

**STATE ELECTION BOARD MEETING
2 Martin Luther King Jr., Dr., Ste. 2066
Atlanta, Georgia 30334
Tuesday, March 17, 2009
2:00 p.m.**

(Whereupon, the meeting started at 2:03 p.m.)

Chairperson Handel - "This is a special call State of Elections Board Meeting, and all of the required notifications for special call were completed. We'll go ahead and call roll. Tex McIver."

Mr. Tex McIver - "Here."

Chairperson Handel - "David Worley."

Mr. David Worley - "Here."

Chairperson Handel - "Randy Evans."

Mr. Evans - "Here."

Chairperson Handel - "And Karen Handel. This does constitute a quorum. I'm sure that Jeff will be here shortly. With that we'll go ahead, and if everyone will please stand so we can do the Pledge of Allegiance."

(Whereupon, the Pledge of Allegiance was recited by all)

Chairperson Handel - "We have two cases. Mr. Ritter, were you going to do both of them at the same time?"

Mr. Stefan Ritter - "Yes, ma'am."

Chairperson Handel - "Okay. So I'll go ahead and call them. What I thought what I would do, colleagues, is give Mr. Parks, representative for Fulton County, five minutes to make some comments once we hear from Mr. Ritter. Does that work, folks? Then, obviously, if there's questions -- Come on up, Jeff. Please let the record show that Jeff Israel is now with us, as well. All right. The actions before us today are SEB Case No. 07-000004 And SEB Case No. 07-000041, both Fulton County. Mr. Ritter."

Mr. Ritter - "Thank you, Madam Chair and members of the Board. Thank you for having us here today. As the Board is aware, these two matters have been hotly contested by the parties for many months. We have been in front of the Administrative Law Judge, which this case was referred, and to which the Office of the Attorney General prepared and filed a statement of matters asserted, initiating an action -- have met with the Court several times and ultimately were ordered by the ALJ, hearing

this, to enter into its mediation process, which is conducted by the Office of Administrative Hearings. Ultimately, I have two documents to present to you today for approval by the Board. The first is a stipulation of facts which addresses the relevant facts, and for all practical purposes tracks the initial investigative report done by the Office of Inspector General of the Office of the Secretary of State. And I will step to those facts in some detail. I would suggest that the Board take those up first and then after those are approved, if they are approved, that the Board then take up a proposed Consent Order resolving the legal issues in the case and establishing the appropriate sanctions, cease and desist, reprimand, remedial actions and so forth as the Board deems to be appropriate in the case. And again, I will go through that in detail, assuming the stipulations of facts is approved by the Board. With that understanding, let me proceed then to the stipulation of facts. Rather than just recite paragraph by paragraph what is in the stipulation, which I know has been transmitted to you and you've had the chance to become a little familiar with, I'm going to provide a narrative of what happened in this case moment by moment, and the things that were discovered by the Office of the Secretary of State, who investigated this matter. What happened is that the Office of the Secretary of State received a call from some concerned citizens who had been taking a stroll on the Atlanta Technical College in Atlanta, and they discovered towards the back of the school, outside of the dumpster some loose voter registration cards. These are applications that are completed by the voter to apply to become registered to vote. And once they are approved, they are then kept as the so-called voter registration card or the completed application of the voter, which documents that this voter has been approved and is entitled to vote. It contains, among other things, personal information of the voter, addresses, names. In many cases social security numbers, and it also contains the voter's signature. And that signature is important because that signature is used for a number of things. It's used to check absentee voting to make sure that the signature on an absentee ballot application is correct and valid, is correct, and ballot is correct, or on assisting application is correct. It's also used for the purposes of recall elections, to check the signatures on those recalls and that's done by the individual counties. These citizens who made the calls saw these cards outside of the dumpster, April 9th, 2007. And they looked in the dumpster and they saw that it looked like a lot there was a lot of other cards or boxes of cards that shouldn't have been in there. This was a matter of concern, so they called the Secretary of State's Office the next morning. And the Secretary

of State's Office then sent several investigators out to the scene. Starting with one, who called and said, no, this looks like a serious situation. And then a group of them went out, looked in the dumpster. Ultimately, they recovered 33 boxes of voter registration materials, mostly consisting of voter registration cards. And those were, by my account, in excess of 90 thousand cards, and also some other materials. As we discussed, there are requirements under Georgia Law that those be maintained. The Secretary of State's Office then began an investigation of what had happened. I won't go through every single detail back and forth of the investigation, but to cut to the chase, what they discovered was, on new and several eyes, not all of the voter registration materials that were supposed to be kept by Fulton County were kept in a method which they were easily retrievable. Which they were retrievable typically on 48-hours notice is the rule of thumb, and typically that's what the statute is viewed as requiring. They also learned in investigating this that we couldn't tell if this was the only instance in which voter registration cards and other election materials had been disposed of by putting them in a dumpster or any other means. They went out ultimately to a location called the Old Warehouse of Fulton County where they discovered in the dumpster that had been dumped, several other voter registration applications, also a completed and unopened absentee ballot, and a number of other documents, a total of about 1700 documents at that location. It appears that the warehouse manager, a man named Ira Turnipseed, had been instructed to move documents from this old warehouse to a new location. And in moving these documents, despite the fact that there is a dispute as to the amount of consultation amongst the respondents as to who consulted with who, there was some consultation about how to move the documents. And ultimately, they used two part-time workers that they use frequently, the two Harris brothers, who are not here today. And they were given the documents and instructed to take care of the documents, and they went to Atlanta Technical College. Varying stories have been told about why they went to Atlanta Technical College, but they went to that college and in the back they found that dumpster and they dumped these 33 boxes into the dumpster. Other documents obviously were not sent with them, but were put in the dumpster at the Old Warehouse because we recovered some of those documents as well. We don't know how many. So the audits were done by the Office of the Inspector General, Secretary of State's Office to find out. First, they did an audit of what they had in the boxes, and they discovered a large percentage of those voter registration cards or applications, completed applications were, in fact, those for active voters. And some

of them were not, but a large percentage of them were. They did do an audit, generally to see what could be produced by Fulton County within this 48-hour period that I spoke of. And that's referred to -- stipulation of facts, we're looking at page 7 and 8. Excuse me, 5 and 6, and what they discovered is that there were some difficulties on Fulton County's part producing all of the applications, or voter registration cards that were requested. Ultimately, in October, after doing some consultation and determining what they thought would be an appropriate statistically valid sample size, they did a much more thorough audit of the overall Fulton County system to see how many cards could be returned in a reasonable period so that they could have been checked for signatures or otherwise. And again, something less than 100 percent was capable of being returned, this is case No. 041. And so we found violations down the line on each one of these actions. After this, it was determined that Fulton County had a system where they kept their voter registration cards in a file cabinet at their main office, these huge Lectriever file cabinets. And what they tried to do was they tried to alphabetize those cabinets. And this was due to the vast number of voters in Fulton County, approximately 500 thousand, slightly less, of registered voters. It was impossible to keep up with that alphabetization of those cards, so many cards sat in postal boxes on the side. Some of them had been scanned in the past, some of them not. Some of them had a signature scan, some of them had an entire card scan. Depending on the period in which the scan was done, not all of them were scanned. And in response to the investigation that was done by the Secretary of State's Office, and also because of the problems that were inherited by the current Board, Justine Boyd, April Pye, who were not, as I understand it, the actual people in charge up until that time. They began an extensive overhaul of the way that they keep cards, the way that they scan cards. And they went and they scanned all of their cards through a new system, so that they had an electronic database where the cards could be much more actively and immediately retrieved. They also took action against the people they saw as responsible for the misconduct that existed in this case which was, in my few years, about five years of doing election work, by far -- candidly, by far, the most serious set of allegations I have ever seen. They began retraining their staff. Ultimately, they spent an excess, according to their numbers, \$300 thousand, not including attorney's fees and employment costs to redo their system. This all was prior to the November election. In fact, most of it was prior to the February primary election last year. Based on that, and based on that brief summary, we have gone through, and we went through the investigative report by the

Secretary of State's Office, which is very thorough, and ultimately Fulton County agreed to stipulate to essentially all of the facts in that investigative summary, which is presented to you now for approval. The stipulated facts that I present to you, these multiple paragraphs recite the facts as I've related them with extensive work by the attorneys to make sure that they're accurate. They also attached some of the remedial actions taken by Fulton County and attached, Fulton County's remedial plan. I don't see, as I stand before you today, a meaningful issue of fact that remains between the parties, meaning, this is really not one that's appropriate for a hearing at OSAH. We can stipulate the facts and ask for your approval of that. Once we get the facts approved, if this Board is willing to agree to the stipulation of facts, we can then move on to the Consent Order and talk about what the appropriate remedy is, base on the stipulated facts. Thank you very much."

Chairperson Handel - "Thank you. Mr. Parks, did you have anything that you wanted to add at this juncture?"

Mr. Parks - "Not unless the Board has questions."

Chairperson Handel - "Okay. All right. Thank you. All right, colleagues, the first order of business is the stipulation of facts. Questions or comments on that document, which is the first document?"

Mr. Evans - "So how did we solve the missing applications or documents that backup where we don't have a signature at all?"

Mr. Ritter - "I can tell you that I think that Fulton County is better to speak to this than I am, because that solution isn't really within the four corners of the case that I have. But I can tell you my understanding is they tried to contact those individuals that we could identify from the voter registration rolls that we didn't have a card or scanned signature for. I won't elaborate greatly on the law of stipulated facts, but I will say there is a statute, as well as case law, that says that if it's more than 10 years old there is a presumed valid registration by that voter, even if you don't have a card or a scan. And also, if you have a scan you can use that in lieu of a card. However, as we will discuss during the Consent Order portion, you are required to keep cards, and we'll discuss the law."

Mr. Evans - "Well, I was just running by page 12, paragraph 42.d."

Chairperson Handel - "D?"

Mr. Evans - "D, yes. And I was --."

Mr. Ritter - "Stipulation Factor?"

Mr. Evans - "Uh-huh (affirmative). I think that's where I'm at. And I was just trying to figure out -- that 3,574 of the mailings were returned as undeliverable. And so, if I read this correctly, and maybe I'm reading this wrong, we have 3,574 where we have -- we don't have a signature to compare in the event there's an absentee ballot."

Mr. Ritter - "If those individuals are still properly on the rolls. And maybe Fulton County can elaborate on that, but that's what my best understanding. Yes."

Chairperson Handel - "And if I might, and also, Randy, if I read this right as well, 5,946 did not respond at all."

Mr. Evans - "No. I agree. Now I'm just trying to figure out what happens."

Mr. Parks - "Would you like me to --.?"

Mr. Evans - "Yes, that would be great."

Mr. Parks - "First of all, that figure includes inactive voters. What we did when we obtained an undeliverable, inaccurate address, we did our own Googling, our own efforts to see if there was a more current address. The reality of it is, most likely most of those voters have, in fact, either located outside of the County or have not provided an address to us, so they would not be in our records. In the last two elections none of those people attempted to vote absentee. But our plan is that to the extent that someone came or sent in an absentee vote request, and we did not have their application on file, we would make physical contact with them to ensure that we obtained the application at the same time we accepted and approved their absentee ballot, even if that meant sending a patrol car to their home. We were that aggressive about it, so that there would not be a situation where simply due to the fact that when we went to our new system and pulled up and they were not there, that their ballot would be automatically rejected. We would make that affirmative effort to contact them. And we just haven't had that situation come up. That gave our Board some

confidence that the people that we were missing -- and realize that these people -- and don't jump to the conclusion that people were missing because the application went into the dumpster. Most Boards of Election will find that due to motor voter or due to all the external places that applications are taken, the reality of it is that some of those never got to us. That's just the real world of dislocating the registration process from the office. But that doesn't mean that we're not prepared to respond in the event we should receive a stray absentee ballot from someone that we don't have. We'll make that extra effort, at whatever cost, to ensure that ballot is properly cast in an absentee fashion."

Mr. Evans - "I know we're going to come to it, but so is that solution you just described in the Consent Order, which is the agreement that you will send a follow-up?"

Mr. Parks - "It's either in the Consent Order or the remedial plan."

Mr. Evans - "It is?"

Mr. Parks - "I would think, and if it's not, it's certainly something that, you know, that's what we recommended to Mr. Ritter that's something we're abiding by."

Mr. Evans - "All right. So could somebody -- if you could find it for me either in the remedial plan or in the Consent Order, that would be great."

Mr. Ritter - "I'll let him do that. Mr. Evans, I think your questions, of course, are fair ones."

Mr. Evans - "I only ask fair questions."

Mr. Ritter - "Of course, sir. I've never known you to do anything but that. Let me emphasize that I can only stipulate here and discuss, you know, what are the facts, as I understand it, for the purpose of the stipulation of facts. You know, when we get to the Consent Order portion we can talk about what they should be doing in addition, or have done. And I think that's a fair way to approach it."

Mr. Evans - "Was there any -- still me?"

Chairperson Handel - "Yes, absolutely."

Mr. Evans - "Okay. I just wanted to make sure. Was there -- Is there any question that any of this cast, at doubt, the integrity of any election given the numbers that exist here?"

Mr. Ritter - "The answer, to the best of my knowledge, at least from these -- the four corners of these facts, is no. I understand there may be other election cases, and that could be. Right now, I don't think there were any challenges, no challenges that were filed based on the facts that are in these stipulation of facts. So as serious as these violations were -- and we were fortunate that a citizen happened upon this, caught it, and some remedial steps were taken."

Mr. Evans - "So I guess my narrow question is, is anybody aware of -- And Mr. Parks, you may know the answer to this. Is anybody aware of a pending lawsuit challenging any election outcome in Fulton County?"

Mr. Ritter - "No."

Mr. Evans - "You're not aware of any?"

Mr. Parks - "And we have not had a challenge to any absentee ballots because of this problem."

Mr. Evans - "Would you have an objection if we added that to the stipulated facts, that there's no pending challenge?"

Mr. Parks - "Oh, not at all."

Mr. Evans - "Okay."

Mr. Parks - "We just didn't think to do it. We're happy to add that. And the answer to your question is on page 8-11 of the Consent Order."

Mr. Evans - "Okay. So we'll come to that."

Mr. Ritter - "Subpart B, is where we put in the representations of contacting a voter in the event one shows up, and if we don't have a signature on file."

Mr. Evans - "All right. What was the -- still me?"

Chairperson Handel - "Uh-huh (affirmative)."

Mr. Evans - "What was the -- I didn't quite follow the issue to dealing with how some ended up in one dumpster and some ended up

in a different dumpster? And so maybe you could just elaborate on what --."

Mr. Ritter - "This is what my understanding is to that question. There appeared to have been more than one dumping incidence. We don't know the extent that that happened. This is what I have been told, and this is what we believe that evidence likely would have shown, though, if the facts should be rejected I reserve the right to prove otherwise, but there appear to have been more than one dumping instance. The one at Atlanta Technical College, the 33 boxes that were taken by the two Harris brothers, Chris and Keenan (phonetic) Harris. The other documents that appeared at the Old Warehouse were placed there first, in a separate instance. Now whether that was the dumping of boxes that were then collected and pulled out, or an alternative that I have heard, is the fact they may have just been cleaning out the warehouse and these are just scraps that were found on the warehouse floor, and they just put those scraps and that's what we discovered. We've cross-examined witnesses on this. There's no discovery, of course, in administrative cases, but those are the two stories. But they were separate incidents regardless of the magnitude of the second."

Mr. Evans - "Which occurred first?"

Mr. Ritter - "To the best of my knowledge, the dumping at the Atlanta Technical College occurred first. But I don't know how to measure that. It seems to have occurred first because that was the discovery time, and that's when they went out versus the cleaning. But frankly, we don't know when that dumpster at the Old Warehouse was dumped. So we could not say, I could not stand here definitively, Mr. Evans, and tell you one definitely occurred before the other."

Mr. Evans - "Madam Secretary, could we ask Mr. Parks, maybe, if he's got anything to add?"

Chairperson Handel - "Yes."

Mr. Evans - "Go ahead. Because I'm just curious."

Mr. Parks - "No. I mean, you know, it reads like a mystery novel."

Mr. Evans - "Yeah, it does. And that's why I'm -- And mysteries are intriguing, but --."

Mr. Parks - "The answer is far blander than the question. These are temporary --."

Mr. Evans - "But not the questioner."

Mr. Parks - "No. The temporary employees were hired to move boxes from one warehouse to another. They filled up the dumpster at the Old Warehouse. They had nowhere else to go. On their break or whatever, they filled up their van and they went on and they were at the Atlanta Technical College. I think probably there for other reasons, checking a schedule or going to school, found an empty dumpster and put the rest of it in. It was a continuous process, it wasn't -- it was the same thing. It just happened to be the one at the Old Warehouse was full. Are there any other questions I can answer you?"

Mr. Evans - "Are there any other distinguishing characteristics that you or our staff were able to determine as to the folks whose applications got dumped? Are there any patterns that existed, or can we tell that these are largely random? And if so, is there any kind of definition to the randomness? Because I'm trying to figure out how this group got picked to get thrown away."

Mr. Ritter - "In terms of how they picked these specific boxes, I can't -- can hardly speak knowledgably about that. But I can tell you from our review of the materials that we had, they appear to be essentially random. These boxes were boxes in which they store voter registration applications based on receipt or when they put them to the side, or whatever. And so, they were kept in these boxes, and they were not kept in a specific order. They were not alphabetized, they were not chronological, so they were, for all intents and purposes, as best we can tell, random. Why they --."

Chairperson Handel - "So no system in how they were put in the boxes from the very beginning?"

Mr. Ritter - "Absolutely. And we were very concerned about the fact of the lack of systemization. And that's part of what Fulton County then attempted with their \$300 thousand-plus to address. Slowly, but effectively, we think they've made some steps in that regard. But, yes, there were some serious problems with the way they were storing those files. And how did they come up with those 33 boxes? My best understanding is that those just happened to be the 33 boxes that were left over

that they happened to load into the truck on that day. These were not any secret ones that they wanted to specifically get rid of, these are the boxes they happened to dump."

Mr. Evans - "Well, to be honest, Madam Secretary, that -- the rest of it all seems to kind of fit, although that is the one part that doesn't fit for me. And I don't have an answer, but it strikes me as incredulous that there is no systematized structure for how these 33 boxes got picked, whether it's by precinct, by age, by chronology, by location. You know, hopefully, God forbid, it would be based on race, gender, creed, or anything else. But it is -- it's hard for me to believe that there is no explanation for how these 33 boxes got picked versus any other 33 boxes. And that's just the troublesome fact that we have to work with."

Mr. Parks - "Excuse me. Can I --."

Mr. Evans - "Sure. Absolutely."

Chairperson Handel - "Please."

Mr. Parks - "The boxes were chronological."

Mr. Evans - "Okay."

Mr. Parks - "These were boxes that were older. And there was a mistake by these two temporary workers that because these were two, three, four-years-old, they fell within the retention policy on the wall that certain documents be thrown away after two years. They misread the policy. But, no, the statement that these were just random, it's not so. They were not alphabetized, because they were -- it became, you know, every time they got one, it became impossible. But they were by year."

Mr. Evans - "I don't see that anywhere."

Chairperson Handel - "If I might. And we might not --."

Mr. Parks - "We do -- you know, this is an interesting thing. When we put it together, we could have easily put that in there, but it didn't appear to us to be -- Yes, we can, again, add that."

Mr. Evans - "Yes. I think that's -- May I, for one moment?"

Chairperson Handel - "Yes, please."

Mr. Evans - "I think that's an extremely important detail, and I'll tell you why. In the world of elections, conspiracies and ideas that there are all of these multitude of ulterior motives that go on, whether it's that you -- that the 33 boxes were all Republican or all Democrat or all one group or one precinct or one locale, means that we have to offer the reason why they were picked. And I just, candidly, had not seen in any of the audit materials, and maybe it's in there, that this was based on aged boxes."

Mr. Parks - "The date on the box."

Mr. Evans - "Is that right?"

Mr. Ritter - "Can we make sure -- I hate to put Ms. LaGrua on the spot, but --."

Chairperson Handel - "That's where I'm trying to go, because that's not my recollection, that --."

Ms. LaGrua - "That is not correct. In fact, one of the boxes was marked 2005, which would not have been subject -- even if you misread the retention schedule that they had, as two years being the mark, there was at least one box marked '05. And another box marked, return mail destroy 1/1/08, which would have been almost one year after the discovery of the boxes. I will say there -- we found nothing that would indicate there was anything nefarious or conspiratorial or patterns to the boxes, but they were not all old boxes that were destroyed. There were documents from as early as I recall, 1946 up through 2004 contained within these 33 boxes. And there were various other boxes -- documents found at the Old -- at the other warehouse when we searched subsequently the second dumpster."

Mr. Parks - "But they all had a chronological common annotation. I'm not going to argue with Ms. LaGrua as to whether they fell within or without a retention period, because the documents in question didn't have a retention period."

Chairperson Handel - "So Mr. Parks, are you saying --."

Mr. Evans - "That's out of remark."

Chairperson Handel - "Well, let me just try to -- Are you contending that box number one that had the year 2003 on it, let's just pick a year, everything in there was from 2003?"

Mr. Parks - "I'm not saying that because when we...."

Chairperson Handel - "Okay. Because I don't think --."

Mr. Parks - "...got the documents back they weren't in boxes anymore, so we can't make that representation. They came back to us initially on a CD, as you might remember, and then later on just -- so I don't know. But I know that from talking to Mr. Sullivan, who was the Registration Chief at the time, that the boxes tended to be numbered by year, but not necessarily by what was in the box. And there could have been different things in a box with the applications like old polling information, other types of election documents. And those are mentioned in the --."

Chairperson Handel - "Ms. LaGrua, is my -- Can you refresh our memory because I thought that you'd find a box and there was a multitude of things in a box from any -- from various spans of year dates? It was not all dedicated to one year in one box."

Ms. LaGrua - "That's correct. They were -- The documents had no rhyme or reason to them, or order in the boxes. The other problem we had was because of the way the boxes were dumped, not all the documents from x-box, I can tell you, may not have been recovered from x-box...."

Chairperson Handel - "Got it."

Ms. LaGrua - "...because these were old boxes just thrown into a large construction dumpster."

Mr. Parks - "Right."

Ms. LaGrua - "`Now we did know that they had only been there a short period of time because the construction dumpster -- we did find the dumping schedule of that dumpster, and they had been there just a couple of days at the time that they were discovered. And the ones at the old warehouse had only been there, I believe it was less than 48 hours because that dumpster had also been emptied. And in fact, we followed the dumpster to the -- the place where they compress it all into the ground, and it was already too late for us to identify everything that had come before on that one."

Chairperson Handel - "All right."

Mr. Ritter - "Yes, and I'll just note, Mr. Evans, that in paragraph 27 and paragraph 28, those were the age of the boxes from 1946 to 2006 in paragraph 27, which was an audit of what was in those boxes. And a small audit was taken in the next paragraph, but you can see there's an enormous range of dates for the materials that was in those boxes."

Mr. Evans - "Yeah, I know. When I studied the sampling sizes and then looked at the backup, it was the inability to detect, Madam Chair, what was the selection method for picking the boxes that troubled me the most because I don't accept that there was no selection model. It could have been location. These are the boxes that happen to be in front of the door. It could have been they were all brown boxes and brown boxes were slated to go, or a color go. But I don't accept that there was no selection criteria. There was clearly a selection criteria, and it troubles me that we don't know what that is because, in our world, we have to offer those explanations or else they get filled in for us. And often they're filled in with things that aren't true and have no basis and fact, so we try to eliminate them as much as possible. And I find that to be a little bit troubling. And I take it there's just no way we can know the answer. Have we interviewed the people who actually --."

Mr. Ritter - "I've attempted to interview the Harris brothers. We had a hard time locating them. They were interviewed, however, by the Secretary of State's Office, and I've reviewed that interview in detail. And one of the other Respondents, Sean Kelly (phonetic), has departed and is now in Iraq serving our Country."

Ms. LaGrua - "They gave no -- They were told that they were told to throw the boxes away, there was not room in the warehouse. So when they were out there, I believe it was a lunch break, they were checking on classes at Atlanta Technical Institute, and they found the dumpster and threw them away. They were not able to explain how they found the dumpster at the very back corner behind a number of buildings, but that was their explanation."

Chairperson Handel - "So for the -- sorry. So for the boxes that they were told to throw away, were they already sitting out?"

Mr. Evans - "Right."

Ms. LaGrua - "Correct. They were direct to throw this group of boxes that were loaded up."

Chairperson Handel - "Okay. So those two individuals didn't select what boxes got thrown out, there was already a selection made."

Ms. LaGrua - "According to them, that is correct."

Mr. Evans - "So do we know who made -- I guess it's your question, which is my question as well, do we know who picked the boxes to be thrown away?"

Ms. LaGrua - "I do not know who picked the boxes. Ira Turnipseed was the one who indicated that he had been told by, as I recall, John Sullivan and others at a meeting with Fulton County that they could destroy boxes marked 2004 and older, and that was his story."

Mr. Ritter - "Right. And again, there is a dispute between Mr. Sullivan, who is here today, and Mr. Turnipseed who is not, as to what they were told, how they were told to do it, and so forth. Mr. Turnipseed, I can tell you, candidly, has tried to absolve himself of any responsibility as to what happened, even though, to the best that we can determine speaking to him, was that he ultimately was the one that made the selection and made the decision as to what these two individuals were to do. The Harris brothers were claiming under the direct supervision of Ira Turnipseed."

Mr. Evans - "And is he a Respondent?"

Mr. Ritter - "He is a Respondent, and I believe is represented by Mr. Parks, is that correct? Yes. He is represented by Mr. Parks, and still an employee of Fulton County."

Mr. McIver - "And a signatory to the document."

Mr. Ritter - "Yes. Any other questions that I can answer for you?"

Mr. Evans - "I take it that the counsel for, subject to our final decision which I recognize that all the rights are reserved, but subject to our final decision I assume that the Fulton County Board of Registration and Elections, April Pye, John Sullivan, and Ira Turnipseed have acknowledged all formalities as to the notice and form of this hearing."

Mr. Ritter - "Yes, they have. They're represented by counsel today, Mr. Parks. They have done so, and we've agreed that stipulation of facts will be binding for all purposes related to these claims, and we discussed the fact on the Administrator Procedure Act, and so forth. So they not only are signatures to this, but they've also been represented by counsel. And I can tell you this is something that the Fulton County Board of Registration and Elections, as well as Fulton County, itself, has very carefully considered."

Mr. Evans - "Madam Chair, could we get each counsel to put that on the record?"

Chairperson Handel - "Absolutely."

Mr. Ritter - "I'm sorry --."

Mr. Evans - "That you -- That we've acknowledged the validity of all notice in the form of the hearing."

Mr. Parks - "Yeah. We acknowledge it. We -- Based upon the stipulated facts of the Consent Order, we're here today on that basis."

Mr. Evans - "Is there other counsel?"

Chairperson Handel - "I think Mr. Parks --."

Mr. Parks - "I don't represent Mr. Sullivan. He's a retiree, and he's representing himself, so you might just speak to him directly."

Mr. Sullivan - "The County doesn't represent me since I retired, but yes, I'm well aware of all the rules and notifications, and I've signed off on this."

Mr. Evans - "Okay. Is there anybody else?"

Chairperson Handel - "Mr. Parks represents the County Elections Board, as well as Ms. Pye and Mr. Turnipseed, correct?"

Mr. Parks - "That's right."

Chairperson Handel - "Okay."

Mr. Evans - "My last question, if I might, Madam Chair, is if we received a complaint in the future challenging the validity of

an election, based on the contents of the stipulated facts, what would our response be?"

Mr. Ritter - "I think that --."

Mr. Worley - "Well, we wouldn't receive a complaint about the validity in an Election...."

Mr. Ritter - "Right."

Mr. Worley - "...that's not what we do."

Mr. Ritter - "Right. Let me just take -- hypothetically, putting jurisdictional arguments to the side. Should we receive, that is, the State Election Board receive a complaint regarding the validity of the election or conduct during election based on the stipulated facts, I think the signatories to the stipulated facts are going to be bound by those stipulated facts. And frankly, if they want to assert that they're not bound by the stipulated facts, well, we'll have the facts to cross-examine them on. Are we going to have to go through a procedure -- an administrative procedure to prove that? Hopefully not, because I think they speak for themselves. These stipulated facts are intended and entered into it specifically for the purpose of resolve in these two cases, 2007-4, and 2007-41. But I think, against the specific parties here, the Respondents, I think these stipulated facts would be hard to deny, and they'd be bound."

Mr. Evans - "I'm actually asking a different question."

Chairperson Handel - "Yes."

Mr. Ritter - "I'm sorry."

Mr. Evans - "My question is, I just want to make sure that we've taken every step that we can legally take today in contemplation of the next year there's an election in 2010, and somebody's unhappy with the outcome of the primary, or unhappy with the outcome of the general election, and they file a challenge to the election. Whether with the Board, or independently with the Superior Court...."

Mr. Ritter - "Right."

Mr. Evans - "...and they cite as a procedural defect in the election, the facts that have been stipulated and accepted by us

in these stipulated facts as reflecting a procedural or a fatal defect in the election. I just want to make sure that I understand what is the answer to that, and is there anything that we can do today to address that on a prospective, as opposed to retrospective, basis?"

Mr. Ritter - "And I think the answer to this -- to that is this. Of course, I know you're a very experienced litigator, Mr. Evans. But the reality is that should there be an election challenge, for instance, based on these stipulated facts. First of all, the State Election Board would not be a party to that action. And I think there would be perhaps a dispute as to what the facts are. Certainly, if I'm the challenger and if I want to rely on the stipulated facts, I'm going to ask them to admit these. If I'm Superior Court I'm going to have request for admissions if they admit all these facts, and I think they'd be duly bound to do that. Are these binding in some other action not before you right now? I don't think the answer to that is yes or no, but I think the answer is that they are bound by these facts in a future case, and I think that this Board has fully the power to rely on them. And I also will say that I think that we have attempted and endeavored to take every procedural step in protection for the State Election Board and for future use that we can."

Mr. Evans - "I'm actually just even asking a different procedural question, which is, as I understand it, there are things that we can do, as a Board, where we can say that we have become aware of a problem, we have addressed it, and as a result in the future, having addressed the issue, that will then not be the basis for a challenge because we've considered it. And I want to make sure that we do that, but Madam Secretary, it's probably best for us to address in the Consent Order phase rather than stipulate it...."

Chairperson Handel - "Okay."

Mr. Evans - "...rather than stipulate it fact phase. But I am a little worried about it because, having been on both sides...."

Mr. Ritter - "Right."

Mr. Evans - "...which is trying to challenge an election and defend an election, I want to make sure that we've taken all the procedural steps we can to make sure this doesn't come back in any future form in a many-headed hydra in the future."

Chairperson Handel - "Okay."

Mr. Evans - "I don't have any more questions."

Chairperson Handel - "All right."

Mr. Ritter - "Thank you."

Chairperson Handel - "Any other questions? David?"

Mr. Worley - "No."

Chairperson Handel - "Tex?"

Mr. McIver - "I'm ready to vote."

Chairperson Handel - "All right. Then we're ready to entertain a motion on the stipulation of facts document. I believe that there was going to be one amendment to it that the Respondents stipulate that there are no pending legal actions."

Mr. Evans - "Challenge any outcome of elections that's been held."

Chairperson Handel - "Right. So is there a motion?"

Mr. McIver - "I so move."

Mr. Worley - "Second."

Chairperson - "A motion and a second. And that motion was as amended."

Mr. McIver - "Yes. I'm sorry, as amended."

Chairperson Handel - "And the seconder was okay with that?"

Mr. Worley - "As amended."

Chairperson Handel - "All right. Any other questions or comments?"

Mr. Evans - "Do we have discussion?"

Chairperson Handel - "Sure."

Mr. Evans - "I have to say this. I concur completely with Mr. Ritter. This is the most egregious misconduct that I've seen since I've been on the State Election Board. The random -- if

we give it the best -- if we give it the best picture we can, the random selection of private and confidential information of voters, which has been entrusted to us to be discarded in a non-secure way at a happenstance back road dumpster, is just completely unacceptable. And the degree to which it calls into question the integrity of the votes that have been casts of the -- in Fulton County is just unacceptable. And we can't expect voters to have any level of confidence in the outcome of our elections if we don't have in place systems designed to address and redress, specifically, these kinds of actions. And I have to tell you that I am worried greatly. I, you know, I give all credit to Secretary Handel who has been vigilant in seeking out and detecting and preventing misconduct, but this is the kind of misconduct that even the most diligent oversight responsibility could never detect. And we have to deal with it in the most serious way we can. Voters in Fulton County have to be worried. You have to be worried about the elections that have already been handled. We're talking about tens of thousands of documents in which their most private information would be readily and easily discoverable, as was here by a citizen who happenstance to be walking down the road, where you could get private social security information in a world of identity theft, and literally, that be taken away. And that's before we get to the issue to have what impact this has on our elections. And we are charged greatly with this. It does trouble me when I look through to see that there is no explanation offered as to how the 33 boxes were in fact selected, who made that ultimate selection, and the fact that we do not have a single person who is willing to own up to the responsibility for what happened here. Now I will say, and we'll talk about this in the Consent Order, it is always good when we have elected officials, and I think the Fulton County Board has stepped up to the plate to commit resources to address this, but it cannot, in any way -- it cannot, in any way, diminish from how serious this is, how worrisome it is, how bad it is for Georgia Elections and what a stain that it leaves. What a stain it leaves on Fulton County in terms of their elections of past, and the elections to come. And it is why we have to have the most rigorous oversight on a going forward basis, and we have to take seriously what's happened here. And I just wanted the record to reflect how personally appalled I am at the facts that are being admitted in this stipulation. And notwithstanding, the civility of this forum, it should not in any way undermine how horrible these facts are when you read them, and they are truly horrendous."

Chairperson Handel - "Well said, Mr. Evans. Any other comments? All right. All in favor, please say aye."

(Whereupon, there was a chorus of ayes)

Chairperson Handel - "Any opposed? All right. Stipulation of facts are accepted. Our next item is the Consent Order, itself, and if -- Mr. Ritter, if you want to walk through that."

Mr. Ritter - "Yes. Thank you, Madam Chair. As the Board's aware, as most of the people in this room today are aware, we had to spend months trying to resolve this case in a way that is not only acceptable to all parties that are involved in this case, but is an appropriate sanction and set of remedies for the facts telling when they described by Mr. Evans, somewhat egregious, and is at the same time productive in the outcome that it is going to have. I'm going to go through the Consent Order point-by-point, but in summary. It proposes that Fulton County Board of Registration and Elections, which is funded by Fulton County, pay \$120 thousand, of which \$100 thousand which would be put into a segregated account to be directed by the Secretary of State's Office for certain expenditures which would be outside of the norm, remove that office beyond mere compliance of the law, but to state a little bit closer to excellence, an excellence that we all want. In election matters, one of the most important things is the comfort of the voters with the integrity of the process, which they are dealing with. I think the steps could be taken, I don't know specifically what those are since I don't deal with that day-to-day, steps could be taken to help with that and we would like to do that in a productive way. Now we got to this Consent Order after mediation. A lengthy mediation, I should add, with a Judge, who is the one, in fact, who pushed for this result. The parties, obviously, had very different ideas of what an appropriate remedy is in this case. But we have reached a result, which I think is an appropriate one to present to you. I would present it -- it is within your authority to accept it or reject it, of course. This Consent Order contains every single type of remedy that this Board can impose, and so I will go through those. But first, let's briefly touch on the law. And in the Consent Order, you will see, I have gone through the statutes in some detail so that you will have (inaudible) and have them at your fingertips. There are also a few regulations that I have not forwarded, but which reflect the substance of those statutes as well. The first thing, and before I get to the actual destruction of the cards, the first thing that you'll see in the Order is an issue about deputization. The parties disagreed about deputization. In fact, we've disagreed about a lot of things, but the fact of the matter is, the Harris

brothers who handled the 33 boxes of cards that were destroyed were not deputized. That cannot be disputed and is submitted into the stipulation of facts. In our view of the law, anybody who handles boxes or voter registration cards, or completed applications, whatever you call them, in moving them is required to be deputized. Page 3 of the Consent Order, you'll see 21-2-215(h) quoted, and it says -- I'm starting in the middle of the fourth line, the registration cards may be retained temporarily at permanent additional voter registration places established under this Code Section, but shall be transmitted to the main office expeditiously as possible by a registrar or a deputy registrar, or by United States Mail. That, in conjunction with the regulation in argue, means that you cannot move these cards, even if you are properly moving them, which they were not, without deputizing someone to move them temporarily. So there's no dispute. The bottom line, in my view, that these folks were not deputized, they were required to be deputized. They haven't disputed that, they know that there's a dispute in the Consent Order, but nonetheless, it's in the Consent Order that that was required. Secondly, moving past that, there are several statutes that are violated by the improper disposal or dumping of the voter registration cards. 21-2-215(h), and 21-2-236(a) require that voter registration cards to be maintained while someone is an active voter, however long they're an active voter, and then two years after that. Putting these voter registration cards in a dumpster obviously violates that rule. And they violated that rules by a) failing to have an appropriate storage methodology, which they could keep it, b) dumping them both Atlanta Technical College, and finally, at their old warehouse in Fulton County. This violation, particularly of 21-2-215(h), is compounded by the audits that were conducted by the Inspector General who determined that they could not readily and rapidly retrieve voter registration cards, as they are required to do by law. The law requires that local registration officials be able to rapidly retrieve the cards for the obvious purpose of being able to check the signature, being able to make sure someone's registered, or to see if someone is not registered, to check the information that's on the card, to update the information on the card, and so forth. So audits were conducted, first of the materials that were collected as stipulated, and secondly, of the overall storage system that existed in Fulton County to see whether those could be retrieved or not retrieved in a timely manner. The parties are willing to consent that this is a violation of these statutes with a failure to be able to do this. There are several other individual violations primarily arising from what was found at the old Fulton County dumpster. There was the voter

registration application, which appears to have been -- excuse me -- a voted ballot which appears to have been improperly destroyed. Absentee ballot applications are required to be maintained for a period of 24 months. Voter registration certificates are required to be maintained for a period of 24 months. Both of those appear to have been violated. Having summarized the law, then let me move on to the details of what we propose as sanctions. First, and I think this goes without any question that this appropriate and necessary in this case, is a Cease and Desist Order against all Respondents who are before this Board today. And to just note on that, the Harris brothers and Sean Kelly, who are not here, and we reserved our right to proceed against them. So we need a Cease and Desist Order against Respondents in front of the Board. Secondly, there's a lengthy list of compliance requirements which spread over three pages, from page 7 halfway down to the top of page 10, that Fulton County Board of Registration and Elections is to enter into. Many of these things, to the best of my knowledge, have, in fact, already been complied with. Some of them may not, but I think the first step to assure and enforce that is for this Board to order compliance. The signing -- excuse me -- their scanning, to the best of my understanding, for instance, of all the voter registration cards so they now have a complete and usable electronic database, has been completed. And they spent a considerable amount of money, and time and resources, and manpower to do that, and I credit them with that. And that was an enormous project, and they got it done. And I should add when speaking about these things, that that was for many of the Respondents, such as Ms. Pye and so forth, primarily an inherited burden, not one that they had initially created themselves. B in -- on page 8 requires the contact that we discussed before, and documentation of their efforts to contact and try to bring in all of the potential registered voters so they have a dispute with about the cards and so forth. Jumping to D, there's a self-reporting requirement so that we don't have to go through this process again of trying to discover what the violations are. We expect them to comply with this order and let us know when there are violations of the law so that they can be remediated. And of course, doing that really should be the obligation of any local Board because, frankly, it not only helps solve the problem, which is really what we should all be concerned with. We should really be concerned with how we get the solution to keep these things from happening, and make sure the integrity of the voter is maintained. And self-reporting is necessary, and they've explicitly agreed to that. And finally, and in detail, of the \$120 thousand that they are to pay as a sanction in this case, 100 thousand of that would be

put in a segregated fund. And that segregated fund would be one that they do not have control over in terms of what they're going to expend out of it, rather the specific expenditures can be ordered by the Office of the Secretary of State. I know as a practical matter, that day-to-day, there are many things that we realize -- the Secretary of State realizes, these are things that maybe they could do. And they may not be self-evident at the beginning, they may not be self-evident today, but ultimately, these are beyond the ordinary and necessary expenses, and these are contemplated explicitly by this part of the Consent Order, the amounts beyond what Fulton County would ordinarily spend. So this is, in fact, a sanction. We could have put this \$100 thousand just into the State's General Revenue Fund. And that would, frankly, be entirely appropriate, particularly in these tough economic times. But that's a drop in the bucket. Even in election terms, \$100 thousand is a drop in the bucket. Only for a cash-strapped agency, like this Board, is that an enormous amount of money, but I will tell you -- or from my personal income that's a lot of money. But I will tell you that \$100 thousand is still something that serves as a sanction to them, and is certainly, by far, the largest sanction, that I'm aware of, that this Board would have ever imposed. Even \$20 thousand is a pretty large sanction, but \$20 thousand is still left to the side as an explicit sanction. If they do not spend the money as directed by the Secretary of State's Office, in the manner directed by the Secretary of State's Office, that \$100 thousand is in default as a direct sanction to the State General Revenue Fund. A couple of legalities, as you mentioned about that just so that you're aware of it. Both, the County's purchasing law, as well as State Law, require that that account not be under our control, as a state, but be under county control. If it were under state control it would be viewed as an earmark and would not be valid. And we're not suggesting these funds be earmarked for a specific purpose, but we are suggesting that the best result, given the difficulties that Fulton County has had, and they continue to have, is to try to use what they're going to spend to improve the system. Do I wish it was larger? Yes, I do. Do I think legally it could larger? I think that we could dispute that, but it's not a clear question. I do think this is an appropriate sanction in this case. Of course, we also included a reprimand. In addition to everything else, there's approximately \$20 thousand in investigative cost making their overall financial version \$140 thousand, and then there's a \$20 thousand flat-out straight remedy. I think this is an appropriate sanction. It's one that we have carefully,

carefully negotiated over a considerable period of time, and therefore I recommend it to the Board."

Chairperson Handel - "All right. Thank you."

Mr. McIver - "Madam Chair."

Chairperson Handel - "Mr. McIver."

Mr. McIver - "I am deeply troubled by this remedy. This fund does not make any sense to me, Mr. Ritter. First of all, it's not the role of the SEB. It also compromises our position on future looking into Fulton County matters, or anybody else's. We are not to be engaged in this level, in my opinion now. Obviously, I speak for myself and not the other members of the Board, but before all this trouble and all this time was spent negotiating the terms of this, I certainly think it would have been wise to confer with this Board. But this, in my judgment, is a mistake. I think where we are is a substantial fine. A return of our investigative monies that were spent by this Department, and whatever remedies that we think are appropriate. But for us to get in the business of monitoring this money, and then having Fulton County come back and say, well, you directed us to spend it on "x" instead of "y", and that's the reason this thing failed. It's completely inappropriate to me, so I want to be heard early on this. I think this is the wrong remedy. We should deal with this in a classic way that we've dealt before. I think many of us probably concur with Mr. Evans concerns about the gravity of these two cases and what they represent, but going forward I think we use classic remedies here, and then, heaven forbid, these people come before us again, any of these people named here represented by somebody esteemed as Mr. Parks, for whom we all have great respect, that's going to be a very unusual day for those individuals. A very unusual day."

Mr. Ritter - "Let me make a comment. You said, consult with the Board, and I respect that. Frankly, I respect your position. While I stand behind this Consent Order and I think it is an appropriate remedy, under the circumstances. Of course, people can disagree, and I respect that, but this manner presenting of presenting it, which I feel duly bound to do and I think is entirely appropriate for this Board to approve this, this is how we would consult with you. I, obviously, can't make exparte contacts with the Board members and say, do you think this would be a good idea. I can propose it, and if you disagree you can reject it or state a different sanction. And I think that we're at that point where, since the facts are stipulated we can get

to the sanctions, however, I do think there should be a full hearing on this first Consent Order, and I would even suggest, respectfully, that we allow Fulton County have a say about why -
-."

Chairperson Handel - "I'm going to. Absolutely."

Mr. McIver - "I'm just concerned, Madam Chair, about the energy, and your time, people's time, that has been spent on this -- Mr. Parks' time. We're concerned about the integrity of the elections here, and for us to go on this foray into funds, and so on, and how they'll be managed and we're directing how purchases will be made. And do we buy pencils or pens, things like that. It just doesn't fit what I think the role of the SEB is. So -- And if that's critical, then it's critical, but that's the way I feel about, and I'm just concerned about all the wasted energy that would have gone into this. And in my judgment, I would advise my colleagues, let's look at this in a classic way, let's deal with it with the classic remedies that are available to us, and whatever amounts those may be. I'm sure we'll find an answer to this afternoon, and go forward. This is about fixing things, and in my judgment, this isn't the fix. And then I, again, become concerned about is it ever going to be fixed, and then, what will be the fate of these individuals who are here before us again?"

Chairperson Handel - "Why don't we, if I might, let's hear from Mr. Parks so that we can -- and then we'll come back around."

Mr. Evans - "Before we do that, can I just ask Mr. Ritter a question?"

Chairperson Handel - "Sure."

Mr. Ritter - "Yes."

Mr. Evans - "Who was the mediator that mediated this?"

Mr. Ritter - "It was Judge Carol Walker, and the mediator, and I would say as well, although Judge Malihi is our ALJ who was assigned to this case, was not involved in the mediation. As far as I know, we had no discussions about the mediation with her, but they made their views -- I don't want to go into that here, but they made they made their views about this case clear."

Chairperson Handel - "Mr. Parks, did you want to comment before we have our deliberations?"

Mr. Parks - "I have some brief comments. Also, Mr. Strickland is here, and he's got some comments because he was very, very involved in the mediation and would like to speak to the Board. The ALJ that was involved in this found common ground in very, very different reviews of some very serious legal issues regarding the level of punishment that can be leveled under the Georgia Election Code. And give the limited amount of civil fines in any effort to expand that by a numerosity multiplied by the number of documents, something like that, serious legal issue. We agreed to get into that battle -- was to extend this beyond the point where we were doing the people's business. And the Magistrate believed that the amount of money in question, rather than continuing to fight over it, to come to an agreement over the amount, but to put it towards the common good. One of the things that we saw this Consent Order doing is to try to create more of a collegial relationship than an adversarial relationship. We are where we are. You can understand that -- that we're not here, at this point and time, to argue that anything was done right. What we're arguing is that this is an opportunity to make sure it's done right, or at least to enhance that opportunity. I understand your concerns, and let me get into a little more detail as to how we -- and this was -- we agreed to the manner of the administration -- the (inaudible) fund as directed by the State. The State called the shots on the administration of it. The reason that we agreed to it is that we saw it as not being complex, but being very simple. Because when you read the particulars of what money can be used for, it's very limited. It's not about anything to do with the day-to-day operation of this Board. It's not pens and pencils, it's not notepads, It has to be training, equipment, or election oriented. That's it. And so that there can be quibbling between our two Boards, no matter what we might recommend as what we need -- an absentee ballot voting accounting machine versus what you believe we need. The State was insistent that we not have that -- a discussion, but that after whatever we recommended or whatever we suggested that the Secretary of State, as the designee of the State Elections Board, or the State Election Board sitting collectively, could make those decisions over a year's period of time. That really -- that gemstone was the -- originated with the magistrate and was the way we got around letting this case go off into what would likely be an appellate battle over the fact that the statute in this case is alarmingly vague on how you calculate the civil penalty. Is it an incident, is it a document, and

where, because there is a huge body of Supreme Court Case law that says, in a civil setting a fine can reach a punitive level. And we debated that heatedly over the course of this case. But where a significant fine is being paid, coupled with an even larger amount of money that is being paid only because of the sanction, only because of the wrongdoing by Fulton County, clearly someone who had no role in this -- in an effort to better the elections, I think everybody, my Board, the magistrate, Mr. Ritter, myself, we left that mediation thinking that this was a win-win situation. So from an administrative point of view, I think that that is not the mountain that I think maybe initially is perceived. Because, first of all, when I've looked -- as we've looked at some of the costs and some of the things that would be obvious that we would need, you don't -- you spend it very quickly. This is not cheap stuff. It is not going to be buying 50 or 60 things. There's not going to be a long list before we run out of this amount of money. But it does what you would want to happen. It's got to improve elections. So the bottom line is, are you going to improve elections with a carrot or the stick? I hope it's a carrot."

Mr. McIver - "Well, we'll see."

Chairperson Handel - "Anyone else?"

Mr. Strickland - "Good afternoon, ladies and gentlemen. Thank you for giving me a few moments to address the Board. First let me say, on behalf of the Fulton Board, that we are -- we sincerely regret that this situation occurred in the first place. And no bones about it, it did occur, and there's nothing we can do about that other than try to improve the situation as to how our elections are run in Fulton County. And as Mr. Parks said, this -- the Consent Order you have before you was the product that the Judge conducted mediation. We had all the parties present, everybody participated in it, it took us the better part of a day, and we thought we came up with a good result. And specifically, to address Mr. McIver's comments about approaching this in the classical fashion, I would respectfully disagree with that approach for the reasons outlined by Mr. Parks. And I want to outline that in a little bit more detail. If we take money from the treasury of Fulton County, which is really Fulton County taxpayers, and I'm one of those, and several of you may also live in Fulton County, and we transfer that money into the State treasury in the form of a monetary penalty, not one dime goes toward the improvement of the elections process in Fulton County. Zero. Our goal in approaching the remedy in this mediation was to develop a plan

that would put the bulk of a sanction toward the improvement of elections in Fulton County. And the way we did that, as opposed to putting in the state treasure, which is not going to go toward elections, I mean, arguably, some miniscule portion might, but in this instance, substantially, all of the monetary penalty would go toward the improvement of elections in Fulton County. You heard Mr. Parks say, and I think it's indicated in the stipulations somewhere in the Consent Order, that we've already spent at least \$350 thousand toward the improvement of elections in Fulton County. Our idea in approaching the mediation was, let's keep doing that. If we're going to spend money from Fulton County taxpayers funds, let's do it towards the improvement of elections in Fulton County. That made sense to us, and our colleagues from the State participated fully in the mediation because we agreed to that approach. So the plan is that \$20 thousand is the absolute direct monetary penalty in the classic sense, Mr. McIver, as it goes into the State Treasury. It is a transfer of funds from Fulton County taxpayers to the State Treasury. Whereas the balance of the funds go into this segregated fund under which Fulton County, we're attempting to maintain as little control over that as we can under the law. And Mr. Ritter, I believe, outlined some of the complications associated with that and he's much more familiar with those details than I am. But the concept is to have this segregated fund which could be expended only for certain -- let's call it big ticket items pertaining to elections in Fulton County, as opposed to pens and pads. And that's how we would better the process -- the elections process in Fulton, which is our goal. And although it's not a part of the stipulation, I want to tell you as an aside, the Board retained a search firm to help us find a new director. We've conducted -- we've narrowed that down to some finalists, we've interviewed all of those finalists, and we have an offer to a new director pending. And we hope to bring that to conclusion at an early date. I'm not able to report to you today that we've actually made a deal with a new director, but we had some good candidates, and we think that we found one that we want to bring on board. We're committed to making these improvements to make the election process in Fulton County the best it can be, and we would urge you to adopt the Consent Order in its current form, and not in the classic form. Mr. McIver, I understand your concerns, and if I were seated where you are I might have the same view. But I would urge you to consider modifying your view to accept the approach that was taken by both sides in the mediation, and resulted in the Consent Order that's before you."

Chairperson Handel - "Thank you."

Mr. McIver - "Madam Chair."

Chairperson Handel - "Yes, Mr. McIver."

Mr. McIver - "Mr. Strickland, you have one of the finest reputations as a lawyer in this State. I've known you a long time, and respect your judgment greatly, but you and I are just going to have to disagree on this one. I am sure the Governor and the Legislature would love to have this extra money, albeit \$100 thousand isn't much against the multi-billions they're struggling with. But it may surprise you to know, I'm for a smaller penalty in this case. A smaller civil penalty. Why? Because I want Fulton County enabled to do the best that they can, and to bring forward elections with much greater integrity with that regard. So although some of this clearly is punitive, in my judgment, that probably needs to be in some sort of appropriate way. But not to endanger what Fulton County wants to do in terms of improving their elections, and what you may have to pay your next Director of Elections, and things of that nature. So that's really where I'm coming from. I have some concerns that the Law Department went into a direction that probably, at least didn't fit anything that I felt was appropriate. It would be nice to know there was a way that they could access us, certainly not exparte, we all know better than that, but in a way where they might be able to determine our feelings. And again, I speak only for myself. But in this way, we know that you folks have worked hard, you've tried hard. Certainly nobody in this room had anything to do with dumping those boxes in the dumpster, as best I can tell. But this is about going forward and enabling Fulton County to do a great job from now on. So I, one, favor smaller penalties -- civil penalties in that regard enabling Fulton County, and then again, heaven forbid, if they come back again with this issue, whether you're a member of the Board or not, I don't know, but if they come back another time, then that's a very different situation for me. These are appalling facts, but they can certainly be corrected. And we sense and we feel for Mr. Parks, and you and others that have spoken to us, that that effort is being made, and I'm very impressed by that. So it's the next event that I'm worried about, and I don't want to cripple you, I don't want to hurt you in any way, I want you enabled to do a great job. And that's really where I come from. And, to me, the classic remedy is the one that fits. But you're right, I sit up here and you stand behind that podium. There may be a day when our roles are reversed, but that's certainly the way I see it."

Mr. Strickland - "Thank you. I appreciate your comments and your perspective on it. Any other questions for me?"

Chairperson Handel - "Thank you."

Mr. Worley - "I had a question...."

Mr. Evans - "I have some questions, as well, when we get there."

Mr. Worley - "...not for Mr. Strickland, but for Mr. Parks."

Mr. Strickland - "Thank you very much."

Chairperson Handel - "Thank you."

Mr. Ritter - "Madam Chair, before we get to those questions, can I briefly respond to what they've said just to add a couple of thoughts?"

Chairperson Handel - "Sure."

Mr. Ritter - "First of all, I just want the Board to be aware of what they refer to -- when Mr. Parks referred to as the vagueness about violations. We disagree about that, but as this Board is aware, statute allows this Board to impose a \$5,000 fine per violation. We have a box containing roughly 100 thousand dollar -- 100 thousand voter registration cards. Thirty-three boxes of those, in one day, were dumped in one construction dumpster at Atlanta Technical College. And you know, how do you count them? I think it's absurd to suggest it's all for one violation of the law, but that's what they would argue. I do wish to avoid this becoming an appellate fight over this, and more attorneys fees being poured down a drain. My goal, in a case like this, is twofold. First, to maximize the sanction in a case to the extent appropriate. Not only because it's warranted, but because I would want to plainly send a message to other potential violators that this sanction is the type of sanction you're going to get if you do this. And I think you send a message with every sanction as long as you act appropriately with relation to the facts. And that's why I think that the amount, when we talk \$120 thousand, plus \$20 thousand in cost, is appropriate. I would certainly vigorously oppose reducing that, but that's -- again it's -- the other thing is this. We try to get to the right result, the most effective result, and I have to only want to agree briefly with what Mr. Strickland said. And I do believe in this Consent Order, I would present it. I realize it is out of the norm,

this is what the mediator suggested and pushed to us, and we were very resistant at first. However, one thing that carried the day, at least with me, was that if they're going to spend this money, and this is money coming out of the Fulton County taxpayers, then I would try to have it redounded to their local benefit because they're the ones who have been essentially violated by this misconduct from their Board and its members. Thank you."

Chairperson Handel - "Mr. Worley, then Mr. Evans."

Mr. Worley - "I had a question for Mr. Parks. Were this to go back to the ALJ and you and Mr. Ritter were arguing over the appropriate penalty, or the legally permissible penalty, what would your -- what penalty would you argue was appropriate given this violation?"

Mr. Parks - "That the case --."

Mr. Worley - "What would be the maximum penalty that you would argue was permissible?"

Mr. Parks - "You know, to be honest with you right now, I don't know."

Mr. Worley - "Okay."

Mr. Parks - "It just was -- there was no way to calculate to get anywhere near this number, which was the number Mr. Ritter was advocating, and hence, the way the matters were found -- a way to the solution was the win-win. And yes, that's where it goes if we don't have -- if you'll note, briefly, on the Consent Order there's a number of these violations we don't agree to, but since we agreed to the sanction we didn't have to resolve that. We don't want to go back to the ALJ for resolution of those issues. But -- I didn't mean to interrupt you."

Mr. Worley "No. I mean, that answers my question."

Mr. Parks - "The other thing that I think is important to say, and it speaks both to your question, and a little bit back to Mr. McIver's concerns, is that this is not our money. My Board has no funds. The energy to resolve this came from Larry Ramsey, the County Attorney that is sitting here, the Fulton County Board of Commissioners, who saw this as a way to achieve the State's, and now its goal, of a record fine. A record amount of money being paid, but at the same time allowing --"

trusting in the expertise of this Board and the Secretary of State's Office, and the Elections Division, to guide it -- to help it guide the betterment of elections in the County. Just because it sounds different doesn't mean it's wrong. It actually is circumventing what I think is a very dangerous legal argument to make that punishment is the focus of the remedy under the State Election Code. I don't think it is, I think it's remediation. But it turns us away -- it turns us away from what this order does. The \$20 thousand sanction is half of a larger sanction -- roughly, half the largest sanction ever entered by this Board, so it's not an insubstantial sanction, particularly when we're paying \$20 thousand for investigative cost. And we're giving you carte blanche over the next \$100 thousand, all of which, again I stress, it's not as if this Board had the money. It is having to come from an external source, and the energy behind getting approval was the fact that the Commissioners were comfortable that the expertise of this Board, coupled with the Secretary of State's Election Division, would make good recommendations that would make elections better. Fulton County Board of Commissioners, I won't speak for Mr. Ramsey, they're not happy with the way the General Election went. You know that, it's on your calendar for April the 1st. Okay. This is linked. Don't make any mistakes. You don't see linkage between this solution and the problem that you want to talk with us about on April the 1st, there's linkage. It's because it's a holistic problem. It isn't a day where 33 boxes went into a dumpster. I'm not going to -- if I tried to argue you that this one isolated incident of two temporary employees making a mistake, it wouldn't fly. You wouldn't believe it, and I wouldn't argue it. This is a problem that we have been working on since that day, spending over \$350 thousand, ready to spend another \$100 thousand, ready to hire someone who we think will come in with national credentials. That coupled with that hundred, the 350 that we've already spent, and additional money that Fulton County is going to pour into this system to make sure that elections in Fulton County work. And the oversight this fund gives your Board on that process is unprecedented."

Chairperson Handel - "Pardon me. Can everyone please turn off your cell phones? That's about the fourth one to go off. Thank you."

Mr. Parks - "The persuasive argument that Mr. Ritter -- I assume it Mr. Ritter, but anyway, transmitted to us as the State's argument by the mediator was -- is that what should -- what was resonating in their room, and I hope it resonated with this Board was, is that as opposed to just sending us off with a

spanking and not knowing what the heck we're going to do to fix the elections, okay? That engagement in the process, rather than being a headache, is an opportunity. If we really are going to say that the mission of this process, the process of time, a remedial response to a code violation that the remedy is actually supposed to improve the elections to make them better, and to ensure that the violation doesn't reoccur, what better way to do it? That's why we came away from the mediation after vying at each other for 14 months, energized -- our Board energized, and the Fulton County Board of Commissioners became energized. It resonated right on down through the line. And what I'm hearing here is, is it -- are we creating a bureaucracy? You know, are we creating an entanglement? Are we creating an overstepping? That's one of the things that I'm hearing from you, Mr. McIver, that is this Board really needing to get in bed with the Fulton County Board of Elections on how it's supposed to fix its problems. And I'm not dismissing that, but I'm trying to tell you that given the way we worded this, and this was worded carefully, it doesn't do that. It's for you all, let's say when you begin to look at the general elections and say, you know, I don't think the absentee ballots were done right here because this automatic counting machine they might have. It allows you to make some insular recommendations that are mandatory within the confines of the money set aside, that with the expertise of the Elections Division, you determine will actually have a profound positive effect on elections. That's where I can't see us decide not to go down that path because of a failure of imagination."

Chairperson Handel - "Okay. Thank you. Let's try to do questions. We understand your point of view. Mr. Worley."

Mr. Worley - "Please stay. So this arrangement has been signed off by the Fulton County Board of Commissioners?"

Mr. Parks - "It has, and approved, and the money is ready to go."

Mr. Worley - "Okay. All right. Now, how much has the Commission budgeted for the administration of the Elections Department for the coming year?"

Mr. Parks - "I don't know that. I could try to find that out, but I'm not sure."

Mr. Worley - "All right. Well, I like the idea that you presented, but I don't want the -- Fulton County to basically

take \$100 thousand that they would have spent, anyway, on elections, and shuffle it over to us."

Mr. Parks - "Right. I mean, you need to have -- it's when you have a budget, you need to have a copy of the budget for some initial representations, but that was made -- we heard that loud and clear. We didn't even want to go there, but we all understood that whatever is the operating budget of the Fulton County Board of Registration and Elections, this is extra money. And the reason I think you'll have some confidence in this extra money is, for example, when we go to capital expenditures that are projected. Okay. Well, if they're projected you're not going to be buying anything that's -- You're not going to -- or asking us to make that purchase. So that kind of detail, I am confident we can meet the task there by either providing you the budget, or providing you some sort of certification that the things you are requesting are not part of an existing budget for capital expenditure, or for training."

Chairperson Handel - "Isn't it true, however, Mr. Parks, that Fulton County's budget for this year was put to bed months ago?"

Mr. Parks - "Yes. I mean, there's a budget to give you, I just don't know what it is. But I could certainly provide -- and that --."

Chairperson Handel - "And the next opportunity to inject additional funds, I believe, Mr. Ramsey you can tie them in here, would not be until budget sounds come late summer. Was money put in?"

Mr. Larry Ramsey - "Madam Chair, the budget soundings process begins in April."

Chairperson Handel - "For soundings?"

Mr. Ramsey - "Yes, ma'am."

Chairperson Handel - "But the additional funds that get put in don't actually physically get put in until well into the summer. And in my four budget years in Fulton, not a single time did soundings actually -- monies come in prior to this late summer or fall. So colleagues, to understand the Fulton budget process. So unless monies are actually dedicated and put aside for this purpose in the 2009 budget, which has already been passed by the Board of Commissioners, there is no extra money to, quote, put in there."

Mr. McIver - "Madam Chair."

Mr. Parks - "Well, they did approve the motion. I mean, it will be our obligation."

Chairperson Handel - "That's fine. Hold on for a second. I got --."

Mr. McIver - "Mr. Evans, next?"

Chairperson Handel - "Do you have a question on this?"

Mr. McIver - "I've got a question of Mr. Parks, but I know you - -."

Chairperson Handel - "Do you have questions?"

Mr. Evans - "I have questions, but whenever you're ready."

Mr. McIver - "Mr. Parks, I'm certainly flattered by the wisdom you intend to impart to this body, and appreciate that, however, the way I see it is the reverse, and that is you're demeaning the wisdom and guidance that people like Mr. Strickland and you, and the other election officials bring to this process. Certainly you folks are qualified to run elections with great integrity. You know how to do it, you have the experience, and so on. Your guidance to them as an attorney, Mr. Strickland's guidance to them as a member of the Board, I believe in you greatly. And I believe in these election officials greatly, and I'd like to think some of this is in aberration. I doubt Mr. Evans would agree with that, necessarily, but my view is that we don't need to take over what is your work. You folks are entirely capable of doing that on your own and that's the kind of respect I have. And that's the reason I'm going to vote for a lower fine. I'm a taxpayer at Fulton County. Perhaps Mr. Worley is, I don't know, but I certainly am one and I want to see my money spent on elections and not fines. Now the Governor may not be so happy to hear about that because they could use the money, but the reality is, what's it going to take to have better elections. So don't demean your position here...."

Mr. Parks - "I understand."

Mr. McIver - "...because you have a lot of wisdom to impart, as I know Mr. Strickland does. So that's where, at least I, for one, am coming from in that regard. And as we get into this and

we work back towards, I hope, will be a classic sort of remedy involved, in my view, it will be to better position you, and Mr. Strickland, the other members of the Board, and the County election officials to do it right the next time. Thank you, Madam Chair."

Chairperson Handel - "Okay. Mr. Evans."

Mr. Evans - "And I don't know whoever has the answer, I just had a few questions because I was confused about -- first of all, is the -- so do I understand correctly that the total number is 100 for the fund -- 100 thousand for the fund, 20 thousand for the civil penalty, and then 19 thousand 624 for the restitution."

Mr. Parks - "That's correct."

Chairperson Handel - "That's what I understand."

Mr. McIver - "That's the way I read it."

Mr. Evans - "So that the total number is 139, 624, 76."

Chairman Eaves - "Yep."

Mr. Parks - "Yes."

Mr. Evans - "On page 8 of 11, under b, so this was the question which was a follow up when we have an absentee vote, by someone who we do not have the scanned application. And I think you described something that was a bit further than what's in b here."

Mr. Parks - "I described what we actually do. The language here is prophylactic. In other words, if you find that what we're doing is inadequate, you can direct us to do more. It was language that we agreed to that Mr. Ritter wanted. What we're -- I can't imagine doing more than we're doing, which is agreeing to physically, in person, contact the voter. But the language here goes, I think, further that to the extent that that wasn't acceptable. You have complete authority to direct that there be some additional steps taken to ensure that, I guess this is really the only situation that comes up, that a voter seeking to vote absentee that does not have their application on file, that we take steps to ensure a signature match and the issuance of the absentee ballot. The words are as directed by the Secretary of State in terms of better obligations. I just let you know what we're doing. But I mean, but I guess getting back to it,

not a single time did one of these people request an absentee ballot in the last -- well, ever since this has happened."

Mr. Evans - "So you would not have -- I assume you would not have an objection to adding the language, including but not limited to in-person...."

Mr. Parks - "Not at all."

Mr. Evans - "...contact via Fulton County Sheriff's Office."

Mr. Parks - "We were letting you --."

Mr. Evans - "No, no. Just the experience I have as a litigator, is that agreements --."

Mr. Parks - "Well, he mentioned, of course, we can't do that with an overseas order. We'd would have to -- for a military summon we would have to go through the --."

Chairperson Handel - "We understand that. That's handled separately anyway."

Mr. Parks - "Yes."

Mr. McIver - "The whole set of federal guidelines."

Mr. Parks - "Exactly."

Mr. Evans - "Under c --."

Mr. Parks - "Same page, sir?"

Mr. Evans - "Yes. Same page, page 8 of 11, it says that the -- that you have provided the current number of registered voters which it has a voter registration card application, and the number of registered voters on the active roles for which it does not have an original application or scanned image. What is that number?"

Mr. Parks - "I don't know what it is today, it dwindles, but I can get it for you and we can tell you. It is not much reduced from the numbers that are in the audit because -- you saw it, the undeliverables, you know, these are people that are -- and to the extent that they don't contact us. For example, by requesting an absentee ballot, we don't have the ability to reach out to them. Our confidence level is these voters that

have either become inactive, relocated, or whatever goes up with each election because we're not seeing it."

Mr. Evans - "Do we know that number?"

Mr. McIver - "It says it in the report at the next audit we'll have it."

Mr. Evans - "I'm confused, Madam Chair. So --."

Mr. Parks - "I mean, we do have the number, I just don't have it with me."

Mr. Evans - "I know, but do you have the number?"

Ms. LaGrua - "No. I do not have the number."

Mr. Evans - "Because this paragraph says that the documentation has been provided, and I'm just trying to figure out where the disconnect is."

Mr. Parks - "That documentation really was the audit that I reported on. We update them, and we can actually give you more updated information, but what I'm telling you is that I don't think it will be materially different."

Mr. Evans - "Yeah. I'm far more interested in process, which is making sure that the information that is being represented in the Consent -- proposed Consent Order, is in fact being provided. So I just need to figure out what the answer to that is."

Chairperson Handel - "Ms. LaGrua, when's the last time we received any type of...."

Ms. LaGrua - "The original report."

Chairperson Handel - "...which was almost a year ago."

Ms. LaGrua - "Correct."

Chairperson Handel - "So that's the last time we've received anything from them, so I don't know that that language is correct, or at least accurate in terms of how I would read it, which I think is your point."

Mr. Parks - "We can update that."

Mr. Evans - "Mr. Ritter, do you have anything to add on this provision?"

Mr. Ritter - "Well, my understanding is that this provision was true when drafted and negotiated. I wasn't aware that it required updating, but if it does need to be updated, then I would expect Fulton County would update and modify...."

Mr. Parks - "Absolutely."

Mr. Ritter - "...and put into the Consent Order by a specific date, then we can do that."

Mr. Evans - "What are the categories under d -- on page 8 of 11, what are the categories where election documents carry a statutory retention period? Because I didn't see that list, and I was just curious as to what that refers to."

Mr. Parks - "Well, it certainly refers to a voter registration application. It refers to absentee ballots, or the application put in. There's -- I mean, it's in the Election Code. You have a list. It's also in our retention policies. I think we emailed those to Ms. LaGrua today. Is that right?"

Ms. LaGrua - "That's correct."

Mr. Ritter - "If I could say for my part, Mr. Evans, I think it's a good question. I do not have a list. It's a good question as to whether we should formulate a list. I will tell you that I have in mind, when I think of those dates, specifically, which required in 215 and 236, and most importantly 236 which is retention requirements for registration cards, applications, and list maintenance activities. However, there may be other scattered requirements under the Code, for instance, for absentee ballot applications, and so forth, which are not in 236. And I'd have to go gather all of them. Honestly, I couldn't tell you what they all are off the top of my head."

Mr. Evans - "Well, with all due respect, it strikes me that this will be back in front of us some day. And the extent to which we can eliminate ambiguity is extremely important. So I was curious as to how the remedial fund -- is that a segregated trust fund -- I didn't exactly understand it."

Mr. Parks - "It is, exactly. It is a segregated trust fund that is separated from the General Fund of Fulton County. The procedures for how it's gone down upon are covered on page 9. Little Roman Numeral I, II, III, and IV, requiring us to fully fund it within 40 days of the approval of the order, detailing the steps which you would take or the Secretary of State, as your designee, would take to direct expenditures."

Mr. Evans - "So does the Fulton County Board of Elections spend money, or does Fulton County spend money?"

Mr. Parks - "This will be a Fulton County fund."

Mr. Evans - "Because I was curious about little II on page 9...."

Mr. Parks - "Yes, sir."

Mr. Parks - "...which seems to suggest that the Fulton County Board of Registrars and Elections expense monies --."

Mr. Parks - "Well, it's Fulton County's money. It's going to be put into a segregated fund. You would direct the Board of Elections to expend it, and they would do the actual purchase order. We have to go through a purchase order process, and the Board of Registration and Elections is the Purchasing Department, if you will, so that the paperwork is under the Board of Registration and Elections, but clearly, the money comes from Fulton County."

Mr. Evans - "What is under page 9, the second sentence of I mean, the establishment? Excuse me. The remedial fund will not prevent the SEB or the Secretary of State from requesting additional funds to be expended or be expended pursuant to law. What does that mean?"

Mr. Parks - "Something Mr. Ritter wanted in. If I misstate it, he'll explain it, but his point was is that if there was another matter -- another reason that the Secretary of State wanted us to do something that the fact the -- it's funded and set up for this, we couldn't interpose and pay out of the fund something that, for example, involved a separate matter."

Mr. Worley - "So if we fined you again on some other matter --."

Mr. Parks - "You couldn't use the \$100 thousand to pay. It's a separate -- we'd have to have new funds for that."

Mr. Ritter - "That's right. And as I read it, and based on my experience, there have been many instances in the scant five years that I've been doing specifically election work, where the Secretary of State has realized that a county, including Fulton County, may not be fully in compliance with what it views as the County's obligation to the law. In that instance, the Secretary of State has said we want you to do this, we want you to do that. Those requests may not have a force of law, the same way that an order from the Court would, but it's a commonplace for the Secretary of State to ask for that to happen, and we do not want to undercut that ability or authority of the Secretary of State. And also to say, we think these expenditures that you much normally make are ones that in the ordinary course of business you have to do to comply with the law. So don't use the \$100 thousand account for that, this is the amount that we want you to spend. For instance, you didn't send out absentee ballots to so-and-so, and you need to send that out, and that's not going to come out of the \$100 thousand. That's your normal operating expense, so it's maintaining that ability on the Secretary of State's behalf, and it has always been exercised to practice."

Mr. Evans - "What is the total amount that the County -- Fulton County has spent in response to the problem today?"

Mr. Parks - "Including everything?"

Mr. Evans - "Uh-huh (affirmative)."

Mr. Parks - "It's over \$468 thousand, before you get to the \$100 thousand."

Mr. Evans - "So 468 for remedial actions taken today?"

Mr. Parks - "And various consultants, legal fees, everything we've spent in connection with this process. And it's probably more than that, that figure is probably my fault. But that's -- that was the calculation that Ms. Pye did for me two or three months ago."

Chairperson Handel - "Could we get the number minus legal fees, because --."

Mr. Parks - "350 -- well, we took out legal fees and consulting fees, professional fees of all sorts, and came down to about \$350 thousand. And that was -- I think that number is in the -- ."

Mr. Evans - "Why was the reprimand limited?"

Mr. Parks - "In terms of excluding Ms. Pye?"

Mr. Evans - "Well, in terms of just excluding all of the various violations. It's got many of the violations, but not all of them. Was that intentional, or is that just shorthand?"

Mr. Ritter - "It's shorthand."

Mr. Parks - "Can you tell me the page you're on?"

Mr. Evans - "Yeah, sure. Page 10 of 11."

Mr. Ritter - "Page 10 of 11, paragraph 3, reprimand. That was the shorthand."

Mr. Evans - "So that was not intended to not address any of those?"

Mr. Parks - "The only intentional was the exclusion of Ms. Pye from the reprimand because she had literally just stepped into the position, and we agreed that she wouldn't be reprimanded. But the other language was -- that's the State's language."

Mr. Ritter - "Well, I think that Mr. Evans had is specifically, were we intending to not reprimand for every violation of the statute you found? And I think the answer is, we intend to reprimand for every violation of the statute is shorthand for that, and I think that, Mr. Parks, if you agree, this applies to accepting the reprimand in full."

Mr. Parks - "We assumed we were so reprimanded."

Mr. Evans - "I was confused by the language on page 10 at the top. Failure to establish and fund the remedial fund in that period will cause the amount to become a sanction."

Mr. Parks - "The purpose of the language -- it may have been in the article -- was that if Fulton County failed to fund -- the segregated fund within the 40-day time period, that it would no

longer have that option, and would agree that it owed \$40 thousand to the general fund --."

Mr. Evans - "A hundred."

Mr. Parks - "We'd probably pay the 20 -- the 20 would still -- you already have a Consent Order for the 20, so the additional 100 would now convert if it failed to fund it to the sanction. And then you would have your rights under the Election Code if they failed to pay it in, to go to Court, to mandate it -- to get an injunction, there's a specific statute on it."

Mr. Evans - "So you view the 100 to be different than the 20 -- in character?"

Mr. Parks - "Well, it was put into remedial fund. I think the language here is just to ensure that it was not funded. There would be no question that money would then be payable into the general fund of the State. Stefan might want to speak to that."

Mr. Ritter - "Right. I think that's an accurate statement in terms of the fact it's payable into the general fund of the State, but let me say that, in my view, it is effectively a sanction, It may not be artfully referred to that way in that paragraph, but strictly speaking, we're not making it as a deferred civil penalty because that would have potential legal ramifications as an earmark. But I think that putting the money into a segregated account, and if that segregated account is not properly funded, which that subparagraph refers to, or is now properly extended, which other paragraphs refer to, then it can become a penalty. We've carefully reviewed, vetted that, and the Law Department has decided that is appropriate. And I must say, the key here being that this account is an account that is a segregated account in Fulton County's name as opposed to the State's name. But we wanted to be very careful to say that when we are doing this, we are not just taking a civil penalty and spending it after the penalty is imposed. I hope that's clear."

Mr. Evans - "Sir, I'm sorry. You lost me on deferred earmark."

Mr. Ritter - "The idea is this. We want them to fund certain segregated --."

Mr. Evans - "No. I got the idea, I'm just troubled by the language here."

Mr. Ritter - "I think that it would have been, perhaps -- and maybe it is on our fault, because the word sanction in subparagraph 4, 2.4, might be better read to say, civil penalty as opposed to sanction. You're looking at the sentence, failure to establish and fund the remedial fund in that period will cause the amount to become a sanction in the amount of \$100 thousand, and immediately payable to the General Revenue Fund of the State of Georgia. The point is if they don't fund it, then it becomes -- that \$100 thousand would then be treated as a civil penalty."

Mr. Evans - "I don't have any other questions."

Chairperson Handel - "Okay. I don't know that I have any questions, but I have a couple of things to point out. And this is really for my colleagues. First of all, I think it's important to point out that Fulton County has already a legal obligation to adequately fund and properly administer its' elections operations, irregardless of a fund or no fund. And what I'm troubled by is if there is something that Fulton County deems, quote, needs to be done, then they have an obligation to go and do it, not sit back and wait for the Secretary of State's Office to say do, or don't do. So I just don't see this as a workable way to go forward. Secondly, I'm deeply troubled to have the Secretary of State's Office, when if there are future violations, Shawn's group has to investigate it. And if we are in the middle of directing the County of what to do or not to do from an ongoing elections and administration standpoint, I think that is really not the place to be for this agency. I'm very concerned about the precedent that this would set where the State is getting in the middle of this type of detail day-to-day, because a couple of things that have been mentioned. They are normal things that the County, if you are a county with such a high volume of cards, then it makes sense that they should have the proper number of scanners, and it shouldn't be a question of waiting for the State to say, hey, you need to get the proper number of scanners. Secondly, I mean, again, on training. If training is needed, it is Fulton County's obligation to ensure that their people are properly trained. I mean, period. Irrespective of anything that occurs here. And I want to remind the Board, in terms of precedent, that we did have a serious violations from DeKalb County, albeit, nothing nearly as egregious as what is before us with these sets of violations from Fulton County. But DeKalb County was -- had a Consent Order in which they had to fix the problems, and there was a sanction. My other area that I am troubled by in this that I think we should reconsider is on page -- it's the audit

section. Page 7, number 2. I don't know that it makes -- it doesn't make a whole lot of sense to have the body that needs to be audited doing its own audits. So rather than having the Fulton Board of Registrations and Elections audit itself, it should be the other way around which is what we've done specifically with other counties, that it is the Inspector General LaGrua's office that comes in and conducts a review to ensure compliance with the Consent Order versus the Board seeing if they are doing what they're supposed to be doing by law, and then reporting. Because I mean, with all due respect, we're here because the Board didn't ensure that the staff was doing what it was supposed to be doing, so I don't have a whole lot of confidence that the Board will go forward and do that. So I'm troubled by that. I'm open to conversation, and obviously I want to hear my colleagues input around where we should go from here. I will point out that if you look at the violations and you say the Board, Ms. Pye, Mr. Sullivan, and Mr. Turnipseed each have violations times just the Code Violation, not individual per cards, that would be 33. Mr. Israel, did you want to add anything?"

Mr. Jeff Israel - "I think, to a degree, that the economy as it is, we need to help to some degree. And it sounds like that's what we're building on right now. I think that's very important."

Mr. Sullivan - "Madam Chair, as a Respondent, do I get to speak?"

Chairperson Handel - "Sure. If you'd like to. Sure."

Mr. Sullivan - "I apologize for my cell phone, my wife had surgery today."

Chairperson Handel - "No worries. Is she okay?"

Mr. Sullivan - "Yeah."

Chairperson Handel - "Okay. Good."

Mr. Sullivan - "I want to personally apologize to each of you, and every voter in Fulton County that this happened during my tenure. This is the worst thing that happened during my 42 years working in Registration and Elections. At one time, Fulton County had an image that Registration and Elections was a tight-run ship and saved a lot of money. We were doing things like designing post card registration cards, having them

presorted in order to save all the postage. In 2002, the Secretary of State adopted my design, and now the voters all over the State and all the counties are saving millions of dollars of postage based on the card that I designed, so I'm real proud of that. Now the image is that Fulton County is the county that throws away records. And that it happened during my tenure, it just makes me very sad, and I wanted to express that. Of course, Madam Chairman remembers that the budget hearings where we would come and plead for additional staff. The Registration Division has the same number of permanent staff that they had in 1964. And so, we are trying to do everything, we have temporary staff. You bring them in, you train them, conduct the election the best you can, and then do it next time. And so, additional permanent staff would be a vast improvement because it could actually make some steps forward."

Chairperson Handel - "Thank you. All right."

Mr. Evans - "I don't know how you would like to proceed, Madam Chair, but if it's permissible I'd like to just offer a couple of observations that might be helpful, and might not be."

Chairperson Handel - "Please. I think that would be great."

Mr. Evans - "I think the 120, from my own perspective, is like - I don't think it gets to where we need to get, fully. However, with that said, I'm also very sensitive to the need to move on."

Chairperson Handel - "Yep."

Mr. Evans - "Which is, we cannot continue to let, you know, past transgressions serve as the perpetual excuse for never making progress. And so in that regard, notwithstanding the fact that I think the number is like -- I think I could support the number, subject however to some modifications. I do believe, for a lot of reasons, Madam Chair, that we should attribute \$5,000 of the civil penalty to the first violation, which is 21-2-213(b), and 215(h). We should attribute \$5,000 to the second violation, which is the 21-2-215(h), and the Georgia Regs 183-16. We should attribute \$5,000 to the third violation, which is also 2-21-215(h), and all of these are on page 5 of 11. I think we should attribute \$5,000 to the violation on page 6 which deals with maintaining and securing complete voter registration cards. And we should attribute \$5,000 to 21-2-236(a). We should attribute \$2,000 to the failure -- the failure to retain absentee ballot applications for a period of 24 months, and

\$1,000 for retaining the voter certificate for at least 24 months. I believe that one thousand would be consistent with a case that we handled some time ago. And then I believe we should impose one dollar per every ballot or application that was discarded, for a total of 92 thousand, so that the total number is \$120 thousand for the civil penalty that would be imposed, so that we have made clear exactly how serious the matter is, and how that there are consequences. On page 7 under the Cease and Desist Order, I think we should 21-2-33.1 to the citation for the Cease and Desist."

Chairperson Handel - "Will you give me the cite again, Randy?"

Mr. Evans - "21-2-33.1, only because it appears that the Georgia Supreme Court has made clear that for injunctive relief, if issued by an administrative board, we need to have the statutory citation included. I believe that's what they're saying. And then under the compliance requirements, I agree with you, Madam Secretary. I do not believe that we can count on Fulton County to audit itself any more than we can count on AIG to audit itself. And so, I would suggest that we designate part of the remedial fund for the retention of a third party vendor whose job it is to report to Ms. LaGrua and conduct the audits so that indeed we don't tap our staff with doing their job...."

Chairperson Handel - "Excellent suggestion."

Mr. Evans - "...but we have them be responsible for paying that. Under that same paragraph, by consenting to the order it says that the Fulton County Board (inaudible), I would change that to confirms and certifies that it is fully implemented. And the only reason I'd change it to confirms and certifies is because that will raise the standard by which they get measured should they appear before us again. On page 8, under b, just the language, Mr. parks, you and I talked about, which is including, but not limited to in-person contact via the Fulton County Sheriff's Office, or such other steps as permitted by law so it addresses your overseas issue, which I think was a valid concern. But I don't want there to be a suggestion in the future that they can retrench from what they're already doing under the guides of reasonable efforts. On c, we do need to get the number."

Chairperson Handel - "Yes."

Mr. Evans - "I'm worried about that number, and I'll tell you why. If the margin of victory in an election is less than the

number for people for whom we don't have ballots, I worry that becomes a factual predicate for an election contest in the future. I'm open to suggestions about how we foreclose that possibility. I think we may have to do that by rule."

Mr. Worley - "If I could object, those people are not voting. You couldn't contest the election because those people didn't show up to vote."

Mr. Evans - "Well, it would be if they voted -- if they voted and they were the margin."

Mr. Worley - "But they're not voting."

Mr. Parks - "But they can vote. They can vote."

Mr. Evans - "They can vote."

Mr. Parks - "They -- if they vote in person there's no -- it's only if they vote absentee."

Mr. Worley - "But they're not voting absentee."

Mr. Parks - "Well, they haven't yet."

Mr. Evans - "But with all due deference to my learned colleague, the fact that people show up -- nobody ever shows up without the photo ID doesn't affect one or the other. But in any event, on number d on page 8, which is the self-reporting, I would again have the vendor have the responsibility for monitoring. We do need a list. It would strike me, Mr. Parks, that if I were in your shoes I wouldn't want to leave it open as to ambiguity about where election documents in precarious statutory retention period, we should just specify, here's the list of documents. And that way you never get, you know, ambushed by the Board later deciding you should have kept a document, and we never have an expectation that doesn't get met. Madam Secretary, with all due respect, as you know, I have been a vigilant defender of the turf of the State Election Board, but I don't think we have the ability or the resources to monitor this fund. And so, on page 9 under 1, 2, 3, and 4, I would change that to the Secretary of State rather than State Election Board."

Chairperson Handel - "Okay."

Mr. Evans - "And again, I think this is important here that we have someone outside of Fulton County who's being paid by Fulton

County who reports to your office and assures the compliance and the implementation of the fund, and directs what needs to get done in that regard. On roman --."

Chairperson Handel - "Can I ask one question?"

Mr. Evans - "Absolutely. That's in all of those as well."

Chairperson Handel - "Right. And then, back to the one the outside audit, it only says -- or just in the audit provisions only, it still just says semi-annual audits, but it doesn't give a period of time, and I certainly don't think -- my sense is two years, at a minimum."

Mr. Evans - "Absolutely. I think we have to get through the November, 2010 Election. I think the vendor contract should specify that their job is to get us through the cycle. And I would be fine with, you know, using -- whoever we're using to help us with Diebold or our systems...."

Chairperson Handel - "Uh-huh (affirmative)."

Mr. Evans - "...so that we can kill more than one bird, you know, so that they're, in fact, contributing more value than simply auditing. On number 4 on page 9, at the bottom, I think that remedial fund shall as opposed to will, it's just a legal term. All the lawyers in the room, we can all disagree about whether the State Election Board has the ability to sanction as opposed to impose a civil penalty. To eliminate that dispute, I would just strike, Mr. Ritter, on page 10 at the top. Failure to establish and fund the remedial fund, I would just put will cause the amount of 100 thousand to become immediately payable. And let's just leave out what it is."

Mr. Ritter - "Excellent."

Mr. Parks - "Our original recommendation."

Mr. Evans - "You earned your fee. On page --."

Chairperson Handel - "Can I go back to, again, on the remedial fund. If, indeed, we're going to have outside oversight, even if we go with using the election center, I don't know that 100 thousand in the remedial fund will carry through because we're talking about a year-and-a-half."

Mr. Evans - "Well, I think they need to put the 100 grand in an account, and then it's gone. It's not their money anymore."

Chairperson Handel - "Okay."

Mr. Evans - "And if you need to have -- Another option, and it's a really good point, Madam Chair, is you literally could have the hundred paid into a trust fund of the vendor, and just say, we're not going to quibble with the budgeting process in Fulton County, or whatever -- my only point is --."

Mr. Worley - "I don't think you can legally do that."

Chairperson Handel - "I think he -- I think what he's saying is if there's a contract to do the audit, that they go ahead and get paid."

Mr. Evans - "Or you can just have --."

Chairperson Handel - "That's what I think."

Mr. Evans - "You can do it either way."

Mr. Worley - "Well I -- When Mr. Evans is finished, I'd like to discuss that topic."

Chairperson Handel - "Okay. Absolutely. Absolutely."

Mr. Evans - "And I'm not wedded to -- I'm not wedded, Mr. Worley, to -- these are just -- I think there's a deal -- not a deal, but a remedy here to be fashioned. I'm just trying to see if we can work our way toward it. On number 3 on page 10, I do think the reprimand needs to include all of the charges."

Chairperson Handel - "Yep."

Mr. Evans - "And I don't think anybody's quibbling really about that, really. On page -- On number 4, the cost, in order to make it clear to other folks out there -- out there, I think I would -- I would divide 4 into two categories. I would divide Sub A into cost -- expenses incurred by the Office of the Secretary of State, and then I would have a second category which are costs incurred by Fulton County which Fulton County has to bear, and put in there the \$468 thousand, plus any expense -- additional amounts incurred today so that it is clear that the total -- the total amount that we're talking about here is, you know, approaching, you know, 700 -- 600 and you know, 68 thousand, almost \$700 thousand. Because I think that a number

that reflects the steps taken in response to our investigation that approaches those kind of numbers, sends the signal of the significance of what we're talking about here in terms of people's private information being discarded rather casually."

Chairperson Handel - "Mr. Evans, let me just make sure I'm clear what I wrote down. So what you would like underneath investigative cost, that it would say, basically it would be...."

Mr. Evans - "A and B."

Chairperson Handel - "...other costs, and then within there, there would be an A, for the Secretary of State's cost, and a B, cost that Fulton County has incurred total...."

Mr. Evans - "And must bear."

Chairperson Handel - "...including the steps that you've taken so far, and then the legal fees, et cetera. You just want it all detailed?"

Mr. Evans - "Exactly. Right. And just say -- And just call that, cost incurred and to be borne by Fulton County so that Fulton County taxpayers know what this has cost them."

Chairperson Handel - "Okay. Got it."

Mr. Evans - "You know, I don't really understand, candidly, the need for the second sentence of 5. Because to me, the deal is you've got to put the 500 -- you've got to put the hundred in the fund. And so, there's no staying anything. You have 40 days to put the money in, and if you don't put it in in the 40 days, then you owe it and it's immediately due and payable. And I just view the -- I view the second sentence of 5 to be, you know, kind of language that I'd probably put in if I were trying to hedge on a little bit. And then 6, the only thing I would add on 6, Mr. Ritter, is I would put in an express provision that says, this does not, in any way, resolve any other complaint that's pending before the State Election Board. And only because I believe in eliminating ambiguity."

Mr. Ritter - "Yes, sir."

Mr. Evans - "But Madam Chair, if we made those revisions, I think we could achieve getting to the number, keeping the money in Fulton County for oversight and other supervision. We can

have a vendor whose job it is to create a reporting mechanism to stay abreast of what's happening. We can get the violations -- we can send the signal we need to send, and we can otherwise redress this. I will say this, which is in my best estimate, we have two jobs. One job is a retrospective job which is to impose appropriate civil penalties for past violations. And the violations here are sufficiently significant that I think that the penalty required for these violations has to be substantial. And second, we have a job to deal with it on a prospective basis, which is how do we deal with this on a going forward. I think that an independent third party oversight combined with funding to make sure the oversight gets done without detracting from the resources of your office, but nonetheless responsive to your office, is the best remedy to do that. I don't think I run afoul of any of the boundaries that I understand the counsel, who's done an outstanding job to have kind of created it for getting a deal done, and I know these are after-the-fact refinements, but I think they're consistent with your respective intent. I wouldn't mean to suggest that we should not give Mr. Parks and the other Respondents a moment to consider and reflect on any thoughts we have. I would never want to suggest that we have a cram-down, and as a result, if you wanted to recess for ten minutes to let them talk, I would not have an objection to that. But I did want -- I thought it would be fair to offer whatever observations that might be -- that I might have."

Chairperson Handel - "All right. Let me hear from Mr. Worley, and then I think Mr. McIver."

Mr. Worley - "Okay. Thank you, Madam Chairwoman. I want to make a couple of just general observations, then deal with some of the specific things that Mr. Evans has raised. First of all, I have the utmost respect for Mr. Strickland, and Ms. Williams, Mr. Westmoreland, Mr. McDougal (phonetic) who's not here, and the other members of the Fulton County Board. I know they do a very -- they do their best to do a very good job. I have a great deal of respect for Ms. Pye, who I know from other observations does a very good job under very difficult funding constraints that have been given to her by Fulton County. And that being said, I do think that this is a very, very serious violation, and that we have to impose an appropriate penalty that not only recognizes the seriousness of that violation, but deters other entities from doing similar actions. So I think the size of the penalty is appropriate. I think the structure is the best result for the taxpayers of Fulton County so that they pay a penalty and recognize that they're paying a penalty, but that it goes back to benefit the actual administration of

Elections in Fulton County. So I like that structure, generally speaking, and I would support that. I would have supported the Consent Order as proposed and presented to the Board, and I want to compliment Mr. Ritter and Mr. Parks for trying to get this resolved, and realizing that anything can happen if it goes to an ALJ. And we could get more money, we could get less money, we could get less benefit for the taxpayers of Fulton County. That's certainly possible if we were not to accept this. So as for some of Mr. Evans' specific points, there -- well, there's sort of two concerns or questions that I have. One, I would like the Secretary of State's Office, and this is not at all a criticism of the Secretary of State's Office. But I would like the Secretary of State's Office to provide, at least the members of the Board, with an itemized breakdown of that \$19 thousand in expenses that the Secretary of State has incurred. I don't have any doubt that those expenses were incurred, but I would like, just for the benefit of the Board's knowledge going forward, for us to know the kinds of expenses that the Board incurs in doing these investigations."

Chairperson Handel - "Sure."

Mr. Worley - "I think that's helpful to us."

Ms. LaGrua - "I don't have it specifically, but I can tell you that those costs were very specific. They were the cost of sort -- the temporary work and oversight of sorting the cards."

Mr. Worley - "Okay."

Ms. LaGrua - "And I can get that for the Board. There were no additional, that was the only...."

Mr. Worley - "That was it?"

Ms. LaGrua - "...that was it in this case."

Mr. Worley - "Well then that answers my question, and I'm fine with that. As for this idea of hiring a vendor to do the audit, I -- with all respect to the Secretary of State's Office, I think that is one of the functions of the Secretary of State and the Inspector General's Office, and I think it's appropriate for that -- for that to be done by them. And I would hate to see us require Fulton County to hire a vendor to do an audit, and spend an awful lot of money that could be better spent on other things. So I don't really like that idea. But otherwise, I think Mr. Evans points are valid points. As far as recessing for ten minutes and letting Fulton County know, or getting an

answer from Fulton County, I don't think we can really do that because there's a lot involved here, and they're going to have to take it back to the rest of the members of the Board who are not here, and to the Commission who only has their lawyer here, to be able to sign on the dotted line. We already have a hearing scheduled for April 1st that Fulton County is going to be appearing at, and I would suggest that if they're amendable to most of Mr. Evans changes, which I think they are, that they would get a final document and bring it back to us on April 1st, which is only two weeks away."

Chairperson Handel - "Can I just add one thing?"

Mr. Worley - "Sure."

Chairperson Handel - "Mr. Worley, on the idea of an outside -- I don't want to call it vendor, but outside expert doing it, typically, when our office has done any type of, quote, audit or oversight, on an ongoing basis of a county or a city, it's been extremely limited and defined in scope. And this would be actually coming in and auditing, pretty much, broadly all the operations which, I mean, that's going to be pretty much a full time slot for someone, and I don't have an individual on the team that can do that. I don't have the ability to hire a person to do that under -- in the current scheme. So just so you kind of know that."

Mr. Worley - "Okay. Sure. I appreciate that."

Chairperson Handel - "Yes. Thank you."

Mr. McIver - "Thank you, Madam Chair. I would also like to thank Mr. Evans for addressing my point about the role of the SEB in this process. Again, my position is this is a Fulton County issue and should be dealt with by Fulton County. I have the trust in these individuals, and I've already spoken on that point so I won't belay or infer this. So my position is going to be that the Secretary of State's Office, the SEB, and others outside the County not be involved, and that we administer a classic remedy here and allow them every opportunity with all the resources they need to fix the problem. Again, with my continuing admonition if they come back again with a problem that's not fixed, then I think we're looking at something beyond ugly. Although, I would offer by a spirit of bringing resolution to the matter, because Mr. Evans is right, this point has got to get closed, they've got to get back to work, we have many other cases we need to work on."

Chairperson Handel - "Yes."

Mr. McIver - "I would offer that when there's a reference in the Consent Order to the Secretary of State, that we would add the word, or her designee, allowing her to choose how that would be done, either internally or externally. I'm comfortable with either one, although it's still my belief that it's a Fulton County issue. But -- so I would offer that as, at this point, at least, an informal amendment to the suggestions made by Mr. Evans."

Chairperson Handel - "All right. And Mr. Evans, if I could ask one more clarification. For the quote and remedial fund, if what you've laid out is that fund is specifically for this audit oversight role, and then there would be reports, and then Fulton County would then have to deal with it on their side of whether they're going to implement or not implement versus us saying, okay, out of the fund pay X, Y, or Z."

Mr. Evans - "That's right."

Chairperson Handel - "Okay. All right. So it would be for the audit oversight."

Mr. Evans - "It would."

Chairperson Handel - "Okay. All right. Mr. Israel, did you have anything else? Any questions? You're good."

Mr. Israel - "Thank you."

Chairperson Handel - "All right. So do we -- I know that Mr. McIver, I think, has a flight. I don't know, do we need a motion to direct you if there's a sense of the Board about this, or do you have something that you want to add, Mr. Parks?"

Mr. Parks - "I just have two issues."

Chairperson Handel - "Sure."

Mr. Parks - "I wasn't able to take all the notes, maybe you've made notes and can give them -- there's two things that I think were systemic that I was concerned about. One is, that I'm not going to have any energy at the Commission level to hire someone to spend \$100 thousand on an audit. If I heard you on that, if it's a consultant that's going to come in for five or \$10

thousand and tell you what we need to do to upgrade the office, I think that makes sense. Again, you don't want that responsibility. So I wasn't sure what the audit, if it's the latter, someone who's going to come in and say, here's where you are, here's what you need, that's a fine expenditure of money. That's a consultant that has expertise, and you can pick that person. And then the vast amount of the funds can go to the betterment of the office. That's the energy I have with the Commission, and I need to keep that spirit alive. The second is, the language of the civil penalty was carefully crafted, principally by Mr. Ritter, because to leave it just at \$120 thousand civil penalty takes us right in the cross hairs of some citizen lawsuit saying you can't use that money the way you're using it. So the --."

Mr. Worley - "You mean the Fulton County taxpayer citizen lawsuit."

Mr. Parks - "Yes. We looked at it, there's risk -- if it's a civil penalty you're not -- there's a statute where that money goes, so it may be inartful, but we need to work on language that creates a rational reason for moving \$100 thousand back into the remedial fund. I'm not here to say that this language is the only language, it was Mr. Ritter's language, I'm fine with, but just leaving it with just the one sentence, Mr. Evans, I think creates a potential problem, and we have the ability to be prophylactic about that now, and it makes sense to do that because we all understand by that first sentence that -- that in the opinion of the SEB, without contest from Fulton County, the case couldn't have merited that size of a civil penalty. So you think that you've gotten where you need to be, but now give us the chance to counteract some taxpayer citizen lawsuit contesting the way that we're excising \$100 thousand out of that to improve the department. So those are my two suggestions."

Mr. Evans - "Well I'll defer to the two of you, however, I think you're actually cleaner if you use the language on E on page 8, than you are if you use the language at the bottom of page 10 to do that."

Mr. Parks - "We can clean it up."

Mr. Evans - "And as far as the hundred, my perspective on the hundred is either, Fulton County is in fact saying, we'll give you a hundred in name only, but we're going to decide how to spend it, in which case I don't have an appetite."

Mr. Parks - "No, no."

Mr. Evans - "Or the other option is, okay, the hundred is gone, you guys figure out how to do it. And I'm fine with -- with, you know, some part of that hundred being a contract with a consultant, and then, you know, the balance of that amount being based on the recommendations that the consultant gives us prioritized, and then you can decide how much, you know, how far down the priority list to go. I suspect it's like every other consultant, they'll give you 250 thousand of expenditures, of which you're only going to fund the first hundred."

Mr. Parks - "I'm only reminded of the time that we hired a consultant to help us buy our law firm computers, and when the consultant was finished we didn't have enough money to buy the computers."

Chairperson Handel - "Well, anybody at Fulton County will tell you that I'm not big on spending lots and lots of money on consultants, so --."

Mr. Evans - "But I do believe that --."

Mr. Parks - "And I don't know what that would be because I'm not familiar with this, but as long as the great bulk of the money was going to implement the consultant's recommendation, I think you and I are on the same page."

Mr. Evans - "The only part I would add is that I would expect there to be continuous oversight by the consultant, which is all these self-reportings would, in fact, be the consultant."

Mr. Parks - "I think that -- I guess that's what we have to worry about. What point, because my energy at the Commission level is it's going to not just do what they think an employer is supposed to be doing, but capital expenditures that improve elections."

Mr. Evans - "Where we are is, and like Mr. McIver, I have the greatest respect in the world for all of the folks in Fulton County is, we want, basically, a private police force whose job is to assure compliance. And we can't take all of the resources of the State and devote to one of our 159 counties. We have one county who's got a problem. They're not going to be called upon to fund the oversight policing function for assuring their compliance. And to be candid, if they comply, they have nothing. It'll be great. They'll get an A+ on their report card."

Mr. Parks - "It's not a question of adhering, it's a question of cost."

Mr. Evans - "I understand. And whatever -- I'm prepared that whatever the cost is to assure Fulton voters that in fact everything is being done according to the book, is to me, a cost that should be a part of this remedy."

Mr. Ritter - "Right. That's absolutely consistent with the way it's crafted. Now we can improve that. We can improve that in the language."

Mr. Evans - "And I would defer you to basically the -- we do take a transcript here, so in terms of the notations that were made in the agreement, you can just -- probably your best bet is just get it from the transcript."

Mr. Ritter - "Exactly."

Chairperson Handel - "And Mr. Evans, I just want to make sure that everybody's clear. You laid out a series of specific civil penalties for violations, plus a dollar for each card thrown out, which was \$120 thousand in civil penalties, plus the \$100 thousand into the remedial fund."

Mr. Evans - "No. The 120...."

Chairperson Handel - "Is the remedial fund."

Mr. Evans - "...is part of the -- well, the 100 consists of 20 thousand payable to the State, and 100 thousand payable either to a consultant --."

Chairperson Handel - "I just want to make sure we're all fine. Okay."

Mr. Evans - "And then I would --."

Mr. Parks - "We can't -- Our purchasing laws won't allow us to do that. We just can't pay it over to the consultant and let him decide how we're going to spend the capital, or not."

Mr. Evans - "No, no. I didn't mean to suggest that the consultant would hold a trust fund."

Mr. Parks - "Okay. I misunderstood you."

Mr. Evans - "No, what I understood was that the consultant may, in fact, get you to sign, you know, a 500-day contract, whatever how many days it is between now and the election day of '06 -- or '12 -- '10. Ten -- 2010."

Mr. Parks - "It's a 12-month fund."

Mr. Evans - "Right."

Mr. Parks - "Yeah. That's fine."

Mr. Sullivan - "Madam Chair, the last time we had a consultant study the Elections Office, the bids were \$135 thousand up to about \$600 thousand. I don't believe we have enough money to hire a consultant."

Chairperson Handel - "Yes. And as I recall, with all due respect, Mr. Sullivan, virtually none of the recommendations were implemented because the Board refused to implement them. And it was a huge bone of contention with the Board of Commissioners, in particular, this member of the Board who was extraordinarily distressed. I believe that y'all wanted to sue the Board of Commissioners and -- if I remember, it's one of the several times that Commissioner Darnell and I were all on the same page. So maybe one of the starting points will be that we will pull that audit and take a look at that and determine all the things that were not implemented from that one, that the Board of Elections and Registrations refused to implement."

Mr. Evans - "The only other thing that I would add is, just so that there's no -- so you don't think you're Don Quixote tilting in a windmill. Subject to the description that I outlined, that would be a proposal that I would vote, yes, for, that the motion were before the Board."

Chairperson Handel - "Do you need a motion on all of this, or are you clear on what you need, and then we'll come back with the revised Consent Order with all of this and take a formal vote on the first?"

Mr. Ritter - "I think the best thing to do is to do the latter. I don't think that -- I mean, it would be great to have a pre-vote, but I think that it would be best --."

Chairperson Handel - "That would be perfect, as long as you know kind of the direction we're going."

Mr. Ritter - "We do, and we'll present it. And should it not be approved at that time, we'll have a very short period to prepare for a hearing, but we will -- thank you."

Chairperson Handel - "All right. Do I have a motion?"

Mr. Evans - "So moved."

Chairperson Handel - "Motion to adjourn."

Mr. Israel - "Second."

Chairperson Handel - "Got a second, all in favor?"

(Whereupon, there was a chorus of ayes)

Chairperson Handel - "Thanks, y'all."

(Whereupon, the meeting adjourned at 4:37 p.m.)