do you believe it's unreasonable for the state 5 to require someone who assists --</p> <p>6 A. I can tell you, I wouldn't do it if you want 7 to put down my name, Jane Hamilton. I am not going to 8 do it.</p> <p>9 Q. Do you believe it's unreasonable for the state 10 to require a person who is assisting a voter with a 11 mail-in ballot to provide his or her name, address, and 12 signature?</p> <p>13 A. Okay. Will you ask that again, please?</p> <p>14 Q. Sure. Do you believe it is unreasonable for 15 the state to require that a person who assists a 16 person, a voter with a mail-in ballot, that the person 17 provide their name, address, and signature?</p> <p>18 A. I feel like you asked why. I mean, it -- has 19 this been the law always?</p> <p>20 Q. No, I just want to know if you think it's 21 unreasonable for the state to require --</p> <p>22 A. Yes, I do. I do. I believe it is 23 unreasonable.</p> <p>24 Q. Okay. And can you explain why you think 25 that's unreasonable?</p>	<p>1 Q. Okay. I am unclear as to your answer as to 2 why you think that's unreasonable?</p> <p>3 A. I think it's unreasonable because I don't feel 4 that the state does a diligent enough efficient or 5 effective enough job in letting those types of things 6 be known. It has been my experience that it makes a 7 mess of things just as this has made a mess of things. 8 That's why. If it weren't for that, then I might say 9 no.</p> <p>10 Q. You might say no to what?</p> <p>11 A. Then I might say -- then I might just say it's 12 not unreasonable. But I think that is unreasonable to 13 say -- I think that's one reason, and I think the other 14 reason is that it's your Constitutional right to have 15 someone help you, and that -- that is what our 16 Constitution says. If you need help with voting, you 17 have a right to get help. It doesn't say if you need 18 help with voting, you have a right to get help, but 19 that person needs to write their first, last name, 20 address, and phone number. It doesn't say that 21 anywhere in the Constitution. So I think it's your 22 liberty to have someone help you, and it's your 23 Constitutional right, and you should not have anything 24 that says you can help but you have to do this. I 25 don't agree with that.</p>

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<p>1 And, in general, I think that voting 2 should not be anything that is complicated, period. I 3 think that voting is something that everyone has a 4 right to do, who is eligible, and that it should be 5 something that is very simple and is a simple process 6 and should not be complicated with laws and regulations 7 that make it harder for a voter to vote. 8 Q. Do you think the mail-in process itself is 9 complicated? 10 A. For a lot of people, absolutely, yes. 11 Q. Okay. Do you think that's part of what has 12 caused the problem? 13 A. I think it depends on who -- who it -- who it 14 is. For some people, yes, for some people who need 15 help as far as reading and writing, I mean. 16 Q. Okay. Let me -- I'm not going to have this 17 marked as an exhibit, but I did want to ask you a few 18 questions about your deposition from October of 2006. 19 A. Okay. 20 MS. DONNELLY: And Mr. Carroll, I did not 21 bring an extra copy for you. 22 MR. CARROLL: That's all right. No 23 problem. 24 MS. DONNELLY: But I certainly don't mind 25 letting you look over her shoulder.</p>	<p>1 A. I mean, if you -- you know, if I had time to 2 look at the list of people that we call for mail 3 applications and ask if they need help, then I could 4 give you names easily. But just from the top of my 5 head, no, I wouldn't want to do that because I could 6 give you wrong names just because of human error. 7 Q. On page 26 of your deposition, I have marked 8 your answer here, and I'll show it to you in a minute. 9 Let me read it for the record. Your testimony was, 10 "Voters in Dallas County right now are unable to vote 11 because they cannot get the help they need, and I know 12 this for a fact because I deal with it every single day 13 on my phone bank." 14 A. Uh-huh. 15 Q. Do you see where I marked that? 16 A. Yes. 17 Q. Okay. And again, you don't -- as you sit here 18 today, you don't have any names of any folks that have 19 been disenfranchised because they could not get help 20 with the mail-in ballots; is that right? 21 A. I believe I answered that, and I think that if 22 you -- if that's a question that -- that is viewed as 23 of high importance, then names, that's something that I 24 could get; but right now off the top of my head, I 25 cannot answer that. And I don't think that -- I think</p>
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<p>1 MR. CARROLL: I trust you -- I trust you 2 to read it accurately. 3 MS. DONNELLY: Okay. 4 Q. (BY MS. DONNELLY) Ms. Hamilton, have you had 5 a chance to review your deposition that you gave in 6 this case in October of 2006? 7 A. No. 8 Q. Okay. I have marked a couple sentences here I 9 wanted to get some clarification from you. 10 A. Sure. 11 Q. On page 20, or at least the page 20 that I 12 have marked, -- 13 A. Uh-huh. 14 Q. -- there is an answer that you gave that -- 15 and I'll quote it, your testimony is, "There are a lot 16 of elderly ladies who are mostly African-American who 17 are not able to vote because they do not have 18 assistance." 19 Do you see where I've marked that and 20 that's your answer? 21 A. Yes. Yes. 22 Q. And I think you testified earlier that you 23 can't, as you sit here today, name any particular 24 voters who were unable to vote because they did not 25 have assistance; is that right?</p>	<p>1 that it's such a huge problem that names is -- giving 2 names to me, it sort of trivializes the issue. You 3 know, when thinking of it, it's sort of insulting when 4 I think about that question, because it's -- we are 5 talking about communities of African-American people. 6 Q. Ma'am, I am certainly not here to trivialize, 7 and I am not here to insult you. 8 A. And I don't -- I mean -- I am not -- I don't 9 suggest that you are, but I am just telling you how I 10 feel by that question, how it makes me feel. And I 11 don't -- I am not saying that -- I really -- I 12 apologize if that's how you -- I am not -- I don't want 13 you to take it like that. But when you asked that 14 question over and over again, because you've asked it 15 now three or four times, that is how it makes me feel. 16 It makes me very emotional because, once again, to me 17 it trivializes a very huge problem now in this 18 community. 19 MS. DONNELLY: Nonresponsive, and I 20 apologize if I've insulted you. That was certainly not 21 my intent. 22 Q. (BY MS. DONNELLY) In your deposition on page 23 22, or at least this is my page 22 here, part of your 24 answer was, "People are just saying if you help someone 25 vote by mail, you are going to go to jail."</p>

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<p>1 Do you see where it says that?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Is it your belief as you sit here today if you</p> <p>4 simply help someone vote by mail that you are going to</p> <p>5 jail?</p> <p>6 A. I believe that with this current attorney</p> <p>7 general it's highly likely, yes.</p> <p>8 Q. And on what basis do you say that?</p> <p>9 A. I feel that if you help more than one person</p> <p>10 and if maybe you some kind of way forget to sign a</p> <p>11 witness for one of those people, as I understand it,</p> <p>12 the law says that you are committing a crime. And that</p> <p>13 is why -- that's -- and I think that's wrong. And I</p> <p>14 think that that is giving someone a criminal record off</p> <p>15 of a technicality that is bogus and unnecessary.</p> <p>16 Q. During your work for the phone bank, did</p> <p>17 you -- how many times do you recall having sent a</p> <p>18 worker from the phone bank to someone's house to assist</p> <p>19 with a mail-in ballot?</p> <p>20 A. Oh, I don't do -- I don't -- I don't do that.</p> <p>21 Q. I am sorry, I meant ever, since 2000, have you</p> <p>22 ever sent a worker from a phone bank --</p> <p>23 A. In '02? In '02 people would call in, and they</p> <p>24 would ask for specific people. And so then I didn't</p> <p>25 have any problem with saying, oh, well, you go help</p>	<p>1 Q. I am sorry. That one right there, that refers</p> <p>2 to you, right?</p> <p>3 A. Uh-huh.</p> <p>4 Q. But it had been talking about Ms. Dean,</p> <p>5 quoting from Ms. Dean earlier?</p> <p>6 A. Okay.</p> <p>7 Q. And then the paragraph after that says, "It</p> <p>8 is absolutely fair to say there is no field program for</p> <p>9 mail ballots," she said."</p> <p>10 Did you say that, or did Ms. Dean say</p> <p>11 that?</p> <p>12 A. That is me, this is not -- that's me.</p> <p>13 Q. "Absolutely fair to say no field program for</p> <p>14 mail ballots," she said," that's a quote from you?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. "What happens now is, everything is by</p> <p>17 phone. They call up and request one. And then you</p> <p>18 call them back and say, 'Did they get it, did you get</p> <p>19 it?'"</p> <p>20 A. Right.</p> <p>21 Q. So this field program that you say --</p> <p>22 A. Uh-huh.</p> <p>23 Q. -- that you say in the article was</p> <p>24 suspended --</p> <p>25 A. No, I didn't say --</p>
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<p>1 Ms. Sue like anybody who was there.</p> <p>2 Q. The question was, how many times do you think</p> <p>3 you did that?</p> <p>4 A. Oh, gosh, that was just -- I mean, I don't --</p> <p>5 I don't know. I don't know. I couldn't -- I couldn't</p> <p>6 even answer -- I have no idea.</p> <p>7 Q. Okay. I'm sorry, I am skipping around here a</p> <p>8 little bit. Let me get you to turn back to Exhibit</p> <p>9 1, --</p> <p>10 A. Uh-huh.</p> <p>11 Q. -- page 6, and I am a little confused in this</p> <p>12 article here as to who was talking, whether it was you</p> <p>13 or Ms. Dean, but what I am going to ask you about is</p> <p>14 this business about a field program.</p> <p>15 A. Uh-huh.</p> <p>16 Q. And I've marked some paragraphs there, and the</p> <p>17 third one that I've marked -- excuse me, the second one</p> <p>18 I marked begins, "Hamilton said the 2003 law and</p> <p>19 Abbott's prosecutions has prompted the Democratic</p> <p>20 party..."</p> <p>21 Do you see where it says that?</p> <p>22 A. Uh-huh.</p> <p>23 Q. That obviously refers to you; is that your</p> <p>24 understanding?</p> <p>25 A. Oh, wait. I am sorry, you said this one?</p>	<p>1 Q. I am sorry, the paragraph above it says,</p> <p>2 "Hamilton said the 2003 law and Abbott's prosecutions</p> <p>3 have prompted the Democratic Party in Dallas County to</p> <p>4 suspend a field program that once sent volunteers to</p> <p>5 voters' homes to help them fill out ballot applications</p> <p>6 to they could vote by mail."</p> <p>7 A. Well, this isn't -- this isn't a big deal, but</p> <p>8 what was asked in the -- in -- during this</p> <p>9 conversation, and this might help for you to</p> <p>10 understand, was that, you know, the difference now and</p> <p>11 what I was trying to explain to him is that -- "him"</p> <p>12 being the -- Steven Rosenfeld, the person who was</p> <p>13 interviewing me, was that I would not send anyone out,</p> <p>14 like I wouldn't send any -- and what I mean by "out" is</p> <p>15 I call out in the community "the field." That's what I</p> <p>16 called it. That's just my terminology for it, and</p> <p>17 that's what most people who do campaigns call it.</p> <p>18 So he asked if, specifically, there is</p> <p>19 anything -- and I said, no, I don't, because I just</p> <p>20 wouldn't do it, because I don't feel comfortable doing</p> <p>21 it; whereas, before, in '02, I wouldn't -- I wouldn't</p> <p>22 think anything of it, I mean, with saying, okay, yeah,</p> <p>23 go help Ms. Brown. That's what I was referring to.</p> <p>24 Q. Okay. So the paragraph above is a little</p> <p>25 unclear because it says, "The 2003 law and Abbott's</p>

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<p>1 prosecutions have prompted the Democratic Party in 2 Dallas County to suspend a field program that once sent 3 volunteers to voters' homes to help them fill out 4 ballot applications," and that's not what you meant? 5 A. Not exactly, no. 6 Q. Okay. It was really more referring to your 7 own reluctance to ask workers to go out in the field to 8 help people with ballots? 9 A. What I was referring to was myself. However, 10 I do know that there are, you know, other Democrats who 11 would not feel comfortable with it either, so -- but 12 what I was referring to was me. 13 Q. Okay. 14 A. I don't feel comfortable with it. 15 Q. Fair enough. Thank for you clarifying that. 16 A. No problem. 17 Q. Have you been in contact with plaintiffs' 18 counsel in this case about testifying in this case next 19 month? 20 A. About testifying? Yes. 21 Q. Okay. Who have you talked to? 22 A. Gerry Hebert. 23 Q. How many times have you talked to Mr. Hebert? 24 A. Like how many times -- 25 Q. Yes, ma'am.</p>	<p>1 Q. Okay. Do you know what you are going to be 2 asked to testify about? 3 A. No, we haven't talked about that yet. I mean, 4 I'd imagine that it's going to be about this, what we 5 are talking about now. 6 Q. Do you have any contacts at the Lone Star 7 Project about mail-in voting changes to the law? 8 A. Do I have any contacts there? 9 Q. Uh-huh. 10 A. Yeah. The Lone Star Project? Yeah. 11 Q. Have you talked to them about changes in the 12 law with respect to mail-in voter assistance? 13 A. We've had general conversations about it. 14 MS. DONNELLY: I thank you for your time. 15 Those are the questions that I have for you today. 16 THE WITNESS: Thank you. 17 MR. CARROLL: No questions. 18 (Signature of the witness was waived by 19 agreement of counsel and the witness.) 20 *** 21 22 23 24 25</p>
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<p>1 A. -- in general? 2 Q. Yes, ma'am. 3 A. For what -- I mean, for -- 4 Q. About this case. 5 A. I have known him -- oh, about this case. 6 Well, let's see. When did this case start? 7 Q. '06. 8 A. Okay. Seems like a very, very long time. 9 Okay. Since '06, oh, gosh, I don't know. I -- I don't 10 know. Maybe -- I don't know, do you want me to just 11 guess? 12 Q. More than five? No. More than five? 13 A. Probably more than five, yeah. 14 Q. Okay. 15 A. Since '06, absolutely. 16 Q. More than ten? 17 A. No, probably not. 18 Q. Okay. Between five and ten times. 19 A. Maybe. 20 Q. Have you talked with him recently about this 21 case? 22 A. Yes, I let him know I was coming here. 23 Q. Okay. And have you talked to him about your 24 testimony that you are going to give at trial? 25 A. Not yet.</p>	<p>1 COUNTY OF DALLAS) 2 STATE OF TEXAS) 3 I, Jerry L. Callaway, RDR, certified 4 shorthand reporter in and for the State of Texas, do 5 hereby certify that the facts as stated by me in the 6 caption hereto are true; that there came before me the 7 aforementioned named person, who was by me duly sworn 8 to testify the truth concerning the matters in 9 controversy in this cause; and that the examination was 10 reduced to writing by computer transcription under my 11 supervision; that the deposition is a true record of 12 the testimony given by the witness. 13 I further certify that I am neither 14 attorney or counsel for, nor related to or employed by, 15 any of the parties to the action in which this 16 deposition is taken, and further that I am not a 17 relative or employee of any attorney or counsel 18 employed by the parties hereto, or financially 19 interested in the action. 20 Given under my hand and seal of office on 21 this, the 1st day of May, A.D., 2008. 22 23 Jerry L. Callaway, RDR, CSR 948 24 Expiration Date: 12/31/2008 25 Firm Registration No. 209 5220 Renaissance Tower 1201 Elm Street Dallas, Texas 75270 (214) 855-5300</p>

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Exhibit 7

Oral Deposition of **Rebecca Minneweather**

Date: April 30, 2008

Volume:

Case: Willie Ray v. State of Texas

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Rebecca Minneweather

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

WILLIE RAY, JAMILLAH JOHNSON,)
GLORIA MEEKS, REBECCA)
MINNEWEATHER, REUBEN ROBINSON,)
EDDIE JACKSON and THE TEXAS)
DEMOCRATIC PARTY,)
) CIVIL ACTION
Plaintiffs,) NO.
) 2-06CV-385
vs.)
)
STATE OF TEXAS, a State of the)
United States; GREG ABBOTT,)
Attorney General of the State of)
Texas; and PHIL WILSON, Secretary)
of State for the State of Texas,)
)
Defendants.)

ORAL DEPOSITION OF

REBECCA MINNEWEATHER

April 30th, 2008

ANSWERS AND DEPOSITION of REBECCA

MINNEWEATHER, taken at the instance of the Defendants,
on the 30th day of April, A.D., 2008, between the hours
of 2:26 p.m. and 2:38 p.m., in the above styled and
numbered cause at the offices of Merit Reporters, 309
W. 7th Street, in Fort Worth, Tarrant County, Texas,
before Jerry L. Callaway, RDR, a Certified Shorthand

Rebecca Minneweather

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<p>1 Reporter in and for the State of Texas, pursuant to the 2 Federal Rules of Civil Procedure and the provisions 3 stated on the record. 4 5 6 7 8 A P P E A R A N C E S 9 10 11 APPEARING FOR THE PLAINTIFFS: 12 Mr. Otis W. Carroll, Jr. 13 IRELAND, CARROLL & KELLEY 14 6101 S. Broadway, Suite 500 15 Tyler, Texas 75703 16 17 APPEARING FOR THE DEFENDANTS: 18 Ms. Rosemarie Donnelly 19 Special Assistant Attorney General 20 808 Travis, Suite 300 21 Houston, Texas 77002 22 23 24 25</p>	<p>1 Q. And the address is obviously on the outside of 2 the envelope? 3 A. Yes. 4 Q. Okay. In testifying in this lawsuit in 5 October of 2006 -- do you remember that? 6 A. Yes. 7 Q. I want to ask you some follow-up questions 8 about some of the questions you were asked in that 9 deposition. As I recall from your testimony, you 10 testified that you helped between 180 people -- excuse 11 me, 80 and 100 people with their mail-in ballots prior 12 to 2006. That was an approximate number of folks that 13 you have helped. Does that sound about right? 14 A. I helped with getting them signed up to 15 receive their mail-in ballots, the applications. 16 Q. Okay. And did you ever help any of these 17 folks mail their mail-in ballots? 18 A. No. 19 Q. Okay. Since 2006 when you testified, have you 20 assisted any voters with their mail-in ballots? 21 A. No, I haven't. 22 Q. Have you done any political work at all since 23 2006? 24 A. No, I have not. 25 Q. Do you know if any of the folks that you used</p>
Page 3	Page 5
<p>1 REBECCA MINNEWEATHER, 2 having been first duly sworn, testified as follows: 3 EXAMINATION 4 BY MS. DONNELLY: 5 Q. Ms. Minneweather, my name's Rosemarie 6 Donnelly. I'm with the attorney general's office, and 7 first of all, I want to thank you for coming downtown 8 today to visit with us about this case. And, as you 9 know, you are a named party in this case as one of the 10 plaintiffs. And so I just want to update some 11 information that you provided in your deposition 12 earlier in this case. 13 Could you give us your residential 14 address, please? 15 A. 5808 Maceo Lane, Fort Worth, Texas 76112. 16 Q. Do you -- how long have you lived at that 17 address? 18 A. All my life. 19 Q. Okay. Do you ever receive mail at this 20 address? 21 A. Yes. 22 Q. And do you receive first-class mail? What I 23 mean by first-class mail, is your name on the outside 24 of the envelope? 25 A. Yes.</p>	<p>1 to help with their mail-in ballots, whether they have 2 not voted since then because you have been unable to 3 help them? 4 A. Only thing I can say, back then I had several 5 that said that they probably would not vote, but as far 6 as them voting, I don't know. 7 Q. Okay. Let me hand you what the court reporter 8 is going to mark for us as Exhibit 1. 9 (Deposition Exhibit 1 marked.) 10 Q. (BY MS. DONNELLY) Ms. Minneweather, would you 11 take a look at what the court reporter marked as 12 Exhibit 1, and I will just state for the record that 13 it's Plaintiffs' Responses and Objections to 14 Defendants' First Set of Interrogatories; do you see 15 that as the title? 16 For purposes of my question, you don't 17 need to read through it. I just wanted to ask you if 18 you have ever seen this document before? 19 A. Oh, yes, I have. 20 Q. Okay. When did you first see this document? 21 A. I got a copy of it on yesterday. 22 Q. Okay. Is that the first time you had seen it? 23 A. First time I had seen the document, but the 24 information that was in it, I had already discussed 25 that with the lawyer a couple years ago.</p>

2 (Pages 2 to 5)

Rebecca Minneweather

Page 6	Page 8
<p>1 Q. Okay. Had you discussed it with the lawyer</p> <p>2 before a couple years ago?</p> <p>3 A. No.</p> <p>4 Q. Okay. The document itself, though, had you</p> <p>5 seen it before yesterday?</p> <p>6 A. No, I had not.</p> <p>7 Q. Okay. Had you discussed this document on the</p> <p>8 telephone with any of the plaintiffs' lawyers before</p> <p>9 yesterday?</p> <p>10 A. No, I have not.</p> <p>11 Q. Okay. Were you mailed or faxed a copy of</p> <p>12 what's Exhibit 1?</p> <p>13 A. It was faxed.</p> <p>14 Q. Do you have a fax machine at your home?</p> <p>15 A. At my job.</p> <p>16 Q. Okay.</p> <p>17 A. Right by my desk.</p> <p>18 Q. Where do you work?</p> <p>19 A. I work for Fort Worth Independent School</p> <p>20 District.</p> <p>21 Q. When you were -- in 2006, as I understand your</p> <p>22 testimony, you were interviewed by some investigators</p> <p>23 from the attorney general's office. Do you remember</p> <p>24 that?</p> <p>25 A. I remember one that came to my house for a</p>	<p>1 Q. Okay.</p> <p>2 A. Contact my lawyer.</p> <p>3 Q. And how long did the interview at your home</p> <p>4 last, just approximately?</p> <p>5 A. If you call it an interview, like I said, he</p> <p>6 just came and introduced himself, said a few words,</p> <p>7 maybe about five minutes.</p> <p>8 Q. Okay. And did you engage a lawyer after that</p> <p>9 interview?</p> <p>10 A. Yes, I did.</p> <p>11 Q. Okay. And do you know if the investigators</p> <p>12 contacted your lawyer after that?</p> <p>13 A. I think so. I don't know for sure. I can't</p> <p>14 say for sure.</p> <p>15 Q. Okay. But you weren't contacted by the</p> <p>16 investigators?</p> <p>17 A. No.</p> <p>18 Q. Okay. And as I understand it, the</p> <p>19 investigation was closed at some point, and you heard</p> <p>20 nothing further from the attorney general's office; is</p> <p>21 that right?</p> <p>22 A. Correct.</p> <p>23 Q. Ms. Minneweather, do you know of any voters</p> <p>24 who have not voted because they have been unable to</p> <p>25 receive assistance with their mail-in ballots?</p>
Page 7	Page 9
<p>1 brief moment, yes.</p> <p>2 Q. Okay. And did the investigators identify</p> <p>3 themselves to you?</p> <p>4 A. Yes, he did.</p> <p>5 Q. And they told you what they were going to ask</p> <p>6 you about?</p> <p>7 A. Yes, like I said, it's been a couple years</p> <p>8 ago.</p> <p>9 Q. Okay. Was there more than one investigator?</p> <p>10 A. No, it was just one that came to the home.</p> <p>11 Q. Okay. And how many times did you talk with</p> <p>12 investigators from the attorney general's office?</p> <p>13 A. That was the only time.</p> <p>14 Q. How long did that interview last?</p> <p>15 A. It really wasn't an interview. He came by and</p> <p>16 set up an appointment for me at an address that was not</p> <p>17 known in Dallas. The address that he had given me was</p> <p>18 not an address that was in Dallas, because I had called</p> <p>19 to get directions, and they had told me that that</p> <p>20 address did not exist in Dallas.</p> <p>21 Q. Okay. And you -- were you contacted by the</p> <p>22 attorney general's office or anyone concerning the</p> <p>23 investigation after that one time at your home?</p> <p>24 A. No, after that I told them to make connections</p> <p>25 with my lawyer.</p>	<p>1 A. Again, like I told you, I really can't say,</p> <p>2 because I haven't had any connections with them since,</p> <p>3 you know, a couple years ago.</p> <p>4 Q. So you just don't know one way or the other?</p> <p>5 A. No.</p> <p>6 MS. DONNELLY: Thank you very much.</p> <p>7 That's all the questions I have.</p> <p>8 EXAMINATION</p> <p>9 BY MR. CARROLL:</p> <p>10 Q. Ms. Minneweather, let me mention one thing to</p> <p>11 you that you may have remembered from your last</p> <p>12 deposition. You have the right under the law to read</p> <p>13 the transcript that Mr. Callaway is going to type up</p> <p>14 and satisfy yourself that it's correct, that it's</p> <p>15 accurate, or you can trust him to do a good job and</p> <p>16 waive that signature. Now, the two witnesses earlier</p> <p>17 today chose to waive. And if you want to read it,</p> <p>18 that's fine, he'll send it to you, you can review it</p> <p>19 and sign it and send it back. But if you are confident</p> <p>20 that he'll do his job, waiving it's just as fine.</p> <p>21 A. I'd like to receive a copy of it if I may.</p> <p>22 Q. That will be fine. So you will need to give</p> <p>23 Mr. Callaway your address, and then he'll get it to</p> <p>24 you, and it will -- there will be an instruction sheet</p> <p>25 as to what you are supposed to do. And frankly, it's</p>

3 (Pages 6 to 9)

Rebecca Minneweather

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1 nothing more complicated than reading it and making any	1 CHANGES AND SIGNATURE
2 corrections that need to be made.	2 WITNESS: REBECCA MINNEWEATHER
3 A. Okay. Also, could I say something in	3 DATE OF DEPO: 4/30/2008
4 reference to a couple of years ago? At that time when	4 PAGE LINE CHANGE REASON
5 they did the investigation or the interrogation or	5 _____
6 however you want to put it, because it was very	6 _____
7 intimidation, it was a very chilling effect for me for	7 _____
8 the mere fact that it was very stressful. I didn't	8 _____
9 appreciate them calling me a criminal in the newspaper	9 _____
10 and judge me because you didn't know me, and I didn't	10 _____
11 appreciate that. And that really hurt my character.	11 _____
12 And again, I hate for people to convict	12 _____
13 people for something, and you don't even know me. I	13 _____
14 don't have a criminal record. And that really	14 _____
15 disturbed me. And it really upset me that I didn't get	15 _____
16 a chance to spend any more time with my senior citizens	16 _____
17 because, again, I render a service to the public, and	17 _____
18 that's what it's all about. And for you to come in and	18 _____
19 suggest the things that have been suggested that really	19 _____
20 hurt my feelings as an individual, and I feel like you	20 _____
21 need to know that.	21 _____
22 And you also interrogated a lot of the	22 _____
23 senior citizens to the point that they don't want to	23 _____
24 have anything to do with anybody else because they are	24 _____
25 afraid because of how y'all handled the situation. And	25 _____

Page 11	Page 13
1 I just thought you needed to know that.	1 _____
2 MS. DONNELLY: Thank you for your time,	2 I, REBECCA MINNEWEATHER, have read the
3 Ms. Minneweather.	3 foregoing deposition and hereby affix my signature that
4	4 same is true and correct, except as noted above.
5	5 _____
6	6 REBECCA MINNEWEATHER
7	7 THE STATE OF _____)
8	8 COUNTY OF _____)
9	9 Before me, _____, on this
10	10 day personally appeared REBECCA MINNEWEATHER, known to
11	11 me (or proved to me under oath or through
12	12 _____) (description of identity card or
13	13 other document) to be the person whose name is
14	14 subscribed to the foregoing instrument and acknowledged
15	15 to me that they executed the same for the purposes and
16	16 consideration therein expressed.
17	17 Given under my hand and seal of office
18	18 this ____ day of _____, 2008.
19	19 _____
20	20 NOTARY PUBLIC IN AND FOR
21	21 THE STATE OF _____
22	22 _____
23	23
24	24
25	25

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Rebecca Minneweather**Page 14**

COUNTY OF DALLAS)

STATE OF TEXAS)

I, Jerry L. Callaway, RDR, certified shorthand reporter in and for the State of Texas, do hereby certify that the facts as stated by me in the caption hereto are true; that there came before me the aforementioned named person, who was by me duly sworn to testify the truth concerning the matters in controversy in this cause; and that the examination was reduced to writing by computer transcription under my supervision; that the deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

Given under my hand and seal of office on this, the 1st day of May, A.D., 2008.

 Jerry L. Callaway, RDR, CSR 948
 Expiration Date: 12/31/2008
 Firm Registration No. 209
 5220 Renaissance Tower
 1201 Elm Street
 Dallas, Texas 75270
 (214) 855-5300

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- | | | |
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E X H I B I T S

- | Ex # | Description | Pg | Ln |
|------|--|----|----|
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Exhibit 8

Filed separately under seal.

Exhibit 9

JAMILLAH JOHNSON

RE: WILLIE RAY, ET AL v. SOT, ET AL

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WILLIE RAY, JAMILLAH JOHNSON,)	
GLORIA MEEKS, REBECCA)	
MINNEWEATHER, REUBEN)	
ROBINSON, EDDIE JACKSON, AND)	
THE TEXAS DEMOCRATIC PARTY,)	
Plaintiffs)	
)	
VS.)	CIVIL ACTION
)	
STATE OF TEXAS, a State of)	NO. 2-06CV-385
the United States; GREG)	
ABBOTT, Attorney General of)	
the State of Texas; and PHIL)	
WILSON, Secretary of State)	
for the State of Texas,)	
Defendants)	

ORAL AND VIDEOTAPED DEPOSITION OF
JAMILLAH JOHNSON
VOLUME 1

MAY 1, 2008

TEXARKANA, TEXAS

JAMILLAH JOHNSON**RE: WILLIE RAY, ET AL v. SOT, ET AL****Page 2**

1 A P P E A R A N C E S
2
3 FOR THE PLAINTIFFS:
4 Mr. Eric Miller Albritton, Esq.
5 P.O. Box 2649
6 Longview, Texas 75606
7 Phone: (903) 757-8449
8
9 FOR THE DEFENDANTS:
10 TEXAS ATTORNEY GENERAL'S OFFICE
11 General Litigation Division
12 P.O. Box 12548
13 Austin, Texas 78711-2548
14 Phone: (512) 463-2120
15 By: Ms. Kathlyn C. Wilson
16 Assistant Attorney General
17 State Bar No. 21702630
18
19 ALSO PRESENT:
20 Carmen Seay, Videographer
21 * * * * *
22
23 ORAL AND VIDEOTAPED DEPOSITION OF JAMILLAH
24 JOHNSON, produced as a witness at the instance of the
25 DEFENDANTS, and duly sworn, was taken in the above-styled
and numbered cause on May 1, 2008, from 11:31 a.m. to
12:10 p.m., before Tobi Moreland, CSR in and for the State
of Texas, at the United States Courthouse, 500 State Line
Road, Texarkana, Texas, pursuant to the Federal Rules of
Civil Procedure and any stipulations made on the record.

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1 VIDEOGRAPHER: This is the videotaped
2 deposition of Jamillah Johnson taken on behalf of the
3 defendant in the matter of Ray versus State of Texas,
4 et al, Civil Action No. 2-06CV-385 for the United States
5 District Court, Eastern District of Texas, Marshall
6 Division, held at the federal courthouse. I am the
7 videographer. My name is Carmen Seay. The court reporter
8 is Tobi Moreland. This is the beginning of Tape 1.
9 Today's date is May 1st, 2008. We are on the record at
10 11:31. Will counsel introduce themselves for the record?
11 MS. WILSON: I'm Kathy Wilson for the
12 defendants.
13 MR. ALBRITTON: Eric Albritton for Ms. --
14 for all the plaintiffs.
15
16 JAMILLAH JOHNSON,
17 having been first duly sworn, testified as follows:
18
19 EXAMINATION
20 BY MS. WILSON:
21 Q. Good morning, Ms. Johnson. My name is Kathy
22 Wilson. We've never met, have we?
23 A. No.
24 Q. I just want to ask you some questions about the
25 lawsuit you've brought. But first of all, just give me a
little of your background. Where were you educated?

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NO.	DESCRIPTION	PAGE
	NO EXHIBITS WERE MARKED	..

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1 A. At Texas Senior High School here in Texarkana,
2 Texas.
3 Q. And what do you do now?
4 A. I'm a mom, and I have -- I'm a college student,
5 and I also have a job, another job.
6 Q. Okay. Where are you going to college?
7 A. Texarkana College.
8 Q. And what kind of classes -- do you have a major?
9 A. Yes. I want to teach high school math.
10 Q. And what's your job?
11 A. Right now?
12 Q. Uh-huh.
13 A. I work at the Dollar Tree as a cashier.
14 Q. Okay. Just generally, can you -- can you tell
15 me -- hang on just a second. I'm sorry, I'm losing my
16 documents here. Now, you joined this lawsuit when it was
17 in progress; is that right?
18 A. Yes, ma'am.
19 Q. Can you tell me just generally why you brought
20 the lawsuit or why you joined the lawsuit, what it was you
21 wanted to accomplish?
22 A. I wanted to accomplish -- no -- no person
23 that -- the way I feel, no person that's disabled or over
24 the age of 65 should be -- have their rights violated or
25 taken because they can't either get to the poll or -- you

2 (Pages 2 to 5)

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<p>1 know, and the people that's assisting them shouldn't be</p> <p>2 punished for stuff that they are not doing anything</p> <p>3 illegal for.</p> <p>4 Q. Okay. Now, how long have you been assisting</p> <p>5 people who vote by mail?</p> <p>6 A. Probably about -- about 15 years now.</p> <p>7 Q. Okay. And how old are you?</p> <p>8 A. 32.</p> <p>9 Q. So since your teens you've been doing that?</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. And I understand that this is a family</p> <p>12 tradition; is that right?</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. All right. What -- how did -- how did it start</p> <p>15 that you started assisting people in voting by mail?</p> <p>16 A. You just -- they sign a card. I mean, you know,</p> <p>17 they'll call and ask can you come and I want to vote at</p> <p>18 home, and then you just go over and let them -- help them</p> <p>19 fill out the card, like read like name, address, and just</p> <p>20 fill it out for them, and that's it.</p> <p>21 Q. Did you ever make any attempts to educate</p> <p>22 yourself about the laws about voting by mail?</p> <p>23 A. Did I educate myself?</p> <p>24 Q. Right.</p> <p>25 A. No, not really. No, not when I was in my teens,</p>	<p>1 Q. And you never went to the secretary of state's</p> <p>2 website to try to find out how to help people by mail?</p> <p>3 A. No, ma'am.</p> <p>4 Q. Okay. And did you ever have any contact with</p> <p>5 anybody from the Attorney General's Office before this</p> <p>6 investigation about what the laws were to assist people to</p> <p>7 vote by mail?</p> <p>8 A. I don't understand that question. I don't</p> <p>9 understand the question.</p> <p>10 Q. Do you -- do you know who the attorney general</p> <p>11 is?</p> <p>12 A. Yes, I do.</p> <p>13 Q. All right. Before the attorney general started</p> <p>14 investigating you --</p> <p>15 A. Right.</p> <p>16 Q. -- had you ever had any conversations or ever</p> <p>17 gotten any information of any kind from the attorney</p> <p>18 general on how to go about helping people vote by mail?</p> <p>19 A. No.</p> <p>20 Q. So basically you just found out you were being</p> <p>21 investigated and learned -- and just kind of said, well,</p> <p>22 there's a new law I didn't even know about; is that right?</p> <p>23 A. Basically, yes, ma'am.</p> <p>24 Q. How did you find out you were being</p> <p>25 investigated?</p>
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<p>1 but as soon as I hit -- within the last two or three</p> <p>2 years, I have.</p> <p>3 Q. In the last two or three years since this --</p> <p>4 since you were prosecuted?</p> <p>5 A. Incidence, uh-huh.</p> <p>6 Q. Right. But before that --</p> <p>7 A. Because they changed. Well, I knew one set of</p> <p>8 laws, and they had always been that way, but I hadn't just</p> <p>9 really gone and dealt with it.</p> <p>10 Q. I see. And so when the law changed, you just</p> <p>11 didn't know anything about it; is that what you're telling</p> <p>12 me?</p> <p>13 A. Yeah. Yes, ma'am.</p> <p>14 Q. And that's the law in 2003 that says if you help</p> <p>15 somebody, you have to sign the back of the envelope?</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. All right. So -- and just so I'm clear, you</p> <p>18 didn't know anything about that law until you found out</p> <p>19 you were being investigated for it?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. Did you ever go to any websites to try to --</p> <p>22 well, I guess maybe you answered that question. You never</p> <p>23 went to any -- to the Texas Democrats' website to try to</p> <p>24 find out how to help people by mail?</p> <p>25 A. No, ma'am.</p>	<p>1 A. The attorney general notified us.</p> <p>2 Q. Okay. How did they notify you, in person?</p> <p>3 A. I can't -- I can't remember. But I know they</p> <p>4 gave us some cards and -- actually, I think they told my</p> <p>5 grandmother that we had to meet them at the Sheraton in</p> <p>6 Four Points. So I learned through my grandmother that</p> <p>7 they wanted to talk to us.</p> <p>8 Q. All right. Now, you were investigated for</p> <p>9 possession of a ballot?</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. All right. And tell me, how many ballots were</p> <p>12 you in possession of?</p> <p>13 A. How many?</p> <p>14 Q. Yes.</p> <p>15 A. In possession? One. I think it was one, one of</p> <p>16 them.</p> <p>17 Q. And did you -- tell me -- tell me before this</p> <p>18 invest -- before you learned you were being investigated,</p> <p>19 tell me how you would assist somebody who needed to vote.</p> <p>20 Say somebody calls you up and said -- and says, you know</p> <p>21 what, I can't get to the polls, can you come -- come help</p> <p>22 me or can you give me some help, what would you do?</p> <p>23 A. I would go over and help them to fill out the</p> <p>24 white card, and then we would mail the card off. And then</p> <p>25 when they would, I guess, get their ballot, they would</p>

3 (Pages 6 to 9)

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<p>1 call, and then they would ask -- they would say, well, I</p> <p>2 don't understand, can you come and read it? And so I</p> <p>3 would go read off, you know, everything that was on the</p> <p>4 ballot. And then they would mark it.</p> <p>5 Q. And what white card are you talking about?</p> <p>6 A. The application for ballot by mail.</p> <p>7 Q. And that's an application that you get at the</p> <p>8 courthouse or somewhere like that?</p> <p>9 A. Any -- yes.</p> <p>10 Q. Now, I understand you had deferred adjudication;</p> <p>11 is that right?</p> <p>12 A. That's correct.</p> <p>13 Q. And how long did you have to serve?</p> <p>14 A. Six months.</p> <p>15 Q. Six months? When was that over?</p> <p>16 A. I don't remember.</p> <p>17 Q. It's over now, isn't it?</p> <p>18 A. Yes.</p> <p>19 Q. All right. And so you're not a convicted</p> <p>20 criminal, correct?</p> <p>21 A. No, I'm not a convicted criminal.</p> <p>22 Q. All right. And you obviously don't have a</p> <p>23 criminal record, right?</p> <p>24 A. Correct.</p> <p>25 Q. Did you have to pay any fines?</p>	<p>1 A. Then you should be punished. But you see a</p> <p>2 person, you say I want to vote for this person or they</p> <p>3 send you something in the mail asking you to support them</p> <p>4 and you really want to do it, but you don't understand how</p> <p>5 to read a ballot or, you know -- and you shouldn't be</p> <p>6 punished for that. And I think that that's wrong. I</p> <p>7 think that they came after me because I was helping people</p> <p>8 that was not literate or they thought couldn't function or</p> <p>9 whatever.</p> <p>10 Q. All right. So you think they came after you</p> <p>11 because you were helping disabled people?</p> <p>12 A. And elderly people, people that can't help</p> <p>13 themselves.</p> <p>14 Q. What makes you feel like they were targeting you</p> <p>15 because you were helping elderly and disabled?</p> <p>16 A. Because in the -- that particular election that</p> <p>17 we're speaking of, you have supposedly the Republican side</p> <p>18 is the ones that started it or whatever. And they just</p> <p>19 were not the ones to be -- I mean, you know, as far as the</p> <p>20 Democrats and then you have, you know, the Republican</p> <p>21 party, they just -- I feel like they were mad because they</p> <p>22 were losing -- I mean, you know, they're losing or they</p> <p>23 think that they're going to lose, so they came after us.</p> <p>24 Q. Okay. You think the Republicans came after you?</p> <p>25 A. Yes.</p>
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<p>1 A. Yes, ma'am.</p> <p>2 Q. What fines did you have to pay?</p> <p>3 A. I really don't remember. I know it was court</p> <p>4 cost and probation fees, but that's it, I guess.</p> <p>5 Q. Okay. Did you pay an attorney?</p> <p>6 A. No. I had a court-appointed.</p> <p>7 Q. Do you have any personal belief as to why they</p> <p>8 were investigating you?</p> <p>9 A. Do I have a personal belief? Not really. I</p> <p>10 feel like -- it's hard to describe. I feel like -- when I</p> <p>11 found out they were investigating me, I felt terrible, I</p> <p>12 mean, because I hadn't did anything. And if you see some</p> <p>13 of the people that ask you to help them, it's sad. And</p> <p>14 they -- it's just hard to, I guess, talk about it because</p> <p>15 it's wrong, because it really is, it's wrong. It's -- the</p> <p>16 system is designed to -- I guess if you're not rich and,</p> <p>17 you know, or literate, then you should be punished, and I</p> <p>18 think that's wrong. I really do.</p> <p>19 Q. If you're not what?</p> <p>20 A. If you're not -- if you're -- the way the system</p> <p>21 is set up --</p> <p>22 Q. Yes.</p> <p>23 A. -- if you cannot read, if you're not literate --</p> <p>24 you understand what I'm saying?</p> <p>25 Q. Yes.</p>	<p>1 Q. Because -- well, were you telling people to vote</p> <p>2 Democratic?</p> <p>3 A. No. You can't -- you can't gesture or anything</p> <p>4 to people and tell them which way to vote.</p> <p>5 Q. Okay. And you never did that, did you?</p> <p>6 A. No.</p> <p>7 Q. So how would the Republicans know that you were</p> <p>8 helping Democrats to vote?</p> <p>9 A. I don't -- I don't know if they just knew -- I</p> <p>10 mean, anybody knows -- I mean, that if they ask you, if --</p> <p>11 you would tell them, I'm a Democrat or -- you know what</p> <p>12 I'm saying? But I just -- that's my -- that's the way I</p> <p>13 believe.</p> <p>14 Q. Okay. Do you have -- what's that based on,</p> <p>15 basically? Is that based on any facts, or is that just --</p> <p>16 that's just based on a feeling you have?</p> <p>17 A. Feeling, and it can be backed up with facts.</p> <p>18 Q. Like what -- okay, good. What facts?</p> <p>19 A. The actual guy, Rusty Hicks himself, he'll tell</p> <p>20 you.</p> <p>21 Q. What do you mean by that?</p> <p>22 A. He just -- he's -- he said things, I guess,</p> <p>23 basically about -- he don't know me, but he said little</p> <p>24 things or whatever about Willie Ray's granddaughter or,</p> <p>25 you know -- and it's not true, but we ended up with this</p>

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<p>1 that we're going through now, so I guess he did do</p> <p>2 whatever he said or whatever.</p> <p>3 Q. Okay. So what --</p> <p>4 A. Threats or -- yeah.</p> <p>5 Q. I don't want -- if you're not through with an</p> <p>6 answer, let me know, because I want you to be able to</p> <p>7 finish your answer. Okay?</p> <p>8 A. Uh-huh.</p> <p>9 Q. All right. Rusty Hicks, you said he was</p> <p>10 following through with threats?</p> <p>11 A. Yeah, like I'm going to get y'all, I know that</p> <p>12 y'all are doing stuff illegal.</p> <p>13 Q. How do you know Rusty Hicks said that?</p> <p>14 A. Because a real reliable source told me.</p> <p>15 Q. Okay. And could you tell me who -- what that</p> <p>16 reliable source is?</p> <p>17 A. No. It's a person.</p> <p>18 Q. Okay. Do you remember who it is?</p> <p>19 A. No.</p> <p>20 Q. Oh, you don't remember who it is?</p> <p>21 A. No.</p> <p>22 Q. Oh, okay. So your feeling that this was</p> <p>23 targeting you -- the Republicans were targeting you is</p> <p>24 based on stuff that you heard that Rusty Hicks said; is</p> <p>25 that right?</p>	<p>1 you, and, well, I'm scared, I don't want you to get in</p> <p>2 trouble, you know. So --</p> <p>3 Q. Did you hear Ms. French say that?</p> <p>4 A. Yes.</p> <p>5 Q. Tell me to the extent that you remember exactly</p> <p>6 what she said. I know you don't remember exactly.</p> <p>7 A. Verbatim, I don't. She just said she couldn't</p> <p>8 believe that that was in the paper like that and that they</p> <p>9 lied.</p> <p>10 Q. Did she say who lied?</p> <p>11 A. I guess she was talking about the paper in</p> <p>12 general, what she had read in the paper.</p> <p>13 Q. And I'm assuming -- do you know what she meant</p> <p>14 when she said they lied? Like the people lied when they</p> <p>15 said you were doing something wrong?</p> <p>16 A. Yes, ma'am.</p> <p>17 Q. And that's what you understood from Ms. French?</p> <p>18 A. Correct.</p> <p>19 Q. When did you have this conversation with</p> <p>20 Ms. French?</p> <p>21 A. I can't remember the exact dates because it's</p> <p>22 been so long ago.</p> <p>23 Q. It was probably closer to the time that all this</p> <p>24 was going on?</p> <p>25 A. Yeah, all this stuff was coming out, yeah.</p>
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<p>1 A. Uh-huh.</p> <p>2 Q. Is it based on anything else?</p> <p>3 A. No.</p> <p>4 Q. All right. Do you know of anyone who stopped</p> <p>5 voting because these -- because these laws were passed</p> <p>6 that somebody had to sign the back of the envelope?</p> <p>7 A. I know one lady that stopped, and I know -- I've</p> <p>8 had several to tell me that if I never came around, that</p> <p>9 they would not be able to vote, and they would never vote</p> <p>10 again.</p> <p>11 Q. Okay. Tell me about this lady that stopped</p> <p>12 voting. Who is that?</p> <p>13 A. Louise French.</p> <p>14 Q. And who is Ms. French?</p> <p>15 A. She was a -- she's a sweet little lady. She --</p> <p>16 she lived in Sunset Apartments.</p> <p>17 Q. The what?</p> <p>18 A. Sunset Apartments.</p> <p>19 Q. Okay.</p> <p>20 A. And she was disabled. She had to walk, you</p> <p>21 know -- she was disabled, and she got excited about</p> <p>22 voting, you know, is it voting time, are we going to get</p> <p>23 to vote? You know. And then when all this stuff came out</p> <p>24 in the paper and all, she was like, oh, that's wrong,</p> <p>25 y'all didn't do anything, you know, why they messing with</p>	<p>1 Q. And Ms. French told you, I'm not going to vote</p> <p>2 anymore?</p> <p>3 A. She said, I don't want to do it anymore.</p> <p>4 Q. Said, I don't want to vote anymore?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Do you know whether she actually stopped voting?</p> <p>7 A. You could probably check the records.</p> <p>8 Q. But you don't know yourself?</p> <p>9 A. No.</p> <p>10 Q. And then you said there were other people who --</p> <p>11 you talked about one person that you said that you --</p> <p>12 A. Mr. and Mrs. Douglas.</p> <p>13 Q. And then there were other people?</p> <p>14 A. Correct.</p> <p>15 Q. All right. Who were those other people that --</p> <p>16 A. Mr. and Mrs. Douglas.</p> <p>17 Q. Okay.</p> <p>18 A. She's about 80 -- 80, and he's about 85, 86.</p> <p>19 And they are a husband and wife, and she's a licensed</p> <p>20 beautician. And I don't know what he does, but they are</p> <p>21 literate, okay. But they just don't get around like they</p> <p>22 used to, and they don't go out. The only time they go out</p> <p>23 is like maybe go to church and to go, you know, get</p> <p>24 groceries, and then they back in the house. Like going to</p> <p>25 the poll to vote and stuff, they said they are too up in</p>

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<p>1 age to do that. So for me to bring the card by for them</p> <p>2 to sign, and then they get it and fill it out, and they</p> <p>3 mail everything back themselves. Then they said they</p> <p>4 wouldn't be able to vote because nobody would bring the</p> <p>5 application by for them to fill out, and then therefore,</p> <p>6 they wouldn't be able to.</p> <p>7 Q. Because nobody could bring the application to</p> <p>8 them?</p> <p>9 A. By, uh-huh.</p> <p>10 Q. And they told you this?</p> <p>11 A. Yes.</p> <p>12 Q. Did Mr. Douglas tell you this, or did</p> <p>13 Mrs. Douglas tell you this?</p> <p>14 A. Both.</p> <p>15 Q. Okay. Did you tell them, you know, you can --</p> <p>16 you can call and they will send you your ballot</p> <p>17 application?</p> <p>18 A. I've -- I've told them, but they said that they</p> <p>19 wouldn't -- they said they wouldn't call up there.</p> <p>20 Q. Did they tell you why?</p> <p>21 A. They feel like -- did they tell me why?</p> <p>22 Q. Yeah.</p> <p>23 A. No, no particular -- no, they didn't.</p> <p>24 Q. Do you know if anyone else started helping</p> <p>25 Mr. and Mrs. Douglas?</p>	<p>1 Q. Right.</p> <p>2 A. So --</p> <p>3 Q. Did you take Ms. Louise French an application,</p> <p>4 too?</p> <p>5 A. No. I haven't seen her.</p> <p>6 Q. Do you have any plans to take her an</p> <p>7 application?</p> <p>8 A. If she asks. If she asks me to, I would.</p> <p>9 Q. Okay.</p> <p>10 A. But I think she too scared.</p> <p>11 Q. What makes you think she's too scared?</p> <p>12 A. Because she said something about -- something to</p> <p>13 the effect about getting in trouble, getting in trouble.</p> <p>14 I don't know why she kept saying that, but probably</p> <p>15 because of the stuff, like I said, that was all over the</p> <p>16 Texarkana Gazette.</p> <p>17 Q. Okay. But you don't really know; you're just</p> <p>18 kind of guessing?</p> <p>19 A. (Witness nods head.)</p> <p>20 Q. I need you to answer out loud.</p> <p>21 A. Yes, ma'am, I'm sorry.</p> <p>22 Q. Okay. Do you have any plans to call Ms. French</p> <p>23 and say, look, I can bring you the white card again and</p> <p>24 I'm not going to get in trouble?</p> <p>25 A. No, ma'am.</p>
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<p>1 A. No.</p> <p>2 Q. You don't know?</p> <p>3 A. No.</p> <p>4 Q. Okay. Do you know whether or not they voted?</p> <p>5 A. Do I know if they voted?</p> <p>6 Q. Right.</p> <p>7 A. Since then?</p> <p>8 Q. Right.</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Yes, they have or --</p> <p>11 A. Yes, they have.</p> <p>12 Q. Okay. They have voted?</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. Do you know how they managed to vote?</p> <p>15 A. Yes. I took them an application by for them to</p> <p>16 fill out again.</p> <p>17 Q. Okay. And when was that?</p> <p>18 A. One day last week, I want to say.</p> <p>19 Q. Okay.</p> <p>20 A. Yeah, because we have an election going on now.</p> <p>21 Q. And that was after that probation where you</p> <p>22 can --</p> <p>23 A. Yeah, after the probation and all that. Now,</p> <p>24 they didn't have any elections going on while I was on</p> <p>25 probation, and I wouldn't have been able to anyway.</p>	<p>1 Q. Okay. Is there anybody else that you know has</p> <p>2 stopped voting because of these statutes that make --</p> <p>3 A. No.</p> <p>4 Q. Okay. You know what statutes I'm talking about,</p> <p>5 don't you?</p> <p>6 A. No, ma'am.</p> <p>7 Q. The ones in the lawsuit that say you have to,</p> <p>8 you know, if you possess a ballot --</p> <p>9 A. Oh, yes, ma'am, the name and stuff like that,</p> <p>10 yes, ma'am.</p> <p>11 Q. All right. Have you had any other conversations</p> <p>12 besides Mr. and Mrs. Douglas and Ms. Louise French about</p> <p>13 how possession of a ballot is a crime unless you sign the</p> <p>14 back?</p> <p>15 A. No.</p> <p>16 Q. So you wouldn't know how other people in</p> <p>17 Texarkana feel about it, would you?</p> <p>18 A. No, ma'am.</p> <p>19 Q. Did you ever tell any of these three, Ms. Louise</p> <p>20 French or Mr. and Mrs. Douglas, did you ever tell them</p> <p>21 that you found out that all you have to do to assist</p> <p>22 somebody is to sign the back?</p> <p>23 A. Did I what?</p> <p>24 Q. Did you -- did you tell them that you found out</p> <p>25 that all you had to do if you were going to assist them</p>

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1 was to sign -- or possess their ballot was to sign the
 2 back of the envelope?
 3 A. Yes, ma'am.
 4 Q. You did tell them that?
 5 A. Yes, ma'am.
 6 Q. Okay. And you understand that now, don't you?
 7 A. Yes, ma'am.
 8 Q. And have you -- have you helped people and
 9 signed the back of any envelopes since -- since you got
 10 off probation?
 11 A. Yeah. Signed my name?
 12 Q. Yes.
 13 A. Yes.
 14 Q. And you put your address there, right?
 15 A. Right, correct.
 16 Q. Just like the law says?
 17 A. Correct.
 18 Q. And you don't have any problems, right?
 19 A. I don't have any problems.
 20 Q. Do you feel like that's a burden to have to sign
 21 your name and put your address there?
 22 A. Yes.
 23 Q. Why do you think it's a burden?
 24 A. Because it's, well, time consuming. I mean, it
 25 takes a lot of time to, I mean, do that.

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1 Q. It's time consuming to put your name and address
 2 on all the ballots?
 3 A. Yes, it is.
 4 Q. Okay. How many -- like how many ballots in a,
 5 say -- did you do this last March for the primary?
 6 A. This past March?
 7 Q. Uh-huh.
 8 A. Yes.
 9 Q. Okay. Like how many ballots did you have to
 10 sign? How many times did you assist and have to sign the
 11 back of an envelope?
 12 A. I don't know the number, but it's a -- it's a
 13 large one.
 14 Q. Can you give me like a ballpark? Is it 20 or 30
 15 or 100?
 16 A. Maybe 150.
 17 Q. So you -- you're estimating that you helped 150
 18 people in March, right?
 19 A. Yeah. Yes, ma'am.
 20 Q. And I assume you helped them in various ways; is
 21 that right?
 22 A. What do you mean?
 23 Q. Well, I mean, like, you know, somebody might
 24 need a ballot read to them?
 25 A. Yes, ma'am.

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1 Q. But they can seal it themselves?
 2 A. Yes, they seal it.
 3 Q. And mail it themselves?
 4 A. Correct.
 5 Q. And some people might need you to mail it for
 6 them?
 7 A. Yes, ma'am.
 8 Q. Because they can't get to the mailbox?
 9 A. Correct.
 10 Q. And so for all of those, you just sign the back,
 11 right?
 12 A. Correct, because I -- even if I read it, then
 13 that's assisting. If I had to put it in the mailbox for
 14 them, that's assisting. So I'm not going to break the
 15 law.
 16 Q. I understand. Have you ever volunteered for any
 17 political campaigns to be a campaign worker?
 18 A. Yes, ma'am.
 19 Q. How long have you been doing that?
 20 A. My grandmother started me when I was two or
 21 three, three, so since I was three. It would be standing
 22 out in front of a school, handing out a card, or we out
 23 knocking on doors, putting cards in doors. So since I was
 24 three.
 25 Q. Okay. How did you -- I don't -- I don't want to

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1 get too personal, but how do you generally decide who
 2 you're going to campaign for?
 3 A. We listen to candidates, and whichever one, you
 4 know, sounds like they'll be more for the people, then
 5 that's who we go with.
 6 Q. And when you're volunteering, do you work with
 7 the campaigns getting yard signs and that sort of thing?
 8 A. Yes, ma'am.
 9 Q. Generally, these people that you campaign for,
 10 are they local or are they on the state level or are they
 11 national?
 12 A. Both, all.
 13 Q. All of them?
 14 A. Uh-huh, yes, ma'am.
 15 Q. Have you ever been paid to campaign for anybody?
 16 A. Have I ever been paid to campaign for somebody?
 17 Q. Yes.
 18 A. Once. Well, actually, I don't get paid. I --
 19 they pay me, but we get -- I have worker -- I get people
 20 to work for the actual candidate.
 21 Q. And this happened one time?
 22 A. More than one -- I mean, it's happened more than
 23 once, maybe once here lately, but maybe three or four
 24 times prior to that.
 25 Q. Okay. Are you --

7 (Pages 22 to 25)

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<p>1 A. As far as getting workers, you know, like</p> <p>2 they'll pay me to get people to work in the field, you</p> <p>3 know, like door hangers and passing out literature.</p> <p>4 Q. So a campaign will say if you bring in X number</p> <p>5 of workers, we'll pay you for each worker you bring in?</p> <p>6 A. No. They pay the worker. Well, they pay me,</p> <p>7 and I pay the workers, yeah.</p> <p>8 Q. Okay. Do you get a --</p> <p>9 A. Gas money, that's all I get.</p> <p>10 Q. Okay.</p> <p>11 A. If that's what you're trying to get to. Do they</p> <p>12 pay me to do this or do that, no. They pay me for my gas,</p> <p>13 like hauling people, taking people to the polls to vote.</p> <p>14 I do that, too.</p> <p>15 Q. Okay. So they just reimburse you gas money?</p> <p>16 A. Right.</p> <p>17 Q. And these workers that you're paying, are you</p> <p>18 just reimbursing them gas money?</p> <p>19 A. Basically, or groundwork, distribution</p> <p>20 literature, passing out literature, like cards on doors.</p> <p>21 Q. Can you get paid by the hour for that?</p> <p>22 A. Yeah. Yes, ma'am.</p> <p>23 Q. Have you ever been paid by the hour for that?</p> <p>24 A. No.</p> <p>25 Q. What is it that motivates you to bring in these</p>	<p>1 A. Yes, ma'am.</p> <p>2 Q. And tell me what kind of get-out-the-vote</p> <p>3 efforts you've been involved in.</p> <p>4 A. Going and knocking on doors, getting people in</p> <p>5 the car to take them to go vote.</p> <p>6 Q. Like on a -- on a typical election day, how many</p> <p>7 people would you drive to the polls?</p> <p>8 A. Me personally?</p> <p>9 Q. Uh-huh.</p> <p>10 A. Me? Anywhere from 50 to 75.</p> <p>11 Q. So you're busy all day on election day?</p> <p>12 A. Correct.</p> <p>13 Q. Typically, if a worker that you bring in is</p> <p>14 handing out cards, how much money are you going to give</p> <p>15 them for a day of handing out cards?</p> <p>16 A. \$50.</p> <p>17 Q. Okay. And you get that money from the campaign?</p> <p>18 A. Correct.</p> <p>19 Q. And how much money -- say last March, how much</p> <p>20 money did -- were you working for a campaign last March?</p> <p>21 A. Yeah. This -- this March?</p> <p>22 Q. Yeah.</p> <p>23 A. Yes.</p> <p>24 Q. Yeah. How much money did they give you for gas?</p> <p>25 A. About \$100.</p>
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<p>1 workers?</p> <p>2 A. The candidate, because I want that candidate to</p> <p>3 win.</p> <p>4 Q. You said you're a mom. How many kids do you</p> <p>5 have?</p> <p>6 A. Four.</p> <p>7 Q. And they are all at home?</p> <p>8 A. Correct.</p> <p>9 Q. You get mail at your home addressed to you,</p> <p>10 correct?</p> <p>11 A. Correct.</p> <p>12 Q. Bills and from the power company, stuff like</p> <p>13 that?</p> <p>14 A. Yes.</p> <p>15 Q. Have the people that you're working for, have</p> <p>16 they always been Democrats?</p> <p>17 A. No.</p> <p>18 Q. So you've helped Republicans as well?</p> <p>19 A. No.</p> <p>20 Q. You've helped nonpartisan people; is that right?</p> <p>21 A. Correct.</p> <p>22 Q. But you have helped Democrats, right?</p> <p>23 A. Yes.</p> <p>24 Q. And have you been involved in get-out-the-vote</p> <p>25 efforts?</p>	<p>1 Q. About how many workers would you get, bring in,</p> <p>2 on a typical campaign?</p> <p>3 A. All total, maybe 30.</p> <p>4 Q. And I assume you have people that you go back to</p> <p>5 all the time and say, do you want to help in this campaign</p> <p>6 this year, something like that? Let me ask that question</p> <p>7 a little clearer.</p> <p>8 A. I know what you're asking me.</p> <p>9 Q. Okay.</p> <p>10 A. Repetition, I'll go back to -- like I come to</p> <p>11 you this year, and then next year come back to you,</p> <p>12 correct?</p> <p>13 Q. That's what I was asking you.</p> <p>14 A. I have some that I do, yes.</p> <p>15 Q. Have you ever heard the phrase ignorance of the</p> <p>16 law is no excuse?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. You're not blaming the secretary of state</p> <p>19 or the secretary of state's office for not knowing about</p> <p>20 this law, are you?</p> <p>21 A. Am I blaming them?</p> <p>22 Q. Right.</p> <p>23 A. Yeah, I guess I am.</p> <p>24 Q. All right. What do you feel they should have</p> <p>25 done to tell you about this law?</p>

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<p>1 A. Well, when a law is changed, I think it should</p> <p>2 be put publicly, like, you know, like on t.v. or in a</p> <p>3 newspaper or send out letters through the mail telling,</p> <p>4 you know, you that a new law has changed and specify what</p> <p>5 the law is.</p> <p>6 Q. Do you feel like the secretary of state had an</p> <p>7 obligation to write to you to tell you about this new law?</p> <p>8 A. I feel like they should have, but as far as</p> <p>9 obligation, they are not obligated to do anything.</p> <p>10 Q. Do you know whether or not they put something up</p> <p>11 on their website so people could go there and check what</p> <p>12 the new laws were?</p> <p>13 A. Repeat that again.</p> <p>14 Q. Do you know whether or not the secretary of</p> <p>15 state put anything up on their website?</p> <p>16 A. No.</p> <p>17 Q. All right.</p> <p>18 A. I don't.</p> <p>19 Q. Do you have access to a computer?</p> <p>20 A. Yes. I have two computers in my home.</p> <p>21 Q. Okay. So do you know how -- you know how to go</p> <p>22 to the secretary of state's website, don't you?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. And you knew how in 2003?</p> <p>25 A. The secretary of state? Yes.</p>	<p>1 telling me?</p> <p>2 A. Yes, ma'am.</p> <p>3 Q. Just to make sure?</p> <p>4 A. Yes, ma'am.</p> <p>5 Q. How did you find your attorneys? Did you find</p> <p>6 them through your grandmother? I'm not asking -- let me</p> <p>7 make something clear, foreseeing your attorney's</p> <p>8 objection. I don't want you to tell me the content of any</p> <p>9 conversation you've ever had with your attorneys, okay?</p> <p>10 A. Uh-huh.</p> <p>11 Q. All right. All I want to know is how you found</p> <p>12 him.</p> <p>13 A. Which attorneys?</p> <p>14 Q. Mr. Albritton and Mr. Hebert and Mr. Carroll.</p> <p>15 A. How did I find them?</p> <p>16 Q. Uh-huh.</p> <p>17 A. I've just talked to them on some occasions after</p> <p>18 the lawsuit -- well, not the lawsuit. After me and my</p> <p>19 grandmother was wrongfully accused of possessing or</p> <p>20 handling -- mishandling ballots. That's how I met them.</p> <p>21 Q. Okay. Is your -- basically what I understand</p> <p>22 you to say is through your grandmother; is that right?</p> <p>23 A. My grandmother didn't bring them to me. They</p> <p>24 heard about our case, and we seen them.</p> <p>25 Q. Okay. That's fine. I don't want you to get</p>
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<p>1 Q. Okay. And by the same token, are you blaming</p> <p>2 the attorney general for your not knowing the law back in</p> <p>3 2003?</p> <p>4 A. No.</p> <p>5 MR. ALBRITTON: Take a break for a second.</p> <p>6 VIDEOGRAPHER: Off the record, 12:06.</p> <p>7 (Brief Recess)</p> <p>8 VIDEOGRAPHER: We're back on the record at</p> <p>9 12:07.</p> <p>10 Q. (By Ms. Wilson) Ms. Johnson, what does</p> <p>11 possessing the ballot of another person mean to you?</p> <p>12 A. Now?</p> <p>13 Q. Yes.</p> <p>14 A. What does it mean? What do you mean? Ask that</p> <p>15 again.</p> <p>16 Q. Do you have an idea of what it means to possess</p> <p>17 the ballot of another person?</p> <p>18 A. Yeah, hold it or mail it.</p> <p>19 Q. I'm asking what it means to you?</p> <p>20 A. I guess, yes.</p> <p>21 Q. All right. So your answer is hold it or mail</p> <p>22 it?</p> <p>23 A. Touch it or read it, assist in any kind of way.</p> <p>24 Q. So if you're doing any assisting at all, you're</p> <p>25 signing the back of that ballot; is that what you're</p>	<p>1 into any conversations.</p> <p>2 MS. WILSON: I'm going to pass the witness.</p> <p>3 MR. ALBRITTON: We'll reserve our</p> <p>4 questions.</p> <p>5 VIDEOGRAPHER: That concludes this</p> <p>6 deposition. We're off the record at 12:10.</p> <p>7 MR. ALBRITTON: If you would, just send</p> <p>8 Ms. Johnson's transcript to me by e-mail, and I will get</p> <p>9 it dispatched to her immediately for reading and signature</p> <p>10 and then return to you and the state as absolutely as</p> <p>11 quickly as possible.</p> <p>12 MS. WILSON: We appreciate that. And</p> <p>13 obviously we'd sure like to have it by next Tuesday</p> <p>14 because we have to file a summary judgment motion on</p> <p>15 Wednesday, so thank you.</p> <p>16</p> <p>17 (WHEREUPON DEPOSITION CONCLUDED</p> <p>18 AT 12:10 P.M., MAY 1, 2008)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 CHANGES AND SIGNATURE

2 WITNESS NAME: JAMILLAH JOHNSON DATE: MAY 1, 2008

3 PAGE/LINE CHANGE REASON

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1 IN THE UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF TEXAS

3 MARSHALL DIVISION

4 WILLIE RAY, JAMILLAH JOHNSON,)

5 GLORIA MEEKS, REBECCA)

6 MINNEWEATHER, REUBEN)

7 ROBINSON, EDDIE JACKSON, AND)

8 THE TEXAS DEMOCRATIC PARTY,)

9 Plaintiffs)

10 VS.) CIVIL ACTION

11) NO. 2-06CV-385

12 STATE OF TEXAS, a State of)

13 the United States; GREG)

14 ABBOTT, Attorney General of)

15 the State of Texas; and PHIL)

16 WILSON, Secretary of State)

17 for the State of Texas,)

18 Defendants)

19

20 REPORTER'S CERTIFICATION

21 DEPOSITION OF JAMILLAH JOHNSON

22 MAY 1, 2008

23

24 I, Tobi Moreland, Certified Shorthand Reporter in

25 and for the State of Texas, hereby certify to the

following:

That the witness, JAMILLAH JOHNSON, was duly sworn

by the officer and that the transcript of the oral and

videotaped deposition is a true record of the testimony

given by the witness;

That the deposition transcript was submitted on

to the witness or to the attorney for

the witness for examination, signature and return to

Integrity Legal Support Solutions by _____;

That the amount of time used by each party at the

deposition is as follows:

Ms. Kathlyn C. Wilson.....40 minutes

That pursuant to information given to the

Page 35

1 I, JAMILLAH JOHNSON, have read the foregoing

2 deposition and hereby affix my signature that same is true

3 and correct, except as noted above.

4

5 _____

6 JAMILLAH JOHNSON

7

8

9 THE STATE OF _____)

10 COUNTY OF _____)

11

12 Before me, _____, on this

13 day personally appeared JAMILLAH JOHNSON, known to me (or

14 proved to me under oath or through

15 _____) to be the person whose name

16 is subscribed to the foregoing instrument and acknowledged

17 to me that they executed the same for the purposes and

18 consideration therein expressed.

19 Given under my hand and seal of office this

20 _____ day of _____, _____.

21

22

23 _____

24 NOTARY PUBLIC IN AND FOR

25 THE STATE OF _____

COMMISSION EXPIRES: _____

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1 the following includes counsel for all parties of record:

2 Mr. Eric Albritton, Attorney for Plaintiffs

3 Ms. Kathlyn C. Wilson, Attorney for Defendants

4

5 That \$_____ is the deposition officer's

6 charges to the Defendants for preparing the original

7 deposition transcript and any copies of exhibits;

8 I further certify that I am neither counsel for,

9 related to, nor employed by any of the parties or

10 attorneys in the action in which this proceeding was

11 taken, and further that I am not financially or otherwise

12 interested in the outcome of the action.

13 Certified to by me this _____ day of

14 _____, 2008.

15

16 _____

17 Tobi L. Moreland, CSR 3317

18 Expires 12/31/09

19 Integrity Legal Support Solutions

20 CRCB #528

21 240 Norwood Tower

22 114 West 7th Street

23 Austin, Texas 78701

24 (512) 320-8690

25

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JAMILLAH JOHNSON

RE: WILLIE RAY, ET AL v. SOT, ET AL

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Wednesday	X 26:4	2003 7:14 30:24	
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working 27:15			
28:20			
wouldn't 18:4,6			

Exhibit 10

Opal Walker[<< Back](#)**Addresses**

Address 800 Butler St
Texarkana, TX 75501-6408

Salutation**Polling Place****Phones****E-Mail****Activist Codes****Survey Questions****Contact History****Neighbor Relationships****Early Voting****Voting History**

	2008	2007	2006	2005	2004	2002	2000	1998	1996	1994	1992
General					E		Y	E	Y	Y	Y
Primary					Y-D	Y-D	Y-D		Y-D		Y-D
May General											
May Muni											

Notes**VAN ID**

VANID 1070261
Cert Number 00032573
StateVoteID 1019636829

Vital Stats**Districts****Also in Household**

Eugene Grant

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Addresses

Address 1011 Robison Ter
Texarkana, TX 75501-4188

Salutation

Polling Place

Phones

E-Mail

Activist Codes

Survey Questions

Contact History

Neighbor Relationships

Early Voting

Voting History

	2008	2007	2006	2005	2004	2002	2000	1998	1996	1994	1992
General					E		E	E	Y		
Primary			E-D		Y-D	E-D	E-D	Y-D			
May General											
May Muni											

Notes

VAN ID

VANID 1069665
Cert Number 00078869
StateVoteID 1019523705

Vital Stats

Districts

Also in Household

Opal Lee Hart

[<< Back](#)

Addresses

Voting Address 311 Robison Ter
Texarkana, TX 75501-4183
Mailing Address 402 Robison Ter
Texarkana, TX 75501-4155

VAN ID

VANID 1069707
Cert Number 00960645
StateVoteID 1019406475

Salutation

Polling Place

Phones

E-Mail

Activist Codes

Survey Questions

Contact History

Neighbor Relationships

Early Voting

Voting History

	2008	2007	2006	2005	2004	2002	2000	1998	1996	1994	1992
General					E		E	E	Y		
Primary			E-D		Y-D	E-D	E-D				
May General											
May Muni											

Notes

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Bernice Junior

<< Back

☐ Addresses

Address 1125 Stuckey St Apt 332
Texarkana, TX 75501-4524

+ Salutation

+ Polling Place

+ Phones

+ E-Mail

+ Activist Codes

+ Survey Questions

+ Contact History

+ Neighbor Relationships

+ Early Voting

☐ Voting History

	2008	2007	2006	2005	2004	2002	2000	1998	1996	1994	1992
General					E		E	E	Y		
Primary			E-D		Y-D			Y-D			
May General											
May Muni											

+ Notes

☐ VAN ID

VANID 1069843
Cert Number 00963878
StateVoteID 1019389379

+ Vital Stats

+ Districts

+ Also in Household

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Mary A Marshall

[<< Back](#)

Addresses

Address 712 Robison Ter
Texarkana, TX 75501-4177

Salutation

Polling Place

Phones

E-Mail

Activist Codes

Survey Questions

Contact History

Neighbor Relationships

Early Voting

Voting History

	2008	2007	2006	2005	2004	2002	2000	1998	1996	1994	1992
General					E						
Primary			E-D		Y-D		E-D				
May General											
May Muni											

Notes

VAN ID

VANID 1069929
Cert Number 00910603
StateVoteID 1019500823

Vital Stats

Districts

Also in Household

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J D Webster

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Addresses

Address 2004 W 6th St
Texarkana, TX 75501-5344

Salutation

Polling Place

Phones

E-Mail

Activist Codes

Survey Questions

Contact History

Neighbor Relationships

Early Voting

Voting History

	2008	2007	2006	2005	2004	2002	2000	1998	1996	1994	1992
General			E		E	Y	E	E	Y		
Primary			E-D		Y-D	E-D	E-D	Y-D			
May General											
May Muni											

Notes

VAN ID

VANID 1063454
Cert Number 00067770
StateVoteID 1019553900

Vital Stats

Districts

Also in Household

Lillie B Briscoe

<< Back

☐ Addresses

Address 509 Robison Ter
Texarkana, TX 75501-4184

☐ Salutation

☐ Polling Place

☐ Phones

☐ E-Mail

☐ Activist Codes

☐ Survey Questions

☐ Contact History

☐ Neighbor Relationships

☐ Early Voting

☐ Voting History

	2008	2007	2006	2005	2004	2002	2000	1998	1996	1994	1992
General					E	Y	E	E	Y		
Primary					Y-D	E-D	E-D	Y-D	Y-D		
May General											
May Muni											

☐ Notes

☐ VAN ID

VANID 1069428
Cert Number 00922072
StateVoteID 1019488360

☐ Vital Stats

☐ Districts

☐ Also in Household

Exhibit 11

E-Submission No: 873

Name:	Phil Wilson	Submission Number:	2008 1792
Address:	P.O. Box 12060	Title:	Secretary of State
	Austin TX 78711	Created Date:	27/03/08
Phone:	800-252-8683	Email:	elections@sos.state.tx.us
Authority:	State of Texas/Secretary of State	Other:	
County:		State:	TX
Jurisdiction:			

Changes Description

A copy of any ordinance, enactment, order, or regulation embodying a change affecting voting.

Section a:) A copy of materials relating to the change in procedure is enclosed herewith. Provided for your review is a copy of the form.

A copy of any ordinance, enactment, order, or regulation embodying the voting practice that is proposed to be repealed, amended, or otherwise changed.

Section b:) A copy of materials relating to the change in procedure is enclosed herewith. Provided for your review is a copy of the form.

A clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

Section c:) The Office of Secretary of State has adopted changes to the Texas carrier envelope. A copy of the new form is enclosed with a copy of the current carrier envelope for comparison. Descriptions of the changes follow.

1. Content changes

The content has been amended to reflect the changes that were offered to the 5th Circuit Court of Appeals.

1) The general information note on the top portion of the back side of the carrier envelope has been changed to include a warning to all persons handling the carrier envelope or assisting the early voting by mail voter in any way. The warning is consistent with the current Texas Election Code (the ?Code?), Section 86.0051 which provides a criminal penalty for any person knowingly possessing another person?s ballot or carrier envelope

E-Submission No: 873

Changes Description

without including signature and address of the individual in possession. The warning printed in bold at the top of the informational side of the carrier envelope is intended to curtail voter fraud and provide notice to all individuals assisting an early voting by mail voter.

2) The ?Instructions to Voter? section of the carrier envelope and the ?Oath of Assistance? section do not contain any changes or additions.

3) The signature line for the voter has been moved to the right side of the informational portion of the carrier envelope to provide more space for the voter?s signature and to allow for larger print so the voter can identify the requirement for his/her signature.

4) Under the voter?s signature line is the oath of the person providing assistance to the voter. The oath does not contain any changes or additions.

5) Below the ?oath of person assisting voter? is a line for the assistant or witness to include his/her information, as required by law. This portion has been modified to include the requirement for the printed name and signature of all witnesses or assistants who may have ?handled the ballot or carrier envelope.? The addition merely tracks the language of Section 86.0051 of the Code to inform individuals that any handling of the ballot or merely depositing the ballot in a mail box for the voter requires them to include their information and signature on the carrier envelope.

6) The front part of the carrier envelope has been amended to include another warning to all individuals assisting a voter. The warning is the same one contained on the back side of the carrier envelope indicating that it is a crime to possess another person?s ballot or carrier envelope if the person does not include his/her name and address on the envelope. As stated above, the warning is consistent with Section 86.0051 of the Code. The warning is intended to curtail voter fraud and provide notice to all individuals assisting an early voting by mail voter.

2. Spanish Language changes

The prior carrier envelope as well as the modified carrier envelope contains both English and Spanish on the same envelope. The modifications and additions to the envelope in English have been provided for in Spanish as well.

Section 86.0051 was added to the Code by House Bill 54, Chapter 393, 78th Legislature, 2003 (precleared on November 21, 2003). In addition, the pertinent sections of the Election Code relating to assistance of a voter are Section 85.035 and Section 86.010. Section 85.035 was amended by Senate Bill 1234, Chapter 203, ? 2.09, 72nd Legislature, 1991 (precleared

E-Submission No: 873

Changes Description

on September 23, 1991) and by Senate Bill 1186, Chapter 554, ? 1, 72nd Legislature, 1991 (precleared on September 23, 1991). Section 86.010 was last amended by House Bill 1483, Chapter 1381, ? 16, 75th Legislature, 1997 (precleared on September 2, 1997). Section 86.006 was added by Senate Bill 616, Chapter 211, 69th Legislature, 1985 ? 1 (precleared on August 16, 1985); it was amended by House Bill 54, Chapter 393, ? 14, 78th Legislature, 2003 (precleared on November 21, 2003) and most recently amended by House Bill 1987, Chapter 238, 80th Legislature, 2007 (precleared on O ...

Identification of the person or body responsible for making the change and the mode of decision (e.g. act of state legislature, ordinance of city council, administrative decision by the registrar).

Section d:) The authority responsible for the change in procedure is the Honorable Phil Wilson, Secretary of State of Texas.

A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

Section e:) These changes were initiated as a result of litigation in the 5th Circuit Court of Appeals, Willie Ray, et. al v. State of Texas, No. 2-06CV-385, pertaining to issues with assistance of ballot by mail voters and voter fraud. This case was recently remanded to the U.S. District Court for the Eastern District of Texas.

The case is currently still before the U.S. District Court for the Eastern District of Texas.

A statement that the change has not yet been enforced or administrated, or an explanation of why such a statement cannot be made.

Section f:) The changes to the form will take effect as soon as preclearance is obtained.

Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

Section g:) These procedures will affect voters throughout the state of Texas.

E-Submission No: 873

Changes Description

A statement of the reasons for the change.

Section h:) The provisions of the change have not been implemented because the State of Texas did not want to encourage vendors to print, or Texas counties to purchase and use, a form that has not yet been precleared.

A statement of the anticipated effect of the change on members of racial or language minority groups. In addition, per 51.28 h, include the names, addresses, daytime telephone numbers, and organizational affiliation, if any of racial and language minority group members residing in the jurisdiction who can be expected to be familiar with the proposed change or who have been active in the political process.

Section i:) This change will not affect members of any racial or linguistic minority differently from the way the general public is affected. The change does not have the intent and will not have the effect of diluting the voting strength of any racial or linguistic minority. For further information regarding the change, contact:

Ann McGeehan
Director of Elections
Office of the Texas Secretary of State
P.O. Box 12060
Austin, Texas 78711-2060
(512) 463-5650

A statement identifying any past or pending litigation concerning the change or related voting practice.

Section j:) There is pending litigation concerning the subject matter of the change. The litigation relating to the subject matter of this Act was Willie Ray, et. al v. the State of Texas, No. 2-06CV-385. The United States District Court for the Eastern District of Texas, Marshall Division, granted the plaintiff's request for preliminary injunction on the application of Section 86.006(f) on October 30, 2006, finding that ?? 86.006 prevents {Plaintiffs} and dissuades others, under the pain of prosecution, from participating in legitimate organizational efforts designated to maximize early voter turnout.? The court's decision was appealed by the State to the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit remanded the case back to the trial court and the new trial is scheduled for May 28, 2008.

E-Submission No: 873

Changes Description

For redistricting and annexations: the items listed under ?51.28(a)(1) and (b)(1); for annexations only: the items listed under ?51.28(c)(3).

Section k:) N/A

Other information that the Attorney General determines is required for an evaluation of the purpose or effect of the change. Such information may include items listed in ?51.28 and is most likely to be needed with respect to redistrictings, annexations, and other complex changes. In the interest of time such information should be furnished with the initial submission relating to voting changes of this type. When such information is required, but not provided, the Attorney General shall notify the submitting authority in the manner provided in ?51.37.

Section l:) If you have any questions or need additional information, please contact Cristina Ruiz Blanton, Staff Attorney, Elections Division, at (512) 463-5650.

Exhibit 12

The State of Texas

SECTION 5 SUBMISSION

NO. 2008-1792

Elections Division
P.O. Box 12060
Austin, Texas 78711-2060
www.sos.state.tx.us



Phil Wilson
Secretary of State

Phone: 512-463-5650
Fax: 512-475-2811
Dial 7-1-1 For Relay Services
(800) 252-VOTE (8683)

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TO: Ms. Stephanie Celandine
U.S. Department of Justice

FAX #: (202) 307-3961

PHONE #:

FROM: Shameika Franklin
Elections Division
Phone: (512) 463-5650 or toll-free 1-800-252-VOTE(8683)
Fax: (512) 475-2811

DATE: 04/04/08

PAGES (including cover page): 15

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Austin, Texas 78711-2060

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The State of Texas



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www.sos.state.tx.us

Phone: 512-463-5650
Fax: 512-475-2811
Dial 7-1-1 For Relay Services
(800) 252-VOTE (8683)

Phil Wilson
Secretary of State

April 3, 2008

Mr. Christopher Coates
Acting Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

EXPEDITED CONSIDERATION REQUESTED

RE: *Electronic Submission File No. 873; Supplementation to Submission under Section 5, Voting Rights Act, of changes to the Texas Ballot by Mail Materials.*

Dear Mr. Coates:

This letter serves as a supplement to our Electronic Submission File No. 873, which was submitted on March 27, 2008, and relates to the changes our office made to the ballot by mail carrier envelope and accompanying materials. These changes were necessitated by pending litigation, *Willie Ray, et. al. vs. State of Texas, No. 2-06CV-385*, which raised issues relating to the assistance of voters in completing a ballot by mail, possessing another individual's ballot, and curtailing voter fraud. Specifically, we are supplementing our March 27, 2008 submission to explain additional minor changes to the voter's balloting materials, which we failed to include with the original submission and which is described in more detail below.

Pursuant to the requirements of 28 C.F.R. § 51.27, the following information is submitted with respect to the supplemented changes in procedure:

- (a) & (b) A copy of the supplemental materials relating to the change in procedure is enclosed herewith. Provided for your review is a copy of the supplemental materials.
- (c) The Office of the Secretary of State has adopted minor formatting changes and modifications to the carrier envelope instruction insert and the ballot envelope to the voter; both documents are included with the ballot by mail materials. Copies of the updated documents are enclosed with a copy of the previous documents for comparison. Descriptions of the specific changes are outlined below.

Mr. Christopher Coates

Page 2

1. Format changes

The carrier envelope instruction insert and the ballot envelope are provided with the ballot by mail materials when they are sent to a voter. Instruction number 2 on the carrier envelope instruction insert has been slightly modified by bolding the sentence that informs a voter and/or an assistant that the assistant must sign the carrier envelope and include an address if assistance was provided in any way. The reason for this change was to highlight important requirements regarding assistance to a voter.

Language on the ballot envelope has also been slightly modified. Instruction number 5 included under the heading of "Instructions to Assistants" provides greater emphasis to an assistant about the criminal offense which may result due to an unlawful possession of another person's ballot. The language was modified to curtail voter fraud and provide notice to all individuals assisting an early voting by mail voter.

2. Spanish Language changes

The Spanish portions of both documents have been updated and modified accordingly.

If you have any questions or need additional information, please contact Cristina Ruiz Blanton, Staff Attorney, Elections Division, at (512) 463-5650.

Sincerely,



Ann McGeehan
Director of Elections

Enclosure

AM:CB:sf

P-12 Ballot Envelope (2-04)
 Prescribed by Secretary of State
 Section 86.012, Texas Election Code

Hart InterCivic

BALLOT ENVELOPE

INSTRUCTIONS TO VOTER:

1. Mark ballot, place ballot in this envelope marked "BALLOT ENVELOPE," and seal ballot envelope.
2. Place ballot envelope in carrier envelope, seal carrier envelope, sign carrier envelope, and return carrier envelope to the early voting clerk either by mail or common or contract carrier. A ballot may not be returned to the early voting clerk by any other method. (See instructions on carrier envelope and the important information enclosure for additional information.)
3. Be sure to mail your ballot so it will be received by the early voting clerk before 7:00 P.M. on election day. If you are voting from outside the United States, the late counting ballot rules may apply to you.

INSTRUCTIONS TO ASSISTANTS:

1. A voter may be assisted to vote only if the voter is physically unable to write or see, and/or unable to read the ballot.
2. Assisting a voter includes the following conduct by a person other than the voter that occurs while the person is in the presence of the voter's ballot or carrier envelope: (a) reading the ballot to the voter; (b) directing the voter to read the ballot; (c) marking the voter's ballot; or (d) directing the voter to mark the ballot.
3. A voter may choose an assistant as long as that assistant is not the voter's employer or an agent of the voter's employer, or officer or agent of the voter's labor union.
4. It is a Class A misdemeanor: (a) to provide assistance to a voter who is not qualified to receive assistance; (b) to prepare the ballot for the voter other than as the voter directs or without direction from the voter; (c) to suggest to the voter by word, sign, or gesture, how the voter should vote; or (d) to provide assistance to a person that has not requested assistance or selected the person to assist the voter. It is also a Class A misdemeanor to assist a voter in violation of #3 above.
5. An assistant must sign the carrier envelope and include the assistant's name and address. Failure to provide this information is a crime. *Added in 2003 until in 2004*
6. If the voter allows a person to mail his or her ballot or deliver the ballot to a carrier/delivery service, that person must sign the carrier envelope and include their printed name and address. Failure to provide this information is a crime. The person mailing or delivering the ballot must do so immediately. It is a crime for a person to collect and store carrier envelopes at another location for subsequent delivery to the early voting clerk.
7. Any ballot cast with assistance in violation of any of the above instructions may not be counted.

EL SOBRE DE LA BOLETA

INSTRUCCIONES PARA EL VOTANTE:

1. Marque su boleta, meta la boleta en el sobre marcado "SOBRE DE LA BOLETA", y cierre el sobre de la boleta.
2. Meta el sobre de la boleta en el sobre portador, ciérrelo, firmelo, y mándelo al secretario de votación adelantada por correo o por transporte común o bajo contrato. No está permitido devolver la boleta al secretario de votación adelantada de ninguna otra manera. (Vea las instrucciones en el sobre portador para información adicionales.)
3. El secretario de la votación adelantada deberá recibir el sobre portador con la boleta incluso antes de las 7 de la noche el día de la elección. No es suficiente solamente enviar el sobre para esta fecha. Si esta votando fuera de los Estado Unidos las reglas de contar boletas pueden aplicar a Udsted.

INSTRUCCIONES PARA LAS PERSONAS DANDO AYUDA:

1. Un votante puede recibir ayuda solamente si es físicamente incapaz de escribir o ver; o no puede leer la boleta.
2. Ayudar a un votante incluye la siguiente conducta por una persona, no el votante, que ocurre durante la presencia de la boleta de votar ó sobre de entrega: a) leer la boleta al votante; b) dirigiendo al votante a leer la boleta; c) marcando la boleta del votante; ó d) dirigiendo al votante que marque la boleta.
3. Un votante puede escoger un ayudante con tal de que ese ayudante no sea la persona que lo(a) emplea, o un agente de la persona que lo(a) emplea, o un oficial o agente de la unión de obreros de la cual el votante es socio.
4. Es un delito menor de la Clase A preparar una boleta para un votante que no está autorizado para recibir ayuda, o preparar la boleta para el votante diferente al modo en que dirija el votante, o sugerir por palabra, seña o acción cómo debiera de votar el votante. Es un delito menor de la Clase A ayudarle a un votante que no ha cumplido con las condiciones del #3 mencionado arriba.
5. Un asistente debe firmar el sobre de entrega y incluir el nombre del asistente en letra de molde. Falta de proporcionar esta información es un delito.
6. Si el votante permite a alguna persona enviar su boleta o entrega las boleta por transporte común o bajo contrato, esa person debe firmar el sobre de entrega incluyendo su nombre en letra de molde y dirección. Falta de proporcionar esta información es un delito. La persona enviando o entregando la boleta debe hacer lo inmediatamente. Es un delito que una persona colecte y guarde sobre sde entrega en otro local para entrega subsucuentemente al secretario de votación adelantada.
7. No se deberá contar ninguna boleta que fue votada con ayuda de un modo en violación de alguna de las instrucciones mencionadas arriba.

AWS-20

Prescribed by Secretary of State
Section 86.012, Texas Election Code
12/07*2000-2007 = 12/12/08*
BALLOT ENVELOPE

INSTRUCTIONS TO VOTER:

1. Mark ballot, place ballot in envelope marked "BALLOT ENVELOPE," and seal ballot envelope.
2. Place ballot envelope in carrier envelope, seal carrier envelope, sign carrier envelope, and return carrier envelope to the early voting clerk either by mail or common or contract carrier. A ballot may not be returned to the early voting clerk by any other method. (See instructions on carrier envelope and the important information enclosure for additional information.)
3. Be sure to mail your ballot so it will be received by the early voting clerk before 7:00 p.m. on election day. If you are voting from outside the United States, the late counting ballot rules may apply to you.

INSTRUCTIONS TO ASSISTANTS:

1. A voter may be assisted to vote only if the voter is physically unable to write or see and/or unable to read the ballot.
2. Assisting a voter includes the following conduct by a person other than the voter that occurs while the person is in the presence of the voter's ballot or carrier envelope: (a) reading the ballot to the voter; (b) directing the voter to read the ballot; (c) marking the voter's ballot; or (d) directing the voter to mark the ballot.
3. A voter may choose an assistant as long as that assistant is not the voter's employer or an agent of the voter's employer, or officer or agent of the voter's labor union.
4. It is a Class A misdemeanor: (a) to provide assistance to a voter who is not qualified to receive assistance; (b) to prepare the ballot for the voter other than as the voter directs or without direction from the voter; (c) to suggest to the voter by word, sign, or gesture, how the voter should vote; or (d) to provide assistance to a person that has not requested assistance or selected the person to assist the voter. It is also a Class A misdemeanor to assist a voter in violation of #3 above
5. Knowingly possessing another person's ballot or carrier envelope may be a crime unless you provide your signature, printed name and address on the carrier envelope.
6. If the voter allows a person to mail his or her ballot or deliver the ballot to a carrier/delivery service, that person must sign the carrier envelope and include their printed name and address. Failure to provide this information is a crime. The person mailing or delivering the ballot must do so immediately. It is a crime for a person to collect and store carrier envelopes at another location for subsequent delivery to the early voting clerk.
7. Any ballot cast with assistance in violation of any of the above instructions may not be counted.

12/07

EL SOBRE DE LA BOLETA

INSTRUCCIONES PARA EL VOTANTE:

1. *Marque su boleta, meta la boleta en el sobre marcado "SOBRE DE LA BOLETA", y cierre el sobre de la boleta.*
2. *Meta el sobre de la boleta en el sobre portador, ciérrelo, firmelo, y mándelo al secretario de votación adelantada por correo o por transporte común o bajo contrato. No está permitido devolver la boleta al secretario de votación adelantada de ninguna otra manera. (Vea las instrucciones en el sobre portador para información adicionales.)*
3. *El secretario de la votación adelantada deberá recibir el sobre portador con la boleta incluso antes de las 7 de la noche el día de la elección. No es suficiente solamente enviar el sobre para esta fecha. Si esta votando fuera de los Estado Unidos las reglas de contar boletas pueden aplicar a Udsted.*

INSTRUCCIONES PARA LAS PERSONAS DANDO AYUDA:

1. *Un votante puede recibir ayuda solamente si es físicamente incapaz de escribir o ver o no puede leer la boleta.*
2. *Ayudar a un votante incluye la siguiente conducta por una persona, no el votante, que ocurre durante la presencia de la boleta de votar ó sobre de entrega: a) leer la boleta al votante; b) dirigiendo al votante a leer la boleta; c) marcando la boleta del votante; ó d) dirigiendo al votante que marque la boleta.*
3. *Un votante puede escoger un ayudante con tal de que ese ayudante no sea la persona que lo(a) emplea, o un agente de la persona que lo(a) emplea, o un oficial o agente de la unión de obreros de la cual el votante es socio.*
4. *Es un delito menor de la Clase A preparar una boleta para un votante que no está autorizado para recibir ayuda, o preparar la boleta para el votante diferente al modo en que dirija el votante, o sugerir por palabra, seña o acción cómo debiera de votar el votante. Es un delito menor de la Clase A ayudarle a un votante que no ha cumplido con las condiciones del #3 mencionado arriba.*
5. *Intencionalmente en posesión de una boleta o sobre portador de otra persona puede ser un delito si no proporcione su firma, nombre en letra de molde y dirección de domicilio una boleta o sobre portador.*
6. *Si el votante permite a alguna persona enviar su boleta o entrega las boleta por transporte común o bajo contrato, esa person debe firmar el sobre de entrega incluyendo su nombre en letra de molde y dirección. Falta de proporcionar esta información es un delito. La persona enviando o entregando la boleta debe hacer lo inmediatamente. Es un delito que una persona colecte y guarde sobre sde entrega en otro local para entrega subsucuentemente al secretario de votación adelantada.*
7. *No se deberá contar ninguna boleta que fue votada con ayuda de un modo en violación de alguna de las instrucciones mencionadas arriba.*

Byrn Chang
NOW 2008

CARRIER ENVELOPE FOR EARLY VOTING BALLOT
(SOBRE OFICIAL PARA ENVIO DE BOLETAS DE VOTACION ADELANTADA)

TO (A):

Name of Early Voting Clerk (Nombre de la Secretaria de Votación Adelantada)

Official Title (Título Oficial)

P.O. Address (Dirección Postal)

, Texas

Zip (Zona Postal)

AFS-22 907

<p>NOTA: Antes de entregarse el sobre, el votante mismo tiene que haberlo sellado. Antes de firmar el sobre, asegúrese que ya selló. Es prohibido firmar este sobre a menos que usted haya completado la boleta electoral o ésta se completó siguiendo sus instrucciones.</p> <p>INSTRUCTIONS TO VOTER: Complete all applicable spaces. The carrier envelope must be signed by the voter in the appropriate space. If the voter cannot sign, the voter's mark must be witnessed and the witness block must be completed. The carrier envelope may not be used to return more than one ballot. The carrier envelope may be delivered in another envelope and must be delivered by mail or by common or contract carrier. Only one carrier envelope shall be placed in another envelope. However, more than one carrier envelope may be placed together in another envelope if the additional carrier envelope(s) belong to a person registered to vote at the same address.</p>		<p>I certify that the enclosed ballot expresses my wishes independent of any dictation or undue persuasion by any person. <i>Certifico que la boleta aquí adjunta da a conocer mis deseos y no obedece las indicaciones ni influencias indebidas de otras personas.</i></p> <p>X</p>	
<p>OATH OF ASSISTANCE: If you assisted the voter in any way with the ballot or witnessed the signature of the voter on the carrier envelope, you must sign the oath: If you are going to deposit the carrier envelope in the mail for the voter or deliver it to a common or contract carrier, you must provide your signature, printed name, and address in the space provided.</p> <p><i>(INSTRUCCIONES PARA EL VOTANTE: Proporcione toda la información solicitada usando los espacios apropiados. Procure firmar el sobre en el renglón apropiado. Si no sabe firmar, un testigo tiene que pretenciar su marca y la información en cuanto al testigo deberá ser proporcionada. Es prohibido colocar más de una boleta dentro de cada sobre. Aunque se permite colocar el sobre oficial dentro de otro sobre, nunca se debe colocar más de un sobre oficial dentro de un mismo sobre, y éste deberá ser entregado por correo o por medio de un portador o transportista comercial. No obstante lo anterior, si en el mismo domicilio vive otro votante inscrito a votar bajo la misma dirección, se permite que su sobre oficial sea colocado dentro del mismo segundo sobre.)</i></p> <p><i>(JURAMENTO. Toda persona que haya ayudado al votante en la preparación de su boleta, no obstante cómo, o que fue testigo cuando éste firmó el sobre oficial deberá firmar y someterse al siguiente juramento. Cualquier individuo que va a depositar el sobre oficial en el correo o llevarlo a un portador comercial en vez de el votante mismo deberá proporcionar su firma, nombre en letra de molde y dirección de domicilio en el renglón provisto.)</i></p> <p>To be completed by early Voting Clerk: (A ser completado por un representante de la Secretaría de Votación por Adelantado)</p>		<p>OATH OF PERSON ASSISTING VOTER: I swear (or affirm) that I will not suggest by word, sign, or gesture how the voter shall vote; I will confine my assistance to answering the voter's questions, to stating propositions on the ballot, and to naming candidate and, if listed, their political parties; and I will prepare the voter's ballot as the voter directs. <i>(JURAMENTO AL QUE SE SOMETE LA PERSONA QUIEN AYUDARA AL VOTANTE: Juro o afirmo que, ni por palabra, señas o acciones, le sugeriré al votante cómo deberá votar. Me limitaré a contestar sus preguntas y a leerle las propuestas que aparecen en la boleta y los nombres de los candidatos y los partidos políticos a que éstos pertenecen; si es que esta información está incluida y rellenaré la boleta según sus instrucciones.)</i></p> <p>Assistant/Witness</p> <p>If voter cannot sign, voter's mark must be witnessed. If voter cannot make mark, witness must check here. If the voter is unable to read and/or mark the ballot, the assistant must fill out the information below. (Si el votante no sabe firmar, deberá hacer su marca ante un testigo. Si el votante no sabe poner su marca, el testigo deberá marcar aquí)</p> <p>X</p>	
<p>Printed names and Signatures of all Assistants, Witnesses or Persons handling ballot or carrier envelope. (Nombres en letra de molde y firmas de todos que ayudaron al votante, testigos, o personas manejando una boleta o sobre portador.)</p>		<p>SIGNATURE OF VOTER (FIRMA DEL VOTANTE)</p>	
<p>Name of Voter (Nombre del votante)</p>		<p>Residence Addresses of persons named above. (Dirección de domicilio de las personas indicadas arriba.)</p>	
<p>Name of Election (Tipo de elección)</p>		<p>Date of Election (Fecha de Elección)</p>	

APFS-22 1/2007

Warning: Knowingly possessing another person's ballot or carrier envelope may be a crime unless you provide your signature, printed name and address.

Aviso: Intencionalmente en posesión de una boleta o sobre portador de otra persona puede ser un delito si no proporciona su firma, nombre en letra de molde y dirección de domicilio.

AW5-21 12/07

12/21/07

CARRIER ENVELOPE FOR EARLY VOTING BALLOT
(SOBRE OFICIAL PARA ENVIO DE BOLETAS DE VOTACION ADELANTADA)

TO (A):

Name of Early Voting Clerk (Nombre de la Secretaria de Votación Adelantada)

Official Title (Título Oficial)

P.O. Address (Dirección Postal)

_____, Texas
Zip (Zona Postal)

<p>Warning: Knowingly possessing another person's ballot or carrier envelope may be a crime unless you provide your signature, printed name and address.</p> <p>Aviso: Intencionalmente en posesión de una boleta o sobre portador de otra persona puede ser un delito si no proporciona su firma, nombre en letra de molde y dirección de domicilio.</p> <p>NOTE: This envelope must be sealed by the voter before it leaves the voter's hand. Seal envelope before signing. Do not sign this envelope unless the ballot has been marked by you or at your direction.</p> <p>NOTA: Antes de entregarse el sobre, el votante mismo tiene que haberlo sellado. Antes de firmar el sobre, asegúrese que ya selló. Es prohibido firmar este sobre a menos que usted haya completado la boleta electoral o ésta se completó siguiendo sus instrucciones.</p>	<p>INSTRUCTIONS TO VOTER: Complete all applicable spaces. The carrier envelope must be signed by the voter in the appropriate space. If the voter cannot sign, the voter's mark must be witnessed and the witness block must be completed. The carrier envelope may not be used to return more than one ballot. The carrier envelope may be delivered in another envelope and must be delivered by mail or by common or contract carrier. Only one carrier envelope shall be placed in another envelope. However, more than one carrier envelope may be placed together in another envelope if the additional carrier envelope(s) belong to a person registered to vote at the same address.</p>	<p>OATH OF ASSISTANCE: If you assisted the voter in any way with the ballot or witnessed the signature of the voter on the carrier envelope, you must sign the oath: If you are going to deposit the carrier envelope in the mail for the voter or deliver it to a common or contract carrier, you must provide your signature, printed name, and address in the space provided.</p>	<p>(INSTRUCCIONES PARA EL VOTANTE: Proporcione toda la información solicitada usando los espacios apropiados. Procure firmar el sobre en el renglón apropiado. Si no sabe firmar, un testigo tiene que presenciar su marca y la información en cuanto al testigo deberá ser proporcionada. Es prohibido colocar más de una boleta dentro de cada sobre. Aunque se permite colocar el sobre oficial dentro de otro sobre, nunca se debe colocar más de un sobre oficial dentro de un mismo sobre, y éste deberá ser entregado por correo o por medio de un portador o transportista comercial. No obstante lo anterior, si en el mismo domicilio vive otro votante inscrito a votar bajo la misma dirección, se permite que su sobre oficial sea colocado dentro del mismo segundo sobre.)</p> <p>(JURAMENTO: Toda persona que haya ayudado al votante en la preparación de su boleta, no obstante cómo, o que fue testigo cuando éste firmó el sobre oficial deberá firmar y someterse al siguiente juramento. Cualquier individuo que va a depositar el sobre oficial en el correo o llevarlo a un portador comercial en vez de el votante mismo necesita proporcionar su firma, nombre en letra de molde y dirección de domicilio en el renglón proveído.)</p>	<p>To be completed by early Voting Clerk: (A ser completado por un representante de la Secretaría de Votación por Adelantado)</p>	<p>Name of Voter (Nombre del votante) _____</p> <p>Name of Election (Tipo de elección) _____</p> <p>Date of Election (Fecha de Elección) _____</p>
	<p>X</p>	<p>SIGNATURE OF VOTER (FIRMA DEL VOTANTE)</p>	<p>OATH OF PERSON ASSISTING VOTER: I swear (or affirm) that I will not suggest by word, sign, or gesture how the voter shall vote; I will confine my assistance to answering the voter's questions, to stating propositions on the ballot, and to naming candidate and, if listed, their political parties; and I will prepare the voter's ballot as the voter directs. (JURAMENTO AL QUE SE SOMETE LA PERSONA QUIEN AYUDARA AL VOTANTE: Juro o afirmo que, ni por palabra, señas o acciones, le sugeriré al votante cómo deberá votar. Me limitaré a contestar sus preguntas y a leerle las propuestas que aparecen en la boleta y los nombres de los candidatos y los partidos políticos a que estos pertenecen; si es que esta información está incluida y rellenaré la boleta según sus instrucciones.)</p> <p>Assistant/Witness</p> <p>If voter cannot sign, voter's mark must be witnessed. If voter cannot make mark, witness must check here _____</p> <p>If the voter is unable to read and/or mark the ballot, the assistant must fill out the information below. (Si el votante no sabe firmar, deberá hacer su marca ante un testigo. Si el votante no sabe poner su marca, el testigo deberá marcar aquí _____)</p>	<p>X</p> <p>Printed names and Signatures of all Assistants, Witnesses or Persons handling ballot or carrier envelope. (Nombres en letra de molde y firmas de todos que ayudaron al votante, testigos, o personas manejando una boleta o sobre portador.) _____</p>	<p>Residence Addresses of persons named above. (Dirección de domicilio de las personas indicado arriba.) _____</p> <p>AW5-21 12/07</p>

Prescribed by Secretary of State
Section 86.013, Texas Election Code
2/04

IMPORTANT INFORMATION ABOUT RETURNING
YOUR MARKED BALLOT IN THE CARRIER ENVELOPE

1. A carrier envelope may not be returned in an envelope or package containing another carrier envelope unless the other carrier envelopes are from persons registered to vote at the same address as your voter registration address.
2. You must seal your carrier envelope before signing your name. You must sign your name next to the large "X" on the carrier envelope. If you cannot sign your name, you must have a person witness your mark. If a person (assistant) helps you in marking your ballot or deposits your carrier envelope in the mail or delivers it to a common or contract carrier, that person must sign your carrier envelope and include their printed name and address. Failure of the assistant to provide this information is a crime, and may result in your ballot being rejected.

SPECIAL RULES RESTRICTING ELIGIBLE
COMMON AND CONTRACT CARRIERS

1. If you use a common or contract carrier to return your ballot, the carrier must be a bonafide business, for profit carrier, the primary business of which is transporting or delivering property for compensation.
2. Your ballot will not be counted if it is picked up by a common or contract carrier at an office of a political party or candidate, office for a specific-purpose or general purpose political committee involved in the election, or a candidate's house unless the address of the candidate is your address.
3. If you return your carrier envelope by common or contract carrier, your carrier envelope must be accompanied by an individual delivery receipt when delivered to the early voting clerk. The receipt must indicate the name and address of the person who delivered the carrier envelope to the common or contract carrier and the date, hour, and address where the carrier envelope was received by the common or contract carrier.
4. If your ballot is returned by an unauthorized method, it will not be counted.

If you have any questions about returning your carrier envelope, please contact the early voting clerk's office at (_____) _____. If you feel that your voting rights have been violated or abused, you may report these incidents to the Secretary of State toll-free at 1-800-252-VOTE(8683).

Requerido por el Secretario de Estado
Frac. 86.013, Código Electoral del estado de Texas
2/04

**DATOS IMPORTANTES EN CUANTO A LA DEVOLUCIÓN DE
SU BOLETA ELECTORAL MARCADA EN EL SOBRE DE ENTREGA**

1. *Es prohibido colocar el sobre de entrega dentro de otro sobre o paquete que contenga sobres de entrega adicionales a menos que las personas enviándolos estén inscritos a votar y el domicilio indicado en sus inscripciones electorales sea igual al suyo.*
2. *Antes de firmarlo, es necesario que cierre y selle el sobre de entrega. Firme el sobre en el lugar indicado por la "X" grande en el sobre. Si no sabe cómo firmar su nombre, será necesario que tenga un testigo presente cuando haga su marca. Si alguien le ayudó marcar sus votos en la boleta, también será necesario que esta persona firme el sobre de entrega porque de otra forma su boleta no se incluirá en el conteo final. Falta por parte del asistente de proporcionar esta información es un delito y puede resultar en que su boleta sea rechazada.*

**REGLAS ESPECIALES EN CUANTO AL USO
DE TRASPORTISTAS O PORTADORES COMERCIALES**

1. *Si decide contratar un transportista o portador comercial para enviar su boleta electoral, éste deberá ser de una empresa de fines de lucro cuya razón principal es el transporte y la entrega de documentos y bienes por paga.*
2. *Si dicho transportista fuere a recoger su boleta en: la sede de un partido político, la sede de una campaña electoral, las oficinas de un comité político, ya sea de interés general o específico, que tenga algún interés en estas elecciones o el domicilio de cualquiera de los candidatos, su boleta no se incluirá en el conteo final a menos que el domicilio del candidato es igual al suyo.*
3. *Si opta enviar su sobre de entrega por portador o transportista comercial al Secretario de Votación Adelantada asegúrese que éste lleve un acuso de recibo individual. El recibo debe indicar el nombre y dirección de la persona que entrego el sobre de entrega al portador o transportista comercial y la fecha, hora, y dirección de donde el portador o transportista comercial recibió el sobre de entrega.*
4. *Si la entrega de su boleta no cumple con toda la norma, su voto no se incluirá en el conteo final.*

Si tiene alguna pregunta en cuanto a cómo devolvernos su sobre de entrega por favor comuníquese con la oficina de la Secretaría de Votación por Adelantado más cercano llamando al () _____.

Si siente que sus derechos electorales han sido violados o abusados, puede hacer un reporte con la oficina del Secretario del Estado al 1-800-252-8683 (VOTE).

AW5-22
Prescribed by Secretary of State
Section 86.013, Texas Election Code
3/07

2008

IMPORTANT INFORMATION ABOUT RETURNING
YOUR MARKED BALLOT IN THE CARRIER ENVELOPE

1. A carrier envelope may not be returned in an envelope or package containing another carrier envelope unless the other carrier envelopes are from persons registered to vote at the same address as your voter registration address.
2. You must seal your carrier envelope before signing your name. You must sign your name next to the large "X" on the carrier envelope. If you cannot sign your name, you must have a person witness your mark. **If a person (assistant) helps you in marking your ballot or deposits your carrier envelope in the mail or delivers it to a common or contract carrier, that person must sign your carrier envelope and include their printed name and address.** Failure of the assistant to provide this information is a crime, and may result in your ballot being rejected.

SPECIAL RULES RESTRICTING ELIGIBLE
COMMON AND CONTRACT CARRIERS

1. If you use a common or contract carrier to return your ballot, the carrier must be a bonafide business, for profit carrier, the primary business of which is transporting or delivering property for compensation.
2. Your ballot will not be counted if it is picked up by a common or contract carrier at an office of a political party or candidate, office for a specific-purpose or general purpose political committee involved in the election, or a candidate's house unless the address of the candidate is your address.
3. If you return your carrier envelope by common or contract carrier, your carrier envelope must be accompanied by an individual delivery receipt when delivered to the early voting clerk. The receipt must indicate the name and address of the person who delivered the carrier envelope to the common or contract carrier and the date, hour, and address where the carrier envelope was received by the common or contract carrier.
4. If your ballot is returned by an unauthorized method, it will not be counted.

If you have any questions about returning your carrier envelope, please contact the early voting clerk's office at (_____) _____. If you feel that your voting rights have been violated or abused, you may report these incidents to the Secretary of State toll-free at 1-800-252-VOTE(8683).

**DATOS IMPORTANTES EN CUANTO A LA DEVOLUCIÓN DE
SU BOLETA ELECTORAL MARCADA EN EL SOBRE DE ENTREGA**

1. *Es prohibido colocar el sobre de entrega dentro de otro sobre o paquete que contenga sobres de entrega adicionales a menos que las personas enviándolos estén inscritos a votar y el domicilio indicado en sus inscripciones electorales sea igual al suyo.*
2. *Antes de firmarlo, es necesario que cierre y selle el sobre de entrega. Firme el sobre en el lugar indicado por la "X" grande en el sobre. Si no sabe cómo firmar su nombre, será necesario que tenga un testigo presente cuando haga su marca. Si alguien le ayudó marcar sus votos en la boleta, también será necesario que esta persona firme el sobre de entrega porque de otra forma su boleta no se incluirá en el conteo final. Falta por parte del asistente de proporcionar esta información es un delito y puede resultar en que su boleta sea rechazada.*

**REGLAS ESPECIALES EN CUANTO AL USO
DE TRANSPORTISTAS O PORTADORES COMERCIALES**

1. *Si decide contratar un transportista o portador comercial para enviar su boleta electoral, éste deberá ser de una empresa de fines de lucro cuya razón principal es el transporte y la entrega de documentos y bienes por paga.*
2. *Si dicho transportista fuere a recoger su boleta en: la sede de un partido político, la sede de una campaña electoral, las oficinas de un comité político, ya sea de interés general o específico, que tenga algún interés en estas elecciones o el domicilio de cualquiera de los candidatos, su boleta no se incluirá en el conteo final a menos que el domicilio del candidato es igual al suyo.*
3. *Si opta enviar su sobre de entrega por portador o transportista comercial al secretario de Votación Adelantada asegúrese que éste lleve un acuso de recibo individual. El recibo debe indicar el nombre y dirección de la persona que entrego el sobre de entrega al portador o transportista comercial y la fecha, hora, y dirección de donde el portador o transportista comercial recibió el sobre de entrega.*
4. *Si la entrega de su boleta no cumple con toda la norma, su voto no se incluirá en el conteo final.*

Si tiene alguna pregunta en cuanto a cómo devolvernos su sobre de entrega por favor comuníquese con la oficina de la Secretaría de Votación por Adelantado más cercano llamando al (____)_____.

Si siente que sus derechos electorales han sido violado o abusado, puede hacer un reporte con la oficina del Secretario del Estado al 1-800-252-8683 (VOTE).

Exhibit 13

The State of Texas

NO. 2008-1792

Elections Division
P.O. Box 12060
Austin, Texas 78711-2060
www.sos.state.tx.us



Phil Wilson
Secretary of State

Phone: 512-463-5650
Fax: 512-475-2811
Dial 7-1-1 For Relay Services
(800) 252-VOTE (8683)

FACSIMILE COVER PAGE**CONFIDENTIALITY NOTICE**

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TO: Ms. Stephanie Celandine
U.S. Department of Justice

FAX #: (202) 307-3961

PHONE #:

FROM: Shameika Franklin
Elections Division
Phone: (512) 463-5650 or toll-free 1-800-252-VOTE(8683)
Fax: (512) 475-2811

DATE: 04/18/08

PAGES (including cover page): 4

If you did not receive this telefax in its entirety or there is a problem with the transmission, please contact Shameika Franklin at one of the Elections Division phone numbers listed above.

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P.O. Box 12060
Austin, Texas 78711-2060

The State of Texas



Elections Division
P.O. Box 12060
Austin, Texas 78711-2060
www.sos.state.tx.us

Phone: 512-463-5650
Fax: 512-475-2811
Dial 7-1-1 For Relay Services
(800) 252-VOTE (8683)

Phil Wilson
Secretary of State

April 18, 2008

Mr. Christopher Coates
Acting Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

EXPEDITED CONSIDERATION REQUESTED

RE: *Electronic Submission File No. 873; Supplementation to Submission under Section 5, Voting Rights Act, of changes to the Texas Ballot by Mail Materials.*

Dear Mr. Coates:

This letter serves as a supplement to our Electronic Submission File No. 873, which was submitted on March 27, 2008, and relates to the changes our office made to the ballot by mail carrier envelope and accompanying materials. These changes were necessitated by pending litigation, *Willie Ray, et. al. vs. State of Texas, No. 2-06CV-385*, which raised issues relating to the assistance of voters in completing a ballot by mail, possessing another individual's ballot, and curtailing voter fraud. In our initial March 27, 2008 submission, we inadvertently provided your office with the incorrect copy of the "current version" of the carrier envelope for comparison. Specifically, we are supplementing our March 27, 2008 submission to provide your office with a correct copy of the "current version" of the carrier envelope for a complete and accurate comparison of the changes made and detailed in our submissions.

If you have any questions or need additional information, please contact Cristina Ruiz Blanton, Staff Attorney, Elections Division, at (512) 463-5650.

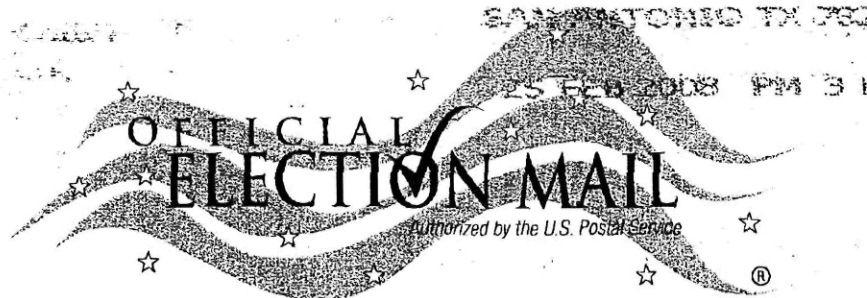
Sincerely,

A handwritten signature in cursive script, appearing to read "Ann McGeehan".

Ann McGeehan
Director of Elections

Enclosure

AM:CB:sf



CARRIER ENVELOPE FOR EARLY VOTING BALLOT
(SOBRE OFICIAL PARA ENVIO DE BOLETAS DE VOTACION ADELANTADA)

TO (A): _____
Name of Early Voting Clerk (*Nombre de la Secretaria de Votación Adelantada*)

Official Title (*Título Oficial*)

P.O. Address (*Dirección Postal*)

_____, Texas _____
Zip (*Zona Postal*)

FILED IN CITY OFFICE
JACQUELYN F. CALLAHAN
ELECTIONS ADMINISTRATOR
BEXAR COUNTY
2008 MAR -3 A 11:07

003

ELECTIONS

04/18/08 FRI 14:23 FAX 512 475 2811

NOTE: This envelope must be sealed by the voter before it leaves the voter's hand. Seal envelope before signing. Do not sign this envelope unless the ballot has been marked by you or at your direction. (NOTA: Antes de entregarse el sobre, el votante mismo tiene que haberlo sellado. Antes de firmar en sobre, asegúrese que ya selló. Es prohibido firmar este sobre a menos que usted haya completado la boleta electoral o ésta se completó siguiendo sus instrucciones.)

I certify that the enclosed ballot expresses my wishes independent of any dictation or undue persuasion by any person.
(Certifico que la boleta aquí adjunta da a conocer mis deseos y no obedece las indicaciones ni influencias indebidas de otras personas.)

SIGNATURE OF VOTER (FIRMA DEL VOTANTE)

INSTRUCTIONS TO VOTER: Complete all applicable spaces. The carrier envelope must be signed by the voter in the appropriate space. If the voter cannot sign, the voter's mark must be witnessed and the witness block must be completed. The carrier envelope may not be used to return more than one ballot. The carrier envelope may be delivered in another envelope and must be delivered by mail or by common or contract carrier. Only one carrier envelope shall be placed in another envelope. However, more than one carrier envelope may be placed together in another envelope if the additional carrier envelope(s) belong to a person registered to vote at the same address.

OATH OF ASSISTANCE: If you assisted the voter in any way with the ballot or witnessed the signature of the voter on the carrier envelope, you must sign the following oath: If you are going to deposit the carrier envelope in the mail for the voter or deliver it to a common or contract carrier, you must provide your signature, printed name, and address in the space provided.

(INSTRUCCIONES PARA EL VOTANTE: Proporcione toda la información solicitada usando los espacios apropiados. Procure firmar el sobre en el renglón apropiado. Si no sabe firmar, un testigo tiene que presenciar su marca y la información en cuanto al testigo deberá ser proporcionada. Es prohibido colocar más de una boleta dentro de cada sobre. Aunque se permite colocar el sobre oficial dentro de otro sobre, nunca se debe colocar más de un sobre oficial dentro de un mismo sobre, y éste deberá ser entregado por correo o por medio de un portador o transportista comercial. No obstante lo anterior, si en el mismo domicilio vive otro votante inscrito a votar bajo la misma dirección, se permite que su sobre oficial sea colocado dentro del mismo segundo sobre.)

(JURAMENTO. Toda persona que haya ayudado al votante en la preparación de su boleta, no obstante cómo, o que fue testigo cuando éste firmó el sobre oficial deberá firmar y someterse al siguiente juramento. Cualquier individuo que va a depositar el sobre oficial en el correo o llevarse a un portador comercial en vez de el votante mismo necesita proporcionar su firma, nombre en letra de molde y dirección de domicilio en el renglón proveído.)

AS-21W 12/03

OATH OF PERSON ASSISTING VOTER: I swear (or affirm) that I will not suggest by word, sign, or gesture how the voter shall vote; I will confine my assistance to answering the voter's questions, to stating propositions on the ballot, and to naming candidates and, if listed, their political parties; and I will prepare the voter's ballot as the voter directs. (JURAMENTO AL QUE SE SOMETE LA PERSONA QUIEN AYUDARÁ AL VOTANTE: Juro o afirmo que, ni por palabra, señas o acciones, le sugeriré al votante cómo deberá votar. Me limitaré a contestar sus preguntas y a leerle las propuestas que aparecen en la boleta y los nombres de los candidatos y los partidos políticos a que estos pertenecen; si es que esta información está incluida y rellenaré la boleta según sus instrucciones.)

Assistant/Witness

If voter cannot sign, voter's mark must be witnessed. If voter cannot make mark, witness must check here _____. If the voter is unable to read and/or mark the ballot, the assistant must fill out the information below. Failure of Witness and/or Assistant to complete this information is a crime. (Si el votante no sabe firmar, deberá hacer su marca ante un testigo. Si el votante no sabe poner su marca, el testigo deberá marcar aquí _____. Tenga en cuenta que el haber servido de testigo o ayudante y no llenar esta información es un delito.)

X

Printed name and Signature of Assistant or Witness (Nombre en letra de molde y firma del que ayudó al votante o testigo).

Residence address of assistant or witness (Domicilio del que ayudó al votante o testigo)

To be completed by Early Voting Clerk: (A ser completado por un representante de la Secretaría de Votación por Adelantado.)

Name of Voter (Nombre del votante) Name of Election (Tipo de elección) Date of Election (Fecha del

Demo
Primary
MAR 04 2008

17-3704 CARRIER ENVELOPE (1/04) HART INTERCIVIC, Austin, TX
Prescribed by Secretary of State Section 86.013 Texas Election Code

ELECTIONS

04/18/08 FRI 14:24 FAX 512 475 2811

004

Exhibit 14

CONDENSED TRANSCRIPT

ORAL DEPOSITION OF

ERIC J.R. NICHOLS

April 24, 2008

Julie A. Jordan & Company
4420 Marathon Boulevard Austin, Texas 78756
(512) 451-8243 phone (512) 451-7583 fax (877) 851-8243 toll free
info@jordanreporting.com www.jordanreporting.com

**WILLIE RAY, ET AL v.
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April 24, 2008**

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WILLIE RAY, JAMILLAH JOHNSON,)
GLORIA MEEKS, REBECCA)
MINNEWEATHER, REUBEN ROBINSON,)
EDDIE JACKSON, and THE TEXAS)
DEMOCRATIC PARTY,)
Plaintiffs,)

VS.) Civil Action No. 2-06CV-385

STATE OF TEXAS, a State of the)
United States; GREG ABBOTT,)
Attorney General of the State)
Of Texas; and PHIL WILSON,)
Secretary of State for the)
State of Texas,)
Defendants.)

ORAL DEPOSITION OF
ERIC J.R. NICHOLS
APRIL 24, 2008

ORAL DEPOSITION OF ERIC J.R. NICHOLS, produced as a witness
at the instance of the Plaintiffs, and duly sworn, was taken in
the above-styled and numbered cause on the 24th day of April,
2008, from 10:16 a.m. to 1:34 p.m., before AMBER KIRTON, CSR in
and for the State of Texas, reported by machine shorthand, at
the Office of the Attorney General, 300 West 15th Street, 11th
Floor, Austin, Texas, pursuant to the Federal Rules of Civil
Procedure.

**WILLIE RAY, ET AL v.
STATE OF TEXAS, ET AL**

**ERIC J.R. NICHOLS
April 24, 2008**

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<p>1 A P P E A R A N C E S</p> <p>2 FOR THE PLAINTIFFS:</p> <p>3 Mr. Otis Carroll</p> <p>4 IRELAND, CARROLL & KELLEY, P.C.</p> <p>5 6101 S. Broadway, Suite 500</p> <p>6 Tyler, Texas 75703</p> <p>7 (903) 541-1600 Phone</p> <p>8 (903) 581-1071 Fax</p> <p>9 EMAIL: otiscarroll@icklaw.com</p> <p>10 -and-</p> <p>11 Mr. Paul S. Ryan</p> <p>12 THE CAMPAIGN LEGAL CENTER</p> <p>13 1640 Rhode Island Ave., NW</p> <p>14 Suite 650</p> <p>15 Washington, DC 20036</p> <p>16 (202) 736-2200 Phone</p> <p>17 (202) 736-2222 Fax</p> <p>18 EMAIL: pryan@campaignlegalcenter.org</p> <p>19 FOR THE DEFENDANTS:</p> <p>20 Ms. Rosemarie Donnelly</p> <p>21 OFFICE OF THE ATTORNEY GENERAL</p> <p>22 808 Travis, Suite 300</p> <p>23 Houston, Texas 77002-1702</p> <p>24 (713) 223-5886 Phone</p> <p>25 (713) 223-5821 Fax</p> <p>EMAIL: rosemarie.donnelly@oag.state.tx.us</p> <p>-and-</p> <p>Ms. Kathlyn C. Wilson</p> <p>-and-</p> <p>Mr. Beau Eccles</p> <p>OFFICE OF THE ATTORNEY GENERAL</p> <p>P.O. Box 12548</p> <p>Austin, Texas 78711-2548</p> <p>(512) 463-2120 Phone</p> <p>(512) 320-0667 Fax</p> <p>EMAIL: kcw@oag.state.tx.us</p>	<p>1 ERIC J.R. NICHOLS,</p> <p>2 having been duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 BY MR. CARROLL:</p> <p>5 Q. Mr. Nichols, good morning.</p> <p>6 A. Good morning, sir.</p> <p>7 Q. You and I haven't seen one another in a while. It's</p> <p>8 good to see you again. You know I'm Otis Carroll and I</p> <p>9 represent the plaintiffs in the suit that we're here about.</p> <p>10 MR. CARROLL: And why don't you make an</p> <p>11 appearance just for the record.</p> <p>12 MR. RYAN: My name is Paul Ryan. I'm with</p> <p>13 Campaign Legal Center, co-counsel in the case.</p> <p>14 Q. (BY MR. CARROLL) Paul is with Hebert's crew, okay?</p> <p>15 A. Yes, sir. It's been many a moon, but it's good to see</p> <p>16 you again this morning.</p> <p>17 Q. Well, I'm glad to see you. And you know we're here on</p> <p>18 a 30(b)(6) deposition?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And you drew the black bean evidently?</p> <p>21 A. Well, I don't know if it's -- what color it is, but</p> <p>22 I've got the bean.</p> <p>23 Q. Okay. Have you looked at the notice?</p> <p>24 A. Yes, sir, I have.</p> <p>25 Q. Let me tell you what I've done. I've just pulled my</p>
Page 3	Page 5
<p>1 I N D E X</p> <p>2 PAGE</p> <p>3 Appearances..... 2</p> <p>4 Stipulations..... 82</p> <p>5 ERIC J.R. NICHOLS</p> <p>6 Examination by Mr. Carroll..... 4</p> <p>7 Signature and Changes..... 84</p> <p>8 Reporter's Certificate..... 86</p> <p>9</p> <p>10 E X H I B I T</p> <p>11 I N D E X</p> <p>12 NO. DESCRIPTION PAGE</p> <p>13 1 Helping Stamp Out Voter Fraud in Texas..... 19</p> <p>14 2 7/16/07 Public Information Request..... 30</p> <p>15 3 Investigation Strategy for Texas Election Code</p> <p>16 Violations..... 58</p> <p>17 4 Investigations/Prosecutions of Texas Election Code</p> <p>18 Violations Policy Statement & Guidelines..... 58</p> <p>19 5 Training Materials..... 58</p> <p>20 6 PowerPoint Presentation..... 63</p> <p>21 7 Enlargement of Bates 2700 of Exhibit 6..... 70</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 notice and highlighted the categories that appear to refer to</p> <p>2 the Attorney General. And just glance at those and tell me if</p> <p>3 those are the ones you're here prepared to talk about today.</p> <p>4 A. I did look at the categories. There are 11 and I</p> <p>5 think I counted about seven that concerned our office. Let me</p> <p>6 just check your math. You've got eight.</p> <p>7 Q. Well, the only reason I highlighted them is if the</p> <p>8 AG's name showed up.</p> <p>9 A. Okay.</p> <p>10 Q. Just check the ones you're here to talk about and</p> <p>11 we'll just talk about those.</p> <p>12 A. Certainly 1 is one that mentions the Attorney General.</p> <p>13 3 highlighted mentions the Attorney General. 5 mentions the</p> <p>14 Attorney General. 6, same thing. 8, same thing. 9 mentions</p> <p>15 the Attorney General. 10 mentions the Attorney General. 11</p> <p>16 does not mention the Attorney General. Maybe that's where you</p> <p>17 and I got off track.</p> <p>18 Q. Well, let's forget about 11, then.</p> <p>19 A. But the other ones do mention the Attorney General.</p> <p>20 And obviously whatever -- I'm not even aware, Mr. Carroll, of</p> <p>21 what objections have been made, but I'm here to testify, you</p> <p>22 know, to this notice consistent with whatever the objections</p> <p>23 are.</p> <p>24 MS. DONNELLY: And Mr. Carroll, it's Rosemarie</p> <p>25 Donnelly. I'll be representing Eric in this case and in this</p>

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<p>1 deposition. The objection that was raised in writing before the</p> <p>2 deposition to the notice was simply to the request for</p> <p>3 documents. We didn't feel like that was within the 30-day</p> <p>4 requirement so we objected to the documents. But having said</p> <p>5 that, we have produced and handed to counsel before the</p> <p>6 deposition Bates-labeled documents D2727 through D2826 and I'm</p> <p>7 going to supplement when we take a break as well. Some of the</p> <p>8 documents that are being produced today have already been</p> <p>9 produced. We're just simply reproducing them for ease of</p> <p>10 inconvenience. But just wanted to let you know that. And some</p> <p>11 are marked confidential, frankly, because that's just the way</p> <p>12 our system is set up, but we're not taking the position, at</p> <p>13 least on the public documents, that they are in fact</p> <p>14 confidential.</p> <p>15 MR. CARROLL: Thank you.</p> <p>16 Q. (BY MR. CARROLL) Okay. So these are the documents</p> <p>17 and, Mr. Nichols, you know you're here speaking for the office?</p> <p>18 A. Yes, sir.</p> <p>19 Q. That this is not a 30 (b)(1) deposition and you and I</p> <p>20 and Ms. Donnelly know all about that stuff.</p> <p>21 Tell me your title and your job here with the</p> <p>22 Attorney General.</p> <p>23 A. My title at the agency is Deputy Attorney General for</p> <p>24 Criminal Justice.</p> <p>25 Q. So what does that make you responsible for?</p>	<p>1 A. December of 2006.</p> <p>2 Q. And obviously you're a licensed lawyer here in the</p> <p>3 state?</p> <p>4 A. Yes, sir, I am.</p> <p>5 Q. Okay. Have you ever done any prosecution work in</p> <p>6 addition to what you're doing now?</p> <p>7 A. Yes, sir, I have.</p> <p>8 Q. Tell me about that.</p> <p>9 A. Over the course of my career, started when I graduated</p> <p>10 from law school, worked for a U.S. district judge in Houston.</p> <p>11 Q. I forgot. Which one?</p> <p>12 A. Judge Hitner. David Hitner.</p> <p>13 Q. Oh, yeah. I remember when Hitner was just a lawyer.</p> <p>14 A. And then a state court judge.</p> <p>15 Q. That's right.</p> <p>16 A. And then -- so obviously got exposed to the federal</p> <p>17 side of criminal prosecutions there, then went to work at the</p> <p>18 U.S. Attorney's office for the southern district of Texas, was</p> <p>19 stationed in Houston but did work around the district. So was a</p> <p>20 federal prosecutor there for three years, from '91 to '94. And</p> <p>21 then from there went out into private practice, which is where I</p> <p>22 think you and I had crossed paths before, and worked at the firm</p> <p>23 of Beck, Redden and Secrest and did that from '94 through</p> <p>24 December of 2006 when I took this job.</p> <p>25 And in the course of doing the work at Beck,</p>
Page 7	Page 9
<p>1 A. I work with five divisions of the agency that are all</p> <p>2 involved in some way or another with the criminal justice system</p> <p>3 in the State of Texas. Do you want me to list those for you?</p> <p>4 Q. That would be great.</p> <p>5 A. We've got a crime victim's services division. We have</p> <p>6 a Medicaid fraud control unit. And hopefully -- I mean, if you</p> <p>7 need me to explain what these ones do, but hopefully the titles</p> <p>8 kind of explain what they do. Crime victim services, Medicaid</p> <p>9 fraud control unit, which is involved in investigation and</p> <p>10 prosecution of crimes against the Texas Medicaid program. We</p> <p>11 have a criminal prosecution's division, which as the title</p> <p>12 implies, consists of prosecutors and support staff. A criminal</p> <p>13 investigations division, which is where all of our peace</p> <p>14 officers who are not assigned to the Medicaid fraud control unit</p> <p>15 and their support staff are housed. And then we have a</p> <p>16 post-conviction litigation division, which is involved in the</p> <p>17 litigation in -- primarily in federal court of challenges by</p> <p>18 state prisoners to their convictions or sentences.</p> <p>19 Q. Habeas stuff?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Who do you report to?</p> <p>22 A. I report to the First Assistant Attorney General.</p> <p>23 Q. And how long have you been a Deputy Attorney General?</p> <p>24 A. Since December of 2006.</p> <p>25 Q. And how long have you been in the office?</p>	<p>1 Redden and Secrest was involved -- I think you and I worked on a</p> <p>2 civil matter before that had some criminal overtones to it. I</p> <p>3 started my career at the firm working on civil matters but then</p> <p>4 kind of came around to the point where I was doing some white</p> <p>5 collar criminal defense work at the firm and so now I've come</p> <p>6 full circle back to the criminal side of things.</p> <p>7 Q. And I forgot. Was Dan Hedges the U.S. Attorney when</p> <p>8 you were there?</p> <p>9 A. Ron Woods was the U.S. Attorney that hired me.</p> <p>10 Q. Okay. Well, that's great. I mean, you know what the</p> <p>11 lawsuit is about generally, do you not?</p> <p>12 A. I have a general understanding.</p> <p>13 Q. All right. Tell me what your understanding is.</p> <p>14 A. The plaintiffs have filed a lawsuit challenging the</p> <p>15 constitutionality, I understand principally, of 2003 amendments</p> <p>16 to the Texas Election Code and those challenges have been made</p> <p>17 under the U.S. Constitution, I believe, the 1st, 14th, 15th</p> <p>18 amendments as well as some federal law challenges under the</p> <p>19 Voting Rights Act.</p> <p>20 Q. And you understand that it's -- the questions I'm</p> <p>21 going to be asking you today have to do only with that piece of</p> <p>22 your work?</p> <p>23 A. I think I understand that, yes, sir.</p> <p>24 Q. Well, I'm telling you. I'm not going to spend any</p> <p>25 time -- even though what you do sounds very interesting. Which</p>

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<p>1 one of your five or six groups would be responsible for voting 2 fraud?</p> <p>3 A. It would be two of the groups -- two of the five 4 groups I mentioned to you earlier.</p> <p>5 Q. The general criminal crew?</p> <p>6 A. The criminal prosecutions division as well as the 7 criminal investigations division.</p> <p>8 Q. And the criminal investigation section would work up 9 the case and then turn it over to the prosecutors?</p> <p>10 A. Yes, sir. As you know from your experience, sometimes 11 it's not as quite as clean a division as that. Sometimes you 12 have prosecutors involved at the investigatory stage, especially 13 if a case involves grand jury activity or certain types of 14 criminal procedures such as search warrants.</p> <p>15 Q. Let me ask you a question, and this is something that 16 was puzzling to me when I was looking at all this stuff, if I 17 can find it. There was a reference in the information that 18 you-all have provided to a statutory -- or what appears to be a 19 statutory requirement for an election -- a criminal election 20 fraud complaint to be initiated by affidavits from two 21 individual. Do you know what I'm talking about?</p> <p>22 A. There is a provision of the election code that 23 provides for direct referrals of matters to our agency through 24 the provision of two or more voter affidavits.</p> <p>25 Q. Okay, but that's not the only way you get cases,</p>	<p>1 always understand the referral process so from time to time 2 we'll actually get in a question or complaint from the 3 individual citizen. If that doesn't meet the criteria for our 4 taking a direct referral, it may be a situation where we'll send 5 that matter over to the Secretary of State so that it can 6 be -- go through this initial review over there.</p> <p>7 Q. Is there one person at the Secretary of State who 8 primarily is the contact with your squad for these kind of 9 cases?</p> <p>10 A. Well, I mean, certainly she's got plenty of staff to 11 support her, but, I mean, our principal contact person would be 12 Ann McGeehan.</p> <p>13 Q. And what's her job over there?</p> <p>14 A. She is -- gosh, my apologies to Ann.</p> <p>15 MS. DONNELLY: Director of elections.</p> <p>16 A. Director of elections.</p> <p>17 Q. (BY MR. CARROLL) Okay. You've told me a little bit 18 about the special investigation unit. Let me just run through a 19 number of questions that I was told to ask. You told me what 20 the functions are. How many investigators do you have in the 21 SIU?</p> <p>22 A. We currently have -- special investigations unit, 23 which is one component of our criminal investigations division, 24 we currently have nine investigators assigned to that unit.</p> <p>25 Q. To the SIU?</p>
Page 11	Page 13
<p>1 right?</p> <p>2 A. No, sir, that's correct. You are correct in that.</p> <p>3 Q. Okay. So what other way can you get cases?</p> <p>4 A. The primary way that we do get referrals is through 5 the Secretary of State. There is also a provision in the 6 election code -- provision or provisions in the election code 7 that provide for a mechanism where an individual citizen, voter, 8 what have you, can make a -- can raise a question or issue with 9 the Secretary of State. Secretary of State then does a 10 preliminary review and then -- I can quote the exact language to 11 you if you need me to, but basically along the lines of the 12 Secretary of State determines reasonable cause to believe that a 13 criminal violation may have occurred. They would then refer 14 that matter over to our office for further investigation.</p> <p>15 Q. And I read in the material somewhere that the bulk of 16 the referrals you get come from the Secretary of State?</p> <p>17 A. Yes, sir, a number of them do. We also get referrals 18 from the voters in the way that you've described. We also get 19 referrals from local law enforcement. We do work cooperatively 20 with local law enforcement, be it local prosecuting attorneys, 21 district attorneys, county attorneys, other local law 22 enforcement, such as sheriff's offices or local police 23 departments, and so we do get referrals in from those sources as 24 well.</p> <p>25 We also -- I mean, obviously some people don't</p>	<p>1 A. Yes, sir.</p> <p>2 Q. But did I understand it right that the SIU would be 3 the squad that would look at voter fraud cases?</p> <p>4 A. Yes, sir, that's correct.</p> <p>5 Q. Are all nine licensed sworn peace officers?</p> <p>6 A. They're all commissioned peace officers, yes, sir.</p> <p>7 Q. And the other question is -- and you can tell me 8 whatever you want to tell me about this. Is generally are they 9 trained by you and your group?</p> <p>10 A. The background for our peace officers is that many of 11 them have come from other law enforcement agencies before they 12 come to our agency so they have, you know, a certain amount of 13 training through those agencies. Of course they go through all 14 the training required in order to become a commissioned peace 15 officer under the laws of the State of Texas. And then 16 obviously once they do come to our agency, they do engage in 17 training on the matters that they're called upon to investigate 18 through our agency.</p> <p>19 Q. I saw a reference to one of your officers named 20 Jennifer Bloodworth.</p> <p>21 A. Yes, sir.</p> <p>22 Q. What's Ms. Bloodworth's job?</p> <p>23 A. She is not currently assigned to the special 24 investigations unit.</p> <p>25 Q. Is that a recent move?</p>

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<p>1 A. I'm sorry, I don't have that information off the top 2 of my head. I can find out for you on a break and tell you. 3 Q. I don't think it's important. But at one time she 4 was, I understand? 5 A. Yes, sir. 6 Q. And maybe had something to do with some of these cases 7 we're going to be talking about? 8 A. I'm not sure exactly the depth in which you want to 9 get involved in the actual cases, but she has been involved 10 in -- historically in the investigation of some election code 11 cases. 12 Q. What's her background, if you know? 13 A. She is a commissioned peace officer, and if you want 14 more details on her kind of where she came before, I can 15 certainly get that for you on a break. 16 Q. Was she a supervisor? 17 A. She was not a supervisor within the special 18 investigations unit. 19 Q. I had some memory of some particular rank she had. 20 Maybe sergeant. 21 A. Yes, sir. 22 Q. Is that -- that doesn't indicate any supervisor role? 23 A. No. We do have ranks within our -- within our 24 criminal investigations division. We have sergeants, 25 lieutenants and captains. But having the rank of sergeant</p>	<p>1 check this on a break too. But I think we have 14 prosecutors 2 currently. 3 Q. Now, can you help me with just generally how big a 4 piece of the office activity enforcing the voting laws is for 5 SIU and CPD? 6 A. We just don't track that in terms of a percentage of 7 somebody's work and whatnot. We just don't track that. 8 Q. And this is -- this is my kind of recollection of how 9 the Attorney General's law enforcement function works. You help 10 out the locals when they need help, right? They need help in 11 prosecuting a case, they have a conflict or something, and you 12 send guys down to prosecute. 13 A. Well, now you're going to open up a whole area that's 14 near and dear to my heart because there have been significant 15 changes in terms of the Attorney General's role in criminal law 16 enforcement. But that certainly is one of the areas where we 17 get involved. 18 Q. But here's the point to the question, I guess. Do you 19 consider election law enforcement to be what I would call a 20 matter of original jurisdiction for the AG? 21 A. It is -- by statute it is an area of original but not 22 exclusive jurisdiction. What I mean by that is that we do have 23 original -- the agency has original jurisdiction to initiate 24 criminal prosecutions under election code, however, it's not 25 exclusive. And local prosecuting attorneys also have</p>
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<p>1 wouldn't in and of itself indicate any supervisory 2 responsibility. 3 Q. Is there anybody today in SIU whom you would identify 4 as being a specialist in election law enforcement? 5 A. I think I understand what you're asking. We don't 6 have any of our peace officers or prosecutors, for that matter, 7 that are solely dedicated to the enforcement of the election 8 code. It's one of the subject matter areas that certain of our 9 investigators and prosecutors work on. 10 Q. Could you help me just generally with what percentage 11 of SIU and -- is it CLED? 12 A. Actually, to update that information that you have, 13 there was a division in the criminal justice arena of the agency 14 at one time called the criminal law enforcement division. 15 That's where CLED came from. That's the acronym. You know, 16 government got all kinds of acronyms. 17 Q. I remember it well. 18 A. But that division no longer exists as such and we now 19 have a criminal prosecutions division where our prosecutors are 20 housed. 21 Q. And is that the division you described to me a minute 22 ago that would work with the SIU folks? 23 A. Yes, sir. 24 Q. How many CPD prosecutors you got? 25 A. We currently have, I believe -- and let me double</p>	<p>1 jurisdiction to prosecute those kinds of cases. And as a matter 2 of course, I mean, everything we do in the criminal justice 3 world we try to work in coordination and cooperation with other 4 criminal law enforcement agencies around the state, including 5 local prosecuting attorneys. 6 Q. As a matter of fact, my memory about the statute that 7 you and I talked about earlier that has -- requires two 8 affidavits to initiate prosecution, under that particular 9 statute also authorizes the county DA to go forward if those two 10 folks are in his county or her county? 11 A. Yeah, I agree with you that the election code has 12 provisions that make it explicit that the local prosecuting 13 attorneys have jurisdiction as well in election code cases. 14 Q. Do you know of any prosecutions that have happened 15 since you've had your job which were initiated by and carried 16 out by the locals without any help from y'all? 17 A. Well -- 18 Q. Maybe without any help is wrong. But do you know of 19 where the locals started and did it themselves pretty much? 20 A. Absolutely, and I just -- in terms of public 21 prosecutions, that is, cases where indictments have been 22 returned, one example would be indictments that were returned in 23 Hidalgo County by the Hidalgo County district attorney. And 24 unfortunately I didn't do all that research in preparing to 25 respond to this particular notice, but if I think of others</p>

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<p>1 I'll -- and I also don't want to be speaking about kind of 2 non-public criminal investigations. 3 Q. I understand. Well, let me tell you what my 4 understanding of the ground rules. I'm not going to ask you and 5 don't expect for you to talk about any of your pending 6 investigations. 7 A. Thank you. 8 Q. What I'm talking about and going to ask you about is 9 primarily from information that the office has turned over to 10 us. 11 A. Yes, sir. 12 Q. What did you do to prepare for today other than talk 13 to Ms. Donnelly? 14 A. I reviewed some documents and -- documents that have 15 been produced in the litigation either as discovery or as 16 pleadings. I reviewed other documents that, as I understand, 17 have been given to you this morning, and I also spoke to a few 18 folks within our organization just to make sure that I was 19 prepared to answer the questions relating these categories in 20 the notice. 21 Q. Did you read any of the depositions which have been 22 taken in the case? 23 A. I skimmed over Ann McGeehan's deposition. 24 MR. CARROLL: And again, how we want to do this 25 is up to y'all since y'all have been doing them with Hebert.</p>	<p>1 A. Yes, sir. 2 Q. Or sponsored it, maybe? 3 A. Yeah. I mean, I think it's safe to say that given the 4 Attorney General's responsibility, he probably had some help in 5 drafting that. 6 Q. Sure. Now, do you know what this was prepared for? 7 A. It's my understanding that this was a piece that was 8 produced by the office kind of in the March 2006 time period and 9 was provided as potential content for publications relating to 10 activities of the Office of the Attorney General. 11 Q. Okay. For instance, I've seen this print of what 12 appears to be a PowerPoint that we got from y'all called 13 Training Materials. I didn't see one in this. So to your 14 knowledge, is one a stand-alone piece? 15 A. Yes, sir. 16 Q. Okay. That's what I wanted to know. Now, let me ask 17 you, Mr. Nichols. I'm kind of like your old boss. I kind of 18 start with the heart of the coconut and then work out towards 19 the shell. 20 A. Now, which boss are you referring to? Which one of my 21 bosses? 22 Q. I'm talking about Joe. You worked primarily for Joe, 23 didn't you? 24 A. I worked for Joe and also with David Beck. 25 Q. Okay. You understand that one of the statutes that</p>
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<p>1 But what I have is information that may have been identified in 2 earlier depositions. Do you just want to refer to that or do 3 you want to re-mark them? Because it doesn't matter to me. 4 MS. DONNELLY: What do you think is your volume? 5 MR. CARROLL: You're looking at it. 6 MS. DONNELLY: That's fine, then. Exhibit 9 to 7 Ann's deposition? 8 MR. CARROLL: Yeah. Why don't we just -- why 9 don't we start that way and if there's something we need to 10 re-mark, you know, we'll go that route. 11 MS. DONNELLY: But Exhibit 9 doesn't match what I 12 have for Ann's deposition so maybe we should re-mark it. 13 MR. CARROLL: Okay. Let's mark this as Exhibit 14 1. 15 (Exhibit No. 1 marked.) 16 Q. (BY MR. CARROLL) Mr. Nichols, let me show you what 17 the reporter has marked as Exhibit 1, and it appears to be 18 produced in this lawsuit and it is entitled, as you can see, 19 Helping Stamp Out Voter Fraud in Texas. Did you glance at that 20 before we came in this morning? 21 A. I did. 22 Q. You've seen that before? 23 A. Yes, sir, I have. 24 Q. Okay. And that's General Abbott apparently authored 25 that piece?</p>	<p>1 we've been focusing on or maybe exclusively looking at deals 2 with written ballots, the way written ballots are applied for, 3 the way they're handled, the way they're submitted once they've 4 been filled out to be counted. You understand that's a big 5 chunk of the lawsuit? 6 A. No. I do understand that -- consistent with my 7 earlier testimony that my understanding of the general gist of 8 the lawsuit is it's a challenge to 2003 amendments to the, as 9 you say, written or mail-in ballot process. 10 Q. Now, take a look at Number 1 here, and this is the 11 piece that we've talked -- 12 MR. CARROLL: And I'm sorry I didn't make copies 13 of this. 14 Q. (BY MR. CARROLL) And I've highlighted the little 15 blurb I want to talk to you about. It says, "For example, Texas 16 has long been a haven for paid political operatives who target 17 seniors and the disabled to handle their mail-in ballots for 18 them, period. Many of the cases referred to my office by the 19 Secretary of State fall under this category." Based on your 20 knowledge of the criminal statute that deal with mail-in 21 ballots, is the first part of the General's comment illegal? 22 Paid operatives -- let's see. Paid political operatives who 23 target seniors and the disabled to handle their mail-in ballots. 24 MS. DONNELLY: I'm going to object. Vague. 25 Q. (BY MR. CARROLL) You understand the question?</p>

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<p>1 A. I'm not sure that I do, but let me try to respond to 2 it. 3 Q. Well, let me rephrase it in light of the objection. 4 I'm just trying to understand if there is anything on the face 5 of that statement that bumps up against Section 86 of the 6 election code dealing with the carrier envelope action or 7 86.006, method of returning marked ballot. 8 MS. DONNELLY: Objection, vague. 9 A. I think that the statement in this piece refers in 10 part to that section of the election code. 11 Q. (BY MR. CARROLL) Okay. But my question is, there is 12 nothing in the -- for instance, there is nothing in the statute 13 that prescribes how someone can legally possess somebody else's 14 written ballot. There is nothing in that statute that precludes 15 that legal handler from being a, quote, paid political 16 operative, correct? 17 MS. DONNELLY: Objection, vague. Go ahead. 18 A. And I'm not sure -- I heard a couple of questions in 19 there, but let me try to respond. 20 Q. (BY MR. CARROLL) Well, let me reask it so there is 21 only one if you heard two. 22 A. Yes, sir. 23 Q. The question is, in Section 86.006, Subsection F, 24 which talks about a person committing an offense for knowingly 25 possessing an official ballot of another, the idea that the</p>	<p>1 at it and see if it might come into play other ways. 2 Q. Sure. 3 A. It could also be related to -- as you know from the 4 statute under 86.006F, there is also a caveat to the accepted 5 categories under F that reads as follows. "Unless the person 6 possesses the ballot or carrier envelope with intent to defraud 7 the voter or the election authority." So it could -- I mean, 8 hypotheticals. It could -- hypothetically it could be -- 9 someone's status as a paid political operative could be related 10 to that element as well. 11 Q. Let's focus on that exception you just talked about. 12 That is -- that is an exception to what otherwise is an 13 exemption under the knowing possession, correct? 14 A. Yes, sir. 15 Q. The law proscribes or criminalizes possession of 16 somebody else's ballot unless, and one of the unlesses is if 17 you're kinned by a certain level or whatever the other 18 exceptions are, correct? 19 MS. DONNELLY: I'm going to object. Misstates 20 the entirety of the statute. It speak for itself. Go ahead. 21 Q. (BY MR. CARROLL) You see what I'm saying? So you 22 have a crime and then you have a -- but it doesn't apply unless 23 and the unless talks about fraud, correct? 24 MS. DONNELLY: Same objection. Go ahead. 25 A. I think I understand your question. There are</p>
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<p>1 possessor is a paid political operative is superfluous to the 2 element of that offense, correct? 3 A. I'm not sure that I can agree with your 4 characterization, with respect, Mr. Carroll, because it may be 5 that someone's status as having been paid to conduct certain 6 types of activities relating to mail-in ballots may be evidence 7 that's used in a case. For example, there are certain 8 requirements under the statute for the government to prove -- or 9 the State to prove that someone engaged in knowing conduct. So 10 someone's status as a paid political operative, to use your 11 terminology -- 12 Q. Well, actually it's the General's terminology. 13 A. Well, you're right. It is in this piece. The fact 14 that somebody is a paid political operative could be relevant to 15 a criminal prosecution for a violation of this provision of the 16 election code and others. 17 Q. It could be a fact but it's not an element of any of 18 these offenses. Wouldn't you agree with that? 19 MS. DONNELLY: I'm going to object to the 20 question as vague. 21 A. Well, I think it does relate to an element of the -- 22 at least one element of the statute. 23 Q. (BY MR. CARROLL) And that would be the knowing 24 element? 25 A. It would be the knowing element and I'm happy to look</p>	<p>1 exceptions to the applicability of 86.006F that are laid out in 2 six subsections of the statute, but those six exceptions do not 3 apply if the State is prepared to prove that the person 4 possessed the ballot or carrier envelope with intent to defraud 5 the voter or the election authority. 6 Q. (BY MR. CARROLL) But is it your understanding, 7 Mr. Nichols, that the fraud element otherwise is not required to 8 be proved by the State for knowing possession? 9 MS. DONNELLY: Could you repeat the question? 10 MR. CARROLL: Be glad to. 11 Q. (BY MR. CARROLL) Is it your understanding that except 12 for the negation of the exemption based on fraud that fraud has 13 no role in the element of knowingly possessing somebody else's 14 ballot? 15 MS. DONNELLY: Objection, statute speaks for 16 itself. You can answer. 17 A. And again, I'm not sure that -- I mean, I'm happy to 18 help you to the extent I can. I'm not sure that I'm, you know, 19 properly qualified to testify on behalf of the agency as to 20 legal interpretations of statutes. But that being said, the 21 86.006F prescribes a person knowingly possessing an official 22 ballot or official carrier envelope provided under the code to 23 another, that is, a voter. And there are six exemptions to that 24 rule that are specified in the statute and those exceptions in 25 effect do not apply if -- in the event that the State is</p>

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<p>1 prepared to prove that the person possessed the ballot or 2 carrier envelope with the intent to defraud the voter or the 3 election authority.</p> <p>4 Q. (BY MR. CARROLL) But that burden on the State to 5 prove intent to defraud the voter or the election authority 6 isn't required otherwise, is it, under knowing possession?</p> <p>7 A. If none of those six exemptions applies to a 8 particular case, then you -- I agree with you. You wouldn't 9 reach this issue of the person possessing the ballot or carrier 10 envelope with intent to defraud the voter or the election 11 authority.</p> <p>12 Q. Mr. Nichols, you and I have been on both sides of the 13 fence in criminal law and we know what lawyers sometimes refer 14 to as a strict liability offense.</p> <p>15 A. I am aware of that.</p> <p>16 Q. Like some environmental federal crimes, as a surprise 17 to most people, are strict liability crimes. Is it your belief 18 that knowing possession of somebody else's ballot, that the 19 offense is complete simply by proving that the accused person 20 had in her or his possession somebody else's ballot and that 21 none of the exemptions applied and the person knew that he or 22 she had that ballot?</p> <p>23 MS. DONNELLY: Objection, statute speaks for 24 itself. You can answer.</p> <p>25 A. I mean, the statute says that a person commits an</p>	<p>1 is required to prove through direct or circumstantial evidence 2 that the possession, be it under criminal statutes directed to 3 illegal drugs, for example, that the person -- or knowing 4 possession of a firearm, that the person did not possess 5 the -- whatever the contraband is through some mistake or 6 accident but that actually the facts and circumstances would 7 lead a trier of fact to the conclusion that that person actually 8 acted with a mental state in which they comprehended that they 9 were in possession of that particular item.</p> <p>10 Q. Would you agree with me that that's -- that the 11 knowing requirement that you just described, which by the way is 12 how I understood it, is not the same as, say, a mens rea for 13 fraud?</p> <p>14 MS. DONNELLY: I'm going to object. Mr. Carroll, 15 with all due respect, I think this is -- this line of 16 questioning is outside the scope of the eight categories of 17 topics that this witness has been designated for. I mean, we've 18 gone on now for a while, but I think this exceeds the scope of 19 what this witness is here to testify about.</p> <p>20 MR. CARROLL: Well, it gets into how you train 21 your investigators to implement the statute we're talking about.</p> <p>22 MS. DONNELLY: I disagree with that 23 characterization of your line of testimony. I think you're 24 asking this witness what his personal experience as a former 25 federal prosecutor and as a law enforcement prosecutor, what he</p>
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<p>1 offense if the person knowingly possesses an official ballot or 2 official carrier envelope provided under this code to another. 3 I don't view that as being a strict liability statute because 4 there is an element of knowing possession.</p> <p>5 Q. (BY MR. CARROLL) You need to take a break?</p> <p>6 A. Yeah, if we could real quick.</p> <p>7 (Break was taken from 10:52 a.m. to 10:52 a.m.)</p> <p>8 Q. (BY MR. CARROLL) So you believe that the knowing 9 requirement means it's not a strict liability offense?</p> <p>10 A. It doesn't meet the definition that I have in mind for 11 strict liability.</p> <p>12 Q. Is the knowing there the knowing that's defined in the 13 preamble to the penal code?</p> <p>14 MS. DONNELLY: Objection, statute speaks for 15 itself.</p> <p>16 A. I do not know that the penal code -- any penal code 17 definition is incorporated by reference in the election code. 18 I'd have to research that.</p> <p>19 Q. (BY MR. CARROLL) So you think maybe whatever knowing 20 means for the election code is defined in the election code?</p> <p>21 A. I don't know that it is defined in the election code, 22 but I think that there is a well-recognized definition in the 23 criminal law principles for the concept of knowing.</p> <p>24 Q. Which is what?</p> <p>25 A. That it involves an actual mental state that the State</p>	<p>1 thinks about the statute, and I don't think that's appropriate 2 for a 30(b)(6) deposition, with due respect.</p> <p>3 MR. CARROLL: Well, I mean, I was asking what the 4 office believes. You know, I can't divorce what he knows from 5 what he knows.</p> <p>6 Q. (BY MR. CARROLL) But let me ask it this way. Do you 7 train your investigators that there is some mens rea requirement 8 for knowing possession of somebody else's ballot?</p> <p>9 A. As part of our investigations and prosecutions of 10 election code cases, we certainly take this element of knowing 11 possession into account.</p> <p>12 Q. Okay. I mean, and I've been using the term "mens rea" 13 as a culpable mental state. Do you train them that all they 14 have to be able to prove is that somebody didn't have the other 15 person's ballot in possession because of an accident or a 16 mistake?</p> <p>17 A. I think a fair way to characterize it, Mr. Carroll, is 18 to say that we train our investigators and prosecutors to 19 conduct investigations that would fairly and fully examine 20 evidence of the facts and circumstances under which in this kind 21 of a case you're talking about a person possessed a mail-in 22 ballot or carrier envelope.</p> <p>23 Q. And that's what I'm trying to understand. The SIU 24 people come in and they ask the lawyers what do we have to prove 25 to make a case against somebody for illegally possessing a</p>

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<p>1 ballot, what do you tell them?</p> <p>2 A. I think that our investigators that -- number one, our</p> <p>3 investigators that conduct these investigations themselves have</p> <p>4 access and have a level of experience with the statute</p> <p>5 themselves. Number two, if there is a discussion about a</p> <p>6 particular case hypothetically and what the elements are, and if</p> <p>7 you're talking about an 86.006F type case, then they would</p> <p>8 certainly talk about knowing possession being one of the</p> <p>9 elements.</p> <p>10 Q. And knowing being complete in the context that you</p> <p>11 described to me a second ago and that is it's not an accident or</p> <p>12 not a mistake?</p> <p>13 A. Yes, sir, and additionally just having -- doing a fair</p> <p>14 investigation of whether the facts showed that a person</p> <p>15 comprehended that he or she was in possession of a carrier</p> <p>16 envelope or mail-in ballot.</p> <p>17 MR. CARROLL: Let's mark this one, please.</p> <p>18 (Exhibit No. 2 marked.)</p> <p>19 MR. CARROLL: This is that letter.</p> <p>20 Q. (BY MR. CARROLL) Have you seen that letter before</p> <p>21 today, Mr. Nichols?</p> <p>22 A. Frankly I haven't.</p> <p>23 Q. I'm curious about the statistics that are in the</p> <p>24 attached table. One is marked indictments and one is marked</p> <p>25 convictions and I've highlighted a couple of them. Are you</p>	<p>1 sure.</p> <p>2 Q. And here's my question, and it's again in the context</p> <p>3 of how you prepare your office to carry out your duties in</p> <p>4 connection with these two statutes. If I get the court</p> <p>5 reporter's written ballot and hold it and I don't fall within</p> <p>6 any of the exceptions, that would constitute a collarable</p> <p>7 offense, correct?</p> <p>8 MS. DONNELLY: I'm going to object that the</p> <p>9 question is vague and the statute speaks for itself. You can</p> <p>10 answer.</p> <p>11 A. The knowing possession of an official ballot or</p> <p>12 official carrier envelope provided under the code to another is</p> <p>13 a criminal offense unless one of the exceptions, the six</p> <p>14 exceptions, laid out in the statute apply.</p> <p>15 MS. DONNELLY: Marked ballot, you meant.</p> <p>16 THE WITNESS: Yes. Well, the statute speaks in</p> <p>17 terms of official ballot.</p> <p>18 Q. (BY MR. CARROLL) Official ballot?</p> <p>19 A. Yes, sir.</p> <p>20 Q. So my hypothetical is I have the court reporter's</p> <p>21 official ballot and I'm not subject to any of the exceptions so</p> <p>22 that is a collarable violation of the possession statute,</p> <p>23 correct?</p> <p>24 MS. DONNELLY: Same objection. Misstates the</p> <p>25 statute and vague. You can answer.</p>
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<p>1 familiar with those criminal prosecutions?</p> <p>2 A. Yes, sir, and I think part of the material that you</p> <p>3 probably got this morning may be an update on these tables.</p> <p>4 Q. But let's talk about the two I have highlighted. One</p> <p>5 of them is Willie Ray from up in Texarkana in Bowie County,</p> <p>6 correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Do you know anything about that criminal case?</p> <p>9 MS. DONNELLY: I'm going to object. That</p> <p>10 question is outside the scope. We've not been asked to prepare</p> <p>11 this witness to testify about the details of Ms. Ray's and</p> <p>12 Ms. Johnson's cases.</p> <p>13 Q. (BY MR. CARROLL) All right. Well, let me ask this.</p> <p>14 What does that table show that Willie Ray was charged with?</p> <p>15 A. On the indictments chart that's attached to this</p> <p>16 letter, the language -- it says, "Possessing an official ballot</p> <p>17 or carrier envelope of another" and then on the convictions page</p> <p>18 it says, "Possessing an official ballot or carrier envelope of</p> <p>19 another." So it looks like the same language.</p> <p>20 Q. Okay. Did you see any reference to that underlying</p> <p>21 offense in the complaint or amended complaint that you may have</p> <p>22 reviewed in preparation for today?</p> <p>23 A. I think there is an allegation in the amended</p> <p>24 complaint about Ms. Ray and the offense to which she pled</p> <p>25 guilty. I think there is. I'd have to look at it again to make</p>	<p>1 A. Again, if the facts and circumstance of your</p> <p>2 hypothetical involve a situation where you knowingly possess an</p> <p>3 official ballot or official carrier envelope provided under the</p> <p>4 code to another person and none of the six exceptions to that</p> <p>5 general rule apply, then that is a violation of 86.006F of the</p> <p>6 election code.</p> <p>7 MS. DONNELLY: And again, you're only referring</p> <p>8 to marked ballots, correct?</p> <p>9 MR. CARROLL: Well, no. He said he's referring</p> <p>10 to official ballots, correct?</p> <p>11 A. That's the way -- in the way that that's defined in</p> <p>12 the statute.</p> <p>13 MS. DONNELLY: Same objection. Misstates the</p> <p>14 statute.</p> <p>15 Q. (BY MR. CARROLL) Then my hypothetical has a second</p> <p>16 part to it, and that is I take the court reporter's official</p> <p>17 ballot and I walk across the street and I put it in the mail</p> <p>18 drop. That's a second crime, is it not, unless I fill in the</p> <p>19 carrier envelope?</p> <p>20 MS. DONNELLY: Objection, vague, compound and</p> <p>21 misstates the statute.</p> <p>22 A. Yeah. I think you got a little bit off track there,</p> <p>23 because your act of possessing the -- knowing possession -- if</p> <p>24 you're shown to be in knowing possession of it, then what you've</p> <p>25 described as filling out the carrier envelope and signing it</p>

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<p>1 would be an exception to the commission of that offense. So in 2 other words, if you took the official ballot or carrier envelope 3 provided to another and you followed the procedures within the 4 election code to document and provide a chain of custody with 5 respect to that ballot and carrier envelope, then by definition 6 you would not have committed an offense.</p> <p>7 Q. (BY MR. CARROLL) Well, I misspoke because my 8 hypothetical is that I didn't fill out the envelope. The first 9 thing I did is I took her ballot and I didn't fall within the 10 exceptions. And then I walked across the street and I put it in 11 the mail drop without having signed and identified myself as the 12 statute requires. That would constitute two crimes, would it 13 not?</p> <p>14 A. I don't believe I see it that way. The offense that 15 we're talking about is 86.006F, which is the knowing possession 16 of an official ballot or official carrier envelope provided 17 under the code to another. If you're talking about a situation 18 where you feel like the act of dropping it in the mailbox is a 19 separate criminal offense, off the top of my head I'm not aware 20 of any provision in the election code that would seek to 21 criminalize that act specifically.</p> <p>22 Q. Look at 86.0051B.</p> <p>23 A. Yes, sir.</p> <p>24 Q. Doesn't that criminalize me putting it in the mail 25 without signing the carrier envelope?</p>	<p>1 with the same ballot, in which event the offense is a state jail 2 felony.</p> <p>3 86.006F carries a range of potential penalties.</p> <p>4 It is a Class B misdemeanor if a person is in knowing possession 5 of at least one but fewer than 10 ballots or carrier envelopes 6 unless the possession is without consent of the voter, in which 7 event the offense is a state jail felony. And then it's a Class 8 A misdemeanor under where there is 10 or fewer than 20 ballots. 9 It's a state jail felony if the person possesses 20 or more 10 ballots in the way that it's described 86.006, sub G.</p> <p>11 Q. Same question. Which do you think from your office's 12 standpoint is the more serious offense, mailing somebody else's 13 ballot without signing all of the -- or filling in all the 14 information or possessing somebody else's ballot illegally?</p> <p>15 MS. DONNELLY: Objection, misstates the statute 16 and mischaracterizes the former testimony. You can answer.</p> <p>17 A. Mr. Carroll, any violation of law is a serious matter, 18 but in terms of the classification of potential penalties, 19 86.006F -- an 86.006F case hypothetically carries up to a second 20 degree felony level of punishment, whereas under 86.0051 the 21 highest level of potential penalty under that statute is a state 22 jail felony.</p> <p>23 Q. (BY MR. CARROLL) That's the mailing without filling 24 in the ballot.</p> <p>25 A. That's 86.0051, yes, sir.</p>
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<p>1 A. What that provision deals with is a situation where 2 you as a carrier have a carrier envelope but you do not provide 3 your signature, printed name and residence address on the 4 reverse side of the envelope.</p> <p>5 Q. So my question is still on the table. If I take the 6 envelope that has the official ballot in it without the 7 exceptions, that's a crime. And then if I drop it in the mail 8 without filling in all the information that the statute 9 requires, that's a second crime, is it not?</p> <p>10 A. Well, I'm not sure it's a second crime. There's a 11 separate provision in the election code that governs that 12 conduct.</p> <p>13 Q. Okay. But you could indict under either one, could 14 you not?</p> <p>15 A. It's a complicated question because you would indict 16 based on the facts and circumstances of a particular case, and 17 whether or not a particular act would be considered to be a 18 lesser included offense of the other is something that you'd 19 have to determine in each individual case.</p> <p>20 Q. From the standpoint of your responsibilities for this 21 office, which is the more serious offense?</p> <p>22 A. Well, in terms of classification, the -- an offense 23 under 86.0051 is classified as a Class B misdemeanor unless the 24 person is convicted of an offense under Section 64.036 for 25 providing unlawful assistance to the same voter in connection</p>	<p>1 Q. Okay. Now, one of the things I discovered in 2 preparing for your deposition is that according to the statute 3 if I'm in jail I can apply for a written ballot, a mail-in 4 ballot.</p> <p>5 A. What you're referring to is the --</p> <p>6 Q. The application for a mail-in ballot.</p> <p>7 A. And you're actually looking at 86.003. There is 8 actually another provision of law that deals with the 9 qualifications.</p> <p>10 Q. Assume I'm qualified. If I'm in a nursing home I can 11 apply for a ballot. If I'm in jail I can apply for a ballot. 12 Assume that I'm qualified to vote otherwise, correct?</p> <p>13 A. There is a provision of law that provides that -- and 14 you haven't given it to me. I can look it up for you, but there 15 is a provision of law that specifies that one of the categories 16 of unavailability concerns someone who is in jail.</p> <p>17 Q. And the highlighted provision that I just put in front 18 of you deals with where the Secretary of State sends the ballot, 19 correct?</p> <p>20 A. Well, it wouldn't necessarily be the Secretary of 21 State. It would be the --</p> <p>22 Q. The election official?</p> <p>23 A. The election official, yes.</p> <p>24 Q. All right. Now, let's assume that I'm in jail and 25 that I have applied for a ballot and that I'm otherwise entitled</p>

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<p>1 to vote and that I vote and I put my ballot in the carrier</p> <p>2 envelope and I hand it to the jailer and the jailer takes it out</p> <p>3 and puts it in the general box to be mailed. Has the jailer</p> <p>4 violated the knowing possession of my ballot?</p> <p>5 MS. DONNELLY: I'm going to object to the</p> <p>6 question as the statute speaks for itself and that the</p> <p>7 hypothetical is not based on any factual scenario in this case.</p> <p>8 I object. I think it's outside the scope of this deposition and</p> <p>9 the scope of the notice.</p> <p>10 A. You want me to try to answer it?</p> <p>11 Q. (BY MR. CARROLL) That's why I asked the question.</p> <p>12 A. Any case is going to depend on the facts and</p> <p>13 circumstances.</p> <p>14 Q. I mean, you wouldn't prosecute that case, would you?</p> <p>15 A. I'm not aware of any referral that has been brought to</p> <p>16 our office that presents a fact situation that you've given me.</p> <p>17 Q. Okay. My question is, you wouldn't prosecute that</p> <p>18 case, would you?</p> <p>19 A. I can't answer that question hypothetically. I mean,</p> <p>20 every case, as you would expect -- I would hope everybody would</p> <p>21 expect -- rises and falls on its particular facts and we</p> <p>22 don't -- we wouldn't ever make a prosecution decision based on</p> <p>23 an off-the-cuff hypothetical that was presented to one of our</p> <p>24 law enforcement professionals.</p> <p>25 Q. Okay. But you couldn't even answer that question</p>	<p>1 somebody to facilitate mailing, the i's are not dotted, the t's</p> <p>2 are not crossed. That is a complete offense on its face, is it</p> <p>3 not?</p> <p>4 MS. DONNELLY: Objection, asked and answered.</p> <p>5 A. Again, it's going to depend on the facts and</p> <p>6 circumstances of each case that the evidence that's adduced</p> <p>7 during the investigation.</p> <p>8 Q. (BY MR. CARROLL) Have you -- or what do you know</p> <p>9 about the term "ballot harvesting"? Have you ever heard that</p> <p>10 term?</p> <p>11 A. I have heard that term.</p> <p>12 Q. What does that mean to you?</p> <p>13 A. It's certainly not a term that I came up with, but I</p> <p>14 understand that that -- among other places, that terminology</p> <p>15 came up in the context of discussions of the Texas Legislature</p> <p>16 over the enactment of amendments to the Texas Election Code.</p> <p>17 Q. The '03 amendments?</p> <p>18 A. I can't just say that exclusively. It may have come</p> <p>19 up in other areas, other amendments, but I know that it came up</p> <p>20 in that context.</p> <p>21 Q. Do you have an understanding of what the term meant in</p> <p>22 that context?</p> <p>23 A. It was intended to convey a situation where</p> <p>24 individuals or organizations of individuals would engage in a</p> <p>25 concerted effort to, in effect, override the free exercise of</p>
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<p>1 hypothetically for me today if you had exactly those facts,</p> <p>2 nothing else. If somebody came in and said, boss, we got a</p> <p>3 referral from some kook in the jail who read the law book,</p> <p>4 filled out the ballot, handed it to a jailer and now claims the</p> <p>5 jailer has violated the law.</p> <p>6 A. I cannot answer that question hypothetically.</p> <p>7 Q. Same question for somebody in a nursing home. Orderly</p> <p>8 comes by, picks up a person in the nursing home's ballot.</p> <p>9 Couldn't answer that either?</p> <p>10 A. Not hypothetically. I would point out, however, that,</p> <p>11 again, every case is going to rise and fall based on the facts</p> <p>12 and how they mesh or don't mesh with the elements of the</p> <p>13 election code provisions, which of course would include an</p> <p>14 element of knowing possession.</p> <p>15 Q. I mean, that's the only element, isn't it?</p> <p>16 A. No, sir.</p> <p>17 Q. Tell me the other elements. If the exceptions don't</p> <p>18 apply.</p> <p>19 A. Well, other elements include not only knowing</p> <p>20 possession but also that the material possessed be an official</p> <p>21 ballot or official carrier envelope. An additional requirement</p> <p>22 would be that that material was provided under the election code</p> <p>23 to another.</p> <p>24 Q. Okay. My jail example, my nursing home example,</p> <p>25 official ballots, official carrier envelopes turned over to</p>	<p>1 the ballot by voters by abusing the mail-in ballot process.</p> <p>2 Q. And do you associate that with some level of coercion</p> <p>3 of the voters?</p> <p>4 A. Again, when you're dealing with the kinds of</p> <p>5 situations that the -- as I understand that the election code</p> <p>6 amendments are intended to address, you're dealing with, in many</p> <p>7 instances, elderly or infirm voters and so the issue of coercion</p> <p>8 or duress is pretty complicated in those -- can be complicated</p> <p>9 in those situations.</p> <p>10 Q. Would ballot harvesting, as you understand the term,</p> <p>11 apply to efforts by, say, the League of Women Voters to</p> <p>12 encourage shut-ins, hospital folks, nursing home folks, to apply</p> <p>13 for, fill out and mail in their ballots?</p> <p>14 A. I think that the clear intent of the election code is</p> <p>15 to provide the free and lawful exercise of the ballot by as many</p> <p>16 persons as possible in the State of Texas, including those who</p> <p>17 may be disabled or unable to appear at the ballot box directly</p> <p>18 to cast their ballots.</p> <p>19 Q. Would you agree with me, Mr. Nichols, that there is</p> <p>20 nothing on its face suspicious or should be suspicious about a</p> <p>21 voter voting with a mail-in ballot?</p> <p>22 A. Again, the intent behind having a mail-in ballot</p> <p>23 process is to ensure that as many citizens in the State of Texas</p> <p>24 as possible, even if they are incapacitated or infirm or unable</p> <p>25 to go to the ballot box, have a mechanism in which their</p>

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<p>1 individual free exercise of the ballot is safeguarded and 2 ensured.</p> <p>3 Q. Matter of fact, in some of these materials I noticed 4 that -- and I think it's the AG's materials, that a voter may 5 not be arrested during balloting, during voting, except for 6 breach of the peace, commission of a felony or treason. Have 7 you ever seen that? I mean, it's in there.</p> <p>8 A. You're catching me cold on that one. If you've got 9 something for me to look at I'm happy to do it.</p> <p>10 Q. I can find it. But to your point, there is nothing 11 about your reading of the statute insofar as the charge to your 12 office that tells you from the legislature take a close look at 13 write-in ballots?</p> <p>14 A. Well, I think, again, you're getting a little bit off 15 the track there. Consistent with my earlier testimony, in order 16 to ensure that the exercise of individual ballots is done 17 appropriately, especially in situations where you're dealing 18 with a population that may be elderly or infirm, I think the 19 clear direction that our office has gotten from the legislature, 20 other prosecutors and law enforcement agencies have gotten from 21 the legislature, is that you need to make sure that the process 22 is working so that freely exercised ballots are not only cast 23 but actually have meaning and that those freely cast ballots are 24 not, in effect, cancelled out by activities of those that would 25 abuse the mail-in process.</p>	<p>1 A. In terms of contacting an affected voter and 2 discussing the facts and circumstances of their casting of the 3 ballot, I think it is fair to say that that's a common part of 4 any election code investigation that concerns -- I mean, it's 5 not just the mail-in ballot process but other aspects of the 6 voting system in Texas.</p> <p>7 Q. And based on what you told me a second ago about what 8 you believe your charge to be from the legislature, it would be 9 an important one, wouldn't it?</p> <p>10 A. I think that it -- I can't ever say as an absolute 11 matter because I don't think you can talk in absolutes. I think 12 every case rises and falls, again, on its facts and 13 circumstances. But I would agree with you that most often it is 14 going to be an important part of that investigation.</p> <p>15 Q. Have you looked at the State's answer to the first 16 amendment -- first amended complaint in the lawsuit?</p> <p>17 A. No, sir, I have not.</p> <p>18 Q. Let me just show what I'm curious about, and that is 19 the State's answer to the Paragraph 40. And here's what 20 Paragraph 40 alleges. And it talks about by filling out but not 21 signing a mail-in ballot application. And then the State says 22 that -- it says the State admits that the practice is condoned 23 by the Attorney General. Is that the practice of pre-filling 24 out the applications? 25 MS. DONNELLY: I'm going to object to the</p>
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<p>1 Q. I looked at the policies and procedures that you-all 2 furnished and this is a copy and I'm not going to refer you to 3 any specific provision right now. But I didn't see any 4 directive in the policies and procedures that asked the -- or 5 told the investigator to interrogate the voter as to whether the 6 voter felt like he or she had been coerced or intimidated by any 7 alleged offense in connection with the possession or the felony 8 and the carrier envelope. Did I miss that?</p> <p>9 MS. DONNELLY: Objection, overly broad.</p> <p>10 A. I don't know if you're going to mark this, but I think 11 you've actually got a couple of documents that are stapled 12 together.</p> <p>13 In terms of the document, the first part of this 14 document --</p> <p>15 Q. (BY MR. CARROLL) Let me interrupt you. You don't 16 have to restrict your answer to the document. Do you train your 17 people to interrogate the voter to find out if the voter felt 18 like either somebody else possessing his or her ballot was a 19 part of intimidation or coercion or whether somebody mailing his 20 or her ballot without filling in all the paperwork was a part of 21 coercion and intimidation?</p> <p>22 A. Interrogate is a little bit of a loaded word.</p> <p>23 Q. Interrogate is the wrong word.</p> <p>24 A. Yes, sir.</p> <p>25 Q. But investigate, question.</p>	<p>1 question as vague.</p> <p>2 A. It's probably something you're going to have to ask 3 the lawyers that are working on the case, because I just -- I 4 was not involved in the --</p> <p>5 Q. (BY MR. CARROLL) Do you know what pre-filling out 6 means?</p> <p>7 MS. DONNELLY: I think this is beyond the scope 8 of the notice. The question is also vague, compound, confusing.</p> <p>9 A. I mean, all I can do for you is just read the language 10 that's in the answer.</p> <p>11 Q. (BY MR. CARROLL) So the terminology doesn't mean 12 anything to you, is what I'm curious about.</p> <p>13 A. Well, I'm looking at the Plaintiff's First Amended 14 Complaint and it talks about longstanding practice by political 15 parties and other organizations of, quote, pre-filling, closed 16 quote, applications for mail-in ballots.</p> <p>17 Q. And the State's position is that it condones whatever 18 that is. And I was just curious --</p> <p>19 A. Well, I think the language here -- again, all I can do 20 is read the language for you, but it says that "Defendant's can 21 neither admit or deny" -- and I'm looking at the Answer to 22 Plaintiff's First Amended Complaint. It says, "Defendants can 23 neither admit or deny that pre-filling envelopes is a 24 longstanding practice but admit that the practice is condoned by 25 the Attorney General's PowerPoint presentation." That's how it</p>

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<p>1 reads.</p> <p>2 Q. So from the standpoint of what you do in your office</p> <p>3 in your role here as a 30(b)(6) witness, you don't know anything</p> <p>4 about pre-filing and the significance or insignificance of the</p> <p>5 admission by the State about the PowerPoint condoning that?</p> <p>6 A. Mr. Carroll, I've served as a lawyer for parties in</p> <p>7 litigation, I've served as a witness and I do understand the</p> <p>8 distinction. So whatever the legal significance is of the</p> <p>9 complaint and the answer and what the effect of that is legally</p> <p>10 I've leave to the lawyers for --</p> <p>11 Q. And I'm not asking you that. I'm just trying to find</p> <p>12 out what you know as a 30(b)(6) witness, if anything, and maybe</p> <p>13 you don't know anything.</p> <p>14 MS. DONNELLY: About what?</p> <p>15 MR. CARROLL: About the term "condoning</p> <p>16 pre-filing."</p> <p>17 A. What I'm telling you is that I was not involved in</p> <p>18 the -- obviously neither the drafting of the plaintiff's</p> <p>19 complaint or the drafting of the answer and I certainly did</p> <p>20 not -- in looking at the categories that were listed in the</p> <p>21 30(b)(6), haven't prepared myself in response to those</p> <p>22 categories to address that issue.</p> <p>23 Q. (BY MR. CARROLL) And insofar as what you do as</p> <p>24 described earlier to me, none of those terms are on your radar,</p> <p>25 pre-filing or anything like that?</p>	<p>1 A. I don't think they could be characterized as</p> <p>2 representing a majority of the activities that we're involved</p> <p>3 in, no, sir.</p> <p>4 Q. Can you tell me without compromising any</p> <p>5 investigations how many overall active files you've got in your</p> <p>6 shop today without regard to what they are?</p> <p>7 A. I can't give you an exact number, but I think it's</p> <p>8 safe to say that we have active open files in -- on voter fraud</p> <p>9 issues in dozens of cases.</p> <p>10 Q. And how many active open files in all of the cases</p> <p>11 that you're handling regardless of what they are?</p> <p>12 A. I don't -- I can't -- I don't track that specifically.</p> <p>13 Q. You don't know whether it's hundreds or thousands?</p> <p>14 A. No, sir.</p> <p>15 Q. You really don't know?</p> <p>16 A. No, sir.</p> <p>17 Q. How many files do your lawyers handle per lawyer, do</p> <p>18 you know that?</p> <p>19 A. It varies. I mean, obviously, as you know, the</p> <p>20 workload of the lawyer depends on the kinds of matters that the</p> <p>21 lawyer is working on and how complicated they are. But on</p> <p>22 average I would say that our prosecutors are working anywhere</p> <p>23 between 10 to 15 matters actively at one time.</p> <p>24 Q. And you have how many?</p> <p>25 A. 19.</p>
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<p>1 A. I'm not sure exactly what you mean by on my radar.</p> <p>2 Q. Have you ever heard them before I asked you about them</p> <p>3 today?</p> <p>4 A. I just can't recall.</p> <p>5 Q. Let's see. Let's keep our exhibits straight a little</p> <p>6 bit. Let me ask you another question about Number 1.</p> <p>7 The General says that voting fraud is an</p> <p>8 epidemic. Do you agree with that characterization? Are you</p> <p>9 seeing an epidemic in your office?</p> <p>10 A. I'm not sure that I'm in a position to personally</p> <p>11 agree or disagree. I -- Mr. Carroll, I'm a -- consider myself</p> <p>12 to be a law enforcement professional and so I'm not involved</p> <p>13 necessarily in characterizing a situation one way or the other.</p> <p>14 I kind of deal with the cases that come into the office.</p> <p>15 MS. DONNELLY: Exhibit 1 is also outside the</p> <p>16 scope of the notice. I'm going to object to any more questions</p> <p>17 about characterizing what's in Exhibit 1.</p> <p>18 Q. (BY MR. CARROLL) And I understand and I'm not trying</p> <p>19 to get you into a semantic judging or disagreeing with your</p> <p>20 boss. From the standpoint of active cases, I'm not asking you</p> <p>21 to identify them, are cases under the election code -- and I may</p> <p>22 have even asked you this before -- are they the bulk of what</p> <p>23 your office does?</p> <p>24 A. Of our overall criminal justice initiatives?</p> <p>25 Q. Right.</p>	<p>1 Q. So you may have 3 or 400 cases in the shop?</p> <p>2 A. Under active work by the criminal prosecutions</p> <p>3 division, absolutely, but then again, you've got matters that</p> <p>4 are also pending on the investigatory stage with the criminal</p> <p>5 investigations division. So that would not be included in that</p> <p>6 total.</p> <p>7 Q. Does the Solicitor General have anything to do with</p> <p>8 enforcement of the election laws in the State of Texas?</p> <p>9 A. The Solicitor General's involvement has been in the</p> <p>10 context of -- I know in the litigation that your clients have</p> <p>11 initiated. But in terms of ongoing day-to-day involvement in</p> <p>12 ongoing investigations and prosecutions, no, sir.</p> <p>13 Q. Do you know -- well, first of all, you and I have</p> <p>14 talked about the -- what we've described as the 2003 amendments</p> <p>15 to the election code.</p> <p>16 A. Yes, sir.</p> <p>17 Q. And those are the ones we've been talking about, the</p> <p>18 illegal possession of somebody else's ballot and what you have</p> <p>19 to do to legally handle and mail somebody else's ballot. Those</p> <p>20 came about in 2003, right?</p> <p>21 A. We've talked about some of them.</p> <p>22 Q. But would you agree that the ones that you and I have</p> <p>23 talked about are part of the 2003 amendment?</p> <p>24 A. The language of 86.006F that we've talked about was</p> <p>25 the subject of amendments not only in 2003 but also 2007, if I</p>

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<p>1 recall correctly.</p> <p>2 Q. Because in 2007, as I understand it, the law changed</p> <p>3 to make the exceptions to unlawful possession that you and I</p> <p>4 talked about exceptions rather than affirmative defenses.</p> <p>5 A. There was a change to 86.006F along those lines.</p> <p>6 Q. Because in '03 that was something you could go into</p> <p>7 court and prove as an affirmative defense but you still could be</p> <p>8 indicted.</p> <p>9 A. I think that -- again, I think that's a very</p> <p>10 complicated issue whether a prosecutor would ever bring a case.</p> <p>11 Q. I'm not asking that. I'm just saying that's the</p> <p>12 difference between an exception to criminal conduct and an</p> <p>13 affirmative defense to criminal conduct, correct?</p> <p>14 A. I guess in fairness what I'm trying to explain is I'm</p> <p>15 not sure that there is a great deal of practical difference</p> <p>16 between the two.</p> <p>17 Q. Because you don't think anybody would have wasted your</p> <p>18 office's time indicting somebody knowing that there was a good</p> <p>19 affirmative defense?</p> <p>20 A. Yeah. I'm not aware of any situation in which either</p> <p>21 our office or local prosecutor filed a case under 86.006F --</p> <p>22 Q. As a matter of fact, I saw in some of the</p> <p>23 information --</p> <p>24 MS. DONNELLY: Let him finish.</p> <p>25 A. -- with knowledge that the subject or target of the</p>	<p>1 prosecution, it's going to go through a review process that's</p> <p>2 going to involve one or more what I'll call line prosecutors</p> <p>3 that will look at the case to determine whether or not it merits</p> <p>4 further investigation first and foremost. And Number 2, once</p> <p>5 the investigation is completed, whether it merits the potential</p> <p>6 presentation to a grand jury to consider -- for the grand jury</p> <p>7 whether charges should be brought.</p> <p>8 And then before that ultimate decision is made,</p> <p>9 that judgment of the line prosecutor or prosecutors is also</p> <p>10 reviewed by management within the criminal prosecutions</p> <p>11 division.</p> <p>12 Q. Do you have an active role in that, you personally?</p> <p>13 A. From time to time I can get involved in discussions on</p> <p>14 particular cases, but it's not a hard and fast rule that I'll</p> <p>15 always be involved.</p> <p>16 Q. Who is your first assistant in your squad?</p> <p>17 A. Well, the chief of the criminal prosecutions division</p> <p>18 is named Don Clemmer, C-l-e-m-m-e-r.</p> <p>19 Q. And how long has Mr. Clemmer had that job?</p> <p>20 A. He has been in that role -- we've done some</p> <p>21 reorganization of the criminal justice division. Don has been</p> <p>22 with the agency for many years, and I can't remember exactly</p> <p>23 when we rolled out the criminal prosecutions division as a</p> <p>24 division. That was sometime last year. But Don has been in</p> <p>25 management in the agency for many years.</p>
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<p>1 investigation had an affirmative defense that met the</p> <p>2 requirements of the subsections of 86.006 F.</p> <p>3 Q. (BY MR. CARROLL) And you would agree with that?</p> <p>4 A. As a prosecutor, absolutely.</p> <p>5 Q. As a matter of fact, somewhere in the information that</p> <p>6 I looked at, if I understood it right, it's a policy of the</p> <p>7 office not to prosecute cases that would be a -- what's it</p> <p>8 called -- a C level misdemeanor. Did I get that right?</p> <p>9 A. At one point in time there was a --</p> <p>10 Q. You don't call it C level. What do you call it?</p> <p>11 A. Class C.</p> <p>12 Q. Class C.</p> <p>13 A. There was a policy that was in effect at some point in</p> <p>14 the history, but I think if you look at the current guidelines</p> <p>15 for investigations and prosecutions of election code violations</p> <p>16 by this office, the classification of the offense is a</p> <p>17 consideration to be made in deciding whether or not to prosecute</p> <p>18 a case. But I don't think there's any kind of flat prohibition</p> <p>19 on prosecuting cases even if they only involve Class C</p> <p>20 misdemeanors.</p> <p>21 Q. How high does the approval requirement go in your</p> <p>22 office before prosecution can be initiated?</p> <p>23 A. When a case is investigated through the criminal</p> <p>24 investigations division, or hypothetically through another law</p> <p>25 enforcement agency and presented to our office for potential</p>	<p>1 Q. Who is Daniel Guajardo?</p> <p>2 A. He is a peace officer, an investigator with our</p> <p>3 criminal investigations division.</p> <p>4 Q. And is he involved in training your investigators as</p> <p>5 to how to handle alleged violations of the election code?</p> <p>6 A. I would say that he -- he's been involved in both</p> <p>7 investigations of election code violations and in assisting</p> <p>8 other investigators within the CID in the investigation of those</p> <p>9 cases.</p> <p>10 Q. Is there a chief investigator?</p> <p>11 A. The way that kind of -- chain of command works is that</p> <p>12 you have the special investigations unit that you talked about</p> <p>13 earlier. Danny Guajardo is one of those nine that I told you</p> <p>14 about. The chief of that unit is Captain Forest Mitchell. And</p> <p>15 Captain Mitchell reports up a chain to the deputy chief for the</p> <p>16 criminal investigations division who then obviously reports to</p> <p>17 the chief of the criminal investigations division who then</p> <p>18 reports to me.</p> <p>19 Q. And if I understood you earlier right, there is no</p> <p>20 investigator assigned exclusively or primarily to election law</p> <p>21 cases?</p> <p>22 A. There is no investigator assigned exclusively to</p> <p>23 election code cases. It may be, you know, with the ebb and flow</p> <p>24 of people's work that at any particular point in time</p> <p>25 somebody -- one of our investigators is primarily engaged in</p>

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<p>1 investigating election code cases.</p> <p>2 Q. That's happenstance?</p> <p>3 A. There is nobody that is a dedicated person that you</p> <p>4 could say your only job at the agency is either to investigate</p> <p>5 or prosecute election code cases.</p> <p>6 Q. Do you know -- of course, I know you weren't around</p> <p>7 with the AG in '03, correct?</p> <p>8 A. I was not. I was happily in private practice.</p> <p>9 Q. You were in private practice, okay. Do you know, in</p> <p>10 your capacity as the 30(b)(6) witness, what role, if any, the</p> <p>11 Attorney General had institutionally in the legislature's '03</p> <p>12 amendments to the election code?</p> <p>13 A. It's my understanding that there was no representative</p> <p>14 of the office who testified on those amendments in our normal</p> <p>15 capacity of testimony, which will be as a, quote, resource</p> <p>16 witness, closed quote, and that's kind of my level of</p> <p>17 understanding.</p> <p>18 Q. Do you have any knowledge about the source of concern</p> <p>19 in the AG's office institutionally pre '03 for voting fraud?</p> <p>20 A. I think the question unintentionally obviously kind of</p> <p>21 mischaracterizes what our involvement in these issues are from a</p> <p>22 criminal justice perspective. I mean, our charge, as you know,</p> <p>23 is to enforce the laws as written and as passed by the</p> <p>24 legislature. And so I don't think it's a situation where our</p> <p>25 agency is either charged with or does set the -- create the law</p>	<p>1 peace officer, and as part of his career spent some time in law</p> <p>2 enforcement out in El Paso before joining our agency. And I'm</p> <p>3 sorry, I don't have the date of his joining the agency, but I</p> <p>4 can certainly get that for you.</p> <p>5 Q. How about Adrian McFarland?</p> <p>6 A. Adrian McFarland is one of our Assistant Attorney</p> <p>7 Generals in our criminal prosecutions division, and, in fact,</p> <p>8 she heads up our -- what's called the major crimes and violent</p> <p>9 offenders unit of prosecutors within the criminal prosecutions</p> <p>10 division.</p> <p>11 Q. What's her involvement, if you know, in voter fraud</p> <p>12 cases?</p> <p>13 A. At various points in time Adrian has been involved in</p> <p>14 supervising other prosecutors within the agency and that</p> <p>15 included a time period when the agency still had that group, the</p> <p>16 CLED or criminal law enforcement division.</p> <p>17 Q. Okay. I'm looking at a declaration that she's</p> <p>18 apparently swore out in this case back in '06 when she talked</p> <p>19 about her job in the CLED group.</p> <p>20 A. Yes, sir.</p> <p>21 Q. She's doing a different job now?</p> <p>22 A. She has a slightly different role, but she's still</p> <p>23 involved in not only serving as a prosecutor but also as a</p> <p>24 supervisor of prosecutors in our agency.</p> <p>25 Q. And you told me a second ago that she's involved in</p>
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<p>1 or set the policy. That's the legislature's job.</p> <p>2 Q. So the AG institutionally doesn't lobby for any</p> <p>3 changes in the law?</p> <p>4 A. We are not an agency that's involved in lobbying</p> <p>5 activities. If we are called upon to serve, as I said earlier,</p> <p>6 as a resource witness or to provide advice to legislators or</p> <p>7 other state agencies, that's obviously part of our daily work.</p> <p>8 Q. Does the AG have any role in interpreting statutes</p> <p>9 such as the '03 amendments to the election code?</p> <p>10 A. It's conceivable that through the opinions process</p> <p>11 that's kind of -- you're familiar with the AG opinions process.</p> <p>12 It's possible that interpretation of the law could occur through</p> <p>13 that process. I'm not aware of any situation in which the</p> <p>14 Attorney General has opined on the election code through the</p> <p>15 opinions process.</p> <p>16 Q. Tell me what your understanding is of the change in</p> <p>17 the election code from '03 to the '07 amendments from the</p> <p>18 criminal standpoint.</p> <p>19 A. The '07 amendment that I'm aware is the one that we've</p> <p>20 discussed on 86.006F.</p> <p>21 Q. Who is David Boatwright (sic)?</p> <p>22 A. Chief Boatwright is the chief of our criminal</p> <p>23 investigations division.</p> <p>24 Q. What's Chief Boatwright's background?</p> <p>25 A. He is a lifelong law enforcement official, certified</p>	<p>1 violent offenders and major crime?</p> <p>2 A. Yes, sir. Violent crime and major offenders section.</p> <p>3 We've gone -- as I said earlier, we went through some</p> <p>4 reorganization of our agency. As the agency has grown and as</p> <p>5 our responsibilities in the criminal justice arena have grown,</p> <p>6 we've gone through a little bit of a growing process as an</p> <p>7 institution, an organization.</p> <p>8 Q. And is she still responsible -- or maybe responsible</p> <p>9 is the wrong word. Does she still deal with violations of --</p> <p>10 criminal violations of the election code?</p> <p>11 A. It's possible that she does have some input on cases.</p> <p>12 Those cases are normally -- election code cases under the</p> <p>13 current structure are normally handled through a separate unit</p> <p>14 of the criminal prosecutions division, which is the white collar</p> <p>15 crime and public integrity unit within the criminal prosecutions</p> <p>16 division.</p> <p>17 Q. That's today?</p> <p>18 A. Yes, sir.</p> <p>19 Q. When did that --</p> <p>20 A. Reorganization I'm talking about occurred sometime in</p> <p>21 '07. So it looks like this affidavit was written in October of</p> <p>22 2006.</p> <p>23 Q. So today the office, I guess, characterizes election</p> <p>24 code violations as white collar crime?</p> <p>25 A. And public integrity crimes.</p>

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<p>1 Q. And public integrity?</p> <p>2 A. Yes, sir.</p> <p>3 MR. CARROLL: Let's go off the record for a</p> <p>4 second.</p> <p>5 (Break was taken from 11:45 a.m. to 12: 44 p.m.)</p> <p>6 (Exhibit Nos. 3 through 5 marked.)</p> <p>7 MS. DONNELLY: This deposition, we would like it</p> <p>8 noted on the record that it's being taken under the standard</p> <p>9 protective order in this case. I assume that's agreeable with</p> <p>10 counsel?</p> <p>11 MR. CARROLL: Completely agreeable.</p> <p>12 Q. (BY MR. CARROLL) Okay. Let's see if I can find what</p> <p>13 I wanted to do.</p> <p>14 MR. CARROLL: That's your mark, right?</p> <p>15 THE COURT REPORTER: Yes.</p> <p>16 Q. (BY MR. CARROLL) Mr. Nichols, I'm going to give you</p> <p>17 Exhibit 3, which we got in production and is called</p> <p>18 Investigation Strategy for Texas Election Code Violations. And</p> <p>19 this is January 25th of '06. And then when you get done</p> <p>20 glancing at it, I'll tell you specifically what I want to talk</p> <p>21 to you about.</p> <p>22 A. Okay.</p> <p>23 Q. Did you have anything to do with the preparation of</p> <p>24 this particular document?</p> <p>25 A. Me personally, no, sir. This appears to have been</p>	<p>1 conduct in and of itself would constitute a Class B misdemeanor</p> <p>2 under the statute.</p> <p>3 MS. DONNELLY: I'm going to object. The statute</p> <p>4 speaks for itself and this is clearly a summary of whoever the</p> <p>5 author was, their interpretation of the statute. But the</p> <p>6 statute speaks for itself.</p> <p>7 A. I am going to look back at the actual statute 86.0051</p> <p>8 and it provides -- I think this is what you're saying, if I'm</p> <p>9 following your question, Mr. Carroll. That the offense under</p> <p>10 that section is a Class B misdemeanor unless the person is</p> <p>11 convicted of an offense under Section 86.0051 for providing</p> <p>12 envelope assistance to the same voter in connection with the</p> <p>13 same ballot in which the offense is a state jail felony.</p> <p>14 Q. That's my question.</p> <p>15 A. I think that's your question.</p> <p>16 Q. That is my question. So do you see anywhere in</p> <p>17 Appendix 2 a reference to 86.0051 that is simply the Class B</p> <p>18 misdemeanor? That is what I'm going to call -- and you don't</p> <p>19 have to agree with this, but what I'm going to call a possession</p> <p>20 uncoupled with unlawful assistance, illegal possession uncoupled</p> <p>21 to unlawful assistance. Because I don't see it and I was just</p> <p>22 curious if I'm just missing it.</p> <p>23 A. In this document, unless I'm missing it, I don't see</p> <p>24 any reference to the Class B misdemeanor provisions of 86.0051.</p> <p>25 Q. Okay. Thank you. Now, look down at the last</p>
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<p>1 done sometime in December or January 2006.</p> <p>2 Q. Now, what I want to chat with you about for a second</p> <p>3 starts on Page 12 and that's Appendix 2 entitled Texas Election</p> <p>4 Code Violations.</p> <p>5 A. Yes, sir.</p> <p>6 MR. CARROLL: By the way, do you have a copy of</p> <p>7 this, Ms. Donnelly?</p> <p>8 MS. DONNELLY: No, I do not.</p> <p>9 MR. CARROLL: Let me see if I can find you one.</p> <p>10 Have we got an extra copy of that one?</p> <p>11 MS. DONNELLY: Yeah, I don't see a production</p> <p>12 number. Do you know where it came from?</p> <p>13 MR. CARROLL: Yeah, it came -- let's see. Hold</p> <p>14 on a second. Hold on a minute. I know we've got an extra copy.</p> <p>15 Here we go.</p> <p>16 Q. (BY MR. CARROLL) Okay.</p> <p>17 A. You wanted me to look at Page 12, Appendix 2.</p> <p>18 Q. Yeah, Texas Election Code Violations. And then if you</p> <p>19 would turn on forward to Page 15. And second to the bottom,</p> <p>20 Texas Election Code Annotated 86.0051, Carrier Envelope Action</p> <p>21 by a Person Other Than a Voter. See where I am?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Now, read that squib to yourself, and what I'm</p> <p>24 focusing on is the big "AND" in capital letters. Do you agree</p> <p>25 with me that the -- if you put a period in front of "and," that</p>	<p>1 paragraph on Page 15, 86.006 entitled Method of Returning Marked</p> <p>2 Ballots, and you and I have talked about that at length this</p> <p>3 morning.</p> <p>4 A. Yes, sir.</p> <p>5 Q. And I asked you whether I was correct in my</p> <p>6 understanding that possession could be a crime and then mailing</p> <p>7 without filling in the appropriate form could be a crime. Isn't</p> <p>8 that what this appendix says?</p> <p>9 A. I think this section appears to be consistent with our</p> <p>10 earlier discussion that there are two separate provisions of the</p> <p>11 election code, one being 86.0051, that deals with a situation in</p> <p>12 which someone other than the voter deposits a carrier envelope</p> <p>13 without filling in the required information. And that there is</p> <p>14 a separate provision in the election code, 86.006, that, as we</p> <p>15 discussed this morning, covers the situation where a person</p> <p>16 commits an offense if the person knowingly possesses an official</p> <p>17 ballot or official carrier envelope provided under the code to</p> <p>18 another, of course subject to the exceptions that we talked</p> <p>19 about at length earlier.</p> <p>20 Q. Okay. And what's the purpose of this document, if you</p> <p>21 know, or what was the purpose of this document?</p> <p>22 A. It appears to be a strategy document developed by the</p> <p>23 Office of the Attorney General to define the mission of the</p> <p>24 agency in enforcement of the election code.</p> <p>25 Q. Is there a more recent counterpart to that?</p>

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<p>1 A. I would consider this document to be a -- no longer a 2 live document, if you will. I think that -- I don't know if you 3 marked it or not, but it's the -- 4 Q. Let's talk about that. That's Exhibit 7? Is that 5 what we called it? 6 A. Yes, sir. This is the one, though, that you had two 7 things in the same one. 8 Q. Why don't you pull off whatever doesn't belong on 9 there. 10 THE COURT REPORTER: It's Exhibit 4. 11 MR. CARROLL: Exhibit 4, okay. 12 Q. (BY MR. CARROLL) So you've pulled off from Exhibit 4 13 what doesn't belong on that document that's entitled 14 Investigation/Prosecutions of Texas Election Code Violations 15 Policy Statement and Guidelines. 16 A. Yes, sir. 17 Q. Were you involved in preparing that document? 18 A. Yes, sir, I was. 19 Q. From a standpoint of reviewing it or approving it or 20 actually writing it? 21 A. I think a little of all of the above. 22 Q. Is there one person you identify in the office as 23 being kind of the scrivener for all that? 24 A. No, sir. When we were developing this, I took input 25 from a number of different people within the -- both the</p>	<p>1 A. Yes, sir. 2 Q. So the question is what is that document? 3 A. It appears to be a printout of a PowerPoint 4 presentation that was developed within the office and used as 5 part of a series of outreach presentations that were conducted 6 in January and February of 2006. 7 Q. All right. Is this document still in use? 8 A. No, sir. 9 Q. As of when? 10 A. It was only used in conjunction with those outreach 11 presentations in January and February of 2006. 12 Q. And outreach to whom? 13 A. It was a program -- I think you made some reference to 14 it in the document you marked earlier as Exhibit 3. But it was 15 an outreach program where peace officers and investigators 16 within our agency conducted or offered to conduct outreach 17 presentations to law enforcement officials at various law 18 enforcement agencies around the state. 19 Q. Do you -- can you give me any help with what 20 particular officers may have conducted these outreaches? 21 A. Yes, sir. I think you actually may have a list in the 22 stuff that Ms. Donnelly produced to you. Let me see that. 23 Q. If you just want to -- 24 A. Yes, sir. If you look at -- I'll just give you the 25 Bates number.</p>
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<p>1 criminal investigations division and the criminal prosecutions 2 division. 3 Q. Okay. Look at -- wait a minute. It might be on the 4 wrong -- hold on just a minute. So the document ends at 2684. 5 Is that the last -- 6 A. That's the last Bates number, yes, sir. 7 Q. Okay. Look at Bates 2689 on that exhibit, please. 8 You got that one? 9 MS. DONNELLY: What is the page number? 10 MR. CARROLL: It doesn't have a page number. 11 A. That's not -- that's the part -- 12 Q. (BY MR. CARROLL) That's the part you removed? 13 A. Yes, sir. 14 Q. All right. 15 MR. CARROLL: Let's mark this one, then. 16 (Exhibit No. 6 marked.) 17 MR. CARROLL: This is what he pulled off that 18 document. 19 MS. DONNELLY: Yes. 20 Q. (BY MR. CARROLL) Do you know what 6 is, Mr. Nichols? 21 I think for the record it starts at 2685; is that 22 right? 23 A. Yes, sir. 24 Q. And let me interrupt you one more time. And I have it 25 going through 2702.</p>	<p>1 Q. That's the stuff we got today? 2 A. Yes, sir. It would be -- just using Bates numbers it 3 would be 2796 through 2799. And that contains -- that portion 4 of that document contains a list of the outreach presentations 5 and the investigators who were involved in those. 6 Q. Do you know how many of the investigators on the list 7 are still with your division? 8 A. Going through, Louis Lorrell (sic) is still with the 9 agency. He is with a different component of criminal 10 investigations division than the SIU. Stringer and Soliz are no 11 longer with the agency. Walling is no longer with the agency. 12 Tom Loper is with the agency. Brunson is no longer with the 13 agency. Wilson, if that's reference to Scott Wilson, I assume 14 it is, he's with the agency. Martinez I'd have to check on. 15 Rivera I don't believe is with the agency. Al Cavalier is the 16 Cavalier that's referred to there. He is with the agency. The 17 Mitchell that's referred to there I presume is Forest Mitchell, 18 who I think I testified earlier is the chief of the Special 19 Investigations Unit. That looks like all the names there. 20 Q. And I see on the totals that there were 76 sessions 21 and 539 attendees. Who organized all of these events, if you 22 know? 23 A. It was our peace officers within the -- within the 24 criminal investigations division. I think another part of this 25 document kind of lays out what the thought process was in terms</p>

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<p>1 of the areas of the state that -- in which these outreach</p> <p>2 programs would be organized and it was just a process of</p> <p>3 individual peace officers within the criminal investigations</p> <p>4 division contacting the local law enforcement agencies seeing if</p> <p>5 there was an interest in having an outreach presentation like</p> <p>6 this, and if so, you know, just basically setting up the</p> <p>7 logistics of the right date and the right place to do it.</p> <p>8 Q. And did your office have any oversight in the</p> <p>9 preparation of the PowerPoint?</p> <p>10 A. If you're talking about the PowerPoint that you marked</p> <p>11 as Exhibit 6 --</p> <p>12 Q. Right. Excuse me for interrupting, but I had</p> <p>13 understood that that PowerPoint was in connection with the</p> <p>14 outreach; is that correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. So that's my question.</p> <p>17 A. Yes, sir. So this PowerPoint was developed by the</p> <p>18 agency for use in connection with those outreach presentations.</p> <p>19 Q. And your office in -- or your division in particular,</p> <p>20 did you-all screen it to make sure it was accurate as to what it</p> <p>21 said the law was?</p> <p>22 A. Well, it was developed within the criminal justice</p> <p>23 divisions of the agency as they then existed.</p> <p>24 Q. Okay. Look at 2689 Bates on that PowerPoint, if you</p> <p>25 will.</p>	<p>1 situation, that is, that the ballot is considered to be</p> <p>2 a -- once it's filled out it's considered to be a ballot just as</p> <p>3 if you or I went in person and voted at the ballot box and we</p> <p>4 need to treat that ballot as -- in essence, the same manner as</p> <p>5 we would treat evidence in a criminal case.</p> <p>6 Q. Let me refer you to Section A where the statute says a</p> <p>7 person commits an offense if the person acts as a witness for a</p> <p>8 voter in signing the certificate on the carrier envelope and</p> <p>9 knowingly fails to comply with Section 1.011. What's that</p> <p>10 referring to?</p> <p>11 A. There is a requirement that if a -- if you look at the</p> <p>12 carrier envelope, there is a space for a witness to actually</p> <p>13 sign the carrier envelope and that's what that's making</p> <p>14 reference to. 1.011 is the code -- the general statute that</p> <p>15 prescribes exactly what you need to do if you're required to be</p> <p>16 a witness.</p> <p>17 Q. Signing document as witness?</p> <p>18 A. Yes, sir. It's 1.011.</p> <p>19 Q. And that's in the old law. That's pre '03 law?</p> <p>20 A. I think 1.011 existed prior to the 2003 amendments.</p> <p>21 Q. So Section A says you commit an offense if you're</p> <p>22 acting as a witness for a voter in signing the certificate on</p> <p>23 the envelope and fails to do what you're supposed to do under</p> <p>24 1.011. B says a person other than the voter who deposits the</p> <p>25 carrier envelope in the mail or with a common or contract</p>
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<p>1 A. Yes, sir.</p> <p>2 Q. Where it says mail-in ballots on the lower right-hand</p> <p>3 corner. Election Code 86.0051 Carrier Envelope Action by</p> <p>4 Persons Other than Voter Offenses. In your mind, does that</p> <p>5 squib accurately explain what the criminal import of 86.0051 is?</p> <p>6 MS. DONNELLY: Objection, statute speaks for</p> <p>7 itself. You can answer.</p> <p>8 A. Yeah. I mean, I believe it does. I mean, we can go</p> <p>9 through and track the language.</p> <p>10 Q. (BY MR. CARROLL) Where does the word "witness" show</p> <p>11 up in 86.0051?</p> <p>12 A. It is the -- I take that --</p> <p>13 Q. It's not in there, is it?</p> <p>14 A. Well, no, no, no. I consider the witness as being</p> <p>15 referred to there as the person who deposits the carrier</p> <p>16 envelope in the mail.</p> <p>17 Q. But, I mean, would you grant me that the word</p> <p>18 "witness" doesn't show up in 86.0051?</p> <p>19 A. I'm not sure I can. I think I said earlier that my</p> <p>20 understanding of the rationale behind the signature on the</p> <p>21 carrier envelope is, in essence, like what we refer to in</p> <p>22 criminal cases as being a chain of custody. And so if a</p> <p>23 person -- if there's a statute that requires a person to sign a</p> <p>24 carrier envelope, then in my mind that is, in essence, the same</p> <p>25 requirement as you would have a witness to a chain of custody</p>	<p>1 carrier must provide the person's signature, printed name,</p> <p>2 residence, blah, blah, blah. Is B a separate offense from A?</p> <p>3 A. There are three -- I'm sorry, there are two offenses</p> <p>4 that are specified in 86.0051. One is Subsection A and the</p> <p>5 other is Subsection B subject to the caveat that's contained in</p> <p>6 Subsection C. So in other words, Subsection B sets out a</p> <p>7 potential offense and then C specifies that a person who</p> <p>8 knowingly violates that subsection commits an offense, if that</p> <p>9 makes sense.</p> <p>10 Q. So A and B set out two different crimes; is that</p> <p>11 right? Is that what I'm understanding?</p> <p>12 A. That's my understanding, yes, sir.</p> <p>13 Q. And A talks about a witness but B doesn't talk about a</p> <p>14 witness, correct? It doesn't use the word "witness."</p> <p>15 A. I think in Subsection B it uses the word "person," but</p> <p>16 I guess what I'm -- from my perspective, the person that's being</p> <p>17 referred to in B, in essence, is a witness.</p> <p>18 Q. Did you personally attend any of these sessions?</p> <p>19 A. Not personally. I was still happily in private</p> <p>20 practice.</p> <p>21 Q. By the way, I had somebody over lunch look at the</p> <p>22 penal code -- 6.03 Texas Penal Code definition of knowing and I</p> <p>23 wrote this down over the phone that the penal code says knowing</p> <p>24 is aware of the nature of his conduct. Is that what you and I</p> <p>25 kind of talked about before lunch as what knowing is?</p>

18 (Pages 66 to 69)

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<p>1 A. Absolutely.</p> <p>2 Q. Aware of the nature of his conduct?</p> <p>3 A. Yeah, subject to the further definition I think you</p> <p>4 and I gave to it, which is that -- as part of that awareness.</p> <p>5 Demonstrating awareness would be to show that the person had</p> <p>6 actual recognition of what it is that they were required to be</p> <p>7 knowingly doing and that it wasn't as a result of some mistake</p> <p>8 or accident that they --</p> <p>9 Q. Or coercion. I couldn't act knowingly if you were</p> <p>10 making me act knowingly.</p> <p>11 A. You know, that's an interesting question. I'm not</p> <p>12 sure that one is quite as easy to answer.</p> <p>13 Q. Well, that will be for another day. All right. Now,</p> <p>14 let's talk a little bit about the PowerPoint. You know that we</p> <p>15 pointed out -- I guess you know that we pointed out --</p> <p>16 MR. CARROLL: Why don't you mark this as an</p> <p>17 exhibit.</p> <p>18 (Exhibit No. 7 marked.)</p> <p>19 Q. (BY MR. CARROLL) Look at Bates 2700 of that document.</p> <p>20 And what I've just handed you is an enlargement of Exhibit 7.</p> <p>21 A. Yes, sir. I see that.</p> <p>22 Q. What was the purpose in the PowerPoint of the</p> <p>23 reference to the stamp that's entitled Sickie Cell?</p> <p>24 A. This was an actual example taken from a specific</p> <p>25 investigation -- election code investigation that was conducted.</p>	<p>1 by an elections clerk that have a unique stamp, that is, a stamp</p> <p>2 that is what I would characterize as kind of being a specialty</p> <p>3 stamp for the U.S. postal service, whether it's a picture of,</p> <p>4 you know, American hero or whatever, it's not the typical,</p> <p>5 normal first class postage, that if you have a series of those</p> <p>6 kinds of mailings, you would use that as one piece of your</p> <p>7 investigatory puzzle, if you will, to try to trace back to a</p> <p>8 situation where there could potentially be ballot harvesting.</p> <p>9 Q. And the idea would be maybe somehow that would prove,</p> <p>10 what, a common source?</p> <p>11 A. Yes, sir.</p> <p>12 Q. But you sure wouldn't go to court with that and that</p> <p>13 alone, I wouldn't think?</p> <p>14 A. No. I think that the whole purpose of this</p> <p>15 presentation was to try to give some guidance to other law</p> <p>16 enforcement professionals about the way to investigate, not</p> <p>17 necessarily that you would -- as you say, that you would take</p> <p>18 this as being your sole piece of evidence to go actually</p> <p>19 prosecute a case.</p> <p>20 Q. And you believe that this particular stamp came from</p> <p>21 evidence in the Ray case?</p> <p>22 A. I believe that to be the case, yes, sir.</p> <p>23 Q. And what was it attached to?</p> <p>24 A. It would have been used on the actual mail-in -- the</p> <p>25 carrier envelopes that were submitted for mailing to be</p>
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<p>1 I believe it was the Willie Ray investigation. And the purpose</p> <p>2 of this slide was to talk to law enforcement officials about the</p> <p>3 kinds of evidence that could be indicative of a situation where,</p> <p>4 to use the term that you referenced to earlier, ballot</p> <p>5 harvesting may occur. And the point of this slide was that if</p> <p>6 there are unique characteristics, in this case a stamp that was</p> <p>7 not the normal U.S. postage stamp with the U.S. flag or whatever</p> <p>8 on it, that were received by a particular election judge, that</p> <p>9 the use of a unique stamp could be evidence that could be</p> <p>10 followed up on in terms of trying to trace back to a potential</p> <p>11 common source, an organized effort to harvest ballots.</p> <p>12 And it wouldn't matter whether it were a Sickie</p> <p>13 Cell stamp, Lou Gehrig stamp. I think you may have mentioned</p> <p>14 Lou Gehrig earlier today. The point was if there is a unique</p> <p>15 feature to a stamp, that is, a stamp that would not be</p> <p>16 ordinarily used by a person that just walked into the post</p> <p>17 office and bought a general first class postage stamp, that that</p> <p>18 might be one factor that the investigator could look at in</p> <p>19 trying to track back the source of potential ballot harvesting.</p> <p>20 Q. So -- and again, I'm not judging. I'm just asking.</p> <p>21 So the idea was that somehow this would be an indicia of fraud,</p> <p>22 because that's what the title says, examine documents for fraud.</p> <p>23 A. Yes, sir. You see the language "unique stamps"</p> <p>24 down -- it's the third bullet on there, which was the point,</p> <p>25 that if you have a series of mail-in ballots that are received</p>	<p>1 submitted to the local elections official.</p> <p>2 Q. Didn't she plead guilty to unlawful possession?</p> <p>3 Wasn't she indicted for unlawful possession, according to what</p> <p>4 you showed me earlier?</p> <p>5 A. I believe that's correct. You can look at that chart,</p> <p>6 though, that I gave you.</p> <p>7 Q. So unlawful possession doesn't have anything to do</p> <p>8 with a stamp, does it?</p> <p>9 A. Oh, no, it certainly does relate to that, yes, sir.</p> <p>10 Q. How so?</p> <p>11 A. Because the -- if you can trace -- without getting</p> <p>12 into the details of any specific investigation, which I know you</p> <p>13 don't want to do --</p> <p>14 Q. Well, I mean, Ray is a public record, right?</p> <p>15 A. No, but I'm saying in general, if you --</p> <p>16 Q. We ought to be able to find that. Didn't we mark it?</p> <p>17 And I'm sorry for interrupting. Go ahead.</p> <p>18 A. No, no, no. If you're investigating a case that</p> <p>19 involves potential mail-in ballot violations or violations of</p> <p>20 the rules of the road, as it were, governing the mail-in ballot</p> <p>21 system, then, as I think we talked about earlier, in</p> <p>22 reconstructing the what, when, why, how and where of the case,</p> <p>23 you have to go back and try to trace the chain, if you will, of</p> <p>24 how that mail-in ballot got to the elections official to be</p> <p>25 counted. I mean, I think I've said this probably before. I</p>

19 (Pages 70 to 73)

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<p>1 mean, our investigators are not front-line monitors of the</p> <p>2 election process. They're not there in county as elections are</p> <p>3 going on monitoring who is doing what in person, balloting or</p> <p>4 mail-in ballot situations.</p> <p>5 When they get a referral it's a historical case</p> <p>6 and we're getting a referral about something that may have</p> <p>7 happened, you know, in an election that occurred six months, a</p> <p>8 year prior. And so as part of their effort to investigate the</p> <p>9 case, they have got to reconstruct how the ballots got from</p> <p>10 point Z, which would be the election's official, back along a</p> <p>11 chain to the actual voter.</p> <p>12 And so the kinds of investigation that we've</p> <p>13 talked about, you know, just as one example, the use of a unique</p> <p>14 stamp may lead you back along that chain to figure out okay, who</p> <p>15 were the players who were involved. We hope that at the end of</p> <p>16 the day we're going to find that there is an actual voter who</p> <p>17 exercised his or her free will and that got that ballot properly</p> <p>18 to the elections official to be counted. But in certain</p> <p>19 circumstances unfortunately we find that that's not necessarily</p> <p>20 the case and that there are others who are involved in the chain</p> <p>21 who unfortunately it is found may have violated the election</p> <p>22 code.</p> <p>23 Q. But do you agree with me under the Ray case that what</p> <p>24 she was convicted of was not -- didn't have anything to do with</p> <p>25 mailing the ballot, it was possessing the ballot?</p>	<p>1 A. I can't give you a specific figure, but I know that it</p> <p>2 was certainly more than one ballot. I think you have the</p> <p>3 records of the Ray case that --</p> <p>4 MS. DONNELLY: I object as this point because I</p> <p>5 think that goes outside the scope of the notice.</p> <p>6 A. I mean, to be helpful I think that you do have the</p> <p>7 records of the Ray case that you'd be able to get that</p> <p>8 information from.</p> <p>9 Q. (BY MR. CARROLL) Is this PowerPoint still in use?</p> <p>10 A. No, sir.</p> <p>11 Q. Any iterations or variations of it in use?</p> <p>12 A. No, sir.</p> <p>13 Q. Do you know institutionally that Judge Ward over in</p> <p>14 Marshall issued an injunction that was stayed by the circuit</p> <p>15 court on this case a few years ago?</p> <p>16 A. I think the injunction was entered in maybe late</p> <p>17 October of '06 and was stayed sometime later by the circuit</p> <p>18 court. I'm not sure exactly of the dates on that.</p> <p>19 Q. Do you have a general understanding of what conduct</p> <p>20 Judge Ward addressed in his injunction, you know, understanding</p> <p>21 it was stayed?</p> <p>22 A. Yes, sir. I mean, I hate to talk about, you know,</p> <p>23 what a judge ordered or didn't order without actually looking at</p> <p>24 the language so I'd have to apologize to you or to Judge Ward --</p> <p>25 Q. That's why I asked you.</p>
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<p>1 A. If I understand the facts of the Ray case, she was</p> <p>2 found and pled guilty to having been involved in the chain of</p> <p>3 the type that I described to you, which under the facts of that</p> <p>4 case did result in mail-in ballots that were improperly dealt</p> <p>5 with being mailed to the local elections official.</p> <p>6 Q. But on your chart doesn't it say that she pled guilty</p> <p>7 to unlawful possession?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And that's -- you and I have talked about this and I</p> <p>10 don't mean to replay all that ground. But I think we finally</p> <p>11 agreed that that's a separate crime from putting the carrier</p> <p>12 envelope with the ballot or maybe just the carrier envelope in</p> <p>13 the mail without filling out the appropriate information.</p> <p>14 That's a separate crime, correct?</p> <p>15 MS. DONNELLY: Objection, mischaracterization.</p> <p>16 A. I mean, there are separate statutes that govern two</p> <p>17 different situations, but they could, as I believe happened in</p> <p>18 the Ray case, involve the same type of evidence, which in</p> <p>19 Ms. Ray's case involved the improper collection, possession and</p> <p>20 transmittal to a local elections official of mail-in ballots.</p> <p>21 Q. (BY MR. CARROLL) Do you know whether -- from what you</p> <p>22 know about the Ray case, do you know whether there were more</p> <p>23 than one ballots implicated?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And how many were implicated?</p>	<p>1 A. I know it concerned -- I know in general terms. I'm</p> <p>2 not going to try quote the judge.</p> <p>3 Q. Just tell me in general what you understand.</p> <p>4 MS. DONNELLY: I'm going to object at this point.</p> <p>5 I mean, you can answer this question, but this is outside the</p> <p>6 scope, again, of the notice. Go ahead.</p> <p>7 A. But I understand that Judge Ward's order was focused</p> <p>8 on 86.006 of the election code.</p> <p>9 Q. (BY MR. CARROLL) And again, I'm mindful of what your</p> <p>10 counsel said, but I'm trying to get an understanding. Here's my</p> <p>11 question and this is important to us. If Ward's injunction had</p> <p>12 stood in force and effect, would it have restricted your office</p> <p>13 from prosecuting voter fraud over and above somebody's</p> <p>14 possession of somebody else's ballot?</p> <p>15 MS. DONNELLY: Objection.</p> <p>16 MR. CARROLL: And I understand your objection.</p> <p>17 Q. (BY MR. CARROLL) But just that naked simple</p> <p>18 possession, which is what I understand Ward's injunction went</p> <p>19 to, not not voting for somebody, not coercing somebody to vote,</p> <p>20 not conspiring to let somebody who is not a citizen vote, none</p> <p>21 of those things, but just physically being in possession of</p> <p>22 somebody else's ballot.</p> <p>23 MS. DONNELLY: I don't want this witness to</p> <p>24 speculate. It is outside the scope and so I'm going to object.</p> <p>25 A. I mean, I'd have to look at the injunction order. I</p>

20 (Pages 74 to 77)

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<p>1 think in general terms there was language in there about the</p> <p>2 injunction was targeted at enforcement of 86.006 under</p> <p>3 circumstances in which the possessor of the ballot had the</p> <p>4 voter's consent, I think. And I, again, apologize to you and to</p> <p>5 the judge if I'm getting that wrong, but that's kind of my</p> <p>6 general recollection.</p> <p>7 Q. (BY MR. CARROLL) Right. And my question, mindful of</p> <p>8 your counsel's objection, is, how would that impair your ability</p> <p>9 to prosecute voter fraud?</p> <p>10 MS. DONNELLY: Again, calls for speculation and</p> <p>11 it is outside the scope.</p> <p>12 A. I guess the answer is that I'm not aware of any</p> <p>13 situation where -- I guess I have to tell you I have not</p> <p>14 analyzed kind of post October 2006 cases in terms of either</p> <p>15 investigations or prosecutions, you know, in line with what</p> <p>16 Judge Ward ruled in that injunction order. I just haven't done</p> <p>17 that analysis.</p> <p>18 Q. (BY MR. CARROLL) This document, the one we looked at</p> <p>19 Appendix 2, which cites the various election code statutes,</p> <p>20 criminal statutes, that would be the March 2007 document?</p> <p>21 A. Exhibit 4, yes, sir.</p> <p>22 Q. I'm trying to figure out a way to ask this that's</p> <p>23 consistent with what you're here prepared to testify on. You</p> <p>24 have a separate statute, we have a separate statute, the State</p> <p>25 has a separate statute to prosecute people who tamper with a</p>	<p>1 No. 5. Do you know what that is, Mr. Nichols? And the best I</p> <p>2 can do for you is to tell you that --</p> <p>3 MR. CARROLL: Here's an extra copy.</p> <p>4 Q. (BY MR. CARROLL) -- is that we got it, I'm told, in</p> <p>5 the production, although it doesn't have a Bates stamp on it.</p> <p>6 Do you have any idea what that is?</p> <p>7 A. It may be a -- we can do a comparison, but it may just</p> <p>8 be a different printout of the PowerPoint that you marked and</p> <p>9 gave me as Exhibit 6.</p> <p>10 Q. And I can tell you -- I think I can tell you, when you</p> <p>11 do that comparison, the page with the Sickle Cell stamp is not</p> <p>12 in there. And that was the question we had as to whether maybe</p> <p>13 the thing had been updated and that had been deleted.</p> <p>14 A. You're missing a page on Exhibit 5. It goes from 20</p> <p>15 to 22.</p> <p>16 Q. Now, this is the one that's marked training materials?</p> <p>17 A. Yes, sir. If you look at the pages on there, it looks</p> <p>18 like --</p> <p>19 Q. I trust you. The question is, do you have any clue</p> <p>20 what this is?</p> <p>21 A. I think -- I think if you -- there may be a few font</p> <p>22 changes, but I think if you had the complete version of --</p> <p>23 what's this been marked as?</p> <p>24 MR. CARROLL: What did you mark this as?</p> <p>25 THE COURT REPORTER: 5.</p>
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<p>1 ballot that has nothing to do with 86.006, correct?</p> <p>2 A. In terms of actually -- you talking about a mail-in</p> <p>3 ballot situation?</p> <p>4 Q. I'm talking about any ballot situation. 86.006 could</p> <p>5 be stricken from the books and we still have a statute that</p> <p>6 deals with voter fraud from the standpoint of ballot tampering,</p> <p>7 correct?</p> <p>8 A. I'm not sure whether striking 86.006 would affect it</p> <p>9 one way or the other, but we do have provisions both in the</p> <p>10 penal code and in the election code that deal with tampering of</p> <p>11 governmental records and ballots.</p> <p>12 Q. And same question for assisting an illegal voter, that</p> <p>13 is, we have a statute that addresses that conduct separate and</p> <p>14 apart from any application of 86.006?</p> <p>15 A. We do have an unlawful assistance provision of the</p> <p>16 election code, yes, sir.</p> <p>17 Q. And separate and apart from 86.006 we have a statute</p> <p>18 that criminalizes actually voting for somebody rather than</p> <p>19 letting that person vote.</p> <p>20 A. We do have a -- we do have provision or provisions of</p> <p>21 the election code that deal with illegal voting or voting for</p> <p>22 other persons.</p> <p>23 MR. CARROLL: Give us a second.</p> <p>24 (Break was taken from 1:28 p.m. to 1:29 p.m.)</p> <p>25 Q. (BY MR. CARROLL) This has been marked as Exhibit</p>	<p>1 A. Exhibit 5. If you had the complete version of Exhibit</p> <p>2 5, which it looks like you're missing a page, I think you'd find</p> <p>3 if you compared it side by side --</p> <p>4 Q. (BY MR. CARROLL) You think it's the same as the</p> <p>5 PowerPoint?</p> <p>6 A. Substantially similar. There may be a few font</p> <p>7 changes here or there or a few language changes, but I think</p> <p>8 it's substantially the same.</p> <p>9 Q. Okay. All right. That's all the questions I have.</p> <p>10 Thank you, Mr. Nichols.</p> <p>11 A. I appreciate your time and your efficiency.</p> <p>12 (Deposition concluded at 1:34 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 STIPULATIONS</p> <p>2 DEPOSITION(S) OF ERIC J.R. NICHOLS</p> <p>3 TAKEN ON APRIL 24, 2008 BY Mr. Otis Carroll</p> <p>4 1. THIS DEPOSITION IS TAKEN PURSUANT TO:</p> <p>5 XXXXXXXX (a.) Notice</p> <p>6 _____ (b.) Notice and Subpoena</p> <p>7 _____ (C.) Agreement</p> <p>8 _____ (d.) Court Order</p> <p>9 2. OBJECTIONS:</p> <p>10 XXXXXXXX (a.) Objections will be made pursuant to the Texas</p> <p>11 Rules of Civil Procedure.</p> <p>12 _____ (b.) All objections will be made at the time of</p> <p>13 taking of the deposition.</p> <p>14 _____ (c.) All objections are reserved.</p> <p>15 _____ (d.) Other: _____</p> <p>16 3. SIGNATURE AND DELIVERY:</p> <p>17 XXXXXXXX (a.) The original transcript will be submitted to _____</p> <p>18 the witness or XXXX the witness' attorney, who will forward the</p> <p>19 signed deposition, including any changes made, to Julie A.</p> <p>20 Jordan & Company within 30 days of submission.</p> <p>21 _____ (b.) Signature is waived and the reporter will</p> <p>22 deliver the original transcript and exhibits to the Custodial</p> <p>23 Attorney.</p> <p>24 _____ (c.) The original transcript will remain in the court</p> <p>25 reporter's office for signature for _____ days from date of</p> <p>submission.</p> <p>_____ (d.) The original signature page, along with a copy</p> <p>of transcript, will be submitted to _____ for</p> <p>submission to the witness for signature, and thereafter will</p> <p>forward the executed signature page, along with any changes</p> <p>made, within _____ days to the offices of Julie A. Jordan &</p> <p>Company for inclusion in the original transcript.</p>	<p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: ERIC J.R. NICHOLS</p> <p>3 DATE OF DEPOSITION APRIL 24, 2008</p> <p>4 PAGE LINE CHANGE REASON</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>
<p>Page 83</p> <p>1 HIRING ATTORNEY ORIGINAL AND CERTIFIED COPY ORDER:</p> <p>2 In the event that the original transcript cannot for any reason</p> <p>3 be produced, it is understood and agreed that the attorney</p> <p>4 asking the first question will be responsible for the expense of</p> <p>5 the production of a transcript and the safekeeping of same for</p> <p>6 use at trial. The shorthand notes may be destroyed after three</p> <p>7 years. This is an agreement for services. We, the undersigned,</p> <p>8 do hereby agree to the stipulations as indicated herein and do</p> <p>9 agree that any lawyer or other individual signing below will be</p> <p>10 responsible for the payment of all services requested and that</p> <p>11 payment for these services rendered is not contingent upon any</p> <p>12 other matter. Rush services are available only by request and</p> <p>13 implies an agreement to pay rush rates. On all orders placed,</p> <p>14 venue for any actions for collection on services lie in Austin,</p> <p>15 Travis County, Texas,</p> <p>16 By: Paul S. Ryan Firm: The Campaign Legal Center</p> <p>17 Representing Willie Ray, et al</p> <p>18 E-Transcript XXXX E-mail address ghebert@campaignlegalcenter.org</p> <p>19 Full Copy XXXX Condensed Copy XXXXXXXX ASCII XXXXXXXX</p> <p>20 Condensed Copy Only _____ (*same cost as full copy)</p> <p>21 Exhibits in B/W only XXXXX Exhibits in B/W & Color _____</p> <p>22 Video in VHS format _____ DVD (Movie File) Format _____</p> <p>23 M-PEG in CD or DVD format _____ Video synch _____</p> <p>24 CERTIFIED COPY ORDER:</p> <p>25 We, the undersigned, do hereby agree to the stipulations as</p> <p>indicated herein and do agree that any lawyer or other</p> <p>individual signing below will be responsible for the payment of</p> <p>all services requested and that payment for these services</p> <p>rendered is not contingent upon any other matter. Rush services</p> <p>are available only by request and implies an agreement to pay</p> <p>rush rates. On all orders placed, venue for any actions for</p> <p>collection on services shall lie in Austin, Travis County,</p> <p>Texas,</p> <p>By: Rosemarie Donnelly Firm: Attorney General of Texas</p> <p>Representing Defendant</p> <p>E-Transcript XXXXX E-Mail address</p> <p>rosemarie.donnelly@oag.state.tx.us</p> <p>Full Copy _____ Condensed Copy _____ Ascii _____</p> <p>Condensed Copy Only XXXXXXXX (*same cost as full copy)</p> <p>Exhibits in B/W Only XXXXX Exhibits in B/W & Color _____</p> <p>Video in VHS format _____ DVD (Movie File) format _____</p> <p>M-PEG in CD or DVD format _____ Video sync _____</p> <p>JOB NO. 08-124</p>	<p>Page 85</p> <p>1 I, ERIC J.R. NICHOLS, have read the foregoing deposition</p> <p>2 and hereby affix my signature that same is true and correct,</p> <p>3 except as noted above.</p> <p>4 _____</p> <p>5 ERIC J.R. NICHOLS</p> <p>6</p> <p>7 THE STATE OF _____)</p> <p>8 COUNTY OF _____)</p> <p>9 Before me, _____, on this day personally</p> <p>10 appeared ERIC J.R. NICHOLS, known to me (or proved to me under</p> <p>11 oath or through _____) to be the person whose name is</p> <p>12 subscribed to the foregoing instrument and acknowledged to me</p> <p>13 that they executed the same for the purposes and consideration</p> <p>14 therein expressed.</p> <p>15</p> <p>16 Given under my hand and seal of office this _____ day of</p> <p>17 _____, _____.</p> <p>18</p> <p>19 NOTARY PUBLIC IN AND FOR THE</p> <p>20 STATE OF _____</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

22 (Pages 82 to 85)

Julie A. Jordan & Company
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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION
4 WILLIE RAY, JAMILLAH JOHNSON,)
5 GLORIA MEEKS, REBECCA)
6 MINNEWEATHER, REUBEN ROBINSON,)
7 EDDIE JACKSON, and THE TEXAS)
8 DEMOCRATIC PARTY,)
9 Plaintiffs,)
10)
11 V.) Civil Action No. 2-06CV-385
12)
13)
14 STATE OF TEXAS, a State of the)
15 United States; GREG ABBOTT,)
16 Attorney General of the State)
17 of Texas; and PHIL WILSON,)
18 Secretary of State for the)
19 State of Texas,)
20 Defendants.)

21 REPORTER'S CERTIFICATION
22 DEPOSITION OF
23 ERIC J.R. NICHOLS
24 APRIL 24, 2008
25

I, AMBER KIRTON, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, ERIC J.R. NICHOLS, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on _____ to Ms. Rosemarie Donnelly, attorney for Defendants for examination, signature and return to me by _____;

That the amount of time used by each party at the

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deposition is as follows:

Mr. Otis Carroll - 02 hours: 18 minutes

Ms. Rosemarie Donnelly - 00 hours: 00 minutes

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes all parties of record:

Mr. Otis Carroll and Mr. Paul S. Ryan,

Attorneys for Plaintiffs

Ms. Rosemarie Donnelly, Ms. Kathlyn C. Wilson, Mr. Beau Eccles,

Attorneys for Defendants

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorney in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this _____ day of May, 2008.

Amber Kirton, CSR
Texas CSR #8110
Expiration Date: 12/31/09
Firm Registration No. 280
Julie Jordan & Company
4420 Marathon Boulevard
Austin, Texas 78756
(512) 451-8243
(512) 451-7583 (Fax)
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23 (Pages 86 to 87)**Julie A. Jordan & Company
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Exhibit 15

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WILLIE RAY, ET AL

VS.

STATE OF TEXAS, ET AL

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*
*
*
*
*
*

**CIVIL ACTION NO.
2:06-CV-385**

**** **CONDENSED TRANSCRIPT** ****

ORAL AND VIDEOTAPED DEPOSITION OF JAMES KENNETH BAILEY

APRIL 28, 2008

COPY

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JAMES KENNETH BAILEY

RE: WILLIE RAY, ET AL v. SOT, ET AL

Page 1

1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF TEXAS
 3 MARSHALL DIVISION

4 WILLIE RAY, JAMILLAH JOHNSON, *
 5 GLORIA MEEKS, REBECCA MINNEWEATHER, *
 6 REUBEN ROBINSON, EDDIE JACKSON, *
 7 AND THE TEXAS DEMOCRATIC PARTY *
 8 PLAINTIFFS *

9 VS. *

NO. 2-06CV-385

10 STATE OF TEXAS, A STATE OF THE *
 11 UNITED STATES; GREG ABBOTT, ATTORNEY *
 12 GENERAL OF THE STATE OF TEXAS; *
 13 AND PHIL WILSON, SECRETARY OF STATE *
 14 FOR THE STATE OF TEXAS, *
 15 DEFENDANTS *

16 ORAL AND VIDEOTAPED DEPOSITION OF JAMES KENNETH BAILEY
 17 Taken April 28, 2008

18 ORAL AND VIDEOTAPED DEPOSITION OF JAMES
 19 KENNETH BAILEY, produced as a witness at the instance of
 20 the Defendants, and duly sworn, was taken in the above
 21 styled and numbered cause on April 28, 2008, from 9:38
 22 a.m. to 10:23 a.m., in the offices of the Texas
 23 Democratic Party, 505 W. 12th Street, Suite 200, Austin,
 24 Texas, before Joy N. Quiroz-Hernandez, Certified
 25 Shorthand Reporter Number 8391 in and for the State of
 Texas, reported by computerized stenotype, pursuant to
 the Texas Rules of Civil Procedure (and the provisions
 stated on the record or attached therein).

JAMES KENNETH BAILEY

RE: WILLIE RAY, ET AL v. SOT, ET AL

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APPEARANCES:

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Rosemarie Donnelly, Special Assistant Attorney General
Jay Dyre, Secretary of State's Office Representative
Beau Eccles, Deputy Division Chief, General Lit. Div.
Patrick Martin, Videographer

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THE VIDEOGRAPHER: This is the videotaped deposition of Ken Bailey. In the matter of Willie Ray, et al versus the State of Texas, et al. Civil Action No. 2-06CV-385. This is the beginning of tape one. Today's date is April 28, 2008. And we're on the record at 9:38 a.m.

JAMES KENNETH BAILEY,
having been first duly sworn (or affirmed), testified as follows:

EXAMINATION

BY MS. WILSON:

Q. Good morning.

A. Morning.

Q. Would you state your full name for the record, please.

A. Yes. My name is James Kenneth Bailey. I go by Ken.

Q. Mr. Bailey, thank you very much. I understand that you were involved with mail ballot training; is that correct?

A. Yes, ma'am.

Q. And do you have -- you have our subpoena -- I'm sorry, our Notice of Deposition in front of you?

A. Yes, ma'am.

Q. I'm assuming that you're going to talk to us

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JAMES KENNETH BAILEY	
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EXHIBITS

Exhibit Number	Brief Description	Page	Marked
1	Mail Ballot Training Power Point Printout	8	

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about items 13, 14 and 15 on the second page. And 12 --

A. Yes.

Q. -- it looks like, too?

A. And 12.

Q. And aside from those, do you know any -- any of these other items that you have -- you have information about?

A. No. I mean, I have some information just because I've been around. But specifically, I think what I'm here is because I actually wrote the mail ballot training and the Power Point and actually did training in the field --

Q. Okay.

A. -- on that.

Q. And so you're only being offered to testify about mail ballot training; is that correct?

A. Yes, ma'am.

MS. WILSON: Let's get this marked.
(Exhibit No. 1 marked)

MR. CARROLL: this is the same one, but it's got the tag on it.

Q. (By Ms. Wilson) Have you looked at Exhibit No. 1?

A. Yes.

Q. And is that exhibit the Power Point

JAMES KENNETH BAILEY

RE: WILLIE RAY, ET AL v. SOT, ET AL

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1 presentation that you wrote?

2 A. Yes. Although, it's not complete.

3 Q. Okay. Well, I'm going to tell you that that is
4 the copy that was given to us. Are you telling me
5 there's more to this that we have not received then?6 A. It looks like there was some more about the
7 actual instruction, to put your name, and address, and
8 signature on the carrier envelope that I don't see in
9 here. And it could be because we sent this to
10 Mr. Hebert via e-mail, and it might not have -- it's a
11 big file. It's really hard to do the whole thing.12 MR. CARROLL: Let me ask a question, do
13 you -- is it likely you would have the missing pieces
14 here?

15 A. Yes. Yeah.

16 MR. CARROLL: Do want him to --

17 A. Well, see I think you've got some of those.
18 Yeah.19 Q. (By Ms. Wilson) Okay. This is copy that I
20 printed out this morning.21 A. There was some -- those last pages is what's
22 kind of missing there, that I don't have.

23 Q. Okay.

24 A. I stopped filling out the form.

25 Q. Maybe -- let me see.

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1 MS. WILSON: Mr. Carroll, could I see the
2 copy that I gave you?

3 MR. CARROLL: Yes, ma'am.

4 MS. WILSON: Thanks.

5 Q. (By Ms. Wilson) Well, let me show you one more
6 copy of this, and maybe -- let's see if we have those
7 pages. Would you look at that copy and see if it's
8 complete, sir?9 A. Yeah. This is -- this is the complete Power
10 Point because it does have the -- the carrier envelope
11 and -- the return and the carrier envelope and signing
12 your name. And it's got my name on it. So yeah, this
13 is the whole thing here, looks like.14 Q. Well, I think that we should probably
15 substitute this for Exhibit No. 1 since this one seems
16 to be complete. But I'm going to need a copy of it.

17 A. We have a copier here.

18 MR. CARROLL: Okie doke.

19 A. You want me to run you a copy?

20 MR. CARROLL: If you could take care of
21 that, that would be great.22 MS. WILSON: Let's go off the record for
23 just a second.24 THE VIDEOGRAPHER: Off the record at 9:43.
25 (OFF THE RECORD)

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1 THE VIDEOGRAPHER: Back on the record at
2 9:45 a.m.3 Q. (By Ms. Wilson) With my opposing counsel's
4 permission, we are going to mark Deposition Exhibit
5 No. 1 as being the copy that the witness has said is
6 complete, and we're going to ditch this other exhibit.
7 (Exhibit No. 1 remarked)8 Q. (By Ms. Wilson) All right. Mr. -- Mr. Bailey,
9 you say you wrote this?

10 A. Yes.

11 Q. All right. How did it come about that you
12 wrote this?13 A. I was getting -- I was the political director
14 at the time, and I was getting calls from people wanting
15 to know how the new law affected mail ballot program.
16 And so I said, well the best way to do that is develop a
17 Power Point that I can go out in the field and talk to
18 people about it to where they'll know how to do it
19 proper.20 Q. Okay. Were these people who were calling in
21 asking about this -- talking to you personally?

22 A. Yes.

23 Q. Okay.

24 A. Yes.

25 Q. Who called?

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1 A. It was -- one of them was Yvonne Torreas, state
2 rep.

3 Q. Okay.

4 A. Yvonne Gonzales Torreas, I think is her name.
5 Another -- and that was in Bee County -- Jim Wells
6 County, and the county surrounding that, basically, I
7 think was where it was. And then I also got a call this
8 year from Del Rio, and I did training in Del Rio --

9 Q. Who --

10 A. -- this year. From the county chair. Carolyn
11 Salsbury, I believe was the name of the county chair
12 there.13 Q. When Ms. Salisbury called, had you already put
14 together this --

15 A. Yes.

16 Q. -- Power Point?

17 A. Yes.

18 Q. All right. So -- so you got a call from a
19 representative, and in response to that call you put
20 together a Power Point; is that right?

21 A. Yes, ma'am.

22 Q. What exactly did -- did Ms. -- did
23 representative Torreas tell you?24 A. She asked if I could come down and talk to her
25 people in the different counties on how to do a mail

3 (Pages 6 to 9)

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1 ballot program. And because of the changes in the
2 statute, to make sure that we did it legally. And so
3 that's when I started trying to put this together.
4 Q. Did she -- did she tell you that -- that anyone
5 was confused about the statute, that people --
6 A. Yes.
7 Q. What did she say exactly about that?
8 A. She said that a lot of people didn't want to do
9 mail ballots because they didn't understand them.
10 Q. Okay. Did she say that people were
11 complaining?
12 A. She stated that people were hesitant to do the
13 program and that they wanted to do it right. And so --
14 and if anything I could do to help.
15 Q. And so to help you put together this Power
16 Point; is that right?
17 A. Yes.
18 Q. Did she tell you who these people were who
19 didn't want to do mail ballots?
20 A. No.
21 Q. Did you get any other calls besides Ms.
22 Torreas?
23 A. Trying to remember. Most of the training that
24 I did was in her district, and I did several of them.
25 Until this year. And since I was going to Del Rio

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1 anyway for delegate training deal, they wanted the Power
2 Point on that, too. So --
3 Q. Do you remember when this phone call was
4 about -- from Representative Torreas?
5 A. I remember that it was '05 when I put this
6 together.
7 Q. Early or late in '05?
8 A. Early, because the session was going on. And I
9 remember talking to Jay and Ann about this Power Point.
10 And I actually gave it to Melinda to look over and do
11 corrections. And they did look it over and made some
12 suggestions. And so I changed it before I actually did
13 the training.
14 Q. And when you say, Jay and Ann, you mean Jay
15 Dyre and Ann McGeehan?
16 A. Yes. And Melinda Nickless.
17 Q. And Jay Dyre's the general counsel at the
18 Secretary of State's office?
19 A. Yes.
20 Q. Ann McGeehan is the director of elections?
21 A. Yes.
22 Q. And I believe Ms. -- Ms. Nickless is maybe the
23 deputy director?
24 A. Deputy director of elections, I believe is
25 correct, yes.

Page 12

1 Q. So you basically cooperated with the Secretary
2 of State's office to explain the statutes to people who
3 wanted to learn about them?
4 A. Yeah. What I did was gave them my Power Point
5 and asked them to look at it.
6 Q. Okay.
7 A. And then they -- they gave it back with
8 comments. And I think even Elizabeth went and looked at
9 it, also.
10 Q. All right.
11 A. And I don't know that Jay looked at it. But I
12 remember we was -- the reason I remember, we were in the
13 senate chamber with, I think it was Senate State Affairs
14 meeting. And you know how you kind of mill around
15 before the meeting, and I talked to him about it then.
16 Q. And after you spoke with the various members of
17 the Secretary of State's office, were you confident that
18 this Power Point would explain the statutes adequately?
19 A. Yes.
20 Q. Besides the Secretary of State's office, did
21 anyone else have input into the Power Point?
22 A. The staff here and, let's see here, who else.
23 I mean, I gathered a lot of the information in some of
24 the slides, basically from the County Clerk here in
25 Travis County. And so I went to them and said, I need

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1 something -- if I requested a mail ballot what would you
2 send me. And so I got a sample of that.
3 Q. And so that's the -- that's why the pictures of
4 the carrier envelopes are from Dana DeBeauvoir's office?
5 A. Yes.
6 Q. And that's these -- these -- these pages aren't
7 numbered, but it looks like six pages from the end it
8 has a -- it has a -- an image of the front of an
9 official ballot envelope. And the return -- the return
10 is dated Dana DeBeauvoir; is that right?
11 A. Yes.
12 Q. Okay. Did you get any actual information from
13 Ms. DeBeauvoir's office or did you just ask for a
14 sample --
15 A. I just wanted a sample from the -- from what a
16 person would receive if they asked for a mail ballot.
17 Q. When you were asked to put together this --
18 this -- this is basically training, right?
19 A. Yes, ma'am.
20 Q. For -- and who is the training meant for?
21 A. Grassroots activists, county chairs. I've even
22 had election workers from the county clerk's attend in
23 different counties. And there was one state rep,
24 several county commissioners, and people like that. So
25 you know, Grassroots people that are -- that are going

4 (Pages 10 to 13)

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1 to be involved in an election cycle.

2 Q. When you say, "grassroots people," what do you
3 mean exactly?

4 A. Precinct chairs, activists, people that are
5 going -- that are active in the community that have
6 friends that are elderly or disabled that they want to
7 make sure that they have the opportunity to vote, and
8 people that will do outreach and go out into the
9 community. That's kind of what the Grassroots
10 community.

11 Q. And the activists who are -- who are -- you
12 consider to be Grassroots, are they -- are they -- these
13 are volunteers --

14 A. Yes, ma'am.

15 Q. -- for the most part?

16 A. Yes, ma'am.

17 Q. Do you know, are these people who get paid by
18 the Party or by anyone else?

19 A. No.

20 Q. Okay. So these are basically just your active
21 volunteers who are trying to, what, get out the vote,
22 campaign, what?

23 A. Yes, ma'am. Get out the vote, campaign. And,
24 you know, the mail ballot typically is geared toward the
25 elderly and the disabled because they are the ones that

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1 have problems getting it to the mailbox. So since the
2 statute was changed, then people were really confused
3 about how they could do that. And some of them just
4 quit doing it.

5 And, you know, our thought was that's a
6 disservice because the disability community needs a
7 chance to vote and participate in elections just like
8 everybody else. And so that's the reason we wanted to
9 make sure they had that opportunity. And I wanted to
10 make sure that they did it legally.

11 Q. How do you know they were confused?

12 A. From the questions I got doing -- doing the --
13 the presentation was a lot of people were confused
14 exactly what they can do, how many ballots they can
15 have, how many carrier envelopes they can have, if they
16 can assist, or whether they can witness. That was the
17 real confusing part. And it's even confusing today to
18 me of am I assisting or am I witnessing. You know, it's
19 really confusing because it depends on what piece of
20 paper you have in front of you.

21 Q. You -- how long have you been working with the
22 Texas Democratic Party?

23 A. I'm -- started in January of '04.

24 Q. Were you involved in party politics before
25 that?

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1 A. I was involved in politics. Some of it was
2 party, some of it was nonpartisan. I was a lobbyist for
3 the fire fighters for ten years. So I did both sides.
4 And -- but if you're asking, I've been a Democrat since
5 '84. That was my first state convention, and I've been
6 to one every one since. And I've been to two national
7 conventions as a delegate.

8 Q. Prior to coming to work for the Texas
9 Democratic Party did you work -- do any work with any
10 mail-in ballots at all?

11 A. No. No.

12 Q. When you were tasked with -- I'm sorry. You --
13 you told me some of the people in your -- in your
14 training were confused because of the questions that you
15 got?

16 A. Yes, ma'am.

17 Q. And do you know who those people were?

18 A. No, I -- I don't. It was the -- it was the
19 people that were there that were there for the training.
20 And I don't remember their names. But there was a lot
21 of confusion in the whole process.

22 Q. Okay. After you gave this Power Point did they
23 understand what to do?

24 A. I think most of them did. There was still some
25 hesitation on -- on their part to have their name on the

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1 back of that envelope.

2 Q. Do you know what -- what that hesitation came
3 from?

4 A. They really didn't want to have their name on
5 the envelope. They were -- I don't know why.

6 Q. Okay. You said that some were confused and
7 some had quit doing the mail-in ballot assistance, or
8 whatever you want to call it; do you remember that
9 testimony --

10 A. Yes, ma'am.

11 Q. -- few minutes ago?

12 A. Uh-huh.

13 Q. How do you know they had quit doing it?

14 A. I talked to several of them. I have a friend
15 whose mother usually would do about 100 mail ballots to
16 people in her community. And since then she's not done
17 any of them because she -- the -- well, because my
18 friend told her, look, you'll get in trouble if you
19 don't know what you're doing.

20 Q. Who -- who is that?

21 A. That is Dorothy Shepard from Port Arthur,
22 Texas.

23 Q. How long have you known Ms. Shepard?

24 A. Probably 12, 15 years.

25 Q. And so Ms. Shepard told you she didn't want to

5 (Pages 14 to 17)

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1 do it because why?
 2 A. She didn't want -- she -- because the -- the
 3 laws have changed and she wasn't sure on how to do them.
 4 Q. Okay.
 5 A. And so her son had told her that, you know,
 6 mom, you need to watch out, you know, and don't -- don't
 7 do this if you -- if you don't know what you're doing,
 8 basically. So I don't think she does but maybe five or
 9 six of them now.
 10 Q. Do you know how many she was doing before?
 11 A. About 100.
 12 Q. How do you know that?
 13 A. That's what -- that's what her son told me.
 14 Q. And her son's name is what?
 15 A. Emmitt. Emmitt Sheppard.
 16 Q. Is there anyone else that you know of who has
 17 quit participating in mail-in ballot?
 18 A. No. No, that's the only one that I know
 19 specifically of.
 20 Q. Okay. Did you make any effort to explain to
 21 Ms. Sheppard or her son that all you really have to do
 22 is sign the back?
 23 A. I made a presentation to the AFLCIO at a
 24 conference about how to do mail ballots. But that's --
 25 and Mrs. Sheppard wasn't there. I didn't do anything

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1 for Mrs. Sheppard. But Emmitt was there and there was
 2 several other labor leaders that were there. But it was
 3 just a simple presentation. So I don't know if it took
 4 or not.
 5 Q. Now, when Emmitt Sheppard said, you know -- you
 6 know, my mom, she used to do about 100, this was per
 7 election?
 8 A. Uh-huh.
 9 Q. She used to do about 100 per election and now
 10 she only does five or six, did you say, well, Emmitt,
 11 really, all you have to do is tell her to sign the back?
 12 A. I did. I told him that.
 13 Q. All right. What did he say?
 14 A. I don't think he said anything.
 15 Q. And did you ever hear anything else about
 16 whether Ms. Sheppard has resumed her previous level of
 17 activity with mail-in ballots?
 18 A. No, she has not.
 19 Q. You know she has not?
 20 A. Yes, she has not.
 21 Q. How do you know that she has not?
 22 A. I did a training in Beaumont on delegate
 23 selection this year. And we -- and Emmitt rode down
 24 there with me and we spent the night at Ms. Sheppard's
 25 house. And that morning she was telling me she didn't

Page 20

1 do them anymore.
 2 Q. Did she tell you why she didn't do them
 3 anymore?
 4 A. No, ma'am, she didn't.
 5 Q. Did she tell you that her son, Emmitt, had
 6 relayed the message that all you had to do was sign the
 7 back?
 8 A. She didn't say.
 9 Q. So at this point you don't know why she's not
 10 doing them?
 11 A. No, I don't.
 12 Q. And when you spoke with Ms. Torreas and
 13 Ms. Salsbury, did they tell you the source of the
 14 confusion?
 15 A. No. No.
 16 Q. So was it kind of a situation of, gosh, there's
 17 these new statutes and we want to know how to follow the
 18 law?
 19 A. Yes. Yeah, it was. It was, you know, we don't
 20 want to get in trouble but we do want to do a mail
 21 ballot program, and so can you do something to show us
 22 how to do it correctly.
 23 Q. Okay. I'm sorry, I should have asked you this
 24 at first, what's your title with the Texas Democratic
 25 Party?

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1 A. Right now I am one of the field directors. And
 2 I actually work -- I get paid by the DNC, the Democratic
 3 National Committee, as a field director. But that --
 4 that happened in February. Prior to that I was
 5 political director for the Party and Director of Party
 6 Affairs until February, and that's when I went over to
 7 the DNC.
 8 Q. And were you political director when you were
 9 making these presentations?
 10 A. Yes, ma'am.
 11 Q. Did anyone within -- did you -- did you run
 12 this Power Point by anyone within the Texas Democratic
 13 Party after you -- in order to get their input before
 14 you kind of took it on the road?
 15 A. Yes. I had it cleared with the chairman, and
 16 at that time it was me. And then after I got the okay
 17 from -- from Melinda, then that's when I -- when I
 18 started doing it.
 19 Q. You cleared it with the chairman?
 20 A. Yeah.
 21 Q. Who is the chairman?
 22 A. The chairman at that time was Charlie
 23 Soechting.
 24 Q. What did Mr. Soechting say about the
 25 presentation?

6 (Pages 18 to 21)

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1 A. Said do it.

2 Q. Did he say anything about the statutes being
3 confusing and, yeah, there's a need for this or anything
4 like that?

5 A. No, I don't think he did.

6 Q. So as far as you can remember, he reviewed it
7 and he said, that's good, take it out?

8 A. Yes, ma'am.

9 Q. Any other comments he made?

10 A. No, ma'am, I don't think so.

11 Q. Did anyone else have any input?

12 A. No, I don't think so. I mean, I -- I put it
13 out for everybody to take a look at. The only input I
14 got back was from the Secretary of State's office. And
15 there were just a few things in there, I think. And it
16 was -- it was my project so it was pretty much left up
17 to me.18 Q. When you say you ran it by everybody, what does
19 that mean?20 A. That means I put it up on -- in our shared
21 drive and sent an e-mail out and told people to take a
22 look at it, if they had a chance, and give me some
23 input. And I don't recall getting any -- you know, we
24 only had, like, five people working for us at the time.
25 So we were all kind of doing our own deal.

Page 23

1 Q. Did you run it by any attorneys?

2 A. Elizabeth looked at it. Charlie Soechting is
3 an attorney. And I'm trying to remember if I ran it
4 past anybody else. I'm not sure that I did.5 Q. And when you sat down to write this, how did
6 you -- how did you go about figuring out what to say?
7 And I'm not -- let me -- let me try to make that
8 question a little more specific. Where did you get your
9 understanding of the new statutes about mail-in ballots,
10 did you read them?

11 A. Yes.

12 Q. Okay.

13 A. I got them from the Election Code and from
14 the -- I talked to Steve Woolens' office, Carolyn -- I
15 can't remember her last name -- she was there forever --
16 about the intent of legislation. And then I read the
17 Election Code. And then I went through the Election
18 Code and started doing piece by piece, and said, okay,
19 like, who can -- who can vote by mail was -- you know,
20 and so I laid that out. And then methodically I kind of
21 went through the statute.22 Q. When you -- when you talked with Carolyn at
23 Steve Woolens' office, did you talk to her, did you --
24 did you talk to Representative Woolens?

25 A. No, I talked to Carolyn. I told her, I said,

Page 24

1 you know, we're having -- I'm doing some stuff and I've
2 had a call about trying to, you know, make sure
3 everybody understands it. And what was y'all's intent?
4 Was y'all's intent that we can't do these, that one
5 person can only do one ballot and that, and she said no,
6 that's not our intent. Our intent was mail ballots are
7 a good thing and we need them. However, we need to make
8 sure that there's -- there's not any fraud in the
9 process. That's the reason we wanted the name of the
10 person on the back of the carrier envelope.11 Q. Were you aware of instances of -- for instance,
12 like, one nursing home, all of the ballots from one
13 nursing home being cast for the -- for the same person?

14 A. No.

15 Q. Did you know that Representative Woolens had
16 talked about some -- a situation like that?17 A. No. I know that Woolens had some problem with
18 mail ballots in the Dallas area.

19 Q. And that's all you knew?

20 A. That's all I really knew, yes, ma'am.

21 Q. So you had no idea exactly what that problem
22 was?

23 A. No.

24 Q. Do you agree that the elderly and disabled can
25 be taken advantage of with the mail-in ballots when --

Page 25

1 when they come to their home?

2 A. Yes.

3 Q. Would you agree that maybe they can be
4 intimidated?

5 A. Sure.

6 Q. Do you think it's a good idea to know who has
7 handled a voted ballot?

8 A. I'm not sure that it's a good idea.

9 Q. Okay.

10 A. I think that once the ballot has been sealed
11 then that's pretty much -- it's been sealed and it
12 should be allowed to go to the post office. And I don't
13 have a problem with, you know, having somebody carry it
14 to the post office. But that's not what the statute
15 says.16 Q. Are you aware of the protections that the
17 Election Code gives to the ballots that have been placed
18 in the ballot box at the polls?

19 A. Yes, ma'am.

20 Q. And is it -- do you know whether under those
21 statutes someone who we don't know could come in, pick
22 up that ballot box and take it to the County Clerk's
23 office?24 A. No. I think the statute says it has to be an
25 election judge to take it.

7 (Pages 22 to 25)

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1 Q. Do you think it's important to know at the --
 2 from -- let me start over. Do you think it's important
 3 to know who those people are who are handling those
 4 ballot boxes full of voted ballots?
 5 A. Yeah. Yeah.
 6 Q. Do you believe that the disabled and the
 7 elderly have the right to the same degree of protection
 8 that a voter at the polls has?
 9 A. Yeah.
 10 Q. Now, you say you got your understanding of the
 11 statutes by reading them and then by sending out your
 12 presentation and asking for comments; is that right?
 13 A. Yes, ma'am. And I did get input from Secretary
 14 Williams.
 15 Q. Himself?
 16 A. Yes, ma'am.
 17 Q. What did Secretary Williams tell you?
 18 A. Basically, what I wanted -- we had a meeting,
 19 and I wanted to be cleared on what storing ballots
 20 meant.
 21 Q. All right. What did he tell you?
 22 A. And I asked him, he said overnight.
 23 Q. Okay. And were you fine with that answer?
 24 A. Yes, I was fine with that. I just wanted
 25 something to where I could tell somebody. And, you

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1 know, I told him what I was doing, you know. And as
 2 long as the name is on the back and they sign it then
 3 that's fine, and he said yes.
 4 Q. Let's look at Exhibit 1 again. I think you're
 5 on page six from the back. It's, like, 11 or 12 from
 6 the back. We're looking for a topic that says
 7 "Returning the Carrier Envelope."
 8 A. Okay.
 9 Q. And you wrote this, right?
 10 A. Yes, ma'am.
 11 Q. And the first check mark there says "Place in
 12 Mail Box," right?
 13 A. Yes, ma'am.
 14 Q. "Give it to someone to place in Mail Box,"
 15 right?
 16 A. Yes, ma'am.
 17 Q. And then you said, if you pick up a Carrier
 18 Envelope you must have your name on the back of the
 19 Carrier Envelope. Did you write that?
 20 A. Yes, ma'am.
 21 Q. Was it clear to you when you wrote that what
 22 was supposed to happen?
 23 A. Yes.
 24 Q. And did you try to make it clear to these
 25 people that you were giving these presentations to that

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1 that's what needed to happen if they picked up a carrier
 2 envelope?
 3 A. Yes.
 4 Q. When you said, pick up, what did you mean?
 5 A. When you physically take possession of the
 6 envelope. And if you go to the next page --
 7 Q. Okay.
 8 A. -- I even had a presentation of this is what a
 9 carrier envelope should look like if you have it in your
 10 possession. And that would be that you have the
 11 signature of the voter, and then as you can see, my name
 12 is there. And I had a stamp made that had my written
 13 name and address. So that's all they really had to do
 14 was stamp it and sign it. And that would make it fairly
 15 easy.
 16 And I think I could -- we could've even
 17 had a stamp made of a signature and probably still
 18 could've been okay, and that would've made it even
 19 easier. But we didn't go that far.
 20 Q. Did -- when you gave these presentations, did
 21 you get questions that said, well, gee, I don't know
 22 what it means to possess a carrier envelope?
 23 A. No.
 24 Q. Did you have a clear idea in your mind of what
 25 possession meant?

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1 A. Yes, ma'am.
 2 Q. What did it mean to you?
 3 A. Means that I physically had possession of an
 4 envelope that had signed and sealed by a voter.
 5 Q. And physically had it meant you had it in your
 6 hands?
 7 A. Had it in my hand.
 8 Q. And is that what you told the people that you
 9 were --
 10 A. Yes.
 11 Q. -- talking to? Now, other than people telling
 12 you, you know, I just -- I just don't want my name and
 13 address on that envelope, has anyone else told you any
 14 reason that they don't want to help with mail-in ballots
 15 anymore?
 16 A. The biggest concern was after the paper came
 17 out with people being indicted, that's when the fear
 18 went up. And people were going, look, I'm just not
 19 going to do that anymore.
 20 Q. Did you attempt to tell them, look, all you
 21 have to do is sign the back?
 22 A. Yes, I did.
 23 Q. What did they say when you told them that?
 24 A. I don't want my name on there.
 25 Q. Who called -- who called and told you that?

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<p style="text-align: right;">Page 30</p> <p>1 A. That was in one of my classes. 2 Q. Okay. 3 A. And I can't remember who it was. 4 Q. Do you remember where it was? 5 A. It was in the Bee -- Alice -- what county is -- 6 Jim Wells maybe. 7 Q. And how many people told you that? 8 A. Several of them did. 9 Q. Do you remember -- can you give me an idea of 10 how many? 11 A. Well, there was two people that spoke up and 12 people were nodding. So, you know, maybe half the 13 class. 14 Q. And of? 15 A. Of, like, 10 or 12 people. Something like 16 that. 17 Q. All right. Did anyone ever tell you that they 18 had talked to the Secretary of State or the OAG about 19 these statutes and that they -- they were given 20 incorrect information? 21 A. No. I talked to the Attorney General's Office. 22 Q. Okay. 23 A. And they gave me a copy of their Power Point. 24 And it wasn't very clear. It was actually not clear at 25 all. And that was when I talked to Ann about, have you</p>	<p style="text-align: right;">Page 32</p> <p>1 lobbyist. Can you just briefly give me your job 2 history? 3 A. Yeah. I was a Dallas firefighter for 22 years; 4 I was a marine for two years; lobbied for ten years, and 5 I was a consultant for two. And I've been with the 6 Party since then. 7 Q. How did you get into lobbying? 8 A. Politics. 9 Q. Okay. You just -- you've been active in 10 Democratic? 11 A. Democratic politics. And it started in '78 12 when we did a pay raise referendum for the fire fighters 13 and police officers in Dallas. 14 Q. Is this Power Point and training available to 15 any locals who would like to have it? 16 A. Yes. It's on our -- it's on our web page. 17 Q. And are you still being asked to give it? 18 A. I was this year because I was doing delegate 19 training, and so since I was going there anyway. I've 20 only had one case this year and was asked to do it. 21 Q. Since you were going where? 22 A. To Del Rio. 23 Q. Okay. Do you know how many times you've given 24 this training? 25 A. No. I would say it's probably under ten. Ten</p>
<p style="text-align: right;">Page 31</p> <p>1 seen the AG's Power Point presentation? And she said, 2 that has not been cleared by our office. 3 Q. Okay. Were there any other discussions you had 4 about the AG Power Point presentation? 5 A. Once I saw it and got a copy of it I made it 6 available to several people. And we -- we discussed it 7 and a lot of people that were there thought it was very 8 unclear and that it was intimidating. And that was the 9 Power Point they were teaching law officers in how to 10 investigate voter fraud by mail ballot. 11 Q. And, obviously, you thought yours was much 12 clearer; is that right? 13 A. Yes. 14 Q. Mr. Bailey, what is your educational 15 background? 16 A. I graduated from Wiley High School. I 17 graduated from the University of -- I mean, the Dallas 18 Baptist College with a bachelor's degree. I attended 19 and graduated from the Harvard Trade Union Program in 20 2000. 21 Q. And what was your bachelor's degree in? 22 A. Career Arts. 23 Q. And what year did you receive that? 24 A. '78. 25 Q. And I know you've told me that you worked as a</p>	<p style="text-align: right;">Page 33</p> <p>1 times probably would be the max. 2 MS. WILSON: I think those are my 3 questions on this topic. 4 MR. CARROLL: You have any questions? 5 MS. WILSON: Let me -- let me -- 6 MR. CARROLL: Where'd you do your marines? 7 A. Camp Pendleton, California. 8 MR. CARROLL: Were you with the fleet 9 or -- 10 A. I was with the first battalion, seventh marines 11 in the first marine division from '71 to '73. They had 12 just pulled out of Vietnam then, and so we were -- 13 MR. CARROLL: Yeah that president was -- 14 was famous in -- 15 A. Yeah. 16 THE VIDEOGRAPHER: This is the end of 17 deposition for Ken Bailey. We're off the record at 18 10:20. 19 MS. WILSON: Oh, we're off? 20 THE VIDEOGRAPHER: We're back on the 21 record at 10:20 a.m. 22 Q. (By Ms. Wilson) Have you ever helped anybody 23 with a mail-in ballot yourself? 24 A. Yes, ma'am. 25 Q. When?</p>

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1 A. I don't remember the date. It was an election
2 where we had -- we had a call here to the office about
3 can you come over and help me sign up for a mail ballot
4 application, and her husband. Well, when I arrived
5 there, she had gone to dialysis. Her husband was still
6 there, and there was a nurse. Her husband was disabled.
7 And he wanted a ballot and so I had a mail ballot
8 application. And he couldn't sign it, all he could do
9 was scribble. And so I had to witness it.

10 Q. Okay.

11 A. And so that's what I did. And then -- then I
12 brought it to the attention of other people who are
13 interested in elections. We have a coalition of
14 election reform people that met during session. So I
15 take it this was probably during the session. It was
16 either '07 or '05.

17 And I just made a statement to them, look,
18 I can't assist anybody else. I did my one and that's
19 all I can do. That's really not fair. It's my job to
20 go out and help people vote and stuff, and because of
21 the statute, I can't do but one.

22 Q. Did you read the statute's provisions on
23 witnessing?

24 A. Yes.

25 Q. Those -- did you understand that the statutes

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1 on witnessing were there before the '03 amendments?

2 A. Yes.

3 Q. And the witnessing statutes say that if you're
4 witnessing something that means that it's either someone
5 who can't write or can't see?

6 A. Right.

7 Q. Okay.

8 A. Yeah. Yeah, that's the reason I was -- I mean,
9 it took me out of the election cycle because I already
10 witnessed one and I can only do one per cycle. And we
11 even talked about trying to get something changed to
12 where if somebody is -- let's say they work for
13 Advocacy, Inc. who does disabled people, and that's part
14 of their job, then they should be able to witness more
15 than one.

16 Q. Right.

17 A. But that was just talk.

18 Q. But you knew that you could witness mail-in
19 ballot voters in other ways --

20 A. Yeah.

21 Q. -- than witnessing?

22 A. Yeah.

23 Q. Okay. And is this the only present -- this
24 Power Point and the training that went with it, was that
25 the only training that the Texas Democratic Party did?

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1 A. To my knowledge, this was the only training
2 that we did. This is the only training I did. Now, we
3 have some field staff that might have done this Power
4 Point. But they used the Power Point.

5 Q. So -- and that was my next question, other
6 people may have used the Power Point and -- because they
7 got it off the website?

8 A. Yes, ma'am.

9 Q. Okay.

10 MS. WILSON: All right. Now I'm through.

11 MR. CARROLL: Anything from the Secretary
12 of State?

13 MR. DYRE: No, sir.

14 THE VIDEOGRAPHER: Okay. This now
15 concludes the deposition for Ken Bailey. We're off the
16 record at 10:23 a.m.

17

18 (WITNESS EXCUSED)

19

20 (SIGNATURE WAIVED)

21

22

23

24

25

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION

4 WILLIE RAY, JAMILLAH JOHNSON, *
5 GLORIA MEEKS, REBECCA MINNEWEATHER, *
6 REUBEN ROBINSON, EDDIE JACKSON, *
7 AND THE TEXAS DEMOCRATIC PARTY, *
8 PLAINTIFFS *

9 VS. * NO. 2-06CV-385

10 STATE OF TEXAS, A STATE OF THE *
11 UNITED STATES; GREG ABBOTT, ATTORNEY *
12 GENERAL OF THE STATE OF TEXAS; *
13 AND PHIL WILSON, SECRETARY OF STATE *
14 FOR THE STATE OF TEXAS, *
15 DEFENDANTS *

16 COURT REPORTER'S CERTIFICATE
17 ORAL DEPOSITION OF JAMES KENNETH BAILEY
18 Taken April 28, 2008

19 I, Joy N. Quiroz-Hernandez, Certified
20 Shorthand Reporter Number 8391 in and for the State of
21 Texas, hereby certify to the following:

22 That the witness was duly sworn by the
23 officer and that the transcript of the oral deposition
24 is a true record of the testimony given by the witness;

25 That examination and signature of the
witness to the deposition transcript was waived by the
witness and agreement of the parties at the time of the
deposition;

That the original deposition was delivered
to _____;

That the amount of time used by each party
at the deposition is as follows:
Ms. Wilson - 43 Minutes

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1 I further certify that my charges for
2 preparation of the completed original deposition
3 transcript and any exhibits thereto are:

4 Original Deposition \$ _____
5 To be paid by: _____

6 That pursuant to information given to the
7 deposition officer at the time said testimony was taken,
8 the following includes all parties of record:

9 FOR THE PLAINTIFFS: OTIS CARROLL

10 FOR THE DEFENDANTS: KATHLYN C. WILSON

11

12

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25

That a copy of this certificate was served
on all parties shown herein and filed with the Clerk.

I further certify that I am neither
counsel for, related to, nor employed by any of the
parties or attorneys in the action in which this
proceeding was taken, and further that I am not
financially or otherwise interested in the outcome of
the action.

Certified to by me this _____ day of

Joy N. Quiroz-Hernandez, CSR
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NOTES

PAGE / LINE

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Exhibit 16

Interview with Phillip & Reshanna Houff

Conducted by Sgt. Jennifer Bloodworth & Sgt. Steve Ried
412 Robison Terrace, Texarkana, TX
02/03/05

R Houff: Hi.

Bloodworth: Hi. Are you Reshanna?

R Houff: Reshanna.

Bloodworth: Reshanna. Ok. I'm Jennifer Bloodworth. I'm with the Attorney General's office. I think that awhile back you had talked to a guy named Jesse Soliz from our office.

R Houff: Who?

Bloodworth: Soliz. Jesse Soliz.

R Houff: Oh, ok.

Bloodworth: About your dad's voting last year? Is now a good time to talk?

R Houff: Yeah, yeah.

Bloodworth: I'm Sgt. Jennifer Bloodworth, this is my partner, Sgt. Steve Ried.

R Houff: Ok

Bloodworth: We're doing an election fraud case and we're talking to people about their mail in ballots...

R Houff: Dad?

P Houff: Huh?

R Houff: These are the people here to see you to look at your signature, so... remember I told you we talked on the phone?

Bloodworth: Well I don't have your actual ballot, b/c it's locked away in a box at the county courthouse. But I do need to ask you if this is your signature here. This would have been the application for the mail-in ballot. It would have been on a thick, cardstock paper, folded in half. Did anybody bring you anything that looked like this?

R Houff: I was here when the man came by.

P Houff: Mine don't look anything like that.

Bloodworth: Is that your signature? No?

R Houff: That don't look like yours, that's the one I question. And the 'H's'... you never write your name like that. But that look like your writing.

P Houff: Yeah, I can't write worth a darn now. I don't know. They different, them "H's," I never wrote like that.

Bloodworth: Yeah, they are a little different.

R Houff: Mhmm. That 'H' is really different.

Bloodworth: Do you remember anybody bringing anything like this by to get you, not registered to vote, you were already registered, but to get you signed up to get a mail-in ballot? So that you didn't have to go down and vote in person?

P Houff: ...They, I come in the mail. I get my stuff in the mail. Then this girl came down, and you know, she showed me all we votes the Democrat vote. So that's when I signed that, I put it in the envelope, sealed it and signed that envelope. And then I put it in another envelope. And I ain't seen it since.

Bloodworth: Did you hand it to her or did you mail it yourself?

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P Houff: I gave it back to her. Yeah, she mailed it because she put the stamp on it.

Bloodworth: Ok, well I'll explain the law to you. It's not that you did anything wrong, but hypothetically, if I were a Republican and I came to you and said, "I'm going to help you, I'm going to help you vote, I'm going to help you with your mail-in ballot." And I watch you vote, and I don't like who you voted for, and I take the ballot, I don't have to mail the ballot.

P Houff: 'Cuz they already took it right there... (unintelligible)

Bloodworth: Yeah... do you normally vote in person?

P Houff: Yeah, every time I done did it, I tried to... (unintelligible) I'm getting old.

Bloodworth: So that's why...

P Houff: God almighty, I could make a whole bunch of them, you'd never get nothing made like that. I got a driver's license, ain't nothing to it.

Bloodworth: Well, Mr. Houff, I need to get a statement from you. Do you feel comfortable writing it out for me, or would you rather me just ask you some questions and have you answer them?

P Houff: You just ask me some questions.

Bloodworth: Ok, well do you mind if I record our conversation?

P Houff: I don't care. I'm old, but I tell you that handwriting doesn't change.

R Houff: Yeah, he can't write, he can't write.

P Houff: I can't write...

Ried: Yeah, that's not his [handwriting].

R Houff: Yeah, that's not his.

Ried: That's definitely not his.

R Houff: That's something I said to the other man, I said that does not look anything like his handwriting.

Bloodworth: Yeah, the 'H' is totally different.

R Houff: Yeah, the 'H' has more of a 'T' to it in the front, and see he never does that. Yeah, that's not his.

P Houff:... Here's my old medicare card, and it's different, but a little bit than that, but no, I don't mind, though. Just give me a statement and I just know I gave what I give it, that's all I can do. They bring it down, I get it in the mail and I asked her. She asked me, "Have you voted?" I said, "No." It doesn't come, she said, yeah, I looked in the mailbox and get it. That's all, I voted... and she...walked up there...

Bloodworth & Ried discuss typing up statement.

P Houff: What's supposed to be? Somebody forging people's name?

R Houff: It's definitely forged on that one.

Bloodworth: Well, honestly, until yours, we hadn't looked at that. That hasn't really been the major issue. The issue of handling of the ballots is what we were here for.

P Houff: Dang.. that's how I write my name. I can write it out 100 times would be the same way, it ain't gonna get no better.

Bloodworth: Do you have another copy of this, or would that suffice...? (handwriting sample)

Ried: Need another form

P Houff: (unintelligible) Ain't none of them gonna sign.

R Houff: That one's really different. That's the one I told him, I said that is not my dad's handwriting.

Bloodworth: Would you feel comfortable writing his words for him on a statement?

What's your middle name?

P Houff: Lamar

Bloodworth: Lamar, and it is H-o-u-f-f?

Ried: Time is 4:03.

P Houff: Yeah, the last thing I knew, that's the way I been voting. And she the same way every election, she comes by every year.

Ried: Every year?

P Houff: Every year. She asked me, "You gonna vote?" I told her, "Yeah."

R Houff: Her and that Willie. Willie...

Bloodworth: Willie Ray?

R Houff: Uh-huh (affirmative).

Bloodworth: Was she with Melinda?

R Houff: No, Belinda came with her, by herself then.

P Houff: Oh, the one that came and got my thing?

R Houff: Yeah.

P Houff: Yeah, she by herself. But she got it all filled out for me, she got it filled out like that. I was down on one, she was down there. ... She the one that helped me. I said I don't know which one of the sheriff to vote for. Hell, I don't know, that girl's a democrat. That's all I know, and that's what I always mark.

Bloodworth: I know it's rude to ask, but can I get your age?

P Houff: 51.

Bloodworth: 51?

R Houff: Yeah, he thought, what's the day of your birthday and I thought it was November 8 of 53, and he thought it was 76. I thought that can't be because I'm only 29, and that's my birthday!

Bloodworth: And what was your date of birth?

P Houff: November 8, 53.

Bloodworth: And what's your phone number here? Is it 277-2022? Do you have a secondary number? Cell phone?

P Houff: That's my cell phone. And when I move down...

Bloodworth: Ok. And uh, I'll ask you (P Houff) some questions and then I guess you (R Houff) can just write his answers. And try to put it in sentence form, but don't worry about grammar or anything. Ok. So I asked you if you had remembered signing this form and you noted that this is probably not your signature.

P Houff: None of them look like mine.

Bloodworth: Would you say that by looking at the application, that um... and it was Melinda that brought this to you, and not Willie Ray? Do you remember?

R Houff: It was Belinda.

P Houff: Belinda always bring it to me.

Bloodworth: Ok, on the application that Melinda brought to you, for, I guess this would have been for the general election.

P Houff: It come, when they mail it to me, it's on a light blue deal, I got it out of the mailbox. ... (unintelligible)... and opened it.

Bloodworth: Ok. You need to note on there that the signatures were different. That, you know, you think that this is your signature, but the one on the bottom portion is not.

P Houff: Yeah, that one there.... I don't do my 'H's' like that. I don't know who put that right there.

Bloodworth: It doesn't look like your signature.

P Houff: I'll even write it out for you.

Bloodworth: Well, even on your DL you don't quite spell out Houff. Whereas this, it is.

P Houff: ... it ain't right. That's my signature there. Phillip L Houff. (laughs).. you can't write...

Bloodworth: Ok, so tell me, you said that she took this with her.

P Houff: Yeah, she took everything. I gave everything to her. She, I assume she seal it with the sticker on it, I mean the stamp. But she told me, "I put the stamp on it." I said, "Great - cuz I was gonna go get a stamp." She said, "No, I take care of it." I gave her everything. She came back upstairs, and she be without it. I assume that she would have mailed it.

Bloodworth: You see where the problem lies though, with somebody taking your ballot instead of you mailing it.

P Houff: Well I didn't know that, you know. To be honest I wasn't voting until she really talked me into voting.

Bloodworth: Well, you should vote.

P Houff: Well I realize that now, I tell everybody else, but before then I didn't vote.

Until she come down there, you know, pushing, they need to make you vote. So, several of us in the building went to vote. She said, "You ain't gotta go down there and stand in no line no more." So I...

Bloodworth: Well you can, you realize that. On here, you can check 65 years of age or older, disability, or confinement in jail which I'm glad you're not. So you know, any one of these is a reason, and you qualify for it. So feel free to do this in the future, just don't give your ballot to anybody.

P Houff: Send it in the mail myself. Cuz I been doing it ever since she taught me. She the one convinced me to start voting. And I said then I leave it up to her. She come downstairs with that and I don't even read it, I just signed it and give it back to her cuz I'm thinking she gonna [mail it]. She know more about the politics and I don't. I thought she gave me good advice.

Bloodworth: Make sure that the statement reads that you did receive your ballot in the mail.

P Houff: Yes I did receive it, and I signed one and put it in the envelope.

Bloodworth: Now, did you wait to vote it until she came back, did she tell you she'd help you vote? What made you wait until she came?

P Houff: I was waiting because I wasn't for sure who to vote for. And I knew I was gonna see her right after so I said, "Whenever you get time you need to come help me and show me how to vote." And that's when she come down here, "Sign here, check there," and I signed it, and put it in the envelope. "I mail it for you," but I didn't know that she would take it in there. Cuz like I said I always use the...

Bloodworth: Ok, so when you received the ballot and Melinda came back by to help you mark it... now, did you do the marking yourself?

P Houff: I marked it myself. But it looked a lot ... I signed it, I put it up in I guess a green envelope. ...

Bloodworth: Did you sign the envelope?

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P Houff: I signed the envelope, and then she put it off in another envelope. I think. She told me, "I'll put a stamp on it and get it in the mail for you." I said, "I sure appreciate it." And I knew for the last 3 years she been doing that. But I see that time on tv about the vote, but I don't vote. She told me to vote. I always gonna vote, vote democrat! But it's a shame... (cough) Is this here a bad deal going around?

Bloodworth: It's not just Bowie County. The actual law about handling ballots, it just went into effect in 2003 and I think the problem is that a lot of people didn't know about it. There's no billboards or anything. There's no way to have known the law changed, and so I think it had been done this way for so long in so many counties that that's why we're having such a problem right now, because the law has changed and yet there was nothing advertised about it. But we're here merely to collect the information and find out who did what. But as far as what's going to happen from here, that's up to our attorneys.

P Houff: Well, I did what I did.

Bloodworth: Yeah, oh, no, no... please don't think that you're in any kind of trouble. It's not anything on your part, if anything you're a victim because your ballot was in jeopardy.

P Houff:

Bloodworth: We do too. That's why we're here. Just make sure that it's noted that you did make your mark at her instruction. That she...

P Houff: She told me.

Bloodworth: She told him who to vote for. And did she walk you through candidate by candidate?

P Houff: Yes, yes. Names like... (unintelligible)

Bloodworth: And did she have anything with her? A sample or anything to go by or did she just tell you the names?

P Houff: She just told the names. Like that time, she just kept going each position. I said, "Who is who?" She said, "Just sign that like that." I think. I thought I was doing the right thing.

Bloodworth: Well, you did right in voting, but we want to make sure that your ballot isn't in question, in getting there.

P Houff: I want it to get there, but like I said I didn't know nothing about so she started helping me. And I thanked her for doing it for me, cuz I didn't know who to vote for. I probably wouldn't have voted, if she hadn't come. I look for her every year or something.

Bloodworth: Until she started coming around that you used to vote in person?

P Houff: No I never voted till I met her, till she helped me vote. And I started talking to my buddies to get them to vote.

Bloodworth: Yeah, in talking to her I felt that it was definitely in good faith. It's just that, while I truly don't think that there was anything other than she took the ballot and went to the mailbox, I really do. But you can see where if the wrong person came to help you...

P Houff: Yeah.

Bloodworth: That's why the law is that everybody has to mail it themselves. [reading statement] By looking at the application that was brought to me by Belinda the signatures were different. The top signature was mine but not the bottom signature. Belinda took the application and stated to me that she would mail it for me. I (Phillip) did receive the

ballot in the mail. When he received the ballot Belinda came up to my apartment and assisted me in voting and marking my ballot. Belinda pointed out which candidate to mark and I marked the ones she stated.” Ok. Um, add in there that she, when he was done making his mark, did she sign on the ballot anywhere? Did she sign anything?

P Houff: No, she didn’t sign.

Bloodworth: Ok, can you add that in there?

R Houff: That she...

Bloodworth: That she did not...

P Houff: She did not.

Bloodworth: She did not sign anywhere on the ballot.

R Houff: (unintelligible) laughs

Bloodworth: Right, and that you sealed it yourself, right?

P Houff: Nope.

Bloodworth: Oh you didn’t?

P Houff: I put it in there and she licked it and sealed it. And I signed it.

Bloodworth: In front of you?

P Houff: You’re damn right. And I signed it and she put it on another one and I (slapped hands).

Bloodworth: Ok. So you....(unintelligible) and he put the ballot in the envelope.

P Houff: I put...

Bloodworth: It’s fine...

P Houff: Put the ballot in the envelope, and the she took it. She sealed it, I signed it.

Bloodworth: Did you see it? It’s going every which way [referencing something on tv]

P Houff: ... [discussed tv]

Bloodworth: Then after she signed it, she told him she’d put a stamp on it and mail it for him.

All discussed television program, R Houff continued to write statement on behalf of P Houff.

Bloodworth: Ok, can you look it over? Is there anything that you need to add?

P Houff: (unintelligible)

Bloodworth: Ok, Reshanna, what I’m going to do, I’m going to start from your period and draw all the way down that way nobody can add anything to the statement. Then I need you to sign below your father and then you’re done.

R Houff: Oh you write like Daddy (to Ried after he signed the statement as a witness).
[laughter & discussion about poor penmanship]

Bloodworth asked P Houff to sign back of statement 10 times.

[discussion about weather]

End of relevant interview.

Exhibit 17

The State of Texas

Elections Division
P.O. Box 12060
Austin, Texas 78711-2060
www.sos.state.tx.us



Phil Wilson
Secretary of State

Phone: 512-463-5650
Fax: 512-475-2811
Dial 7-1-1 For Relay Services
(800) 252-VOTE (8683)

Dear Voter:

Thank you for choosing to exercise your right to vote. You have chosen to cast your ballot by mail, and I would like to share with you information about the process of voting by mail.

Applications to vote by mail become a public record 72 hours after the ballot has been mailed to you. In recent years, certain campaigns have used this information to identify and influence voters casting a ballot from home. When you vote by mail, you may take the following steps to protect your ballot and your vote.

1. **Know your rights as a voter:** You have the right to vote for the candidates of your choice. You have the right to mark your own ballot or to receive assistance with reading or marking your ballot from a person you know and trust. Your vote is secret. You do not have to tell anyone how or for whom you voted. If a person assists you with reading or marking your ballot, it is a crime for that person to reveal how or for whom you voted.
2. **Be careful about assistance:** No one should help you with your ballot, unless you cannot read the language written on the ballot or unless you have a disability that makes you unable to write or to see. If one of these conditions applies to you, we recommend that you ask a family member or trusted friend for assistance with your ballot. The person assisting you must mark your ballot according to your instruction and cannot suggest how you should vote. The assistant must place his or her name, address, and signature on the carrier envelope.
3. **Mail your own ballot:** If you can't get to the mailbox to mail your own ballot, give your ballot to a family member or trusted friend to mail for you. Do not accept offers from strangers to mail your ballot for you. Texas law prohibits voted ballots from being delivered by common or contract carrier from campaign headquarters.

If you follow these simple guidelines, be assured your vote will count. **If anyone attempts to pressure or intimidate you, we urge you to report this to your county elections office, your district attorney's office, or our office toll-free at 1-800-252-VOTE(8683).**

Early voting in person begins February 19, 2008 and will continue through February 29, 2008, and election day is March 4, 2008. You may contact your county elections office for the locations and hours of operation for your early voting sites. If you change your mind about voting by mail and would prefer to vote in person, you must take your mail ballot with you and cancel it at the polling place. You may then vote in person, either during the early voting period or on election day.

Sincerely,

A handwritten signature in black ink that reads "Phil Wilson".

Phil Wilson
Secretary of State

The State of Texas



Elections Division
P.O. Box 12060
Austin, Texas 78711-2060
www.sos.state.tx.us

Phone: 512-463-5650
Fax: 512-475-2811
TTY: 7-1-1
(800) 252-VOTE (8683)

Roger Williams
Secretary of State

Dear Voter:

Thank you for choosing to exercise your right to vote. You have chosen to cast your ballot by mail, and I would like to share with you information about the process of voting by mail. When you vote by mail, you may take the following steps to protect your ballot and your vote.

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If you follow these simple guidelines, be assured your vote will count. **If anyone attempts to pressure or intimidate you, we urge you to report this to your county elections office, your district attorney's office, or our office toll-free at 1-800-252-VOTE(8683).**

Early voting in person begins on the 17th day before the election and will continue until the 4th day before election day. You may contact your local elections office for the locations and hours of operation for your early voting places. If you change your mind about voting by mail and would prefer to vote in person, you must take your mail ballot with you and cancel it at the polling place. You may then vote in person, either during the early voting period or on election day.

Sincerely,

A handwritten signature in black ink that reads "Roger Williams".

Roger Williams

AM:EHW:ID:DearVoter\doc

The State of Texas



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P.O. Box 12060
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3. **Mail your own ballot:** If you can't get to the mailbox to mail your own ballot, give your ballot to a family member or trusted friend to mail for you. Do not accept offers from strangers to mail your ballot for you. Texas law prohibits voted ballots from being delivered by common or contract carrier from campaign headquarters.

If you follow these simple guidelines, be assured your vote will count. **If anyone attempts to pressure or intimidate you, we urge you to report this to your county elections office, your district attorney's office, or our office toll-free at 1-800-252-VOTE(8683).**

Early voting in person begins October 23 and will continue through November 3, 2006. Election day is November 7. You may contact your county elections office for the locations and hours of operation for your early voting sites. If you change your mind about voting by mail and would prefer to vote in person, you must take your mail ballot with you and cancel it at the polling place. You may then vote in person, either during the early voting period or on election day.

Sincerely,

A handwritten signature in cursive script that reads "Roger Williams".

Roger Williams

The State of Texas



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Geoffrey S. Connor
Secretary of State

Dear Voter:

Thank you for choosing to exercise your right to vote. You have chosen to cast your ballot by mail, and I would like to share with you information about the process of voting by mail. When you vote by mail, you may take the following steps to protect your ballot and your vote.

1. **Know your rights as a voter:** You have the right to vote for the candidates of your choice. You have the right to mark your own ballot or to receive assistance with reading or marking your ballot from a person you know and trust. Your vote is secret. You do not have to tell anyone how or for whom you voted. If a person assists you with reading or marking your ballot, it is a crime for that person to reveal how or for whom you voted.
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3. **Mail your own ballot:** If you can't get to the mailbox to mail your own ballot, give your ballot to a family member or trusted friend to mail for you. That person must place his or her signature, printed name, and residence address on the carrier envelope. Do not accept offers from strangers to mail your ballot for you. Texas law prohibits voted ballots from being delivered by common or contract carrier from campaign headquarters.

If you follow these simple guidelines, be assured your vote will count. **If anyone attempts to pressure or intimidate you, we urge you to report this to your county elections office, your district attorney's office, or our office toll-free at 1-800-252-VOTE(8683).**

Early voting in person begins April 28 and will continue until May 11, and election day is May 15. You may contact your local elections office for the locations and hours of operation for your early voting places. If you change your mind about voting by mail and would prefer to vote in person, you must take your mail ballot with you and cancel it at the polling place. You may then vote in person, either during the early voting period or on election day.

Sincerely,

Geoffrey S. Connor

AM:EHW:ID:DearVoter\May04.doc

The State of Texas



Elections Division
P.O. Box 12060
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www.sos.state.tx.us

Phone: 512-463-5650
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(800) 252-VOTE (8683)

Geoffrey S. Connor
Secretary of State

Dear Voter:

Thank you for choosing to exercise your right to vote. You have chosen to cast your ballot by mail, and I would like to share with you information about the process of voting by mail.

Applications to vote by mail become a public record 72 hours after the ballot has been mailed to you. In recent years, certain campaigns have used this information to identify and influence voters casting a ballot from home. When you vote by mail, you may take the following steps to protect your ballot and your vote.

1. **Know your rights as a voter:** You have the right to vote for the candidates of your choice. You have the right to mark your own ballot or to receive assistance with reading or marking your ballot from a person you know and trust. Your vote is secret. You do not have to tell anyone how or for whom you voted. If a person assists you with reading or marking your ballot, it is a crime for that person to reveal how or for whom you voted.
2. **Be careful about assistance:** No one should help you with your ballot, unless you cannot read the language written on the ballot or unless you have a disability that makes you unable to write or to see. If one of these conditions applies to you, we recommend that you ask a family member or trusted friend for assistance with your ballot. The person assisting you must mark your ballot according to your instruction and cannot suggest how you should vote. The assistant must place his or her name, address, and signature on the carrier envelope.
3. **Mail your own ballot:** If you can't get to the mailbox to mail your own ballot, give your ballot to a family member or trusted friend to mail for you. Do not accept offers from strangers to mail your ballot for you. Texas law prohibits voted ballots from being delivered by common or contract carrier from campaign headquarters.

If you follow these simple guidelines, be assured your vote will count. **If anyone attempts to pressure or intimidate you, we urge you to report this to your county elections office, your district attorney's office, or our office toll-free at 1-800-252-VOTE(8683).**

Early voting in person begins February 25 and will continue until March 8, and election day is March 12. Please note in some counties, early voting may begin on February 23 or 24 if so ordered by the early voting clerk. You may contact your county elections office for the locations and hours of operation for your early voting places. If you change your mind about voting by mail and would prefer to vote in person you must take your mail ballot with you and cancel it at the polling place. You may then vote in person, either during the early voting period or on election day.

Sincerely,

Geoffrey S. Connor

MN:EHW:ld:Dear VoterPrimary03English.doc

Exhibit 18

No response
due to
litigation.

Ann,

Should we
not respond
now that this
is in litigation.
ETHW



Moving Texas Forward
Texas Democratic Party

Boyd L. Richie, Chair

September 7, 2006

The Honorable Roger Williams
Secretary of State
Austin, Texas

Mr. Secretary,

Based on recent conversations between the staff of the TDP and your staff, I am requesting clarification in regards to mail ballots and applications for mail ballots. Below are several statements based on my understanding of the law. Please respond as to whether or not these statements are correct.

Definition of "assistance":

- A voter may only be "assisted" in filling out the application for a ballot or a ballot if the voter is unable to read, write, or is disabled and cannot see the application or ballot.
- MAILING the application or ballot on behalf of a voter does not qualify as assistance under this definition, but a person who does mail a ballot for another, must complete the witness/assistant section of the application or carrier envelope.
- If this person is neither a witness or assistant, what are they?

Applications :

- Applications for a ballot can be completely filled out by anyone, whether pre-printed or in handwriting, except for the signature (which must be done by the voter applicant), and these pre-filled out applications may be mailed to voters.
- Filling out the application BEFORE mailing it to the voter DOES NOT count as "assistance".
- Filling out any portion of the application in the presence of the voter DOES count as "assistance".
- If a voter is unable (due to illiteracy or physical disability) to sign the application, anyone can witness them making their mark, but the person doing so must complete the "witness" section of the application.
- A person can only "witness" one application per election (unless the voter is related to them as parent, spouse, child, sibling, or grandparent).

- Taking the signed application for a mail-in ballot to the post office requires the person transporting the application to complete the witness/assistant section of the application. In this case, should the person mark out "witness" on the application to indicate that they were not a witness and therefore that application does not count toward their limit of being a witness to only 1 application per election?
- A person can "assist" with or mail an unlimited number of applications as long as they properly complete the witness/assistant section of the application.

Ballots:

- If a person "assists" a voter in filling out the ballot, that person must sign the back of the carrier envelope, print their name, and put their residence address.
 - o In this case, it is recommended that they cross out the word "witness" to indicate they were not a "witness" and therefore that carrier envelope does not count toward their limit of being a witness to only 1 voter's carrier envelope per election
- A person may take a sealed carrier envelope to the post office, as long as they sign the back of the carrier envelope, and print their name and residence address.
 - o In this case, it is recommended that they cross out the word "witness" to indicate they were not a "witness" and therefore that carrier envelope does not count toward their limit of being a witness to only 1 voter's carrier envelope per election.
- A person may "assist" with or mail an unlimited number of ballots, as long as they properly fill out the back of the carrier envelope.
- If a person "witnesses" a voter's mark on the carrier envelope, that person must also sign the back of the carrier envelope, print their name, and put their residence address and indicate that they were a "witness".
- A person may only "witness" one voter's carrier envelope per election (unless the voter is related to them as parent, spouse, child, sibling, or grandparent).

Please respond by email to rhernandez@txdemocrats.org or fax to 512-480-2500.

Sincerely,



Ruben Hernandez
Executive Director

ELECTIONS DIVISION LETTER ASSIGNMENT

LETTER #: 7224

PRIORITY: _____

DUE DATE: 9/20/06NAME: Ruben HernandezSUBJECT: 2x Dem Party wants clarification
on Up laws related to vote by mail

ASSIGNED TO: _____

GENERAL LAW

ADMINISTRATION

SPECIAL PROJECTS

FOR: PaulDATE ASSIGNED: 9/15/06

TYPE OF ACTION: _____ LETTER _____ OPINION _____ PHONE CALL

SPECIAL COMMENTS: _____

Exhibit 19

CLEARANCE PAGE

DATE

Drafter: GL/ M. Best

MB

12/15/03

Verified legal citations ____ (initials)

Concur (2nd Att'y):

JM

12/15/03Approved: E. Hanshaw Winn

E

12/11/03Approved: Ann McGeehan

A

12/22/03OK 1/22
12/19/03Document: Letter to Mr. James T. ClancyDated: December 11, 2003

***** IMPORTANT *****

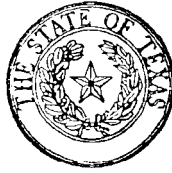
IF THIS DOCUMENT IS ADDRESSED TO THE DEPARTMENT OF JUSTICE - GIVE TO IRENE DIAZ FOR SUBMISSION --- DO NOT - REPEAT - DO NOT PROCESS FOR MAILING.

THE PERSON DOING THE MAILING MUST INITIAL THE FOLLOWING ACTIONS. IF THE ACTION DOES NOT APPLY, ANNOTATE N/A AND INITIAL THE LINE.

1. Enclosures attached na
2. Salutation and addressee are same ✓
3. Envelope attached and addressee verified ✓
4. "CC" or "BCC" made and mailed na
5. Copy to legal database ✓
6. Copy to Executive ✓
7. Log with referrals to Attorney General _____

FILE: Citizen's File (Letter of Last Name) _____
 County File (County Name) _____
 Other: (i.e. City of Austin or Austin ISD or Circle C MUD) _____

The State of Texas



Elections Division
P.O. Box 12060
Austin, Texas 78711-2060
www.sos.state.tx.us

Phone: 512-463-5650
Fax: 512-475-2811
TTY: 7-1-1
(800) 252-VOTE (8683)

Geoffrey S. Connor
Secretary of State

December 22 2003

Mr. James T. Clancy
Republican Party of Texas
101 Llano Circle
Portland, Texas 78374

Dear Mr. Clancy:

You have asked the following questions:

(1) If the local party or candidate sends an application to vote by mail to a voter who is over 65 which includes the voter's name, home address and voter registration identification, must they complete the voter assistance portion; (2) does the state have the new vote by mail application form completed; and (3) is there any prohibition on providing different but sufficient applications?

The answer to your first question is no. The assistance portion is required to be completed only when the voter is assisted in completing the application and the assistant in the voter's presence. Tex. Elec. Code Ann § 84.003(a) (Vernon Supp. 2004).

To answer your second question, the redesigned application for ballot by mail is being printed and will be available in January. The new form will be posted on our website as well.

Your third question asks if voters may use an unofficial application form as long as the form complies with state law. The answer is yes.

If you have any further questions or concerns or need assistance, please feel free to contact the Elections Division at (800) 252-VOTE(8683).

Sincerely,

A handwritten signature in cursive script, reading "Ann McGeehan".

Ann McGeehan
Director of Elections

AM:MB:sf



REPUBLICAN PARTY OF TEXAS

Jim Clancy
Senate District 21

101 Llano Circle
Portland, Texas 78374
Home Phone: 361.643.7833
Work Phone: 361.888.9261
Fax: 361.888.8504
jclancy@mattbran.com

October 9, 2003

Secretary of State
Attn: Elections Enforcement
P. O. Box 13697
Austin, Texas 78711

Dear Sir or Madame:

If the local party or candidate sends an application to vote by mail to a voter who is over 65 which includes the voter's name, home address and voter registration identification, must they complete the voter assistance portion, and if so, who must complete it?

Does the state have the new vote by mail application form completed?

Is there any prohibition on providing different but sufficient applications?

Very truly yours,



James T. Clancy

**ELECTIONS DIVISION
LETTER ASSIGNMENT**

LETTER #: 6640 PRIORITY: _____ DUE DATE: 10/30/08

NAME: Jessie T. Clancy

SUBJECT: Ask if it is considered "voter assistance"
when a local party or candidate sends ABXs

ASSIGNED TO: GENERAL LAW ADMINISTRATION
to me 65 voters which include name/address/Vote ID.
SPECIAL PROJECTS

FOR: Melanie DATE ASSIGNED: 10/23/08

TYPE OF ACTION: _____ LETTER _____ OPINION X PHONE CALL

SPECIAL COMMENTS: _____

Exhibit 20

CONDENSED TRANSCRIPT

ORAL DEPOSITION OF

ANGELA DENISE CARR

April 17, 2008

Julie A. Jordan & Company
4420 Marathon Boulevard Austin, Texas 78756
(512) 451-8243 phone (512) 451-7583 fax (877) 851-8243 toll free
info@jordanreporting.com www.jordanreporting.com

**WILLIE RAY, ET AL v.
STATE OF TEXAS, ET AL**

**ANGELA DENISE CARR
April 17, 2008**

Page 1

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WILLIE RAY, JAMILLAH)
JOHNSON, GLORIA MEEKS,)
REBECCA MINNEWEATHER,)
REUBEN ROBINSON, EDDIE)
JACKSON, and THE TEXAS)
DEMOCRATIC PARTY,)
Plaintiffs)

vs.)

STATE OF TEXAS, a State)
of the United States; GREG)
ABBOTT, Attorney General)
of the State of Texas; and)
PHIL WILSON, Secretary of)
State for the State of)
Texas,)
Defendants)

CIVIL ACTION NO. 2-06CV-385

ORAL DEPOSITION OF

ANGELA DENISE CARR

APRIL 17, 2008

ORAL DEPOSITION of ANGELA DENISE CARR, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above-styled and numbered cause on the 17th day of April, 2008, from 9:02 a.m. to 9:56 a.m., before Suzanne T. Lane, RPR, CSR in and for the State of Texas, reported by method of machine shorthand at the offices of The Field Law Firm, 9442 Capital of Texas Highway North, Arboretum Plaza One, Suite 500, Austin, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

**WILLIE RAY, ET AL v.
STATE OF TEXAS, ET AL****ANGELA DENISE CARR
April 17, 2008**

Page 2	Page 4
<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PLAINTIFFS:</p> <p>4 BY: Ms. Mandy Carroll</p> <p>5 IRELAND, CARROLL & KELLEY</p> <p>6 6101 S. Broadway, Suite 500</p> <p>7 Tyler, Texas 75703</p> <p>8 (903) 561-1600</p> <p>9 (903) 581-1071 Fax</p> <p>10</p> <p>11 FOR THE DEFENDANTS:</p> <p>12 BY: Ms. Rosemarie Donnelly</p> <p>13 OFFICE OF THE ATTORNEY GENERAL OF TEXAS</p> <p>14 808 Travis, Suite 300</p> <p>15 Houston, Texas 77002</p> <p>16 (713) 223-5886</p> <p>17 (713) 223-5821 Fax</p> <p>18</p> <p>19 FOR ESCAPEES, INC.:</p> <p>20 BY: Mr. Scott King Field</p> <p>21 THE FIELD LAW FIRM</p> <p>22 9442 Capital of Texas Highway North</p> <p>23 Arboretum Plaza One, Suite 500</p> <p>24 Austin, Texas 78759</p> <p>25 (512) 343-3663</p> <p>(866) 271-4431 Fax</p>	<p>1 ANGELA DENISE CARR,</p> <p>2 having been first duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 BY MS. CARROLL:</p> <p>5 Q. My name is Mandy Carroll. I'm one of the</p> <p>6 attorneys representing the plaintiffs in a case filed</p> <p>7 in the Eastern District of Texas that challenges the</p> <p>8 State's voting laws as the way they're currently</p> <p>9 written. I don't know how much you know about that,</p> <p>10 but would you please state your name for the record,</p> <p>11 and spell it.</p> <p>12 A. Sure. Do you want my full name?</p> <p>13 Q. Sure.</p> <p>14 A. Angela Denise Carr, C-A-R-R. First name is</p> <p>15 A-N-G-E-L-A, D-E-N-I-S-E.</p> <p>16 Q. Ms. Carr, have you ever given a deposition</p> <p>17 before?</p> <p>18 A. No, I have not.</p> <p>19 Q. Okay. I'll just tell you some ground rules</p> <p>20 that we can hopefully agree to. Try to answer yes or</p> <p>21 no, so that -- I'm sure your attorney has already told</p> <p>22 you all of this, but try to answer yes or no for the</p> <p>23 court reporter so she can get everything down. And</p> <p>24 I'll try to speak slowly -- sometimes I speak fast --</p> <p>25 so you try to do the same. And we'll try not to speak</p>
Page 3	Page 5
<p>1 INDEX</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 over each other, because it really helps her if I can</p> <p>2 finish my question before you start answering. If you</p> <p>3 ever need a break, just let me know, and I'll be happy</p> <p>4 to take one, and I just ask that you answer the last</p> <p>5 question I asked you.</p> <p>6 Ms. Carr, how are you employed?</p> <p>7 A. I am employed full time at Escapees RV Club.</p> <p>8 Q. And could you state the address of the</p> <p>9 Escapees RV Club for the record.</p> <p>10 A. 100 Rainbow Drive, Livingston, Texas 77351.</p> <p>11 MS. DONNELLY: Can I interrupt just real</p> <p>12 quick before we get into the substance?</p> <p>13 MS. CARROLL: Sure.</p> <p>14 MS. DONNELLY: Can we agree that the</p> <p>15 deposition will be taken according to federal rules?</p> <p>16 MS. CARROLL: Sure.</p> <p>17 Q. (By Ms. Carroll) Do you live in Livingston?</p> <p>18 A. Yes, I do.</p> <p>19 Q. Do you live on Rainbow Drive there, or is</p> <p>20 that just where you work?</p> <p>21 A. That's where I work.</p> <p>22 Q. Okay.</p> <p>23 I'm going to hand you what I'm going to</p> <p>24 mark as Exhibit 1, which is the subpoena for Escapees,</p> <p>25 Inc.</p>

2 (Pages 2 to 5)

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<p>1 (Exhibit No. 1 was marked.)</p> <p>2 Q. (By Ms. Carroll) And attached to it -- I</p> <p>3 guess I'll just mark it as Exhibit 2 -- is the notice</p> <p>4 of oral deposition for the Escapees.</p> <p>5 (Exhibit No. 2 was marked.)</p> <p>6 Q. (By Ms. Carroll) Have you had a chance to</p> <p>7 review these?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. As you can tell, on Exhibit 2, we ask</p> <p>10 that Escapees, Inc. identify an agent that is</p> <p>11 knowledgeable to testify on what's listed as 1, 2,</p> <p>12 and 3 on the second page of the Exhibit 2. Is that</p> <p>13 you?</p> <p>14 A. Yes.</p> <p>15 Q. So you're the person most knowledgeable to</p> <p>16 testify on these matters?</p> <p>17 A. Yes.</p> <p>18 MR. FIELD: I want to just step in for a</p> <p>19 second.</p> <p>20 MS. CARROLL: Okay.</p> <p>21 MR. FIELD: On No. 3 -- and I told Jerry</p> <p>22 this -- there is really no one at Escapees that knows</p> <p>23 that information --</p> <p>24 MS. CARROLL: Okay.</p> <p>25 MR. FIELD: -- so I didn't want you to</p>	<p>1 tent and go to a campground on the weekends, it's for</p> <p>2 anyone that's interested in camping or RVing.</p> <p>3 Q. Is the only place that Escapees is, is only</p> <p>4 in Livingston, Texas?</p> <p>5 A. Our headquarters is in Livingston. Like I</p> <p>6 said, we own RV parks in several states along the</p> <p>7 Sunbelt, but our headquarters is in Livingston.</p> <p>8 Q. You mentioned that one of the services you</p> <p>9 provide to your members is a mail forwarding service.</p> <p>10 A. Yes.</p> <p>11 Q. Can you tell me a little bit about how that</p> <p>12 operates?</p> <p>13 A. Can you -- how we do -- I mean, I need a</p> <p>14 little bit more clarification.</p> <p>15 Q. Sure. If I'm a full-time RVer, and I have</p> <p>16 a -- do I get a mailbox in Livingston?</p> <p>17 A. We have -- as you can imagine, with as many</p> <p>18 people as we have, we've got a very large mail room.</p> <p>19 And what you receive is a Pendaflex. We use Pendaflex</p> <p>20 files to file their mail into. So you do receive a</p> <p>21 number, and that is your box number -- if you want to</p> <p>22 call it that -- and that's how we differentiate you</p> <p>23 between everyone else.</p> <p>24 Q. Okay. So you said you have a really large</p> <p>25 number of members. How many members does Escapees have</p>
Page 7	Page 9
<p>1 have any misunderstanding.</p> <p>2 MS. CARROLL: Sure.</p> <p>3 Q. (By Ms. Carroll) Could you explain some of</p> <p>4 the services that Escapees -- and if I say "Escapees,"</p> <p>5 can we understand that that means "Escapees, Inc."?</p> <p>6 A. Yes, that's fine.</p> <p>7 Q. Could you explain to me some of the services</p> <p>8 that Escapees provides to its members?</p> <p>9 A. It's pretty involved. We have a magazine, an</p> <p>10 award winning magazine that we do. It's a bi-monthly</p> <p>11 magazine. We offer a park system, an RV park system</p> <p>12 for our people to go visit. We offer the largest mail</p> <p>13 forwarding service that people can use.</p> <p>14 The majority of the major points that we</p> <p>15 offer, it's a pretty all-encompassing club. We have</p> <p>16 various companies we're affiliated with that will offer</p> <p>17 discounts to people. Just anything that you can think</p> <p>18 of, really, that's related to RVing, we either try to</p> <p>19 provide or we partner with people that can provide that</p> <p>20 for them.</p> <p>21 Q. So this is a club for people who don't have a</p> <p>22 permanent home and they RV all the time, or some people</p> <p>23 have a permanent home and they RV part of the time?</p> <p>24 A. It's both, actually. Whether you RV on the</p> <p>25 weekend, or even if you have a tent and you go with a</p>	<p>1 right now?</p> <p>2 A. Escapees has about 65,000 members.</p> <p>3 Q. And do all of them have a mailbox system in</p> <p>4 Livingston?</p> <p>5 A. No, they do not.</p> <p>6 Q. How many of them have a mailbox number -- or</p> <p>7 a -- I'm sorry, I don't know the term that you use --</p> <p>8 in Livingston?</p> <p>9 A. It's called a personal mailbox, a PMB. And</p> <p>10 we have about 10,500 account holders -- or accounts.</p> <p>11 We don't have a listing of -- I don't have numbers for</p> <p>12 exactly how many people that is, but we have around</p> <p>13 10,500 boxes.</p> <p>14 Q. So those are individual boxes that may</p> <p>15 encompass two or more people or a family?</p> <p>16 A. Exactly. It could be a single, or it could</p> <p>17 be a family.</p> <p>18 Q. So do these people come in and set up an</p> <p>19 account with you in Livingston first if they want to</p> <p>20 have their mail forwarded on to them, wherever they may</p> <p>21 be at the time?</p> <p>22 A. They can come to Livingston to do that, or</p> <p>23 they can mail in their paperwork to us, or they can --</p> <p>24 if we're at a show or one of our own shows, they can</p> <p>25 come and sign up that way.</p>

3 (Pages 6 to 9)

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<p>1 Q. You said there are shows. How else may they 2 find out about the RV club?</p> <p>3 A. Our website. We're affiliated, like I said, 4 with numerous other businesses that we co-brand -- 5 well, not co-brand -- but that we work with to get the 6 name out about -- get the word out about us. So there 7 are several different ways that they can find out about 8 us.</p> <p>9 Q. So if someone has an address that they want 10 their mail forwarded to, if they're traveling around 11 all the time, do they temporarily change that address, 12 or how do you know where to forward these people's 13 mail?</p> <p>14 A. They call us or they e-mail us or they will 15 submit their instructions to us by mail or over our 16 website, and that's how we know where to send it to.</p> <p>17 Q. Generally, how often does that change?</p> <p>18 A. It depends. That's a hard question to 19 answer, because it just depends on the person.</p> <p>20 Q. Do they call you? Are you the one answering 21 the phone when they call, or who do they usually call?</p> <p>22 A. No, they don't call me. We have a bank of 23 phone operators that they'll call and talk to.</p> <p>24 Q. And generally, how many people work as a 25 phone operator? And is that their only job, to operate</p>	<p>1 account holders, these are the number of Escapees 2 accounts that we had, the club accounts that we had. 3 The 65,000 number I gave you is a rough estimate of how 4 many exact people. These are actually accounts.</p> <p>5 Q. And each of these people in this year -- like 6 in 2008, there's 30,568. That's the number of mail 7 service accounts that you have that --</p> <p>8 A. No. This is the number -- the question asked 9 of me was the number of persons belonging to Escapees 10 Club in Texas in the following years. This is not mail 11 service. This is Escapees Club.</p> <p>12 Q. Okay. So in 2008 -- and I know that you said 13 that you don't know the exact number, but if you could 14 just help me out by trying to figure out how many mail 15 service accounts you think you might have in 2008 --</p> <p>16 A. In 2008, we have about 10,500.</p> <p>17 Q. Do you have any idea, for 2006, how many mail 18 service accounts you might have had?</p> <p>19 A. It has stayed pretty steady.</p> <p>20 Q. So around the 10,000 number?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Fair enough. If you look to the third 23 page of that Exhibit 3 that I've marked, is this on the 24 website, or is this something that you send out to your 25 members? It says Escapees Mail Service, and it looks</p>
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<p>1 the phones and say -- if they say, you know, this is 2 where I want my mail forwarded or --</p> <p>3 A. Yes.</p> <p>4 Q. How many people does the Escapees employ in 5 that position?</p> <p>6 A. We have about seven phone operators that are 7 full time that are in our call center.</p> <p>8 Q. Okay.</p> <p>9 I'm going to hand you what I'm going to 10 mark as Exhibit 3 to your deposition. 11 (Exhibit No. 3 was marked.)</p> <p>12 Q. (By Ms. Carroll) I think this is some 13 information that was provided in response to the 14 subpoena, which is Exhibit 1, that your attorney was 15 kind enough to send before the deposition. If you 16 could, take a look at the first page, which is an 17 e-mail, I think, from you to James Hendrix. Who is 18 James Hendrix?</p> <p>19 A. James works in our I.T. Department. He's one 20 of our programmers.</p> <p>21 Q. And it says the subject is "numbers." What 22 are these in reference to?</p> <p>23 A. Well, one of the questions that you asked of 24 me is how many members we had in these years. These 25 numbers are relating to -- again, like the mail service</p>	<p>1 like just a brochure of what the mail service entails.</p> <p>2 A. This is actually something that we mail out 3 to our new members that tells them what their address 4 is and how to call in instructions and so forth.</p> <p>5 Q. So this goes out to all new members, and they 6 all have an address? Or they have to sign up for an 7 address?</p> <p>8 A. They already have an address at this point, 9 and we're informing them what their address is.</p> <p>10 Q. Okay. If someone has an address on file with 11 the mail service account to forward their mail to, does 12 that go every day? Do you forward the mail every day 13 or every week, or how does that work?</p> <p>14 A. Again, it depends on how they want us to do 15 it. We are a very personal service. It's geared 16 toward what the individual wants us to do. It could be 17 daily, it could be weekly, it could be monthly. It 18 just depends on what they ask of us.</p> <p>19 Q. Is it more expensive to do it daily or...</p> <p>20 A. The only expense is postage.</p> <p>21 Q. So there is one plan for a mail service, and 22 it's kind of whatever they call -- you call it --</p> <p>23 A. There are three options, three different 24 plans, and that's on one of the forms that I submitted. 25 There are three different plans, and that just depends</p>

4 (Pages 10 to 13)

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<p>1 on how much sorting you would like us to do for you.</p> <p>2 But it all has the same options, as far as, you know,</p> <p>3 you can have it sent monthly or weekly or daily or</p> <p>4 however you want it. The schedule is the same</p> <p>5 throughout.</p> <p>6 Q. I notice that in this blank, it says, Your</p> <p>7 Name, Rainbow Drive, number -- and then there is a</p> <p>8 blank -- Livingston, Texas 77399.</p> <p>9 So all of the Escapees mail goes to</p> <p>10 Rainbow Drive. Is that correct?</p> <p>11 A. Correct.</p> <p>12 Q. Do they all -- how big is Rainbow Drive?</p> <p>13 A. Do you mean Rainbow the street or --</p> <p>14 Q. I'm sorry, that was a bad question. If all</p> <p>15 of the Escapees who had an RV that had a mail service</p> <p>16 account wanted to come and park on Rainbow Drive at one</p> <p>17 time, could Rainbow Drive fit that many people?</p> <p>18 A. It's not just Rainbow Drive. It's also -- we</p> <p>19 have a campground associated with Rainbow Drive. It's</p> <p>20 in the same acreage and all that, so there is a</p> <p>21 campground associated with it, and the campground can</p> <p>22 accommodate members who want to come in and visit with</p> <p>23 us and stay.</p> <p>24 Q. But it could fit all the 10,500 accounts at</p> <p>25 the same time?</p>	<p>1 there.</p> <p>2 A. (Reading) Escapees Mail Service members who</p> <p>3 will be traveling out of state may have their ballots</p> <p>4 sent to the following address: Your Name, Care of</p> <p>5 Escapees RV Club, PO Box 1578, Shepherd, Texas 77371.</p> <p>6 Q. Is it sent to Shepherd, Texas -- first of</p> <p>7 all, is Shepherd, Texas in the same county as</p> <p>8 Livingston?</p> <p>9 A. I don't believe so.</p> <p>10 Q. Do you know if it's sent to Shepherd, Texas</p> <p>11 because most of the Escapees are going to be away</p> <p>12 traveling in Shepherd, Texas?</p> <p>13 A. No.</p> <p>14 Q. Why is it sent to Shepherd?</p> <p>15 A. Because, like the rule says, it does need to</p> <p>16 be -- your absentee ballot needs to be mailed to an</p> <p>17 address outside of Polk County.</p> <p>18 Q. Okay. So it's sent to Shepherd, Texas. And</p> <p>19 then what happens?</p> <p>20 A. We go to Shepherd, Texas, and retrieve</p> <p>21 anything in our post office box.</p> <p>22 Q. And so that would include the mail-in ballots</p> <p>23 that people have applied for from the Polk County voter</p> <p>24 registration office?</p> <p>25 A. Yes.</p>
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<p>1 A. Not at the same time, no.</p> <p>2 Q. Okay. I think the best way to do this is,</p> <p>3 I'm going to mark -- I'm looking at a page that says</p> <p>4 "The Forum." I'm just going to mark that as Exhibit 4,</p> <p>5 that particular page.</p> <p>6 (Exhibit No. 4 was marked.)</p> <p>7 Q. (By Ms. Carroll) Will you read me the part</p> <p>8 that says Early Voting By Mail?</p> <p>9 A. The entire paragraph?</p> <p>10 Q. Sure.</p> <p>11 A. (Reading) The last date to register to vote,</p> <p>12 to be eligible for the March 4 Primaries, is</p> <p>13 February 4, 2008. When you apply for a ballot by mail,</p> <p>14 you must first request an application. Applications</p> <p>15 for voting by mail will be accepted January 4 through</p> <p>16 February 26, (received, not postmarked).</p> <p>17 Q. Okay, keep going.</p> <p>18 A. (Reading) Once your application is received</p> <p>19 by the County Clerk, a ballot will be mailed to you.</p> <p>20 The ballot must be mailed to an address outside of</p> <p>21 Polk County unless you are 65 (or older) or disabled</p> <p>22 (no proof necessary); however, you must indicate your</p> <p>23 reason for applying for an absentee ballot, i.e.</p> <p>24 disabled, away traveling, et cetera.</p> <p>25 Q. And now read the last little part right</p>	<p>1 Q. And so then what happens after you retrieve</p> <p>2 them?</p> <p>3 A. We bring them back to our building, and we</p> <p>4 file them in their file, just like we would any other</p> <p>5 piece of mail that they would receive.</p> <p>6 Q. And so by "file," you put them in their post</p> <p>7 office box?</p> <p>8 A. Yes, in their Pendaflex.</p> <p>9 Q. And then, from there, they're sent out to</p> <p>10 wherever they're traveling to or whatever you have on</p> <p>11 file?</p> <p>12 A. Wherever they -- when they call us and tell</p> <p>13 us they want their mail sent, that is sent along with</p> <p>14 any other mail that may have accumulated for them.</p> <p>15 Q. So this service, you wouldn't just</p> <p>16 necessarily send this on its own, but you might if they</p> <p>17 call you?</p> <p>18 A. Correct. If they call us and ask us, "Is</p> <p>19 that there," then we'll go down and look. And</p> <p>20 according to their instruction, we'll send it to them</p> <p>21 however they request it.</p> <p>22 Q. Okay. How often is this PO box in Shepherd,</p> <p>23 Texas, checked?</p> <p>24 A. About once a week.</p> <p>25 Q. And each time you go and check it, somebody</p>

5 (Pages 14 to 17)

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<p>1 takes the mail, the ballots, and brings them back?</p> <p>2 A. Correct.</p> <p>3 Q. Is there any other mail that comes to that</p> <p>4 PO box?</p> <p>5 A. I don't know. I've only checked it a few</p> <p>6 times, so I'm not aware of what all comes to that post</p> <p>7 office box, if there is anything additional.</p> <p>8 Q. But as far as you know, it's only set up to</p> <p>9 receive mail-in ballots for this voter service that you</p> <p>10 provide?</p> <p>11 A. I don't really know.</p> <p>12 Q. Well, have you ever seen anything else in</p> <p>13 there?</p> <p>14 A. Like I said, I've only checked it probably</p> <p>15 three times the entire time I've worked for Escapees,</p> <p>16 and there was only one time that there was actually</p> <p>17 anything in there, that I checked it. And at that</p> <p>18 time, the mail was bundled together, and I just took</p> <p>19 the bundle out -- it was bundled with a rubber band --</p> <p>20 and I just grabbed the bundle and took it back to our</p> <p>21 office and handed it to the filing department to take</p> <p>22 care of.</p> <p>23 Q. But you will agree with me that you think</p> <p>24 that -- I mean, why would their mail be sent to -- any</p> <p>25 other kind of mail be sent to Shepherd, Texas, when</p>	<p>1 Q. Okay.</p> <p>2 A. (Reading) Once you have registered to vote,</p> <p>3 you may apply for a ballot. You can request a</p> <p>4 ballot application from the county clerk's office</p> <p>5 (see "Voter Resources" below) or download one from</p> <p>6 www.sos.state.tx.us.</p> <p>7 Q. Okay. Now just go through the steps with me.</p> <p>8 A. Okay. (Reading) It is very important that</p> <p>9 you fill out your application for ballot carefully and</p> <p>10 completely. There are eight critical boxes that must</p> <p>11 be completed. (1) Name; (2) Residence Address (the</p> <p>12 same one you used on the residence line of your voter</p> <p>13 registration); (3) Type and Date of Election</p> <p>14 (example: Primary/March '06;</p> <p>15 (4) Party Preference (You must select a</p> <p>16 party if voting in a primary; (5) Reason For Voting By</p> <p>17 Mail (out of county traveling); (6) Special</p> <p>18 Instructions For Mailing Ballot (Most of you would</p> <p>19 probably indicate "Address outside of the county");</p> <p>20 (7) Mail My Ballot To (When you are</p> <p>21 voting absentee, you cannot have your ballot sent to</p> <p>22 any address in the county in which you are registered,</p> <p>23 unless you are 65 or older or disabled.) Escapees Mail</p> <p>24 Service members who are traveling out of the state may</p> <p>25 have their ballots sent to the following address: Your</p>
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<p>1 there is an address on file in Livingston, Texas? Why</p> <p>2 would anything else besides voter registration -- or</p> <p>3 absentee ballots be sent to Shepherd, Texas?</p> <p>4 MR. FIELD: Objection; calls for</p> <p>5 speculation.</p> <p>6 Q. (By Ms. Carroll) You can still answer. I</p> <p>7 don't know if we explained that, but sometimes we</p> <p>8 object to sustain the -- or to preserve the record, but</p> <p>9 you can still answer the question.</p> <p>10 A. I wouldn't -- I hate to assume about what all</p> <p>11 goes there, without seeing it myself. But I would</p> <p>12 guess that that would probably be the only thing that</p> <p>13 would go there.</p> <p>14 Q. Okay. I'm going to hand you what I'm going</p> <p>15 to mark as Exhibit 5 to your deposition, and it looks</p> <p>16 like a printout from a web page that explains to your</p> <p>17 members how they should vote -- or, not how -- I'm</p> <p>18 sorry, how they can vote.</p> <p>19 (Exhibit No. 5 was marked.)</p> <p>20 Q. (By Ms. Carroll) On the second page, if you</p> <p>21 would, read the part under Applying For Ballot By Mail.</p> <p>22 A. Read it out loud again?</p> <p>23 Q. Yes. Is this what you recognize from your</p> <p>24 web page?</p> <p>25 A. Yes.</p>	<p>1 Name, Care of Escapees RV Club, PO Box 1578, Shepherd,</p> <p>2 Texas 77371; (8) Sign Here (make sure you sign your</p> <p>3 application).</p> <p>4 Q. Thank you. You do that very well.</p> <p>5 So it says reason for voting by mail --</p> <p>6 No. 5 -- is out of the county traveling.</p> <p>7 Do most of -- I guess this is for your</p> <p>8 members. One of the reasons you could be voting by</p> <p>9 mail is because you're 65 years or older. Is that the</p> <p>10 case with most of your members, or is it because</p> <p>11 they're out of the county traveling?</p> <p>12 MS. DONNELLY: Objection; leading.</p> <p>13 Go ahead.</p> <p>14 A. I'm sorry, could you repeat the question?</p> <p>15 Q. (By Ms. Carroll) What is the reason that you</p> <p>16 think that most of your members are voting by mail?</p> <p>17 MS. DONNELLY: Objection; speculation.</p> <p>18 MR. FIELD: Join the objection.</p> <p>19 A. My personal feeling is that the reason why</p> <p>20 they're voting by absentee ballot is because they're</p> <p>21 not in our county at that time. Otherwise, they would</p> <p>22 go and vote in person, which is why it's set up that</p> <p>23 way.</p> <p>24 Q. (By Ms. Carroll) Okay. So again, this just</p> <p>25 tells you that if you're out of the county, you can</p>

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<p>1 have your absentee ballot sent to Shepherd, Texas?</p> <p>2 A. That's correct.</p> <p>3 Q. And that's when the process happens where</p> <p>4 someone from the Escapees picks up the mail in</p> <p>5 Shepherd, Texas --</p> <p>6 A. Yes.</p> <p>7 Q. -- and then brings it back to Livingston --</p> <p>8 A. Yes.</p> <p>9 Q. -- and sends it from Livingston to wherever</p> <p>10 they may be?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 I'll mark this is as Exhibit 6 to your</p> <p>14 deposition.</p> <p>15 (Exhibit No. 6 was marked.)</p> <p>16 Q. (By Ms. Carroll) I found this on the website.</p> <p>17 Can you tell me what this document is?</p> <p>18 A. This is our "How to Become a Real Texan"</p> <p>19 booklet.</p> <p>20 Q. Is this from your website?</p> <p>21 A. Yes, it is.</p> <p>22 Q. Was this prepared by Escapees?</p> <p>23 A. This was initially prepared by the lady who</p> <p>24 does the intro, which is Carol Richards.</p> <p>25 Q. What do you mean by "does the intro"?</p>	<p>1 MR. FIELD: Objection. Mandy, I'm</p> <p>2 letting you go -- I'm trying to give you a little room</p> <p>3 here, but I'm not going to let you get too much into</p> <p>4 the domicile voting issue, because I've tried that case</p> <p>5 four times.</p> <p>6 MS. CARROLL: Okay. Fair enough. And</p> <p>7 that's not what we're here about. I'm just trying to</p> <p>8 establish where most people live.</p> <p>9 MR. FIELD: Sure. I understand.</p> <p>10 Q. (By Ms. Carroll) If you will look with me on</p> <p>11 page 4 of this booklet, it tells you about voting. It</p> <p>12 tells you to see -- your voter registration, it says,</p> <p>13 may be just another one of the indicators of your</p> <p>14 domicile. Is that correct?</p> <p>15 A. Yes, that's what it says.</p> <p>16 Q. Okay. And that says to see page 13; and does</p> <p>17 that just tell you another one of the ways that you can</p> <p>18 vote if you're out of the county while you're -- if</p> <p>19 you're registered to vote in Livingston, Texas?</p> <p>20 A. It goes over how to register to vote, and it</p> <p>21 does go into a little of the detail of how the absentee</p> <p>22 ballot process works.</p> <p>23 Q. Okay. And I notice that there was no</p> <p>24 information about the Shepherd PO box on this page.</p> <p>25 Was that because it wasn't set up then? Or do you know</p>
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<p>1 A. The introduction to the -- well, the second</p> <p>2 page is just the back cover, obviously. It's the</p> <p>3 copyright portion of it. The lady who writes what I</p> <p>4 call the introduction to the booklet, which is titled</p> <p>5 "Domicile: One's Legal Residence," that's what I'm</p> <p>6 considering the introduction, and it's by</p> <p>7 Carol Richards.</p> <p>8 Q. And is she someone who is employed by the</p> <p>9 Escapees?</p> <p>10 A. No. She is one of our -- she is an Escapees</p> <p>11 member.</p> <p>12 Q. Okay. This booklet, I take it, from the</p> <p>13 title, "How to Become a Real Texan," is meant for</p> <p>14 people who live outside of Texas who are full-time</p> <p>15 RVers, to teach them how to become domiciled in Texas</p> <p>16 or have a domicile?</p> <p>17 A. It's if they choose to be, they can be a</p> <p>18 Texas resident with our mail forwarding service. It is</p> <p>19 a designation that we receive from the State of Texas,</p> <p>20 and this tells them the steps to follow if they choose</p> <p>21 to do that. It's not required. Obviously, we can just</p> <p>22 be their mail forwarding service, or they can -- they</p> <p>23 do have the option of using it as the domicile.</p> <p>24 Q. But this book, is it sent out to people that</p> <p>25 don't live in Texas?</p>	<p>1 when this document was prepared?</p> <p>2 A. I don't know. We've modified it from time to</p> <p>3 time, so I don't know when the original document was</p> <p>4 created.</p> <p>5 Q. Do you know when the Shepherd PO box was set</p> <p>6 up?</p> <p>7 A. No, I don't.</p> <p>8 Q. When you went and checked it, was that a year</p> <p>9 ago? Two years ago? Do you know generally how many</p> <p>10 years it has been running?</p> <p>11 A. It was about two -- probably two years ago.</p> <p>12 I don't know how long it has been running, as far as</p> <p>13 when it was set up. I've worked for Escapees for</p> <p>14 11 years and I don't know when it was set up.</p> <p>15 Q. But you remember, at least, that it was set</p> <p>16 up two years ago?</p> <p>17 A. Yes.</p> <p>18 Q. And maybe more?</p> <p>19 A. Possibly.</p> <p>20 Q. Okay. Can we take a break so I can just make</p> <p>21 sure I got everything and --</p> <p>22 MR. FIELD: Sure.</p> <p>23 (Recess.)</p> <p>24 Q. (By Ms. Carroll) I may have asked you this --</p> <p>25 and I apologize if I'm being duplicative -- but do you</p>

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<p>1 have any idea how many Escapees mail service members 2 vote by mail?</p> <p>3 A. No.</p> <p>4 Q. Is there any way to find that out? Or you 5 don't keep any records in the ordinary course of 6 business?</p> <p>7 A. No, we don't. We don't keep track of who is 8 a Texas resident or who votes or any of that. We just 9 strictly handle their mail, and we keep track of their 10 address. That's enough.</p> <p>11 Q. Fair enough.</p> <p>12 MS. CARROLL: I think that's all I have.</p> <p>13 EXAMINATION</p> <p>14 BY MS. DONNELLY:</p> <p>15 Q. I have some questions for you.</p> <p>16 A. Okay.</p> <p>17 Q. My name is Rosemarie Donnelly. I'm with the 18 attorney general's office. I would like to hand you a 19 couple of exhibits, one of which I think is already in 20 the record, but I think I'm going to make it a separate 21 exhibit. I'm going to make it Exhibit No. 7. 22 (Exhibit No. 7 was marked.)</p> <p>23 Q. (By Ms. Donnelly) Exhibit 7 is a page from 24 your website that your lawyer was kind enough to 25 forward to us before the deposition. And what I want</p>	<p>1 they request their ballot, that they request their 2 ballot be sent to Shepherd?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. You talked earlier about a member of 5 the Escapees -- or an Escapee employee goes to 6 Shepherd, picks up the mail from the early voting 7 clerks. Right?</p> <p>8 A. No. They don't pick up the mail from the 9 early voting clerk. They pick up the mail from the 10 post office box.</p> <p>11 Q. Oh, I'm sorry. I misstated that. Thank you. 12 What happens is, your members apply for a ballot. 13 Right?</p> <p>14 A. Right.</p> <p>15 Q. And they send that application to the early 16 voting clerk. Right?</p> <p>17 A. Right.</p> <p>18 Q. And then the early voting clerk sends an 19 unmarked ballot, a ballot envelope, and a carrier 20 envelope for that member that applied, to the Shepherd 21 box?</p> <p>22 A. All I know is that we receive envelopes. I 23 have never done it myself. I've always been in the 24 county. So all I know is that we receive an envelope 25 addressed to two people. I don't know what exactly is</p>
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<p>1 to focus on is this Shepherd post office box. It's my 2 understanding from your website that this Shepherd post 3 office box is set up for folks who are members who are 4 traveling and do not know where they're going to be, and 5 so they want their application -- excuse me -- they 6 want their ballot sent to the Shepherd post office box 7 and then forwarded to them by Escapees. Am I stating 8 that right?</p> <p>9 A. Correct.</p> <p>10 Q. I noticed on the website that Escapees 11 actually encourages its members to have their ballot 12 sent directly to them if they know where they are going 13 to be.</p> <p>14 A. Yes.</p> <p>15 Q. And the reason that y'all do that, I assume, 16 is because the time frame for receiving and mailing a 17 ballot back to Texas to the early voting clerk, the 18 time frame is fairly limited. Is that why y'all 19 encourage them to get their ballot directly?</p> <p>20 A. Yes.</p> <p>21 Q. And they can, in fact, do that if they know 22 where they are going to be. Is that right?</p> <p>23 A. Correct.</p> <p>24 Q. So it's only for those members who don't know 25 where they are going to be traveling at the time that</p>	<p>1 inside the envelope, though.</p> <p>2 Q. Okay. And those envelopes are from the early 3 voting clerks. Right?</p> <p>4 A. Right.</p> <p>5 Q. And then the Escapees employee picks up those 6 envelopes, and they're sealed envelopes -- right?</p> <p>7 A. Yes.</p> <p>8 Q. -- and takes those sealed envelopes to the 9 Livingston location. Is that right?</p> <p>10 A. Yes.</p> <p>11 Q. And then either you contact the members and 12 ask them where they want those envelopes sent, or the 13 member contacts Escapees and says where they want those 14 envelopes sent?</p> <p>15 A. We don't contact them. We wait for them to 16 call us and tell us what to do. We have so many 17 people, we don't call them. We wait for them to call 18 us.</p> <p>19 Q. Okay. And they know to do that?</p> <p>20 A. Yes.</p> <p>21 Q. And they know how to contact you?</p> <p>22 A. Yes.</p> <p>23 Q. Then once they have contacted you, you 24 forward the sealed envelope -- I assume in another 25 envelope -- to the Escapees member?</p>

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<p>1 A. Yes. Post office regulations are that you 2 cannot reuse postage. So any mail that has accumulated 3 for them, we put into a new envelope -- and that would 4 possibly include any ballots that we may have picked up 5 for them -- and it's completely sealed and put in 6 another envelope and mailed to them, yes. 7 Q. And you don't at any time open an envelope 8 from an early voting mailing clerk? 9 A. No, not that I'm aware of. Our members can 10 ask us to open letters, and we'll read them to them 11 over the phone. But to my knowledge, we have never 12 opened a ballot for anyone. 13 Q. Okay. And so once your member receives the 14 sealed ballot in another envelope from Escapees, he or 15 she marks the ballot and sends it directly back to the 16 early voting clerk. Correct? 17 A. Correct. 18 Q. So the marked ballot is never handled by the 19 Escapees employees. Is that correct? 20 A. That is correct. 21 Q. Okay. Let me ask you this. It says on your 22 website that Escapees is a licensed commercial mail 23 receiving agency. 24 A. Yes. 25 Q. And that license is issued by the U.S. Postal</p>	<p>1 commercial mail receiving agency? 2 A. They don't change very often, but we are on 3 top of any new regulations that come to us from our 4 postal representative in Houston, and we do training 5 with them as needed. 6 Q. And part of the requirements are that 7 Escapees, Inc. has to have on file with the U.S. Postal 8 Service a Form 1583 for each member for which mail is 9 forwarded. Is that right? 10 A. Yes, it is. 11 Q. So you can't forward mail on behalf of a 12 member unless you're licensed by the US Postal Service, 13 and there is a Form 1583 in effect for that member. Is 14 that right? 15 A. That is correct. 16 Q. Okay. Are you aware of any complaints from 17 the US Postal Service about Escapees, Inc.'s handling 18 of the mail for its members? 19 A. No, I'm not. 20 Q. And you have worked at Escapees, Inc. for how 21 long? 22 A. Eleven years. 23 Q. And this license, I would gather, is pretty 24 important to the Escapees business. Is that right? 25 A. Yes.</p>
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<p>1 Service, as I understand it. 2 A. Yes, that is correct. 3 Q. And Escapees, Inc. had to apply for that 4 license. Is that right? 5 A. Yes. 6 Q. And in applying for that license, you had to 7 meet certain requirements. Is that right? 8 A. I would assume so. 9 Q. And were you involved in that process? 10 A. No, I was not. 11 Q. But you do know that, in fact, Escapees is a 12 licensed commercial mail receiving agency? 13 A. Yes. 14 Q. What's your understanding of what that means? 15 A. That means that we are allowed to handle 16 people's mail for them. We can be kind of the person 17 in between them and their mail. 18 Q. Does your license require you to follow 19 regulations of the US Postal Service? 20 A. Yes. 21 Q. And are your employees familiar with those 22 regulations? 23 A. Yes, they are. 24 Q. Do you have to have periodic training for 25 your employees to keep up with those regulations for a</p>	<p>1 Q. So I would assume that Escapees, Inc. is very 2 careful about complying with US postal regulations for 3 a commercial mail receiving agency. 4 A. Yes, we are. 5 Q. Okay. And you would want to be very careful, 6 I assume, at Escapees, Inc., that you handle the mail 7 in such a way that you don't receive any complaints. 8 A. Correct. 9 Q. I think you testified earlier that 10 Escapees, Inc. encourages its members to have their 11 mail and ballot sent directly to them. 12 A. Yes. 13 Q. For example, if someone is traveling in 14 Florida, the early mailing -- excuse me -- the early 15 voting clerk could send the ballot, the unmarked 16 ballot, to them directly in Florida. Right? 17 A. To my knowledge, yes. 18 Q. And if they don't have a precise address, it 19 could be sent to General Delivery of whatever town 20 they're staying in in Florida. Is that right? 21 A. I don't know the specific addressing 22 requirements of absentee ballots. I would assume that 23 you could have it sent to General Delivery or to any 24 valid address. 25 Q. And in fact, your company, Escapees, Inc.,</p>

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<p style="text-align: right;">Page 34</p> <p>1 provides a service that they will supply information 2 about general delivery in a town wherever a member 3 might be staying? 4 A. We can help them. We try to put that as 5 their responsibility to make sure that that post office 6 will accept general delivery-addressed mail. But we do 7 try to help them if they're unable to -- if we get them 8 on the phone and they're not sure, we do try to help 9 them as much as possible. 10 Q. But this forwarding service, I think you 11 testified earlier, is really only for folks who don't 12 know precisely what address they will be at, and so 13 they want to be sure that their ballot is sent to them 14 by Escapees, Inc., as opposed to the early voting 15 clerk. Is that right? 16 A. Yes. 17 Q. And so it's really for the convenience of the 18 members that you provide this Shepherd box? 19 A. Yes. 20 Q. They could, if they wanted to, determine 21 where they're going to be located, and have that 22 unmarked ballot sent directly to them? 23 A. Yes. And we actually prefer that because 24 that's one less thing that we have to mess with. We 25 prefer not to have to drive to Shepherd and pick things</p>	<p style="text-align: right;">Page 36</p> <p>1 STIPULATIONS 2 DEPOSITION(S) OF ANGELA DENISE CARR 3 TAKEN ON APRIL 17, 2008 BY MANDY CARROLL 4 1. THIS DEPOSITION IS TAKEN PURSUANT TO: 5 (a.) Notice 6 XXXXXXXX (b.) Notice and Subpoena 7 XXXXXXXX (c.) Agreement 8 (d.) Court Order 9 2. OBJECTIONS: 10 XXXXXXXX (a.) Objections will be made 11 pursuant to the Federal Rules of Civil 12 Procedure. 13 (b.) All objections will be made at 14 the time of taking of the deposition. 15 (c.) All objections are reserved. 16 (d.) Other: _____ 17 3. SIGNATURE AND DELIVERY: 18 XXXXXXXX (a.) The original transcript will be 19 submitted to XXX the witness or _____ the 20 witness' attorney, who will forward the signed 21 deposition, including any changes made, to 22 Julie A. Jordan & Company within 30 days 23 of submission. 24 (b.) Signature is waived and the 25 reporter will deliver the original transcript and exhibits to the Custodial Attorney. _____ (c.) The original transcript will remain in the court reporter's office for signature for _____ days from date of submission. (d.) The original signature page, along with a copy of the transcript, will be submitted to _____ for submission to the witness for signature, and thereafter will forward the executed signature page, along with any changes made, within _____ days to the offices of Julie A. Jordan & Company for inclusion in the original transcript.</p>
<p style="text-align: right;">Page 35</p> <p>1 up, so we do try to encourage them, as much as 2 possible, to have it sent directly to them. 3 MS. DONNELLY: That's all I have. Thank 4 you very much for your time. 5 MR. FIELD: No questions here. 6 MS. CARROLL: I don't have any more 7 questions. 8 (Deposition concluded at 9:56 a.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 37</p> <p>1 HIRING ATTORNEY ORIGINAL AND CERTIFIED COPY ORDER: 2 In the event that the original transcript cannot for 3 any reason be produced, it is understood and agreed 4 that the attorney asking the first question will be 5 responsible for the expense of the production of a 6 transcript and the safekeeping of same for use at 7 trial. The shorthand notes may be destroyed after 8 three years. This is an agreement for services. We, 9 the undersigned, do hereby agree to the stipulations as 10 indicated herein and do agree that any lawyer or other 11 individual signing below will be responsible for the 12 payment of all services requested and that payment for 13 these services rendered is not contingent upon any 14 other matter. Rush services are available only by 15 request and implies an agreement to pay rush rates. On 16 all orders placed, venue for any actions for collection 17 on services shall lie in Austin, Travis County, Texas, 18 By: Mandy Carroll Firm: Ireland, Carroll & Kelley, PC 19 Representing: Plaintiffs 20 E-Transcript XXX E-mail address: mcarroll@icklaw.com 21 Full copy XXX Condensed Copy _____ ASCII _____ 22 Condensed Copy Only _____ (*same cost as full copy) 23 Exhibits in B/W only XXX Exhibits in B/W & Color _____ 24 Video in VHS format _____ DVD (Movie File) format _____ 25 M-PEG in CD or DVD format _____ Video sync _____ CERTIFIED COPY ORDER: We, the undersigned, do hereby agree to the stipulations as indicated herein and do agree that any lawyer or other individual signing below will be responsible for the payment of all services requested and that payment for these services rendered is not contingent upon any other matter. Rush services are available only by request and implies an agreement to pay rush rates. On all orders placed, venue for any actions for collection on services shall lie in Austin, Travis, County, Texas, By: Scott Field Firm: The Field Law Firm Representing: Escapees, Inc. E-Transcript _____ E-mail address: scott@thefieldlawfirm.com Full copy _____ Condensed Copy _____ ASCII _____ Condensed Copy Only XXX same cost as full copy) Exhibits in B/W only XXX Exhibits in B/W & Color _____ Video in VHS format _____ DVD (Movie File) format _____ M-PEG in CD or DVD format _____ Video sync _____</p>

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<p>1 CERTIFIED COPY ORDER: We, the undersigned, do hereby agree to the 2 stipulations as indicated herein and do agree that any 3 lawyer or other individual signing below will be 4 responsible for the payment of all services requested 5 and that payment for these services rendered is not 6 contingent upon any other matter. Rush services are 7 available only by request and implies an agreement to 8 pay rush rates. On all orders placed, venue for any 9 actions for collection on services shall lie in Austin, 10 Travis, County, Texas, 11 By: Rosemarie Donnelly 12 Firm: Office of Attorney General 13 Representing: Defendants 14 E-Transcript XXX 15 E-mail address: rosemarie.donnelly@oag.state.tx.us 16 Full copy XXX Condensed Copy XXX ASCII ____ 17 Condensed Copy Only ____ (*same cost as full copy) 18 Exhibits in B/W only XXX Exhibits in B/W & Color ____ 19 Video in VHS format ____ DVD (Movie File) format ____ 20 M-PEG in CD or DVD format ____ Video sync ____</p> <p>21 CERTIFIED COPY ORDER: We, the undersigned, do hereby agree to the 22 stipulations as indicated herein and do agree that any 23 lawyer or other individual signing below will be 24 responsible for the payment of all services requested 25 and that payment for these services rendered is not continguent upon any other matter. Rush services are available only by request and implies an agreement to pay rush rates. On all orders placed, venue for any actions for collection on services shall lie in Austin, Travis, County, Texas, By: _____ Firm _____ Representing _____ E-Transcript _____ E-mail address _____ Full copy _____ Condensed Copy _____ ASCII ____ Condensed Copy Only ____ (*same cost as full copy) Exhibits in B/W only ____ Exhibits in B/W & Color ____ Video in VHS format ____ DVD (Movie File) format ____ M-PEG in CD or DVD format ____ Video sync ____</p> <p>26 JOB NO. 08-114</p>	<p>1 I, ANGELA DENISE CARR, have read the foregoing 2 deposition and hereby affix my signature that same is 3 true and correct, except as noted above.</p> <p>4 _____ 5 ANGELA DENISE CARR</p> <p>6 THE STATE OF _____ 7 COUNTY OF _____</p> <p>8 Before me, _____, on this day 9 personally appeared ANGELA DENISE CARR, known to me or 10 proved to me on the oath of _____ or 11 through _____ (description of 12 identity card or other document) to be the person whose 13 name is subscribed to the foregoing instrument and 14 acknowledged to me that he/she executed the same for 15 the purpose and consideration therein expressed.</p> <p>16 Given under my hand and seal of office on this 17 _____ day of _____, 2008.</p> <p>18 _____ 19 NOTARY PUBLIC IN AND FOR 20 THE STATE OF _____ 21 My Commission Expires: _____</p>
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<p>1 CHANGES AND SIGNATURE 2 WITNESS NAME: ANGELA DENISE CARR 3 DATE OF DEPOSITION: APRIL 17, 2008 4 PAGE LINE CHANGE REASON 5 _____ 6 _____ 7 _____ 8 _____ 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 _____ 23 _____ 24 _____ 25 _____</p>	<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF TEXAS 3 MARSHALL DIVISION 4 WILLIE RAY, JAMILLAH) 5 JOHNSON, GLORIA MEEKS,) 6 REBECCA MINNEWEATHER,) 7 REUBEN ROBINSON, EDDIE) 8 JACKSON, and THE TEXAS) 9 DEMOCRATIC PARTY,) 10 Plaintiffs) 11) CIVIL ACTION NO. 2-06CV-385 12 vs.) 13) 14 STATE OF TEXAS, a State) 15 of the United States; (GREG) 16 ABBOTT, Attorney General) 17 of the State of Texas; and) 18 PHIL WILSON, Secretary of) 19 State for the State of) 20 Texas,) 21 Defendants)</p> <p>22 REPORTER'S CERTIFICATION 23 ORAL DEPOSITION OF ANGELA DENISE CARR 24 TAKEN ON APRIL 17, 2008</p> <p>25 I, Suzanne T. Lane, CSR #6992, RPR, do hereby certify that, pursuant to the agreement herein above set forth there came before me on the 17th of April, 2008, at 9:02 a.m., in the offices of The Field Law Firm, 9442 Capital of Texas Highway North, Arboretum Plaza One, Suite 500, Austin, Texas, the following named person, to wit: ANGELA DENISE CARR, who was by me duly sworn to testify to the truth and nothing but the truth of witness' knowledge touching and concerning the matters in controversy in this cause; that such witness was thereupon examined under oath, and the deposition transcribed by computer-assisted transcription by me or under my supervision, and that the deposition transcript is a true record of the testimony given by the witness; that the deposition transcript was submitted on _____ to the witness or to the attorney for the witness for examination, signature, and return to me by _____;</p>

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1 I further certify that I am neither attorney nor
2 counsel for, nor related to or employed by, any of the
3 parties to the action in which this testimony was taken
4 and, further, that I am not a relative or employee of
5 any attorney or counsel employed by the parties hereto,
6 or financially interested in the action.

7
8 IN WITNESS WHEREOF I have hereunto set my hand and
9 affixed my seal on this _____ day of _____,
10 2008.

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Suzanne T. Lane, CSR, RPR
Texas CSR No. 6992
Expiration: 12/31/09
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Exhibit 21

Oral Deposition of **Dorothy Dean**

Date: April 30, 2008

Volume:

Case: Willie Ray v. State of Texas

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

WILLIE RAY, JAMILLAH JOHNSON,)	
GLORIA MEEKS, REBECCA)	
MINNEWEATHER, REUBEN ROBINSON,)	
EDDIE JACKSON and THE TEXAS)	
DEMOCRATIC PARTY,)	
)	CIVIL ACTION
Plaintiffs,)	NO.
)	2-06CV-385
vs.)	
)	
STATE OF TEXAS, a State of the)	
United States; GREG ABBOTT,)	
Attorney General of the State of)	
Texas; and PHIL WILSON, Secretary)	
of State for the State of Texas,)	
)	
Defendants.)	

ORAL DEPOSITION OF

DOROTHY DEAN

April 30th, 2008

ANSWERS AND DEPOSITION of DOROTHY DEAN,
taken at the instance of the Defendants, on the 30th
day of April, A.D., 2008, between the hours of 12:01
p.m. and 12:33 p.m., in the above styled and numbered
cause at the home of the witness, 1504 Russell Glen
Lane, in Dallas, Dallas County, Texas, before Jerry L.
Callaway, RDR, a Certified Shorthand Reporter in and

Dorothy Dean

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<p>1 for the State of Texas, pursuant to the Federal Rules 2 of Civil Procedure and the provisions stated on the 3 record. 4 5 6 7 8 A P P E A R A N C E S 9 10 11 APPEARING FOR THE PLAINTIFFS: 12 Mr. Otis W. Carroll, Jr. 13 IRELAND, CARROLL & KELLEY 14 6101 S. Broadway, Suite 500 15 Tyler, Texas 75703 16 17 APPEARING FOR THE DEFENDANTS: 18 Ms. Rosemarie Donnelly 19 Special Assistant Attorney General 20 808 Travis, Suite 300 21 Houston, Texas 77002 22 23 24 25</p>	<p>1 am working on making some flowers for a Girl Scout 2 garage sale this Saturday as soon as I finish that up. 3 But I am president of the Progressive Voter's League, 4 and we meet the second Tuesday of every month up at the 5 Thurgood Marshall Recreation Center, and I manage 6 campaigns for various candidates, or either assist on 7 campaigns if they already have a manager. 8 And I volunteer for almost everything, 9 and I always have. As my kids in elementary school 10 would say, my mother will do it. She is a professional 11 a volunteer. And then I serve on hearings, I've done 12 civil service board for six and a half years, I've done 13 federal juror, grand juror, petit juror, and I am a 14 precinct chair and an election judge at the school up 15 there for about 35, 38 years, somewhere in there. 16 Q. All right. Thank you. Can you describe for 17 the court your political activities that you have 18 engaged in over the years? What types of things have 19 you done? 20 A. Well, I am a deputy registrar. I am deputized 21 to register voters, and I manage campaigns, as I said. 22 I help, you know, community people with projects and 23 things like that. As a precinct chair, whenever there 24 is an issue that is going to be voted on, it would be 25 my job to make sure that I inform the people that live</p>
Page 3	Page 5
<p>1 DOROTHY DEAN, 2 having been first duly sworn, testified as follows: 3 EXAMINATION 4 BY MS. DONNELLY: 5 Q. Good afternoon, Ms. Dean. My name is 6 Rosemarie Donnelly. I work for the attorney general's 7 office. And I wanted to first of all thank you for 8 letting us come to your home to visit with you this 9 afternoon. 10 A. You're welcome. 11 Q. We certainly appreciate your making the time 12 to do this for us. 13 A. Uh-huh. 14 Q. And let me just start off by asking you, how 15 old a lady are you? 16 A. I'm 74. 17 Q. And I notice from the Internet some of the 18 stuff I read about you, you are far from retired. You 19 are a busy lady. 20 A. Well, I try to stay busy. 21 Q. Yeah. And, I mean, just some of your 22 activities, what you are doing these days, and to keep 23 yourself busy, can you just kind of describe what that 24 is? 25 A. Well, number one, I am active in church, and I</p>	<p>1 in this precinct. So I make up flyers, if they -- like 2 on this bond for the school district coming up, so I'll 3 put out flyers and make them aware so, you know, come 4 and vote and voice your opinion on just whatever comes 5 up. 6 Q. Okay. When you say that you manage campaigns 7 for folks, now, are you a paid political consultant to 8 the campaigns? 9 A. Yes. 10 Q. Okay. So you are paid for your services to 11 assist the campaign -- 12 A. Uh-huh. 13 Q. -- and whatever they need to have done? 14 A. Right. 15 Q. Okay. Are you currently working as a paid 16 consultant for any campaigns today? 17 A. No. 18 Q. Okay. Have you in the last election cycle? 19 A. On the primary, I did. 20 Q. The 2008 primary? 21 A. Uh-huh. 22 Q. And which campaign did you work on? 23 A. I worked with -- the young man that had the 24 candidacy, met with me and wanted me to assist him, and 25 so I only worked the southern sector, meaning this</p>

2 (Pages 2 to 5)

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<p>1 community out here.</p> <p>2 Q. Okay. What did you do on the 2008 campaign?</p> <p>3 A. I had an office, I had phoners, had a phone</p> <p>4 bank and a walk crew.</p> <p>5 Q. A phone bank and a walk crew?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Okay. Tell me about the phone bank, what did</p> <p>8 you actually do?</p> <p>9 A. We have lists that are separate from the</p> <p>10 ordinary lists where you can pull up and he furnished</p> <p>11 it for me, and it has the senior citizen voters on it.</p> <p>12 And so we call and ask if they would like a application</p> <p>13 to receive a mail ballot at home, and if they did, we</p> <p>14 mailed it to them. Then we later called back to see if</p> <p>15 they actually signed the application and sent it in so</p> <p>16 they could receive a mail ballot. And walked</p> <p>17 through -- just walked precincts, put out literature.</p> <p>18 Q. Okay. Now, the phone bank folks, did they</p> <p>19 ever go and assist any of the voters with their</p> <p>20 ballots, the ones you supervised?</p> <p>21 A. They don't assist them with the ballots. They</p> <p>22 ask if they would like to receive an application. Once</p> <p>23 they receive the application, they call them back and</p> <p>24 see if they have -- if they've laid it down, because</p> <p>25 sometime they forget. And they have to sign it and</p>	<p>1 basis and then some of them change. If one dropped</p> <p>2 out, they sent a friend.</p> <p>3 Q. Okay. Did you ever personally talk with any</p> <p>4 voters who said that they can't vote this year because</p> <p>5 they didn't have anybody to help them with their</p> <p>6 mail-in ballot?</p> <p>7 A. I talked to a couple of voters that said they</p> <p>8 needed help in order to vote.</p> <p>9 Q. Okay. And what did they say they needed help</p> <p>10 with?</p> <p>11 A. They said that they needed help in order to --</p> <p>12 in order to vote, and who -- you know, we would send</p> <p>13 someone out to assist them.</p> <p>14 Q. They asked for someone to come help them?</p> <p>15 A. Uh-huh.</p> <p>16 Q. Okay. Did y'all send somebody?</p> <p>17 A. I went to one.</p> <p>18 Q. Okay. Okay. Who was that?</p> <p>19 A. A lady that lives over in South Dallas on</p> <p>20 Bethurum Street.</p> <p>21 Q. You don't remember her name?</p> <p>22 A. And I think she was like 90, but she was</p> <p>23 pretty -- pretty -- like she was still mobile, and she</p> <p>24 walked with a walker, but really a nice lady. And she</p> <p>25 said she needed help, and so I went over and showed her</p>
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<p>1 send it in. Then you receive your pallet. But they</p> <p>2 never actually left the office, you know. They had</p> <p>3 literature. And then the third call is to see if they</p> <p>4 received the ballot and if they filled it out and</p> <p>5 mailed it back in.</p> <p>6 Q. Okay. Now, did you supervise the phone bank</p> <p>7 workers?</p> <p>8 A. Yes.</p> <p>9 Q. And they were volunteers?</p> <p>10 A. They were paid.</p> <p>11 Q. They were paid.</p> <p>12 A. Uh-huh.</p> <p>13 Q. How were they compensated?</p> <p>14 A. Who?</p> <p>15 Q. The -- what, did they get a salary, by the</p> <p>16 hour, how were they --</p> <p>17 A. By the hour.</p> <p>18 Q. Hourly, hourly rate? Okay. And how many</p> <p>19 hourly rate volunteers did you supervise in this last</p> <p>20 election?</p> <p>21 A. They worked about four hours a day.</p> <p>22 Q. Okay. How many folks were there?</p> <p>23 A. Six.</p> <p>24 Q. Do you remember their names?</p> <p>25 A. No, not all of them, just only on a first-name</p>	<p>1 how to -- I read the names off to her, and say, when</p> <p>2 you do that, shade it in, and vote.</p> <p>3 Q. Okay. Do you remember her name?</p> <p>4 A. Not offhand.</p> <p>5 MS. DONNELLY: Take a quick break.</p> <p>6 (Telephone interruption.)</p> <p>7 Q. (BY MS. DONNELLY) Okay. This lady on</p> <p>8 Bethurum Street, did you help anybody else with their</p> <p>9 mail-in ballots this last election cycle?</p> <p>10 A. No, not in person.</p> <p>11 Q. Okay.</p> <p>12 A. I took another lady over to help one, one</p> <p>13 other lady that needed some assistance.</p> <p>14 Q. Okay.</p> <p>15 A. I just took her over there and let her assist</p> <p>16 her.</p> <p>17 Q. Okay. Are you aware of any voters who did not</p> <p>18 vote or could not vote in this last election, in the</p> <p>19 primary in 2008, because they couldn't get any help</p> <p>20 with their mail-in ballots?</p> <p>21 A. Personally, I don't -- I don't know of any</p> <p>22 that requested help and didn't get it, because I would,</p> <p>23 you know, bring to the minds and speaking to them that</p> <p>24 if they had a caregiver coming by or if they had a</p> <p>25 granddaughter that was old enough to assist them, that</p>

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<p>1 have her call back and one of the phoners could walk 2 her through it and she could therefore help her 3 grandmother like that. But there were several people 4 that needed help, but they were just people that were 5 being phoned. And then when the phoner would tell me, 6 then I would tell them how to handle it. 7 Q. Okay. Have you been contacted about coming to 8 Marshall, Texas, to testify at the trial in this case 9 that we are here on today? 10 A. Have I been contacted? 11 Q. Have you been contacted about coming to 12 Marshall, Texas, next month to testify in a trial? 13 A. No, nobody has asked me. 14 Q. Okay. 15 A. What's in Marshall? 16 Q. There is a trial -- this is what we are here 17 about today. There is a trial between the plaintiffs, 18 and the plaintiffs have sued the attorney general and 19 the Secretary of State. 20 A. And the nature will be? 21 Q. And this is concerning mail-in voting, and 22 nobody has contacted you about testifying? 23 A. No. No. No one has contacted me and asked me 24 to come and appear at a trial. 25 Q. Has anyone expressed to you confusion about</p>	<p>1 word that you can only assist one. And so then the 2 people who had been assisting, even next door neighbors 3 and things, they said, no, because I've got to save my 4 one assistance for my aunt, my great aunt. And they 5 couldn't help this one because they didn't want to go 6 over that one count. And so then the people they had 7 been helping, they, well, you always help me, why can't 8 you, and it's hard to explain. 9 Well, now, if I help more than one, I'll 10 go to jail, and I don't want to go to jail. And say 11 oh, no, no, that -- that's crazy. I don't want you to 12 go to jail, because that's the same person that goes to 13 the store and get your bread and milk for you and other 14 little things. It's -- it's really -- it's really 15 terrible in a way. 16 Q. So what you are hearing is that folks believe 17 that they can only assist one person per year? 18 A. Uh-huh, exactly. 19 Q. And -- and that's what's confusing? 20 A. Uh-huh. 21 Q. That's what they are confused about? 22 A. Not only to the person trying to assist, but 23 to the person that's being assisted. They don't want 24 to get -- like me, for instance. I don't just 25 volunteer on political stuff. I volunteer on a lot of</p>
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<p>1 the mail-in voting procedures? 2 A. Not directly, but people, you know, with me 3 being out there and seeing and knowing a lot of people, 4 you know, they complain about it, you know, that 5 it's -- it has just changed over the last 30 years 6 since I started until it's -- it's causing handicapped, 7 senior citizens, and a lot of them to not want to fool 8 with it. Because they keep saying, well, no one can 9 help you; and, if they do, they are going to jail. And 10 all these rumors are just piling up, and then the old 11 people get scared. 12 Q. And what's the nature of the confusion? Is it 13 sort of a generalized confusion about the process, the 14 overall process, or is there something in particular 15 they are confused about? 16 A. Well, that they have to have people -- it's 17 confusing because sometime the people that go and try 18 to assist them don't know that this law has changed and 19 another law has changed, and for instance, in I think 20 like '04, '06, 2006, no, it was farther back than that, 21 we had a workshop over at the headquarters on Stemmons. 22 And these guys came from Austin. And they told them 23 that could only assist five people with the mail 24 ballot. 25 Then about three years later, they got</p>	<p>1 other organizations and a lot of events that come up 2 and a lot of conventions and things. And this doesn't 3 just limit either to the community or to the church or 4 to the state, you know. So when I hear all of this 5 circle of events taking place and how it affects the 6 people, it's -- it's terrible. It's heartbreaking, 7 because when this guy came and they did the workshop, 8 and he told us we couldn't go over the five, I said, 9 now when number 6 come up, then I got to tell that 10 person no. Absolutely, or you will be indicted. 11 I say if that person come to me or call 12 me and ask me, would you please come and help me, Ms. 13 Dean, I know you, I know you from the church, I know 14 you -- been knowing you 20 years and I want you, I 15 don't want the lady across the street. I can't help 16 you, I've already helped my five. Yeah, that's right. 17 That's what you tell them. 18 I said, then, if she don't get to vote, 19 then you are denying her her Constitutional right to 20 vote. I am willing to help her, but you are creating a 21 law or a restriction there that does not apply to the 22 Constitution. 23 Q. So, if I am understanding you right, the 24 people that you are talking to believe that they are 25 allowed to assist only one voter per election --</p>

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<p>1 A. Uh-huh.</p> <p>2 Q. -- for the mail-in ballot; is that right?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Okay. And that's what they are concerned</p> <p>5 about?</p> <p>6 A. Well, that and the -- and the fact that they</p> <p>7 have to -- they have to sign -- I have always signed,</p> <p>8 if I assist anybody, this was before it was required.</p> <p>9 On the back of the envelope it says "Witness." So I</p> <p>10 would not only put my name on there as a witness,</p> <p>11 because I know a lot of people that just make X, and if</p> <p>12 they do, then that means that you witness them. So</p> <p>13 that validates their ballot. That was a registered</p> <p>14 voter of age that witnessed this event. I put my name</p> <p>15 and phone number on every one. And I did -- I did that</p> <p>16 before this requirement came into effect. The election</p> <p>17 department knew when my ballots came in, early voting,</p> <p>18 Ms. Dean's is -- she always have put her name and phone</p> <p>19 number on it, everybody know that, you know.</p> <p>20 Q. So you don't think it's unreasonable, then,</p> <p>21 for the state to require someone who has assisted a</p> <p>22 mail-in voter to put their name and address and sign</p> <p>23 the envelope?</p> <p>24 A. Well, if a person feel like that's an offense</p> <p>25 to them, you know, that they would have to put their</p>	<p>1 interviewed for this article?</p> <p>2 A. Uh-huh.</p> <p>3 Q. I see your picture on there.</p> <p>4 A. Uh-huh.</p> <p>5 Q. Let me ask you a few questions about some of</p> <p>6 the things that you were quoted on.</p> <p>7 A. Uh-huh.</p> <p>8 Q. On page 6, I think it's the next page over</p> <p>9 from where you are. No, the other way. The other way.</p> <p>10 I have kind of indicated on the right margin the</p> <p>11 paragraphs that pertain to you. Do you see that?</p> <p>12 A. Uh-huh. This statement?</p> <p>13 Q. Yes, ma'am.</p> <p>14 A. Uh-huh.</p> <p>15 Q. Now, I wanted to ask you about this paragraph</p> <p>16 here.</p> <p>17 A. Uh-huh.</p> <p>18 Q. Where it says, "There is a" -- "There is one</p> <p>19 lady who used to be a precinct chair, she said. I</p> <p>20 refused to give her name because she almost had a</p> <p>21 nervous breakdown. She couldn't believe that all of</p> <p>22 her hard work as a precinct chair, and devoted to the</p> <p>23 party, something like this happened to her. She still</p> <p>24 to this day cannot get over it." Do you see that?</p> <p>25 A. Uh-huh.</p>
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<p>1 name, address, and phone number on there, like there is</p> <p>2 a new generation out here now. And if they don't want</p> <p>3 that personal information, we don't know who is</p> <p>4 handling the things.</p> <p>5 Me, I don't fear people or what they can</p> <p>6 do to me. But you don't want your identity theft</p> <p>7 predator knowing where you live, do you? And your</p> <p>8 address. Times have changed, and I can see where some</p> <p>9 restrictions about not wanting to give out information</p> <p>10 could be harmful. You have young people living alone</p> <p>11 and everything, you know, and they are just not as</p> <p>12 secure as 30 years ago. So there might be a problem</p> <p>13 with that.</p> <p>14 Q. Okay. Fair enough. Let me ask you a few</p> <p>15 questions, if you don't mind.</p> <p>16 MS. DONNELLY: Get the court reporter to</p> <p>17 an Exhibit 1.</p> <p>18 (Deposition Exhibit 1 marked.)</p> <p>19 Q. (BY MS. DONNELLY) Ms. Dean, I'll just tell</p> <p>20 you that what I have handed to you as Exhibit 1 is an</p> <p>21 article that I reprinted from the Internet, and it is</p> <p>22 an article dated April 18, 2008. It was published in</p> <p>23 the Texas Observer. The title is "Vote By Mail, Go to</p> <p>24 Jail." And the article was written by a gentleman by</p> <p>25 the name of Steve Rosenfeld. Do you recall being</p>	<p>1 Q. "She wants to be her precinct's chair again.</p> <p>2 But because of the law, she can't get it back." Do you</p> <p>3 see that?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Are you referring to Ms. Meeks there?</p> <p>6 A. Ms. who?</p> <p>7 Q. Meeks?</p> <p>8 A. No.</p> <p>9 Q. Who were you referring to there?</p> <p>10 A. Well, I wouldn't give the lady's name, but</p> <p>11 this was, I guess, about 20 years ago, and it was in</p> <p>12 the paper.</p> <p>13 Q. Okay.</p> <p>14 A. And in the Morning News.</p> <p>15 Q. So it was 20 years ago?</p> <p>16 A. Uh-huh.</p> <p>17 Q. Okay. Not the next paragraph, but the one</p> <p>18 after that --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- well, it says, "Dean," that would be you,</p> <p>21 said, "The impact of the attorney general's campaign is</p> <p>22 much larger than the dozen people charged with voter</p> <p>23 fraud and dozens more that have been investigated."</p> <p>24 And then there is a quote attributed to you. "You have</p> <p>25 to understand that this would be 20 to 30 percent of</p>

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<p>1 the voting ballots from the Democratic Party, because</p> <p>2 senior citizens cherish the right to vote. They</p> <p>3 remember the poll tax, having to pay for it. And they</p> <p>4 want to vote."</p> <p>5 Was that your quote?</p> <p>6 A. That's it. That's what I was just telling</p> <p>7 you.</p> <p>8 Q. Okay.</p> <p>9 A. You got to work by phone, but then you don't</p> <p>10 have the people out there actually going door to door</p> <p>11 to door to assist them.</p> <p>12 Q. Okay. I was unclear as to what you meant by</p> <p>13 the quote. You are not saying in this quote that you</p> <p>14 believe that 20 to 30 percent of the Democratic ballots</p> <p>15 are disenfranchised because of the change in the law,</p> <p>16 are you?</p> <p>17 A. I would think that would be an accurate</p> <p>18 statement, that people who don't get the assistance</p> <p>19 don't get an opportunity to vote. It's as simple as</p> <p>20 that, unless they can get someone to help them. Well,</p> <p>21 we are looking at a whole generation of people who paid</p> <p>22 poll tax in order to vote, and they were very, very</p> <p>23 adamant about their voting rights.</p> <p>24 So as they got older and some of them</p> <p>25 they can't even bend their fingers enough to hold a</p>	<p>1 election day, right, in the last election?</p> <p>2 A. Some of them do come in person, you know. I</p> <p>3 had several in this past election on walkers to come</p> <p>4 in. So we have to make special provision for them.</p> <p>5 They can't stand up more than five minutes, and they</p> <p>6 don't have to if they come in my precinct, because I</p> <p>7 have always made provisions for them before they put it</p> <p>8 in writing. But --</p> <p>9 Q. I mean, you, for example, you voted on</p> <p>10 election day at the polling place, right?</p> <p>11 A. Uh-huh.</p> <p>12 Q. All right. So not every senior citizen votes</p> <p>13 by mail?</p> <p>14 A. No, not every senior citizen votes by mail.</p> <p>15 Q. And not every senior citizen needs assistance</p> <p>16 to vote by mail, right?</p> <p>17 A. Right.</p> <p>18 Q. And not every senior citizen needs assistance</p> <p>19 is unable to get assistance, right?</p> <p>20 A. You say every senior citizen that need</p> <p>21 assistance won't get it?</p> <p>22 Q. No, I'm asking you if for every senior citizen</p> <p>23 that does need assistance, --</p> <p>24 A. Uh-huh.</p> <p>25 Q. -- he or she may have a granddaughter, a</p>
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<p>1 pen, you can put the pen in there and hold their</p> <p>2 finger, which one do you want, and you have to hold it</p> <p>3 steady. It's to that point.</p> <p>4 Now, in more affluent areas, they don't</p> <p>5 need that kind of help; but in low income areas where</p> <p>6 people grew up poor, they got a chance to vote finally,</p> <p>7 they wanted to participate, and they started</p> <p>8 participating, and eventually things got better for</p> <p>9 them. And they know the importance of voting. A lot</p> <p>10 of the modern young people don't know the importance of</p> <p>11 voting. But this means almost as much to the older</p> <p>12 generation as their faith, and they -- they will not</p> <p>13 separate from those two things. So when they don't get</p> <p>14 the help that they need, then this is -- this is</p> <p>15 something that has been taken away from them, and they</p> <p>16 don't feel good about it.</p> <p>17 Q. I understand.</p> <p>18 A. So the percentage could be more or it could be</p> <p>19 somewhat less, but that's -- that's -- that's pretty</p> <p>20 accurate, you know.</p> <p>21 Q. Okay. I guess what I am trying to understand,</p> <p>22 then, is, you are not saying that every senior citizen,</p> <p>23 first of all, votes by mail-in ballot, right?</p> <p>24 A. Not all of them vote by mail ballot, no.</p> <p>25 Q. You, for example, you voted personally on</p>	<p>1 neighbor, a family member to help them with their</p> <p>2 mail-in ballot, right?</p> <p>3 A. Some of them don't have anybody.</p> <p>4 Q. Okay. But some of them do, right?</p> <p>5 A. Yeah.</p> <p>6 Q. So you are not saying here that every senior</p> <p>7 citizen --</p> <p>8 A. No.</p> <p>9 Q. -- has been disenfranchised?</p> <p>10 A. No, I am not saying every senior citizen.</p> <p>11 Q. And do you know the names of any folks that</p> <p>12 you are aware of, personally aware of who have been</p> <p>13 disenfranchised because they could not receive any</p> <p>14 assistance with their mail-in ballot?</p> <p>15 A. Not off -- not -- not just off the top of my</p> <p>16 head I don't, you know, but working with -- as long as</p> <p>17 I have, I know there have been many that didn't get to</p> <p>18 vote because they didn't have anybody to help them.</p> <p>19 And it just restricts the people that were helping them</p> <p>20 to not want to help them because they don't want to get</p> <p>21 involved in legal entanglement with the -- with the</p> <p>22 law.</p> <p>23 Q. Can you identify any volunteers or activists</p> <p>24 who have said they would not assist voters with mail-in</p> <p>25 ballots because they feared that they might be</p>

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<p>1 prosecuted?</p> <p>2 A. I wouldn't -- I wouldn't name names on people</p> <p>3 knowing that, if I knew any, --</p> <p>4 Q. Okay.</p> <p>5 A. -- that would get them indicted, you know. I</p> <p>6 just wouldn't do that.</p> <p>7 Q. No, no, I don't think I made my question</p> <p>8 clear. Has anyone told you, I am not going to help</p> <p>9 someone with a mail-in ballot because I am afraid I</p> <p>10 might be prosecuted, so I am not going to help?</p> <p>11 A. No, no one has told me that they weren't going</p> <p>12 to help personally.</p> <p>13 Q. Okay.</p> <p>14 A. But here again...</p> <p>15 MS. DONNELLY: That's all the questions I</p> <p>16 have for you today. I really appreciate your time.</p> <p>17 EXAMINATION</p> <p>18 BY MR. CARROLL:</p> <p>19 Q. Ms. Dean, let me ask you a question, because I</p> <p>20 didn't understand the answer, and it might just be me.</p> <p>21 This article that Ms. Donnelly talked to you about from</p> <p>22 the Texas Observer --</p> <p>23 A. Uh-huh.</p> <p>24 Q. -- and this reference to the one lady who used</p> <p>25 to be a precinct chair, --</p>	<p>1 up version of this transcript.</p> <p>2 A. Uh-huh.</p> <p>3 Q. That's what they call it when you testify.</p> <p>4 A. Right. Right.</p> <p>5 Q. That way you can read it and make sure it's</p> <p>6 accurate and sign it, or you can trust him to type it</p> <p>7 up right and do what the law calls waiving your</p> <p>8 signature, --</p> <p>9 A. Okay.</p> <p>10 Q. -- which is a perfectly fine thing to do.</p> <p>11 Ms. -- Ms. Hamilton testified earlier this morning, you</p> <p>12 know, the young lady whose picture is next to yours in</p> <p>13 this thing?</p> <p>14 A. Uh-huh. Uh-huh.</p> <p>15 Q. And she chose, for instance, to waive it.</p> <p>16 A. Uh-huh.</p> <p>17 Q. And so if that's what you want to do, we can</p> <p>18 tell him; or if you want him to send it over here, sit</p> <p>19 down and read it make sure it's fine, and then sign it,</p> <p>20 you can do that, whichever you choose.</p> <p>21 A. Well, I think I would rather waive it.</p> <p>22 Q. Okay.</p> <p>23 A. Uh-huh.</p> <p>24 MR. CARROLL: That's fine. So she will</p> <p>25 waive signature, Will. Okay?</p>
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<p>1 A. Uh-huh.</p> <p>2 Q. -- the sentence right above that says, "Dean,"</p> <p>3 that's you, "said she has not been investigated by</p> <p>4 Abbott but knows of others who have." And then there</p> <p>5 is a reference to the lady who used to be a precinct</p> <p>6 chair.</p> <p>7 A. Uh-huh.</p> <p>8 Q. Is this lady, to your knowledge, somebody who</p> <p>9 was investigated by Greg Abbott's office?</p> <p>10 A. Not that I know of.</p> <p>11 Q. Okay. So -- so what you told Ms. Donnelly a</p> <p>12 minute ago that whatever you were --</p> <p>13 A. Abbott was not even --</p> <p>14 Q. Got you, and that's the question, so that --</p> <p>15 whatever happened in her life --</p> <p>16 A. Uh-huh.</p> <p>17 Q. -- happened a long time ago?</p> <p>18 A. Right.</p> <p>19 Q. Okay.</p> <p>20 MR. CARROLL: That's the only question I</p> <p>21 had.</p> <p>22 A. Uh-huh. No, he was not the AG at that time.</p> <p>23 Q. (BY MR. CARROLL) Let me mention one other</p> <p>24 thing to you, Ms. Dean. Under the rules you have the</p> <p>25 right to ask the court reporter to send you the typed</p>	<p>1 THE WITNESS: Okay.</p> <p>2 MR. CARROLL: Thank you.</p> <p>3 (Signature of the witness was waived by</p> <p>4 agreement of counsel and the witness.)</p> <p>5 ***</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 COUNTY OF DALLAS)
 2 STATE OF TEXAS)
 3 I, Jerry L. Callaway, RDR, certified
 4 shorthand reporter in and for the State of Texas, do
 5 hereby certify that the facts as stated by me in the
 6 caption hereto are true; that there came before me the
 7 aforementioned named person, who was by me duly sworn
 8 to testify the truth concerning the matters in
 9 controversy in this cause; and that the examination was
 10 reduced to writing by computer transcription under my
 11 supervision; that the deposition is a true record of
 12 the testimony given by the witness.

13 I further certify that I am neither
 14 attorney or counsel for, nor related to or employed by,
 15 any of the parties to the action in which this
 16 deposition is taken, and further that I am not a
 17 relative or employee of any attorney or counsel
 18 employed by the parties hereto, or financially
 19 interested in the action.

20 Given under my hand and seal of office on
 21 this, the 1st day of May, A.D., 2007.
 22

23 _____
 24 Jerry L. Callaway, RDR, CSR 948
 25 Expiration Date: 12/31/2008
 Firm Registration No. 209
 5220 Renaissance Tower
 1201 Elm Street
 Dallas, Texas 75270
 (214) 855-5300

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Exhibit 22

WILLIE RAY

WILLIE RAY, ET AL v. SOT, ET AL

Page 1

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WILLIE RAY, JAMILLAH JOHNSON,)	
GLORIA MEEKS, REBECCA)	
MINNEWEATHER, REUBEN)	
ROBINSON, EDDIE JACKSON, AND)	
THE TEXAS DEMOCRATIC PARTY,)	
Plaintiffs)	
)	
VS.)	CIVIL ACTION
)	
STATE OF TEXAS, a State of)	NO. 2-06CV-385
the United States; GREG)	
ABBOTT, Attorney General of)	
the State of Texas; and PHIL)	
WILSON, Secretary of State)	
for the State of Texas,)	
Defendants)	

ORAL AND VIDEOTAPED DEPOSITION OF

WILLIE RAY

VOLUME 1

MAY 1, 2008

TEXARKANA, TEXAS

WILLIE RAY**WILLIE RAY, ET AL v. SOT, ET AL****Page 2**

1 A P P E A R A N C E S
2
3 FOR THE PLAINTIFFS:
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7 Phone: (903) 757-8449
8
9 FOR THE DEFENDANTS:
10 TEXAS ATTORNEY GENERAL'S OFFICE
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13 Austin, Texas 78711-2548
14 Phone: (512) 463-2120
15 By: Ms. Kathlyn C. Wilson
16 Assistant Attorney General
17 State Bar No. 21702630
18
19 ALSO PRESENT:
20 Carmen Seay, Videographer
21 * * * * *
22
23 ORAL AND VIDEOTAPED DEPOSITION OF WILLIE RAY,
24 produced as a witness at the instance of the DEFENDANTS,
25 and duly sworn, was taken in the above-styled and numbered
cause on May 1, 2008, from 12:15 p.m. to 2:06 p.m., before
Tobi Moreland, CSR in and for the State of Texas, at the
United States Courthouse, 500 State Line Road, Texarkana,
Texas, pursuant to the Federal Rules of Civil Procedure
and any stipulations made on the record.

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1 VIDEOGRAPHER: This is the videotaped
2 deposition of Willie Ray taken on behalf of the defendant
3 in the matter of Ray versus State of Texas, et al, Civil
4 Action No. 2-06CV-385 for the United States District
5 Court, Eastern District of Texas, Marshall Division, held
6 at the federal courthouse. I am the videographer. My
7 name is Carmen Seay. The court reporter is Tobi Moreland.
8 This is the beginning of Tape 1. Today's date is May 1st,
9 2008. We are on the record at 12:15 p.m. Will counsel
10 introduce themselves for the record?

11 MR. ALBRITTON: Eric Albritton for Ms. Ray
12 and the other plaintiffs.

13 MS. WILSON: Kathy Wilson for the
14 defendants.

15 WILLIE RAY,
16 having been first duly affirmed, testified as follows:

EXAMINATION

17 BY MS. WILSON:

18 Q. Ms. Ray, what business are you in? Do you have
19 a business?

20 A. Business?

21 Q. Or do you have a job?

22 A. No, ma'am.

23 Q. All right. What's your educational background?

24 A. I am a registered nurse.
25

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1 Q. And how long have you been an R.N.?

2 A. About 30 years. Okay. About 30 years.

3 Q. When did you graduate from nursing school?

4 A. It was probably in the late '60s.

5 Q. And where did you go to nursing school?

6 A. T.C.

7 Q. And that stands for?

8 A. Texarkana College.

9 Q. Texarkana College, thank you.

10 A. It was Texarkana Community College at that time.

11 Q. And did you work as an R.N.?

12 A. Yes, ma'am.

13 Q. Where did you work as an R.N.?

14 A. All over. I worked at Cotton Belt. I worked at
15 St. Michael's. I worked at Wadley and other places
16 throughout, but those were my basic.

17 Q. And for about how long did you work as an R.N.?

18 A. Approximately the same amount of time after I
19 became an R.N. I was an L.V.N. first. You didn't ask me
20 that.

21 Q. I didn't, did I?

22 A. No, ma'am.

23 Q. Thank you for telling me.

24 A. I went from being an L.V.N. to an R.N.

25 Q. Okay.

2 (Pages 2 to 5)

WILLIE RAY**WILLIE RAY, ET AL v. SOT, ET AL**

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<p>1 A. So it -- you know, it's kind of confusing there.</p> <p>2 It's been such a long time ago, the '60s. Late '60s is</p> <p>3 when I graduated from R.N. school, I believe.</p> <p>4 Q. And how long were you an L.V.N. before that?</p> <p>5 A. God, you're getting so far back.</p> <p>6 Q. Just an estimate is fine.</p> <p>7 A. Probably not very long, maybe a year or two,</p> <p>8 something like that. I'm not sure.</p> <p>9 Q. And are you now retired?</p> <p>10 A. Yes, ma'am.</p> <p>11 Q. How long have you been retired?</p> <p>12 A. Since -- now, don't hold me -- I think it was</p> <p>13 ninety -- I'd have to go back to the records, but I think</p> <p>14 it was '95.</p> <p>15 Q. And from where did you retire?</p> <p>16 A. Lone Star Ammunition Plant.</p> <p>17 Q. Is that a private corporation?</p> <p>18 A. That's a -- let me get it right. It's a -- it's</p> <p>19 operated by the government, but private, yes.</p> <p>20 Q. I see.</p> <p>21 A. Yes. It's Day & Zimmerman.</p> <p>22 Q. Which government, federal, state?</p> <p>23 A. It had to be -- God, you're going so far back.</p> <p>24 I think it had to be federal. We were privately owned,</p> <p>25 Lone Star Army Ammunition Plant, and the federal part of</p>	<p>1 A. The best I could when they were there.</p> <p>2 Q. Did you ever do something like call the</p> <p>3 Democratic party to find out if they had any information</p> <p>4 on how to help people vote?</p> <p>5 A. We did workshops, and I attended a lot of</p> <p>6 meetings. I just remember that.</p> <p>7 Q. Do you remember when those workshops and</p> <p>8 meetings were?</p> <p>9 A. No, ma'am, I don't.</p> <p>10 Q. But that was -- were those -- were those held by</p> <p>11 the Democratic party?</p> <p>12 A. Some of them, I believe.</p> <p>13 Q. All right. And who else sponsored the workshops</p> <p>14 and meetings that you went to?</p> <p>15 A. Maybe community people.</p> <p>16 Q. Just --</p> <p>17 A. Community leaders at the time.</p> <p>18 Q. Oh, I see. Okay. Were these people who were</p> <p>19 actually running for office?</p> <p>20 A. No, not necessarily.</p> <p>21 Q. Did you know that the secretary of state is the</p> <p>22 chief elections officer?</p> <p>23 A. I do now.</p> <p>24 Q. At any of these meetings, did they ever -- did</p> <p>25 they ever tell you that the secretary of state had a</p>
Page 7	Page 9
<p>1 it was Day & Zimmerman.</p> <p>2 Q. So it was Army and not National Guard?</p> <p>3 A. No, ma'am. It was ammunition plant, is what it</p> <p>4 was.</p> <p>5 Q. Ammunition plant?</p> <p>6 A. Yes, ma'am.</p> <p>7 Q. Now, I understand you've been helping people</p> <p>8 vote for a long time; is that right?</p> <p>9 A. That's correct.</p> <p>10 Q. How long have you been helping people vote?</p> <p>11 A. Well, oh, Lord, let's just say a long time.</p> <p>12 Q. All right. Since you -- since the days you were</p> <p>13 an L.V.N. at least?</p> <p>14 A. Well, probably I was an R.N.</p> <p>15 Q. All right.</p> <p>16 A. But I can't remember exactly, you know. It's</p> <p>17 kind of fuzzy.</p> <p>18 Q. I'm trying to get just an estimate, like the</p> <p>19 early '70s, late '70s, something like that?</p> <p>20 A. Probably in the '70s.</p> <p>21 Q. That's close enough.</p> <p>22 A. Maybe around -- yes.</p> <p>23 Q. Now, all of these years that you've been helping</p> <p>24 people to vote, have you made attempts to educate yourself</p> <p>25 on laws about voting?</p>	<p>1 website you could go look at?</p> <p>2 A. I don't -- I'm not computer -- no, ma'am. That</p> <p>3 was way back.</p> <p>4 Q. So you don't use a computer?</p> <p>5 A. No, ma'am.</p> <p>6 Q. Did they ever tell you the secretary of state</p> <p>7 has a -- has a phone line that you can call, a toll-free</p> <p>8 number?</p> <p>9 A. I can't recall.</p> <p>10 Q. Did you -- now, this lawsuit is over statutes</p> <p>11 that were passed in 2003?</p> <p>12 A. That's what I understand.</p> <p>13 Q. All right. Did you have -- had you ever heard</p> <p>14 of those laws being passed before you were investigated</p> <p>15 for breaking them?</p> <p>16 A. No, ma'am.</p> <p>17 Q. So you didn't have any information from the</p> <p>18 secretary of state on those laws; is that right?</p> <p>19 A. That's correct.</p> <p>20 Q. And you didn't have any information from the</p> <p>21 attorney general on those laws; is that right?</p> <p>22 A. That's correct.</p> <p>23 Q. How did you learn you were being investigated?</p> <p>24 A. Oh, you know, just to be honest with you, it's</p> <p>25 so fuzzy, I just can't recall. And I'm not going to lie</p>

3 (Pages 6 to 9)

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<p>1 to you.</p> <p>2 Q. If you can't recall, then that's the best you</p> <p>3 can do.</p> <p>4 A. I mean, I want to be honest. You know, I heard</p> <p>5 about it, but how did I first -- I can't recall.</p> <p>6 Q. I can understand. All right. But you do recall</p> <p>7 that you got deferred adjudication; is that right?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. And that was for about six months; is that</p> <p>10 right?</p> <p>11 A. It may have been eight, I believe. Mine was</p> <p>12 eight.</p> <p>13 Q. So maybe eight months deferred adjudication?</p> <p>14 A. Yes, ma'am.</p> <p>15 Q. And were you on probation for those eight</p> <p>16 months?</p> <p>17 A. Probation?</p> <p>18 Q. Well, you were never convicted, were you?</p> <p>19 A. No, ma'am.</p> <p>20 Q. And you don't have a criminal record, do you?</p> <p>21 A. No, ma'am.</p> <p>22 Q. Do you remember how much you paid in fines?</p> <p>23 A. You know, I can't remember exactly. But, you</p> <p>24 know, with that adjudication thing, you have to pay so</p> <p>25 much of this and so much of that, and they put it all</p>	<p>1 Q. Okay.</p> <p>2 A. -- you know, and I don't want to do that.</p> <p>3 Q. Now, I believe you were investigated for</p> <p>4 possessing the ballots of seven people?</p> <p>5 A. That was the first thing they told me.</p> <p>6 Q. All right. Did you ever possess those ballots?</p> <p>7 A. No, ma'am.</p> <p>8 Q. And when I ask you if you possessed the ballots,</p> <p>9 what's your understanding of possessing the ballot?</p> <p>10 A. Possessing the ballot is taking over somebody's</p> <p>11 ballot and holding it or whatever. You know, possessing</p> <p>12 to me is just -- it's in your possession, you've got it,</p> <p>13 whether it's possessing --</p> <p>14 Q. In your control somehow?</p> <p>15 A. Yes, carrying it, you know, yeah.</p> <p>16 Q. And you provided stamps for people in October</p> <p>17 of '04, didn't you?</p> <p>18 A. Probably so.</p> <p>19 Q. Did you mail any other ballots than the one you</p> <p>20 mailed for Edna Roach?</p> <p>21 A. Oh, I can't recall.</p> <p>22 Q. Do you have any belief as to where the</p> <p>23 investigators got the information that you had possessed</p> <p>24 ballots without signing the back?</p> <p>25 A. The thing that I recall -- and I want to stay on</p>
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<p>1 together. And I just can't remember how much it was, you</p> <p>2 know, exactly. It -- if I'm remembering correctly, it may</p> <p>3 be under a thousand. I don't -- it's somewhere under</p> <p>4 that, you know. I can't tell you exact.</p> <p>5 Q. Do you have any personal belief as to why they</p> <p>6 investigated you?</p> <p>7 A. Personal belief? I really -- I'm not sure I</p> <p>8 could answer that, you know. I don't really -- I don't</p> <p>9 really know why they would do it unless somebody had to</p> <p>10 turn me in or something. I don't really know, I'll just</p> <p>11 say that. And I really don't concentrate on those kind of</p> <p>12 things.</p> <p>13 When things come up for me, you know, I just</p> <p>14 say, well, you know, I just have to do -- do what was</p> <p>15 right, because I feel like from what they explained, I</p> <p>16 made a mistake. But I wasn't intentionally, you know,</p> <p>17 vindictive trying to do anything wrong. I guess I'll put</p> <p>18 it like that. So when your heart is right, you don't look</p> <p>19 for causes. You just say, well, I need to correct it. I</p> <p>20 made a mistake, but I'm not a -- you know, I'm not a</p> <p>21 criminal. I wouldn't do anything.</p> <p>22 Q. Okay. So I guess you're saying you just don't</p> <p>23 have any personal belief as to why they investigated you?</p> <p>24 A. I guess that would be -- because if I said</p> <p>25 anything else, I would be lying because I don't know --</p>	<p>1 track and be honest with you. The thing that I recall --</p> <p>2 and I can't say where it first came from. There was</p> <p>3 rumbling in the community that people was upset. Okay?</p> <p>4 They were very disturbed about people knocking on their</p> <p>5 doors and almost threatening them. And I will get calls</p> <p>6 like that when something like that is going on.</p> <p>7 And I had one lady that was doing an area, and</p> <p>8 that was Melinda Hunter. And she told me that these</p> <p>9 people had came out from state to talk with her, and she</p> <p>10 was very nervous and very much afraid.</p> <p>11 And I said, Melinda, are you sure? And she</p> <p>12 said, yes, ma'am, I am. And she said they came twice and,</p> <p>13 you know, talked to her and scared her pea green. I mean,</p> <p>14 it scared her literally. And she has -- you know, if</p> <p>15 there was anything that I could do for Melinda, I would</p> <p>16 have, because she's a living vegetable. She just lost it.</p> <p>17 She threw away everything, and it really just hurt that</p> <p>18 young lady. And her personality had come out, so she was</p> <p>19 like, boy, I'm doing something. And she never did</p> <p>20 anything wrong to my knowledge, because if I taught you, I</p> <p>21 taught you to be honest and open and don't do the wrong</p> <p>22 thing. And she was doing that, plus she was registered</p> <p>23 and she was keeping up with the people that she was</p> <p>24 serving, you know. And they all depended on her. She did</p> <p>25 not do nothing that I would recall, because I know her.</p>

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<p>1 But she was so proud that she was doing something, you 2 know, to help people. And those people will tell you, I 3 depend on Melinda. Melinda take care of us. And when she 4 told me the first time, I could not believe this, you 5 know, that they would go around and really put the 6 pressure on people to say stuff. 7 And I said, Melinda, that's not true, baby. Is 8 that true? And she said, yeah. And she said, and they 9 came back again. And so at that point, she just threw 10 away everything, you know, her little list, her -- her 11 voter registration. She doesn't vote anymore, and she was 12 just always a voter, you know. 13 MS. WILSON: Okay. I'm going to have to 14 object as nonresponsive -- I'm sorry, nonresponsive. I'm 15 trying -- 16 A. Okay. 17 Q. (By Ms. Wilson) I wasn't trying to ask so much 18 where you got the information. 19 A. Oh, okay, okay. 20 Q. The question was do you have a belief as to 21 where the investigators got their information -- 22 A. Oh, okay. 23 Q. -- about you? 24 A. I'm sorry. 25 Q. Okay? That was the question I meant to ask.</p>	<p>1 Q. Okay. 2 A. So, you know, as they told you, that was a chill 3 on the community because they went to houses and 4 investigated -- I mean, talked to people. And it was -- I 5 can just remember how sad and bad I felt for how, you 6 know, it was told to me of how they were done with 7 questioning. 8 Q. I see. So the chilling feeling you were talking 9 about came from these investigators investigating -- 10 A. The people. 11 Q. I'm sorry. 12 A. The people in the community -- see, they talked 13 to lots of people. 14 Q. I know. Let me get -- we need to be careful. 15 Maybe your attorney told you. We need to be careful not 16 to talk over each other. 17 A. Okay. 18 Q. Let me get my question out. 19 A. Okay. 20 Q. And then I -- and then I'm going to let you 21 answer it. But when you say a chilling feeling, you mean 22 the chilling feeling came in response to those 23 investigators coming and asking people questions? 24 A. I hope I understood you right. If not, I've got 25 to break for a minute. It came from the people. It</p>
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<p>1 A. Okay. 2 Q. Do you have any -- 3 A. I don't have any idea, no idea, that's correct. 4 Q. All right. Do you remember testifying at the 5 preliminary injunction hearing down in Marshall in October 6 of '06? 7 A. Yes, ma'am, I remember going there. 8 Q. Okay. Do you remember talking about a chilling 9 feeling all over Texarkana area? 10 A. It was. 11 Q. Okay. You said people were sad about what 12 happened? 13 A. Yes, ma'am. 14 Q. I want to ask you about that a little. What do 15 you mean when you say a chilling feeling? 16 A. You know, if you are so interested in doing 17 something, can't wait for it to happen, and then you find 18 out that this is going on, no one wants to participate. I 19 mean, it's just like throwing water on something that 20 chills. 21 Q. When you find out what is going on? 22 A. When you find out that so many people -- and I'm 23 not trying -- but that's where my -- the people in the 24 community would tell you that these investigators were 25 there. I didn't know it.</p>	<p>1 slowed down the participation in the process. Am I still 2 not getting it? 3 Q. No. I mean, if that's your -- I just need to 4 know -- 5 A. What the chilling effect? 6 Q. I'm not -- what I'm trying to do is get to what 7 caused that chilling effect, and from what I'm -- from 8 what I'm hearing is that the chilling effect came because 9 the investigators came and started knocking on people's 10 doors; is that right? 11 A. That chilled the people. You know, I want to 12 answer you correctly. I'm not trying to talk over you. 13 I'm just trying to express the way I understood it. 14 Yes, when the people said somebody come to my 15 house, and they will tell me, and they were just down. 16 You know, it was -- okay, people get excited about 17 election times. They are really up high, we're going to 18 vote, we're going to vote, you know, we're going to vote. 19 Well, when this happened, it just -- maybe I should say a 20 spirit killing, you know, the spirit wasn't as high. They 21 really wasn't that interested. That's the chilling effect 22 I was trying to express. 23 Q. I just want to -- what I'm trying -- I think I 24 understand what you mean when you say chilling effect. 25 A. Yes, ma'am.</p>

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<p>1 Q. I'm trying to figure out what caused it. And as</p> <p>2 I understand what you said, what caused the chilling</p> <p>3 effect was these investigators starting to knock on</p> <p>4 people's houses?</p> <p>5 A. That was scary and chilling.</p> <p>6 Q. Okay.</p> <p>7 A. That was scary and chilling.</p> <p>8 Q. Was there anything else besides the</p> <p>9 investigators that caused what you feel like was a chill?</p> <p>10 A. You know, I hate to go off into that, but I'm</p> <p>11 not sure I really understand what you're getting at.</p> <p>12 Q. And that's -- that's perfectly fair. I want you</p> <p>13 to understand my questions. Okay? And I should have told</p> <p>14 you at first, if I don't -- if I do not -- you know, I</p> <p>15 always think I'm real clear, but I'm not.</p> <p>16 A. Well, that's the way I feel, and I don't want to</p> <p>17 be that way.</p> <p>18 Q. So please tell me. I just want -- you just say</p> <p>19 that people had these high spirits about voting and then</p> <p>20 there was a chill?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. And I'm trying to trace what caused that chill.</p> <p>23 And from what you've told me, it started when the</p> <p>24 investigators started knocking on people's doors. And I</p> <p>25 just want to know, is that correct?</p>	<p>1 that another way. Who was it that -- well, let me ask it</p> <p>2 this way: How did you find out about this, what you call</p> <p>3 a chilling effect? Who called you and told you?</p> <p>4 A. Nobody.</p> <p>5 Q. Okay.</p> <p>6 A. It -- you know, like actions speak louder than</p> <p>7 words.</p> <p>8 Q. Okay. How did you find out about it, then?</p> <p>9 A. Just like I said, when I went -- when it was</p> <p>10 voting time and I went to Melinda -- Melinda was one of</p> <p>11 them I recall. I mean, that's been a long time ago, but</p> <p>12 she sticks out in my mind. And she said, I can't do it</p> <p>13 anymore. She said, they have been here to us. And she</p> <p>14 was taking care of like an area, an assigned area. And</p> <p>15 that was a chill on Melinda and her entire territory</p> <p>16 because they had trust in her. You know what I mean?</p> <p>17 Q. So that was a chill on Melinda going out and</p> <p>18 assisting people?</p> <p>19 A. And it was a chill on the people because they</p> <p>20 had been also asked.</p> <p>21 Q. Okay. Who was -- who was Melinda helping?</p> <p>22 A. She worked the high-rise area.</p> <p>23 Q. When you say high-rise area, what does that</p> <p>24 mean?</p> <p>25 A. That's a community of people.</p>
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<p>1 A. That is my belief of this.</p> <p>2 Q. Okay. Other than the investigators knocking on</p> <p>3 people's doors, was -- was there anything else causing</p> <p>4 this chilling effect that you're talking about, or did it</p> <p>5 all stem from these investigators when they started</p> <p>6 knocking on people's doors?</p> <p>7 A. That is my belief because I never had any other</p> <p>8 complaints. Everybody was happy and jolly and ready to</p> <p>9 vote.</p> <p>10 Q. So it was just the investigators knocking on</p> <p>11 people's doors that caused the chilling effect; is that</p> <p>12 right?</p> <p>13 A. The investigators with what they told them</p> <p>14 about, you know, signing up or of the workers helping</p> <p>15 them.</p> <p>16 Q. Okay.</p> <p>17 A. You know. And I hope I'm answering your</p> <p>18 questions. I'm trying to understand them.</p> <p>19 Q. You are. And I understand that -- I understand</p> <p>20 that you're trying to explain something that might be hard</p> <p>21 to put into words, and I appreciate your efforts.</p> <p>22 Tell me who in the community told you -- and</p> <p>23 right now I just want you to confine your answer to who</p> <p>24 told you or who are these people who called you and told</p> <p>25 you that their spirit just wasn't in the -- let me put</p>	<p>1 Q. Where is that located?</p> <p>2 A. That's located on Robison -- off of Robison</p> <p>3 Road.</p> <p>4 Q. Is that Robison Terrace?</p> <p>5 A. Yes. Does that mean -- let me say this, ask you</p> <p>6 this: If that means going and getting Melinda, she is</p> <p>7 just a vegetable.</p> <p>8 Q. I'm --</p> <p>9 A. I'm sorry, I'm sorry.</p> <p>10 Q. We -- if they --</p> <p>11 MR. ALBRITTON: Just answer the questions</p> <p>12 she asks you, if you would, please, Ms. Ray.</p> <p>13 THE WITNESS: Thank you.</p> <p>14 MS. WILSON: And I'm going to object to the</p> <p>15 side-bar, and I'm going to object to nonresponsive.</p> <p>16 A. Okay.</p> <p>17 Q. (By Ms. Wilson) All right. Do you know any of</p> <p>18 the people at Robison Terrace who did not vote because</p> <p>19 Melinda didn't help them?</p> <p>20 A. Not that I recall.</p> <p>21 Q. Do you know if anyone else helped people at</p> <p>22 Robison Terrace?</p> <p>23 A. Not that I recall.</p> <p>24 Q. Now, when you say Melinda was your worker, it</p> <p>25 sounds like you've got things organized in terms of</p>

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<p>1 getting out the vote; am I correct?</p> <p>2 A. Well, not anymore.</p> <p>3 Q. Well, let's go back to 2003 before this</p> <p>4 investigation happened, okay?</p> <p>5 A. Yes, ma'am.</p> <p>6 Q. Did you have -- did you have people organized to</p> <p>7 go get out the vote at election time?</p> <p>8 A. There was a few.</p> <p>9 Q. All right. How many did you have?</p> <p>10 A. Well, as far as I can recall, it was -- the two</p> <p>11 that worked was Melinda and Jamillah.</p> <p>12 Q. All right. And you said Melinda was your worker</p> <p>13 or one of your workers. Did you have other workers</p> <p>14 besides Melinda and Ms. Johnson?</p> <p>15 A. Those were the two I knew.</p> <p>16 Q. Okay. About how many people -- well, do you</p> <p>17 know about how many people Melinda helped?</p> <p>18 A. No.</p> <p>19 Q. Do you know how she went about helping people?</p> <p>20 A. What do you mean?</p> <p>21 Q. What did she do to assist them? Did she -- did</p> <p>22 she put up signs at Robison Terrace? Did she call people?</p> <p>23 Do you know?</p> <p>24 A. I don't know.</p> <p>25 Q. What did you do to assist people?</p>	<p>1 Q. So you're not -- you're not taking any active</p> <p>2 measures like putting up posters or, you know, call this</p> <p>3 number if you need voting assistance or putting out</p> <p>4 pamphlets or anything, you know, if you need assistance,</p> <p>5 you know, call this number?</p> <p>6 A. I think I'm confused.</p> <p>7 Q. Okay. Well, my question is, you said -- you</p> <p>8 said it's word of mouth, and that may be the answer. But</p> <p>9 my question is have you ever like actively tried to inform</p> <p>10 people that if they needed help voting, you would help</p> <p>11 them get it?</p> <p>12 A. I'm sure I did in the beginning.</p> <p>13 Q. And you just don't remember how you did it?</p> <p>14 A. Well, probably through every effort that -- you</p> <p>15 know, putting out signs and talking to them and that kind</p> <p>16 of stuff, literature that we have.</p> <p>17 Q. And I guess by -- what you're saying is by now,</p> <p>18 you've kind of built up a reputation and so -- and so you</p> <p>19 don't do that anymore?</p> <p>20 A. Well, when you -- I don't do that anymore?</p> <p>21 Q. You don't put up signs anymore.</p> <p>22 A. Oh, I would, yes, ma'am.</p> <p>23 Q. Oh, okay. So you still put up signs?</p> <p>24 A. I would.</p> <p>25 Q. What do the signs say?</p>
Page 23	Page 25
<p>1 A. What did I do to -- what did I do to assist</p> <p>2 people?</p> <p>3 Q. If -- I'm sorry.</p> <p>4 A. Okay, go ahead.</p> <p>5 Q. I'm just trying to figure out, you say you've</p> <p>6 been -- you've been helping people vote for a long time?</p> <p>7 A. Yes, ma'am.</p> <p>8 Q. Just kind of typically, how does it happen that</p> <p>9 somebody needs your help and what do you do in response?</p> <p>10 A. Well, whatever their needs are, if they need a</p> <p>11 ride to the poll or need an application.</p> <p>12 Q. How do you find out about them?</p> <p>13 A. How do I find out about them?</p> <p>14 Q. Yeah. How do you find out somebody needs help?</p> <p>15 A. That's a good question.</p> <p>16 Q. I don't think anybody has ever told me that. I</p> <p>17 don't think a deponent has ever told me that.</p> <p>18 A. I'm not sure I understand or can give you a good</p> <p>19 answer, but by word of mouth, I guess.</p> <p>20 Q. Do you ever try to let people know that you're</p> <p>21 available to help people vote?</p> <p>22 A. Do I ever -- I don't have to.</p> <p>23 Q. Okay.</p> <p>24 A. That don't answer your question, does it? But</p> <p>25 when that time come, they just know that I've been there.</p>	<p>1 A. It just say if whoever is running, maybe I put</p> <p>2 up signs for them.</p> <p>3 Q. Okay. I'm trying not -- that's not exactly what</p> <p>4 I'm talking about. I'm asking if you specifically ever</p> <p>5 had any cards made up or any posters that said if you need</p> <p>6 help voting, call Willie Ray?</p> <p>7 A. I can't recall.</p> <p>8 Q. Okay. About how many people were you helping in</p> <p>9 2003?</p> <p>10 A. 2000 -- I can't recall.</p> <p>11 Q. Did -- did any of those people tell you that</p> <p>12 they weren't going to vote because you were being</p> <p>13 investigated?</p> <p>14 A. I can't recall those exact words.</p> <p>15 Q. Did they give you the indication or give you the</p> <p>16 belief that they weren't going to vote because of what</p> <p>17 happened to you?</p> <p>18 A. Let me -- let me answer you correctly. No.</p> <p>19 Okay. What was your question again?</p> <p>20 Q. My question is did anybody indicate to you -- do</p> <p>21 you -- let me put it this way: Do you know of anybody who</p> <p>22 didn't vote because you were investigated?</p> <p>23 A. No.</p> <p>24 Q. Did anybody tell you, well, I'm just not going</p> <p>25 to vote anymore, if they can do this to you, I don't want</p>

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<p>1 to participate?</p> <p>2 A. You know, I want to answer your question that</p> <p>3 you're asking. What I'm sure -- you know -- you know, I</p> <p>4 think I'm tired.</p> <p>5 Q. You think you're --</p> <p>6 A. I think I'm tired. I think my mind is wore out.</p> <p>7 I think I need a break.</p> <p>8 Q. All right, sure. We can take a break.</p> <p>9 A. I am so bogged down in confusion.</p> <p>10 VIDEOGRAPHER: We're off the record at</p> <p>11 12:47.</p> <p>12 (Brief Recess)</p> <p>13 VIDEOGRAPHER: We're back on the record at</p> <p>14 12:54 p.m.</p> <p>15 Q. (By Ms. Wilson) Okay. Ms. Ray, I think my</p> <p>16 question was did any of these people that you had helped</p> <p>17 indicate to you that they weren't going to vote after you</p> <p>18 were investigated?</p> <p>19 A. Yes, ma'am.</p> <p>20 Q. Okay. Who did?</p> <p>21 A. Melinda.</p> <p>22 Q. All right. And what did Melinda say?</p> <p>23 A. She said, I'm just not voting anymore.</p> <p>24 Q. All right. Do you know whether or not Melinda</p> <p>25 stopped voting?</p>	<p>1 A. I know they stopped voting because they told me</p> <p>2 they stopped voting.</p> <p>3 Q. And which ones stopped -- I need names of people</p> <p>4 who stopped voting.</p> <p>5 A. And that, I can't recall. I just heard the</p> <p>6 words.</p> <p>7 Q. Did you ever go to the voter records and see if</p> <p>8 they actually stopped voting?</p> <p>9 A. No, ma'am.</p> <p>10 Q. So all you know is they told you they stopped</p> <p>11 voting, right?</p> <p>12 A. Yes, ma'am. They -- well, you know, the</p> <p>13 assist -- they told me they stopped voting and they wasn't</p> <p>14 going to vote anymore.</p> <p>15 Q. But you don't remember who it was?</p> <p>16 A. I can't remember.</p> <p>17 Q. And they just -- and they just said, I'm not</p> <p>18 going to vote anymore, right?</p> <p>19 A. Because of what's going on.</p> <p>20 Q. Because -- because you were being investigated,</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. What did you tell people when they said, well,</p> <p>24 I'm just not going to vote anymore because they are</p> <p>25 investigating you?</p>
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<p>1 A. She threw her card away, and she did stop</p> <p>2 voting.</p> <p>3 Q. How do you know she threw her card away?</p> <p>4 A. Well, let's just say she told me she wasn't</p> <p>5 voting anymore.</p> <p>6 Q. Okay. So you actually don't -- you didn't see</p> <p>7 her throw her card away, did you?</p> <p>8 A. No.</p> <p>9 Q. So did she say, I'm throwing my card away?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Did she say that to you?</p> <p>12 A. Yes.</p> <p>13 Q. Now, that was one of your workers, right?</p> <p>14 A. Yes.</p> <p>15 Q. All right. Now, what about the people that you</p> <p>16 helped, did any of them say I'm not going to vote anymore?</p> <p>17 A. I know it was said to me.</p> <p>18 Q. By whom?</p> <p>19 A. Oh, God. I just can't -- the only one that I</p> <p>20 really heard to say that to me was Melinda. And I'm sure</p> <p>21 there was others. I just can't recall their names.</p> <p>22 Q. Do you actually know whether or not any of these</p> <p>23 people stopped voting?</p> <p>24 A. Yes, ma'am.</p> <p>25 Q. All right. Which ones stopped voting?</p>	<p>1 A. Well, I certainly encouraged them to continue.</p> <p>2 Q. To continue voting?</p> <p>3 A. Yes.</p> <p>4 Q. But you have no idea, do you, whether or not</p> <p>5 they actually voted after that, do you?</p> <p>6 A. I didn't go and check the record.</p> <p>7 Q. Okay. So you don't know, do you?</p> <p>8 A. I didn't check the record.</p> <p>9 Q. Okay. Does that mean you do know or you don't</p> <p>10 know?</p> <p>11 A. Well, records speak, but I know what they told</p> <p>12 me.</p> <p>13 Q. I understand that. But you don't know whether</p> <p>14 they voted or not, do you?</p> <p>15 A. No.</p> <p>16 Q. Do you remember at the -- at the hearing in</p> <p>17 Marshall, you said people were discouraged?</p> <p>18 A. Discouraged?</p> <p>19 Q. Uh-huh.</p> <p>20 A. Uh-huh.</p> <p>21 Q. When you were talking -- first of all, do you</p> <p>22 recall saying that?</p> <p>23 A. I'm sure I did.</p> <p>24 Q. And do you remember what you were talking about</p> <p>25 when you said people were discouraged?</p>

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<p>1 A. Because the harassment.</p> <p>2 Q. What do you mean harassment?</p> <p>3 A. Of the interrogation of the investigation.</p> <p>4 Q. Okay. So the people coming and asking questions</p> <p>5 from the A.G.?</p> <p>6 A. Yes.</p> <p>7 Q. All right. And you've said that made people</p> <p>8 discouraged?</p> <p>9 A. Oh, sure it did.</p> <p>10 Q. Okay. And so that was part of this kind of</p> <p>11 chilling feeling you were talking about?</p> <p>12 A. Sure.</p> <p>13 Q. Because people were asking them questions about</p> <p>14 how you had helped them?</p> <p>15 A. Ask your question again.</p> <p>16 Q. All right. Well, you said people were</p> <p>17 discouraged.</p> <p>18 A. Yes, ma'am.</p> <p>19 Q. And from what I can understand is that</p> <p>20 discouragement that you were talking about in Marshall was</p> <p>21 part of what we were talking about, the chilling feeling,</p> <p>22 earlier?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And that's what you meant when you said</p> <p>25 they were discouraged?</p>	<p>1 year, correct?</p> <p>2 A. Right.</p> <p>3 Q. Okay. Is -- do -- is it your experience that</p> <p>4 mid-term elections, people don't turn out as much as they</p> <p>5 do for presidential election years?</p> <p>6 A. I can't recall.</p> <p>7 Q. And you didn't check the records after the</p> <p>8 election in '06 to see if the people you had helped had</p> <p>9 voted in that election?</p> <p>10 A. I can't recall.</p> <p>11 Q. Okay. What about this last March, did you help</p> <p>12 people this last March?</p> <p>13 A. March? I'm sure I did.</p> <p>14 Q. The March primaries?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Let me try to -- you may have answered --</p> <p>17 you may have answered this, and it may just be -- if</p> <p>18 you -- let me try to put this question -- first of all,</p> <p>19 you didn't check to see if the people you helped in the</p> <p>20 past have voted since then, have you?</p> <p>21 A. Have I --</p> <p>22 Q. Have you checked to see if they are still</p> <p>23 voting?</p> <p>24 A. No.</p> <p>25 Q. Now, this last March primary when we had the</p>
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<p>1 A. They were discouraged by what I've already said</p> <p>2 about the coming out, and they did tell me that they had</p> <p>3 badges and some had guns and they were discouraged and</p> <p>4 they were afraid.</p> <p>5 Q. Okay. And that's -- so all of that's --</p> <p>6 A. That was the chilling.</p> <p>7 Q. That's part of what you're calling the chilling</p> <p>8 effect?</p> <p>9 A. Yes.</p> <p>10 Q. All right. Did you ever look at a list of</p> <p>11 people who applied for mail-in ballots in October of 19 --</p> <p>12 I'm sorry. Boy, am I behind times. Okay. Did you ever</p> <p>13 look at a list of people who applied for mail-in ballots</p> <p>14 in October of '06?</p> <p>15 A. I can't recall.</p> <p>16 Q. Do you remember checking the list of people who</p> <p>17 applied for mail-in ballots for that November election in</p> <p>18 '06?</p> <p>19 A. I can't recall.</p> <p>20 Q. Did you look after the election at any official</p> <p>21 lists of who had voted by mail?</p> <p>22 A. I can't recall.</p> <p>23 Q. The '06 election was a mid-term election, right?</p> <p>24 A. '06?</p> <p>25 Q. We're in '08. The presidential election is this</p>	<p>1 primaries --</p> <p>2 A. Yes.</p> <p>3 Q. -- you said you helped people during that</p> <p>4 primary?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And that was after your probation was</p> <p>7 over, right?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. All right. What activities did you engage in to</p> <p>10 help people last March?</p> <p>11 A. Application for ballot by mail.</p> <p>12 Q. About how many people did you help?</p> <p>13 A. I don't have any idea.</p> <p>14 Q. Just is it 10, 20, or 100 or --</p> <p>15 A. Not that many -- not as many as usual. I can't</p> <p>16 recall, but it --</p> <p>17 Q. Okay. How many do you usually help?</p> <p>18 A. I can't recall.</p> <p>19 Q. Can you give me a ballpark figure at all? Is it</p> <p>20 around 150, something like that?</p> <p>21 A. Well, I can say this: It was more before the</p> <p>22 investigation than it is now. People are real reluctant.</p> <p>23 Q. All right. When you say it was more before the</p> <p>24 investigation, how do you know that if you can't remember</p> <p>25 how many you helped then and how many you help now?</p>

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<p>1 A. Well, let's just say that it was just -- I</p> <p>2 couldn't give you a number, but it just seemed like it was</p> <p>3 more.</p> <p>4 Q. It seems like it was more?</p> <p>5 A. It was more before because it's very few -- you</p> <p>6 know, it's not a whole bunch right now.</p> <p>7 Q. Well, you say people are a little reluctant.</p> <p>8 What people are reluctant?</p> <p>9 A. The ones that -- the ones that we -- well, all</p> <p>10 of them, I guess.</p> <p>11 Q. So all the people you used to help are</p> <p>12 reluctant; is that what you're saying?</p> <p>13 A. Well, let's just say most of them.</p> <p>14 Q. Okay. Most of them? Can you give me the names</p> <p>15 of people who have told you they're reluctant to -- to do</p> <p>16 what?</p> <p>17 A. No.</p> <p>18 Q. First of all, let me ask you this --</p> <p>19 A. Okay.</p> <p>20 Q. What are they reluctant to do?</p> <p>21 A. To vote. To vote, you know, like at home.</p> <p>22 Q. Okay. How do you know they are reluctant?</p> <p>23 A. Because they said.</p> <p>24 Q. And can you remember any person who told that to</p> <p>25 you, I'm reluctant to vote at home?</p>	<p>1 A. Well, average of writing, writing it down.</p> <p>2 Q. Okay. But, like, per person you assist, how</p> <p>3 long does it take to put your name and address on the</p> <p>4 back?</p> <p>5 A. Well, I wouldn't be for sure, but it takes me</p> <p>6 some time. And maybe -- I haven't counted my time, you</p> <p>7 know, hadn't put a watch on it, but I'm not as fast as I</p> <p>8 once was.</p> <p>9 Q. You think maybe less than a minute to write down</p> <p>10 your name and address?</p> <p>11 A. I've never timed it.</p> <p>12 Q. Could you write down your name and address for</p> <p>13 me right now? Just -- I'm going to tell you write, go.</p> <p>14 A. Now? Okay. (Witness complies.) Okay.</p> <p>15 Q. Okay. You finished? Okay. That was well under</p> <p>16 a minute. I timed it at about 35 seconds.</p> <p>17 A. 35 seconds.</p> <p>18 Q. So if you -- if you help 60 people, it's going</p> <p>19 to take you about 15 minutes to put your -- I'm sorry, I'm</p> <p>20 bad at math. It's going to take you about half an hour to</p> <p>21 put your name and address on the envelopes; is that right?</p> <p>22 A. If that's what you said.</p> <p>23 Q. Let's let the -- let's let people who are better</p> <p>24 at that do the math. But you feel that's burdensome for</p> <p>25 you?</p>
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<p>1 A. No, I can't think of one in particular.</p> <p>2 Q. Now, you know now -- I believe you testified in</p> <p>3 Marshall that you were unaware of the law -- of this law</p> <p>4 about possession -- possessing ballots?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. And so you didn't know anything at all</p> <p>7 about that law until somebody came and told you you had</p> <p>8 broken it; is that right?</p> <p>9 A. That is correct.</p> <p>10 Q. And you know now that all you have to do to</p> <p>11 assist somebody is to sign and -- I'm sorry. All you have</p> <p>12 to do if you take possession of another person's ballot is</p> <p>13 to sign and give your address?</p> <p>14 A. That's correct.</p> <p>15 Q. And you do that now, right?</p> <p>16 A. Yes.</p> <p>17 Q. Is that burdensome for you?</p> <p>18 A. Yes.</p> <p>19 Q. How is it burdensome?</p> <p>20 A. It just take more time.</p> <p>21 Q. How much more time?</p> <p>22 A. Well, it's not like you were -- I'm not sure</p> <p>23 about the time.</p> <p>24 Q. Is it a big amount of time to put your name and</p> <p>25 address on the back?</p>	<p>1 A. Well, it takes -- it takes time to do that, yes,</p> <p>2 ma'am.</p> <p>3 Q. Other than the time it takes, are there any</p> <p>4 other burdens associated with putting your name and</p> <p>5 address on the back of the ballots?</p> <p>6 A. I don't have any problem with -- with writing</p> <p>7 it, but it does take time. It's the delay, and people</p> <p>8 before, they -- it's just -- just not like it was.</p> <p>9 Q. It was easier when you didn't have to, wasn't</p> <p>10 it?</p> <p>11 A. Exactly.</p> <p>12 Q. Now, you get mail at your home that's addressed</p> <p>13 to you, right?</p> <p>14 A. Yes.</p> <p>15 Q. And right there with your name and your address</p> <p>16 like from bills from the power company?</p> <p>17 A. Yes.</p> <p>18 Q. Ms. Ray, you understand that these elderly and</p> <p>19 disabled people, sometimes they can be taken advantage of,</p> <p>20 don't you?</p> <p>21 A. Yes.</p> <p>22 Q. People can come in and maybe take their ballot</p> <p>23 from them without letting them vote it? Have you ever</p> <p>24 heard that happening?</p> <p>25 A. People come in and take their ballot?</p>

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<p>1 Q. Right.</p> <p>2 A. Without --</p> <p>3 Q. Without letting them vote it, just take -- just</p> <p>4 intimidate these elderly people and say give me -- you can</p> <p>5 give me that ballot, I'll take care of it for you? Have</p> <p>6 you ever heard anything like that?</p> <p>7 A. No.</p> <p>8 Q. You understand that that can happen, don't you?</p> <p>9 A. I'm sure it can, but it's not my practice.</p> <p>10 Q. And I wasn't suggesting that it was.</p> <p>11 A. Oh, okay.</p> <p>12 MS. WILSON: I'm going to -- I'm going to</p> <p>13 have this exhibit marked.</p> <p>14 (DEPOSITION EXHIBIT NO. 1</p> <p>15 WAS MARKED FOR IDENTIFICATION.)</p> <p>16 Q. (By Ms. Wilson) I want you to -- I'm going to</p> <p>17 give you just a few minutes to read this, okay? And I'm</p> <p>18 going to -- I'm going to -- I'm going to tell you that</p> <p>19 this is from a complaint that was sent to the secretary of</p> <p>20 state.</p> <p>21 A. (Witness reviews document.)</p> <p>22 Q. All right. I just want to ask you a couple of</p> <p>23 questions about this. You -- this is -- and this is an</p> <p>24 example of a person being taken advantage of in their</p> <p>25 home?</p>	<p>1 A. Well, that sounds really -- I've never</p> <p>2 experienced that.</p> <p>3 Q. I understand that.</p> <p>4 A. Yes, ma'am. And so I -- I just couldn't -- I've</p> <p>5 never experienced that, and it's hard to believe that</p> <p>6 somebody would take that advantage of an elderly person.</p> <p>7 Q. And you do agree that this is improper, don't</p> <p>8 you?</p> <p>9 A. If -- if that is the truth. I mean --</p> <p>10 Q. If that happened, it's improper, isn't it?</p> <p>11 A. I don't -- okay.</p> <p>12 Q. Is that -- if this happened the way they said it</p> <p>13 did, that's improper, isn't it?</p> <p>14 A. Well, I guess --</p> <p>15 Q. I'm asking your opinion.</p> <p>16 A. From what I read --</p> <p>17 Q. I'm just asking your opinion.</p> <p>18 A. Yes, yes.</p> <p>19 MR. ALBRITTON: Let her finish.</p> <p>20 MS. WILSON: Okay, I'm sorry.</p> <p>21 MR. ALBRITTON: You're just talking over</p> <p>22 her, too.</p> <p>23 Q. (By Ms. Wilson) All right. We'll try -- let's</p> <p>24 kind of back off. All right.</p> <p>25 A. But in my experience, I have not known anything</p>
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<p>1 A. Yes.</p> <p>2 Q. And voting by mail; you understand that?</p> <p>3 A. Yes.</p> <p>4 Q. And this person actually, when they -- this</p> <p>5 person's name is Gloria Gamboa, and two people came by and</p> <p>6 indicated they were there to pick up her mail-in ballot.</p> <p>7 A. That's what I read.</p> <p>8 Q. Right, right. And instead of actually assisting</p> <p>9 this woman, they put -- they put pressure on her to vote</p> <p>10 for one of the candidates? You read that?</p> <p>11 A. I read the letter.</p> <p>12 Q. Okay. Well, did you read where they -- did you</p> <p>13 read where it says, "Ms. Gonzalez identified herself as</p> <p>14 May Gonzalez' wife, and she reminded me that I voted for</p> <p>15 her husband on the last election and questioned why I was</p> <p>16 not voting for him this time." Did you read that?</p> <p>17 A. I read the letter.</p> <p>18 Q. That's -- that's a little intimidating, don't</p> <p>19 you think?</p> <p>20 A. I read it.</p> <p>21 Q. Okay. My question is whether or not you think</p> <p>22 it's intimidating for someone to go to somebody's house</p> <p>23 when they know they have gotten their mail-in ballot and</p> <p>24 start to ask them why they are not voting for their</p> <p>25 husband?</p>	<p>1 like that to happen, and it seems like a fairy tale. I</p> <p>2 just -- I just -- I just can't believe somebody doing --</p> <p>3 that's not my practice. I don't do that. But maybe it</p> <p>4 does happen, but I don't practice that. And if there was</p> <p>5 somebody who practiced that, I would certainly be the</p> <p>6 first one to turn them in.</p> <p>7 Q. All right. And as I told you before, I'm not</p> <p>8 suggesting that you have ever done anything like this.</p> <p>9 I'm just -- that's just an example of the kind of voting</p> <p>10 complaints that the secretary of state can get. And, in</p> <p>11 fact, I want to show you another one.</p> <p>12 MS. WILSON: Let's put this together as</p> <p>13 Exhibit 2, first page and second page.</p> <p>14 (DEPOSITION EXHIBIT NO. 2</p> <p>15 WAS MARKED FOR IDENTIFICATION.)</p> <p>16 A. (Witness reviews document.)</p> <p>17 Q. (By Ms. Wilson) Let me -- I'm going to -- why</p> <p>18 don't you keep it because I'm going to ask you a couple of</p> <p>19 questions.</p> <p>20 A. Oh, okay.</p> <p>21 Q. Right there on that first page where it says a</p> <p>22 ballot -- okay. It says a ballot was mailed to me by the</p> <p>23 county clerk. Several days later a female came to my</p> <p>24 house and asked me if I had marked the ballot. She told</p> <p>25 me that I should vote straight Democrat. I told her I</p>

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<p>1 wanted to write in for Mike Acosta. She told me that by</p> <p>2 voting straight ticket, I was voting for Mike Acosta. And</p> <p>3 then if you look at the second page, there's the sample</p> <p>4 ballot. You see where it's -- you see where it's circled</p> <p>5 sample?</p> <p>6 A. Yes.</p> <p>7 Q. And, in fact, you understand straight party</p> <p>8 voting, don't you?</p> <p>9 A. Yes.</p> <p>10 Q. And so if this person had actually voted</p> <p>11 straight party, that would not have cast a vote for the</p> <p>12 person that this person wanted to vote for, would it?</p> <p>13 A. I'm not familiar with this kind of vote-in.</p> <p>14 Now, what was your question again? I've not experienced</p> <p>15 that.</p> <p>16 Q. Well, okay. Do you see where by Raul Gon --</p> <p>17 Raul Gomez, it says Democrat?</p> <p>18 A. Yes.</p> <p>19 Q. Now, if this person had cast a straight party</p> <p>20 ticket, he would have voted for Raul Gomez. Do you</p> <p>21 understand that?</p> <p>22 A. Yes.</p> <p>23 Q. All right. And so whoever came by and said if</p> <p>24 you vote a straight party ticket, you will vote for Mike</p> <p>25 Acosta, that just wasn't true, was it?</p>	<p>1 Q. -- if you cast a straight Democratic -- a</p> <p>2 straight Democratic ticket or a straight Democratic party</p> <p>3 vote, you're going to vote for Raul Gomez. Do you see</p> <p>4 that?</p> <p>5 A. Where is his name?</p> <p>6 Q. His name is right up there in that circled part.</p> <p>7 A. I see it circled.</p> <p>8 Q. Okay. Do you see that if you -- if you vote a</p> <p>9 straight party ticket, you're going to vote for Raul</p> <p>10 Gomez?</p> <p>11 A. Is he on here?</p> <p>12 Q. Yes, ma'am. He's right up in that circle.</p> <p>13 A. Right here where you got circled?</p> <p>14 Q. Yes, ma'am.</p> <p>15 A. Okay.</p> <p>16 Q. You see where it says Royce McNeil, Republican,</p> <p>17 Raul Gomez, Democrat? Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. All right. Now, as you understand straight</p> <p>20 party voting, if this person cast a straight party vote,</p> <p>21 that vote is going to go to Raul Gomez, won't it?</p> <p>22 A. Yes, Democrat.</p> <p>23 Q. Okay. Now, back to this --</p> <p>24 A. Or Republican, whatever.</p> <p>25 Q. -- this affidavit.</p>
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<p>1 A. It's not my practice.</p> <p>2 Q. And I'm not -- like I said, I'm not suggesting</p> <p>3 that it is.</p> <p>4 A. Right.</p> <p>5 Q. I just want to get an answer --</p> <p>6 A. So it's hard for me to visualize that. So I</p> <p>7 guess if you say that, that's true.</p> <p>8 Q. Well, here's -- I'm sorry, did I interrupt you?</p> <p>9 A. Go ahead.</p> <p>10 Q. Okay. Here's what I'm -- I understand that this</p> <p>11 might be hard for you to visualize, which is why I brought</p> <p>12 these.</p> <p>13 A. Yes, ma'am.</p> <p>14 Q. Because these are actual ones. These are actual</p> <p>15 complaints, both of these. Okay? And so I want to get</p> <p>16 back to my question. First of all, in this Exhibit 2,</p> <p>17 this person who said if you vote a straight party ticket,</p> <p>18 you will be voting for Mike Acosta, that person was lying,</p> <p>19 as you understand this; is that correct?</p> <p>20 A. Well, I'm not getting the whole gist of this.</p> <p>21 It's hard for me to make sense of what you're saying here.</p> <p>22 Q. Well, let's try to make sense of it. Remember</p> <p>23 when you said that if this person on this ballot, Page 2</p> <p>24 of Exhibit 2 --</p> <p>25 A. Okay.</p>	<p>1 A. Okay.</p> <p>2 Q. This person said he wanted to vote for Mike</p> <p>3 Acosta. He said, I wanted -- I wanted to write in for</p> <p>4 Mike Acosta. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. But this lady who came by said, well, if you</p> <p>7 vote straight party ticket, you're going to vote for Mike</p> <p>8 Acosta. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Well, in fact, if you look back at Page 2,</p> <p>11 remember we said that if you vote straight party ticket,</p> <p>12 you're actually going to vote for Raul Gomez? Do you see</p> <p>13 that?</p> <p>14 A. Straight party ticket is that you vote for the</p> <p>15 straight party. I understand that.</p> <p>16 Q. And this vote -- and a vote for the straight</p> <p>17 party ticket in this particular example would have been</p> <p>18 cast for Mr. Gomez, correct, according to the ballot in</p> <p>19 front of you?</p> <p>20 A. I don't -- the only thing I know, if you -- and</p> <p>21 I have not experienced. If you vote a straight party</p> <p>22 ticket, why would you, you know, write it in?</p> <p>23 Q. Well, that's kind of my point. This --</p> <p>24 A. So I'm not familiar, you know, with that. So I</p> <p>25 just know the party voting.</p>

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<p>1 Q. Okay. Here's what I'm trying to get at, and 2 this is -- 3 A. Okay. 4 Q. I'm trying -- I want to know if you understand 5 this complaint. Because this person who's complaining has 6 said, look, I wanted to vote for Mike Acosta, who is the 7 write-in right here on the third line. Do you see that? 8 A. Yes, ma'am. 9 Q. I want to vote for Mike Acosta. But this lady 10 came in and said to vote for Mike Acosta, all you have to 11 do is vote straight party ticket. Do you understand that? 12 A. I didn't say that. That's not my practice. I 13 can't answer for somebody else. 14 Q. Ms. -- I'm not asking if you do it, and I'm not 15 actually asking you if this person did it. I'm asking you 16 if you understand what this election worker was being 17 accused of? 18 A. It's just hard for me to understand something 19 like that. But if they misled them, yes, that's wrong. 20 Q. And you understand that this election worker was 21 trying to mislead that voter, don't you? 22 A. I wasn't there. 23 Q. If this is -- if Exhibit 2 is correct and if 24 this is what happened, then that election worker was 25 trying to mislead that voter; isn't that correct?</p>	<p>1 maybe it would have been a good idea in Exhibit 2 if we -- 2 we don't know who -- we don't know who that female is, do 3 we, from this piece of paper? It doesn't say. 4 A. There's no name. 5 Q. Right. 6 A. There is -- let me see here. Okay. I do see 7 where I guess this is the printing and address. What is 8 that? See, I'm not -- right there. It looks like she 9 made an X or whatever. 10 Q. Someone made an X? 11 A. Yeah, they made an X, and whoever was helping 12 fill that out. Is that what it was? 13 Q. No. I'm just asking you -- 14 A. Okay. 15 Q. -- in this example -- 16 A. Well, I can't give you a clear answer. 17 Q. Well, right here, it says -- see where it says, 18 several days later, a female came to my house; do you see 19 that? 20 A. Uh-huh. 21 Q. Now, according to that, it was just a female. 22 It's not somebody who gave a name and address. Do you see 23 that? 24 A. I see that, yes. 25 Q. Okay. All right. Do you think maybe it's a</p>
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<p>1 A. If -- I wasn't there, so I really don't know. 2 And it's just hard for me to visualize, and so I can't say 3 something that I really don't know. I mean, I guess if 4 somebody would do that, it would be wrong. 5 Q. Okay. That's all I needed. Now, you do 6 understand, then, Ms. Ray, that not all people who go and 7 help these elderly and disabled people are following the 8 rules? 9 A. Yes. 10 Q. And you understand that some of them are going 11 in and trying to take advantage of those people? Do you 12 understand that? 13 A. That's what you've just said. 14 Q. Well, but I know I said it. My question is do 15 you understand that that happens? 16 A. I can't witness it, but I -- you know, from what 17 you've showed me, I mean, it's written. 18 Q. And so you understand that it can happen, don't 19 you? 20 A. Sure. 21 Q. And that when you're helping disabled and 22 elderly people, you want to be careful not to influence 23 them; isn't that correct? 24 A. Yes. 25 Q. All right. Don't you think it's a good idea --</p>	<p>1 good idea for people who are helping these disabled and 2 elderly, do you think it's a good idea for them to write 3 their name and address so we know who they are? 4 A. Well, if that's the law. 5 Q. Okay. Well, do you know that when you go to 6 the -- to the polling place on election day -- 7 A. Yes. 8 Q. -- and there's a ballot box -- 9 A. Yes. 10 Q. -- we don't let just anybody pick up that ballot 11 box and take it back to the county clerk, do we? 12 A. No. 13 Q. You have to be signed in; they have to know who 14 handled that box, don't they? 15 A. Well, you know, I'm not familiar with that. 16 Q. Okay. 17 A. I'm not. You're getting out of my field. I'm 18 not familiar with how they do that. 19 Q. Okay. But do you think it would be odd if we 20 let some stranger go into a polling place and say, oh, 21 I'll take those ballots to the county clerk for you? Do 22 you think that might be odd? 23 A. You know, anybody? 24 Q. Yeah, just somebody off the street? 25 A. Oh, yeah.</p>

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<p>1 Q. Some stranger.</p> <p>2 A. Well --</p> <p>3 Q. Do you think that's odd?</p> <p>4 A. Why would they do that?</p> <p>5 Q. Well, my question is why would we let them?</p> <p>6 Don't we want to know who's handled voted ballots?</p> <p>7 A. I just feel that we -- we should follow whatever</p> <p>8 procedure we have. We know it, and the thing about that,</p> <p>9 it's not gotten -- and I preached this all of the time,</p> <p>10 there should be a mechanism -- I guess let me just answer</p> <p>11 your question.</p> <p>12 Q. Do you want me to ask it again?</p> <p>13 A. If I didn't answer it, yes.</p> <p>14 Q. Okay.</p> <p>15 A. Tell me exactly what you're saying.</p> <p>16 Q. All right.</p> <p>17 A. Point-blank, just say it.</p> <p>18 Q. Would it be -- why would we let some stranger</p> <p>19 come in and take a box of voted ballots when we don't know</p> <p>20 who that person is?</p> <p>21 A. So we --</p> <p>22 Q. Do you think that would be a bad idea?</p> <p>23 A. A box of them?</p> <p>24 Q. Yeah, just come into the polling place and --</p> <p>25 A. Yeah.</p>	<p>1 A. I need to -- I signed it today.</p> <p>2 Q. You signed it today?</p> <p>3 A. When is -- well, I signed it last -- when did I</p> <p>4 sign that? Let's see here. I didn't even notice that.</p> <p>5 Q. Do you know what day you signed that?</p> <p>6 A. I guess it was -- I'm not sure. I signed it the</p> <p>7 30th. Was that -- that was, I guess, yesterday.</p> <p>8 Q. Yesterday was the 30th, that's correct.</p> <p>9 A. Uh-huh.</p> <p>10 Q. I'm going to show you Plaintiffs' Responses and</p> <p>11 Objections to Defendants' First Set of Interrogatories.</p> <p>12 And I'm going to -- responses and specific objections.</p> <p>13 I'm going to ask you if you've ever seen that before?</p> <p>14 A. I've seen something similar.</p> <p>15 Q. When did you see it?</p> <p>16 A. I saw it, I'm sure, at the -- let's see here.</p> <p>17 Let me look at this.</p> <p>18 Q. All right.</p> <p>19 A. Okay. Apparently saw it when I -- when I signed</p> <p>20 it.</p> <p>21 Q. When you signed -- when you signed this piece of</p> <p>22 paper that says Declaration of Willie Ray?</p> <p>23 A. Yeah, apparently so, probably.</p> <p>24 Q. So the first time you saw this document,</p> <p>25 Plaintiffs' Responses and Objections to Defendants' First</p>
Page 51	Page 53
<p>1 Q. And the reason for that is we want to protect</p> <p>2 voted ballots; isn't that right?</p> <p>3 A. That would be correct.</p> <p>4 Q. Okay. And these mail-in ballots, those are</p> <p>5 voted ballots, aren't they?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Do you think these elderly and disabled</p> <p>8 people are entitled to the same or similar kinds of</p> <p>9 protection that we give the voted ballot at the polling</p> <p>10 place?</p> <p>11 A. But it's not a group. It's just a one</p> <p>12 individual.</p> <p>13 Q. That's right. It's just one individual, but do</p> <p>14 you think that that individual is -- do you think that</p> <p>15 individual deserves the same protection for his voted</p> <p>16 ballot as the people at the polling place got for their</p> <p>17 voted ballots?</p> <p>18 A. Sure.</p> <p>19 Q. Now, I've been handed a paper. This says</p> <p>20 Declaration of Willie Ray. And you've declared that the</p> <p>21 responses and objections to Defendants' First Set of</p> <p>22 Interrogatories are true and correct; is that right?</p> <p>23 A. That's correct.</p> <p>24 Q. And you didn't date that. What day did you sign</p> <p>25 that?</p>	<p>1 Set of Interrogatories, was yesterday?</p> <p>2 A. No. No. These are the same that -- it looked</p> <p>3 like I've seen them before, but I've seen them -- I saw</p> <p>4 them when I signed.</p> <p>5 Q. Okay. When is the first time you saw them?</p> <p>6 A. I have no idea.</p> <p>7 Q. Did any -- did you supply the answers here where</p> <p>8 it says, for example, Interrogatory No. 6, it says,</p> <p>9 "Describe any voter assistance that you provided to any</p> <p>10 voter prior to 2003." Did you draft --</p> <p>11 A. Let me see.</p> <p>12 Q. Did you supply any of that answer?</p> <p>13 A. Well, I recognize the name.</p> <p>14 Q. Okay. Did you supply the answer, is my</p> <p>15 question?</p> <p>16 A. The answer?</p> <p>17 Q. Yeah. Did you -- did you -- were you ever asked</p> <p>18 to answer that question?</p> <p>19 A. Let me see here.</p> <p>20 Q. Before sitting here right now?</p> <p>21 A. I'm sure I did.</p> <p>22 Q. You're sure -- this is your answer?</p> <p>23 A. Probably -- probably is way back then.</p> <p>24 Q. You don't remember answering that question,</p> <p>25 though, do you?</p>

14 (Pages 50 to 53)

WILLIE RAY

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<p>1 A. If I didn't answer it yesterday.</p> <p>2 Q. What do you mean if you didn't answer it</p> <p>3 yesterday?</p> <p>4 A. I mean, I don't remember specifically. I know</p> <p>5 I've answered questions.</p> <p>6 MR. ALBRITTON: And I'm going to instruct</p> <p>7 you, I don't want you -- don't talk to her about</p> <p>8 discussions you had with Mr. Hebert or any other lawyer</p> <p>9 related to the lawyers helping you get these answers into</p> <p>10 the form for giving them.</p> <p>11 THE WITNESS: Okay.</p> <p>12 MR. ALBRITTON: So don't go into</p> <p>13 discussions with -- don't go into discussions you had with</p> <p>14 your lawyers about those reports.</p> <p>15 THE WITNESS: Okay.</p> <p>16 Q. (By Ms. Wilson) All I want to know is is this</p> <p>17 your answer? That's all I want to know.</p> <p>18 A. Well, if it's there. If that's -- and just like</p> <p>19 I said --</p> <p>20 Q. Ms. -- okay. I don't want to interrupt you.</p> <p>21 It's a yes or no, is this your answer or not? Right there</p> <p>22 where it says response, is that your answer to that</p> <p>23 question?</p> <p>24 A. Is that to my lawyer?</p> <p>25 Q. I just want to know if the facts that are here,</p>	<p>1 A. Prior to --</p> <p>2 Q. 2003.</p> <p>3 A. Yes.</p> <p>4 Q. Did you remind them by phone or in person of</p> <p>5 election deadlines?</p> <p>6 A. I have no idea.</p> <p>7 Q. Did you provide stamps to voters for sending in</p> <p>8 election-related forms prior to 2003?</p> <p>9 A. Yes.</p> <p>10 Q. Did you pre-fill mail-in ballot applications for</p> <p>11 voters prior to 2003?</p> <p>12 A. Yes.</p> <p>13 Q. Did you help voters complete and/or mail their</p> <p>14 mail-in ballot applications prior to 2003?</p> <p>15 A. Are those -- where are those questions coming</p> <p>16 from, from my lawyer?</p> <p>17 Q. Ma'am, I'm just asking you a question.</p> <p>18 MR. ALBRITTON: Can we take a break for a</p> <p>19 second?</p> <p>20 MS. WILSON: I have a question pending, and</p> <p>21 I'd like it answered.</p> <p>22 Q. (By Ms. Wilson) Prior to 2003, did you help</p> <p>23 voters complete and/or mail their mail-in ballot</p> <p>24 applications?</p> <p>25 A. Prior to 2003?</p>
Page 55	Page 57
<p>1 Plaintiffs Ray, Johnson, Meeks, Minneweather, and Jackson</p> <p>2 helped mail-in voters apply for and cast their mail-in</p> <p>3 ballots in a variety of ways, including reminding voters</p> <p>4 by phone or in person of election deadlines, this whole</p> <p>5 answer, is that your answer to that question?</p> <p>6 A. If that's to my lawyer, we have that privilege.</p> <p>7 Q. Okay. Is there any more information that you</p> <p>8 would give about what kind of help you gave to people</p> <p>9 prior to 2003?</p> <p>10 A. I'm sure I answered all that I should with --</p> <p>11 with the lawyers.</p> <p>12 MS. WILSON: Okay. I'm going to object as</p> <p>13 nonresponsive.</p> <p>14 Q. (By Ms. Wilson) My question is, beyond what's</p> <p>15 given here, did you do anything else prior to 2003? I</p> <p>16 want you to read what the answer is right there and then</p> <p>17 tell me if you did anything else. Okay?</p> <p>18 A. Let me just be truthful with you. I can't -- if</p> <p>19 it goes back, I won't be able to answer you because I just</p> <p>20 don't recall.</p> <p>21 Q. I'm going to go about this another way, okay?</p> <p>22 Prior to 2003, all right?</p> <p>23 A. Yes, ma'am.</p> <p>24 Q. Did you help mail-in voters apply for and cast</p> <p>25 their mail-in ballots in a variety of ways?</p>	<p>1 Q. Yes, ma'am.</p> <p>2 A. Yes.</p> <p>3 MS. WILSON: All right. You've asked for a</p> <p>4 break.</p> <p>5 VIDEOGRAPHER: We're off the record, 1:43.</p> <p>6 (Brief Recess)</p> <p>7 VIDEOGRAPHER: We're back on the record at</p> <p>8 1:48 p.m.</p> <p>9 Q. (By Ms. Wilson) Ms. Ray, before 2003, did you</p> <p>10 help voters complete and/or mail in mail-in ballots?</p> <p>11 A. Yes.</p> <p>12 Q. Before 2003, have you driven people to the --</p> <p>13 voters to the polls?</p> <p>14 A. Yes.</p> <p>15 Q. After 2003 -- do you understand I'm changing the</p> <p>16 question, okay? After 2003 and after you served your</p> <p>17 probation, have you helped mail-in voters apply for and</p> <p>18 cast mail-in ballots?</p> <p>19 A. Yes.</p> <p>20 Q. After 2003 and after you served your probation,</p> <p>21 have you reminded voters by phone or in person of election</p> <p>22 deadlines?</p> <p>23 A. Yes.</p> <p>24 Q. After 2003 and after you served your probation,</p> <p>25 have you provided stamps to voters for sending in</p>

15 (Pages 54 to 57)

WILLIE RAY**WILLIE RAY, ET AL v. SOT, ET AL**

Page 58	Page 60
<p>1 election-related forms?</p> <p>2 A. Yes.</p> <p>3 Q. After 2003 and after you've served your</p> <p>4 probation, have you pre-filled mail-in ballot applications</p> <p>5 for voters?</p> <p>6 A. Yes.</p> <p>7 Q. After 2003 and after you completed your</p> <p>8 probation, have you helped voters complete their mail-in</p> <p>9 ballot applications?</p> <p>10 A. Yes.</p> <p>11 Q. After 2003 and after you served your probation,</p> <p>12 have you helped voters complete their mail-in ballots?</p> <p>13 A. Yes.</p> <p>14 Q. Have you -- after 2003 and after you served your</p> <p>15 probation, have you helped voters mail their mail-in</p> <p>16 ballots?</p> <p>17 A. Yes.</p> <p>18 Q. And after 2003 and after you served your</p> <p>19 probation, have you driven voters to the polls?</p> <p>20 A. Yes.</p> <p>21 Q. After 2003 and after you served your probation,</p> <p>22 if a voter has asked for your help, have you helped them?</p> <p>23 A. Yes.</p> <p>24 Q. After 2003 and after you served your probation,</p> <p>25 if a voter wanted you to pre-fill in a ballot application,</p>	<p>1 under oath and subject to penalty of perjury?</p> <p>2 A. Say it -- yes.</p> <p>3 Q. You do? Okay. And you've read these responses</p> <p>4 very carefully, have you not?</p> <p>5 A. Well, I gave them.</p> <p>6 Q. Well, you -- I'm sorry, I don't understand that</p> <p>7 response.</p> <p>8 A. What now?</p> <p>9 Q. You said you gave them. What does that mean?</p> <p>10 A. Okay. You said have I read them?</p> <p>11 Q. Yes.</p> <p>12 A. Very carefully?</p> <p>13 Q. Yes.</p> <p>14 A. Have I read them very carefully?</p> <p>15 Q. Yes. Have you read the responses?</p> <p>16 A. I read them.</p> <p>17 Q. Did you read them carefully because you knew you</p> <p>18 were swearing to them?</p> <p>19 A. I read them.</p> <p>20 Q. Okay. And to the best of your knowledge, you're</p> <p>21 willing to state under oath today that all of the facts in</p> <p>22 these responses are true?</p> <p>23 A. Yes.</p> <p>24 Q. All right. But you don't remember the first</p> <p>25 time you saw these, do you?</p>
Page 59	Page 61
<p>1 did you pre-fill it for them?</p> <p>2 A. Yes.</p> <p>3 Q. After 2003 and after you served your probation,</p> <p>4 if a voter wanted you to help them complete their mail-in</p> <p>5 ballot applications, did you do that for them?</p> <p>6 A. Yes.</p> <p>7 Q. After 2003 and after you served your probation,</p> <p>8 if a voter wanted you to help them complete and/or mail</p> <p>9 their mail-in ballots, did you help them?</p> <p>10 A. Yes.</p> <p>11 Q. After 2003 and after you served your probation,</p> <p>12 if a ballot -- if a voter needed you to provide a stamp</p> <p>13 for sending in election-related forms, did you do that for</p> <p>14 them?</p> <p>15 A. Yes.</p> <p>16 Q. After 2003 and after you served your probation,</p> <p>17 if a voter needed a drive to the -- needed to be driven to</p> <p>18 the poll, did you do that for them?</p> <p>19 A. Yes.</p> <p>20 Q. Do you understand, Ms. Ray, that this document</p> <p>21 where you say Declaration of Willie Ray that you handed</p> <p>22 me --</p> <p>23 A. Yes.</p> <p>24 Q. -- do you understand that that document makes</p> <p>25 all of the answers to these interrogatories -- puts them</p>	<p>1 A. No.</p> <p>2 Q. And, in fact --</p> <p>3 A. I don't think, no.</p> <p>4 Q. I'm sorry, I didn't mean to interrupt you. You</p> <p>5 were going to add something to "no"?</p> <p>6 A. No.</p> <p>7 Q. The first time you ever saw these, they were</p> <p>8 already in this form, weren't they, where it had an</p> <p>9 Interrogatory No. 1 and a response to Interrogatory No. 1</p> <p>10 after it?</p> <p>11 A. That is between -- okay.</p> <p>12 Q. Your counsel will -- if I'm asking -- believe</p> <p>13 me, if I'm asking a question that's improper --</p> <p>14 A. Yes.</p> <p>15 Q. -- your counsel is going to let me know.</p> <p>16 A. Yes.</p> <p>17 Q. Okay? I just want to know if this is the only</p> <p>18 way you've ever seen these, with an Interrogatory No. 1</p> <p>19 and a response right after it?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Ms. Ray, is there anything that you were</p> <p>22 doing prior to 2003 in terms of helping voters with</p> <p>23 mail-in ballots that you are not doing now?</p> <p>24 A. Ask that question again.</p> <p>25 Q. Is there anything that you were doing prior to</p>

16 (Pages 58 to 61)

WILLIE RAY**WILLIE RAY, ET AL v. SOT, ET AL**

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<p>1 2003, prior to this investigation for possessing the</p> <p>2 ballots of others, is there anything you were doing prior</p> <p>3 to 2003 to help mail-in voters that you are not doing now?</p> <p>4 A. You know what, I don't think I understand. Is</p> <p>5 there anything -- you know, let me -- let me say this</p> <p>6 here. I ask you to go over it again because I have</p> <p>7 problems, and I mentioned this earlier on, with the</p> <p>8 background noise. I don't get it so clear with the air</p> <p>9 conditioner going.</p> <p>10 Q. I'll be happy to -- I'll be happy to restate it</p> <p>11 and make sure you understand all of my words.</p> <p>12 A. Okay. I'm just having -- and I'm sorry, but I</p> <p>13 do, even with my grand kids.</p> <p>14 Q. It's quite all right.</p> <p>15 A. Okay. Go ahead.</p> <p>16 Q. I'll say it louder. Is there anything that you</p> <p>17 were doing in 2003 to help mail-in ballot voters that you</p> <p>18 are not doing anymore now?</p> <p>19 A. Anything that --</p> <p>20 MR. ALBRITTON: I'm going to instruct</p> <p>21 you -- I don't think you're asking this, but -- I don't</p> <p>22 think you're asking are you mailing ballots without</p> <p>23 signing them, but the way you ask the question, it can</p> <p>24 call for an incriminatory response.</p> <p>25 MS. WILSON: Let me rephrase.</p>	<p>1 Q. (By Ms. Wilson) Ms. Ray, have you ever</p> <p>2 volunteered to work for campaigns?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know how many campaigns you've</p> <p>5 volunteered for?</p> <p>6 A. Not exactly.</p> <p>7 Q. Have you ever been a paid worker for a campaign?</p> <p>8 A. No.</p> <p>9 Q. Have you ever received any compensation for</p> <p>10 having worked on a campaign?</p> <p>11 A. No.</p> <p>12 Q. Have you ever -- now, you say -- you say you had</p> <p>13 a worker named Melinda Hunter?</p> <p>14 A. She -- she did work, yes.</p> <p>15 Q. And you referred to -- you referred to her as</p> <p>16 your worker. Do you remember that?</p> <p>17 A. Yes, ma'am.</p> <p>18 Q. Did you ever pay Melinda?</p> <p>19 A. I could not pay her. I made -- no.</p> <p>20 Q. You never gave her any money for helping get</p> <p>21 these votes, these ballots filled out over at Robison</p> <p>22 Terrace?</p> <p>23 A. Yes.</p> <p>24 Q. You did or you didn't give her money?</p> <p>25 A. I did.</p>
Page 63	Page 65
<p>1 MR. ALBRITTON: I don't think you're trying</p> <p>2 to do that, but I think that's part of the problem with</p> <p>3 the question.</p> <p>4 MS. WILSON: Let me rephrase.</p> <p>5 Q. (By Ms. Wilson) Are there any activities where</p> <p>6 you are helping people to vote by mail, okay, like helping</p> <p>7 them with ballots, helping them with applications, is</p> <p>8 there anything you used to do before 2003 to help people</p> <p>9 vote that now you've said I just can't do that anymore,</p> <p>10 any of those?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. What -- what have you -- what activity</p> <p>13 are you no longer engaging in?</p> <p>14 A. Just picking up the ballots, putting them in the</p> <p>15 mail. I sign now.</p> <p>16 Q. That's the only difference between now and 2003;</p> <p>17 is that right?</p> <p>18 A. To my knowledge of what was -- yes, I sign now.</p> <p>19 MS. WILSON: All right. Give me a couple</p> <p>20 of minutes.</p> <p>21 MR. ALBRITTON: Yes, ma'am.</p> <p>22 VIDEOGRAPHER: Off the record, 1:58.</p> <p>23 (Discussion off the record.)</p> <p>24 VIDEOGRAPHER: Back on the record,</p> <p>25 2:01 p.m.</p>	<p>1 Q. Okay. How much money did you give her?</p> <p>2 A. Maybe 25 or \$30, something like that.</p> <p>3 Q. Was that each election?</p> <p>4 A. Oh, I can't -- maybe not each, but when I would.</p> <p>5 Q. Okay. Did that money come from a campaign?</p> <p>6 A. No.</p> <p>7 Q. That came from your own pocket?</p> <p>8 A. Yes. I was -- it did come from my -- from me.</p> <p>9 Q. All right. Why would you pay Melinda Hunter to</p> <p>10 get out the vote?</p> <p>11 A. I wasn't paying her. She -- I just, you know --</p> <p>12 she was from -- you know how you just try to help somebody</p> <p>13 that needs something. It wasn't a pay. It was just</p> <p>14 giving her a little something to get her a little</p> <p>15 something because she was in a fix, and if she needed some</p> <p>16 food, whatever, you know, get you something to eat or</p> <p>17 whatever.</p> <p>18 Q. Okay. Well, other than this time that you --</p> <p>19 other than election time, did you ever give Ms. Hunter any</p> <p>20 money?</p> <p>21 A. Yes, ma'am.</p> <p>22 Q. Okay. Did you ever take election workers to</p> <p>23 dinner?</p> <p>24 A. Take them to dinner? No, ma'am, I can't recall.</p> <p>25 Q. Do you know Andrea Muhammad?</p>

17 (Pages 62 to 65)

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Page 66	Page 68
1 A. Yes, ma'am.	1 CHANGES AND SIGNATURE
2 Q. Has Ms. Muhammad ever worked with you to get	2 WITNESS NAME: WILLIE RAY DATE: MAY 1, 2008
3 people at Robison Towers signed up to vote?	3 PAGE/LINE CHANGE REASON
4 A. No.	4
5 Q. So she's never worked with you at all?	5
6 A. Not with me.	6
7 Q. Has she worked with anyone, to your knowledge?	7
8 A. I would have no idea.	8
9 Q. How do you know Ms. Muhammad?	9
10 A. Because she is over the high-rise. She's the	10
11 manager there.	11
12 Q. So when you visit the high-rise, you just -- you	12
13 met her there?	13
14 A. Yes, ma'am.	14
15 Q. Do you know how long you've known her?	15
16 A. No.	16
17 Q. Okay. Have you ever talked to her about helping	17
18 you out with election work?	18
19 A. No.	19
20 Q. Have you ever paid Andrea Muhammad any money for	20
21 giving you access to Robison Towers?	21
22 A. No.	22
23 Q. Or Terrace?	23
24 A. No.	24
25 Q. Have you had any conversations with Ms. Muhammad	25

Page 67	Page 69
1 about this lawsuit?	1 I, WILLIE RAY, have read the foregoing deposition
2 A. Not that I recall.	2 and hereby affix my signature that same is true and
3 MS. WILSON: Okay. I'll pass the witness,	3 correct, except as noted above.
4 but we have a couple of housekeeping measures. I've been	4
5 handed a Declaration of Jamillah Johnson. This is a	5
6 verification of the Plaintiffs' Responses and Objections	6 WILLIE RAY
7 to Defendants' First Set of Interrogatories. Ms. Johnson	7
8 failed to date her declaration. Mr. Albritton has told me	8
9 and is willing to say on the record that he witnessed	9 THE STATE OF _____
10 Ms. Johnson signing this document today, which is May 1st,	10 COUNTY OF _____
11 and Mr. Albritton has dated the document May 1st himself,	11
12 and he has initialed the date.	12
13 MR. ALBRITTON: That's correct.	13 Before me, _____, on this
14 MS. WILSON: And with respect to the	14 day personally appeared WILLIE RAY, known to me (or proved
15 Declaration of Willie Ray, which is also a verification to	15 to me under oath or through _____)
16 Plaintiffs' Responses and Objections to Defendants' First	16 to be the person whose name is subscribed to the foregoing
17 Set of Interrogatories, this one is also undated. Ms. Ray	17 instrument and acknowledged to me that they executed the
18 has testified, I believe, that she signed this yesterday.	18 same for the purposes and consideration therein expressed.
19 I think we're agreeing that on the record here, she will	19 Given under my hand and seal of office this
20 date it as of April 30, which is the date that she signed.	20 _____ day of _____, _____.
21 MR. ALBRITTON: That's correct. We have no	21
22 questions.	22
23 VIDEOGRAPHER: This concludes this	23 NOTARY PUBLIC IN AND FOR
24 deposition. We're off the record, 2:06 p.m.	24 THE STATE OF _____
25 (WHEREUPON DEPOSITION CONCLUDED	25 COMMISSION EXPIRES: _____

18 (Pages 66 to 69)

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1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION
4 WILLIE RAY, JAMILLAH JOHNSON,)
5 GLORIA MEEKS, REBECCA)
6 MINNEWEATHER, REUBEN)
7 ROBINSON, EDDIE JACKSON, AND)
8 THE TEXAS DEMOCRATIC PARTY,)
9 Plaintiffs)
10 VS.) CIVIL ACTION
11)
12) NO. 2-06CV-385
13 STATE OF TEXAS, a State of)
14 the United States; GREG)
15 ABBOTT, Attorney General of)
16 the State of Texas; and PHIL)
17 WILSON, Secretary of State)
18 for the State of Texas,)
19 Defendants)

20 REPORTER'S CERTIFICATION
21 DEPOSITION OF WILLIE RAY
22 MAY 1, 2008

23 I, Tobi Moreland, Certified Shorthand Reporter in
24 and for the State of Texas, hereby certify to the
25 following:

 That the witness, WILLIE RAY, was duly sworn by
the officer and that the transcript of the oral and
videotaped deposition is a true record of the testimony
given by the witness;

 That the deposition transcript was submitted on
to the witness or to the attorney for
the witness for examination, signature and return to
Integrity Legal Support Solutions by _____;

 That the amount of time used by each party at the
deposition is as follows:

 Ms. Kathlyn C. Wilson.....1 Hour, 35 Minutes

 That pursuant to information given to the

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1 the following includes counsel for all parties of record:
2 Mr. Eric Albritton, Attorney for Plaintiffs
3 Ms. Kathlyn C. Wilson, Attorney for Defendants

4 That \$_____ is the deposition officer's
5 charges to the Defendants for preparing the original
6 deposition transcript and any copies of exhibits;

7 I further certify that I am neither counsel for,
8 related to, nor employed by any of the parties or
9 attorneys in the action in which this proceeding was
10 taken, and further that I am not financially or otherwise
11 interested in the outcome of the action.

12 Certified to by me this _____ day of
13 _____, 2008.

14 _____
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Exhibit 23

Interview with Louise French

Conducted by Sgt. Jennifer Bloodworth & Sgt. Jesse Soliz
4615 Summerhill Rd. #205, Texarkana, TX
4/14/05

French: Come right around, y'all have a seat.

Soliz: Your sister's out there... how have you been? (French's friend leaves house)

Bloodworth: Well, you know why we're here. It's the same thing we talked to you about last time, about the election fraud with your ballot. Remember?

French: Uh-huh (affirmative).

Bloodworth: And you had said that somebody came to the door to pick it up from you.

French: Yeah – a young lady. Y'all haven't found her?

Bloodworth: Well, I need to ask you first. I have two line-ups I need you to look at, and I need you to tell me...

French: You mean if I can figure if it was one or the other? Oh yeah, I'd know her picture.

Bloodworth: Yeah, I'll show you this one first. There're some young ladies on here.

Soliz: It's 12 noon.

Bloodworth: You tell me if any of these are the one that came by to pick up your ballot. (shows her line-up with Jamillah Johnson)

French: No, not neither one of them. Y'all got any more pictures?

Bloodworth: Now don't forget that they could be wearing glasses...

French: Y'all got any more pictures? Got any more pictures? Let me look at some more pictures.

Bloodworth: Now I'm asking about the one that actually picked up your ballot.

French: No. Hey! This one could be her. It could be her, yeah.

Soliz: Now what number is that? What number is that?

French: Yep – that could be her.

Soliz: What number do you see there?

French: Uh... 95.

Soliz: No, that's number 5.

French: Number 5? Yeah.

Soliz: Ok.

French: My eyes are...[something about her eyes are bad]

Soliz: Alright.

Bloodworth: Ok. Is there anything that ... what was different about her from this picture? Glasses? Hair?

French: Well, she wore her hair different, her hair was different.

Soliz: Ok, because I noticed that you really snapped on it.

French: You know, it look like she had a wig on.

Soliz: Ok.

French: She look like she had a wig on, one of them straight wigs that hang to your shoulder?

Bloodworth: Ok. Ok. And just for my peace of mind, that you think that this (pointing to #5 on Jamillah Johnson's photo line-up) is?

French: Yeah, that's her. That's her.

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Soliz: That is her? Ok.

French: Yeah, that her.

Bloodworth: Number 5 is the one that picked up your ballot?

French: Mmhmm (affirmative).

Soliz: Very good.

Bloodworth: Ok.

French: Mmhmm (affirmative).

Soliz: Alright, I appreciate your time.

French: Alright, that's her. Did he see, did y'all show it to him (Murphy) too?

Soliz: Yes, and believe it or not, he picked out the same one.

Murphy: Mmhmm (affirmative).

French: I know her face, but I might forget her name, but I know her face.

Soliz: Yeah, you got it. I saw it snap. I saw you light up there.

Murphy: ... she done something illegal.

French: What they doing the fraud voting or what?

Bloodworth: Well, it's um... it's kind of easy to see both sides of it. In the language of the law what they did was wrong. They should... YOU should mail your ballot. They should not be asking to pick up your ballot to mail it for you. Unless you're family.

French: Yeah, uh-huh.

Bloodworth: In that case they can mail it, but they have to sign on it.

French: No, they wasn't related to me in no kind of way.

Bloodworth: Yeah, so you know, if they had just signed as an assistant, basically, then that would have been ok. But they didn't, so...

French: So y'all know where both of them at.

Murphy: They had Willie Ray on tv a couple weeks ago.

Bloodworth: Well, I mean, you know... y'all make your own decisions about it.

French: Well that's the girl I told y'all.

Soliz: Ok.

French: That her. Mmhmm, yeah.

Bloodworth: Alrighty then.

Soliz: We really appreciate you taking the time to look at that, alright?

French: Ok.

Soliz: Y'all have a good day.

French: Alright. Y'all come back again.

Soliz: Yes, Ma'am. I know, I had to pet the little cat before I left, too.

French: You said you got one like that?

Soliz: Yeah, I got one (cat) at home just like him.

French: Ok.

Soliz: We'll see you. It's 12:00, noon.

End of interview

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