

STATE ELECTION BOARD MEETING
2 Martin Luther King Jr., Dr., Ste. 512
Atlanta, Georgia 30334
Wednesday, April 1, 2009
10:00 a.m.

(Whereupon, the meeting started at 10:00 a.m.)

Chairperson Handel - "I'm going to call the meeting to order. And we do have a quorum. I'll just call the roll. Tex McIver."

Mr. Tex McIver - "Here."

Chairperson Handel - "Randy Evans."

Mr. Randy Evans - "Here."

Chairperson Handel - "Jeff Israel."

Mr. Jeff Israel - "Here."

Chairperson Handel - "And I know David Worley is on his way. He did let us know he would be a few minutes late. We will have some public comment once we get through our Invocation and Pledge of Allegiance. If I could ask everyone to please stand."

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

Chairperson Handel - "We have four public comments. The first is Garland Favorito and John Fortune has given his time to Garland, so that will be four minutes. And then we'll have Gunther for two, and Gloria Tatum for two minutes. And if you would do me a favor and state your name and address for the record that will be great."

Mr. Garland Favorito - "Thank you, Madam Chair. My name is Garland Favorito. My address is 220 Tallow Box Drive in Roswell."

Chairperson Handel - "Can you talk a little bit louder for us?"

Mr. Favorito - "Yes."

Chairperson Handel - "That will be great. I think you just needed to get a little closer to the microphone."

Mr. Favorito - "My name is Garland Favorito. My address is 220 Tallow Box Drive in Roswell, Georgia. I'm a life-long computer analyst, and a member of VoterGA, which is -- it stands for Voters Organized for Trusted Election Results in Georgia. That's a nonpartisan, all volunteer, technology-neutral organization. We simply seek to restore voting that can be verified, audited and recounted properly. Our position is best,

I think, described by, Madam Secretary's 2006 Basics report, which states that voters should have the ability to review their ballot, procedures must be established for audit in an election to verify that the electronic vote totals are accurate, and that paper audit trail should be determined as accurate and discrepancies in the vote, and show a valid record. That sums it up better I think than anything I would say. Currently, as most of you here know, in Georgia, voters can only verify the selections that disappear from the screen. We don't know if they are actually on the ballot. Election officials simply are certifying results that whatever the machine tells them, without knowing actually that those results are in fact correct. And there's no direct physical evidence that voter intent retained for recount purposes, so the machine simply reprints previous unverifiable results. As a result of all this, in 2004, Free Congress Foundation rated Georgia as the worst in the nation in system reliability and recount preparedness. In fact, the Secretary's report concluded in 2006 that the electronic voting machines currently used in Georgia are already obsolete, which we certainly agree with. We have claimed for years that fraud and errors are undetectable statewide in these machines. We believe that now the evidence is on record that in fact that is true. Professor Williams mentioned in our recent deposition that's going before the Supreme Court in Georgia that if a machine itself was reporting inaccurately in a given election, nobody would know it. He also admitted under oath in regards to tabulation servers that the equipment should not prevent fraudulent manipulation of vote recording count, and I'm quoting there. That is -- It conflicts with both 1990 and 2002 voting systems security standards which states that all types of equipment shall incorporate appropriate physical provisions to prevent fraudulent manipulation of the vote recorded, counted and reporting processes. The State has historically relied on certification and testing. The certifications have -- voting certification testing has failed us. Certifications, there's nothing on record for the machines that were piloted in 2001, and nothing on record for the equipment that was purchased in 2002. No certifications exist in those time periods, and in accordance with court documents. Professor Williams also has admitted that the machines were patched in 2002, before the election. The 0808 patch required recertification. He admits that the recertification was not performed, and that the failure to recertify that patch is a violation of law. In December of 2002, a letter from the Secretary of State's Office to Diebold's President, Bob Urosevich, stated that they were still waiting for a verifiable analysis of the overall impact of that patch to the voting system. Confirmation of the statewide voting system

is appropriately certified, and confirmation that the 0808 patch was not grounds for requiring systems be recertified at the national and state level. All of this was one month after the election from 2002 was conducted. The State relies on (Blackberry interference). Federal tests that we use are independent, and that they are funded by the voting machine and factories so as a result (Blackberry interference)."

Chairperson Handel - "All right. Thank you. The next speaker is Gunther. Is it pronounced, Ruckl?"

Mr. Gunther Ruckl - "That's correct."

Chairperson Handel - "Thank you."

Mr. Ruckl - "My name is Gunther Ruckl. I am a pediatrician, and I live at 1445 Midlong Drive, Decatur, Georgia, 30032. Madam Secretary of State, members of the Board, in a report dated March 23rd, 2009, the Federal Computer Week reports that people admits voting system flaws. It says in the first paragraph, 30 percent of electronic voting systems have had their warnings vindicated by two recent announcements. An official with -- election system formerly known as Diebold, admitted that its audit log system was flawed enough that it could be possible to delete votes undetected. And several election officials in Kentucky were arrested on charges related to election fraud including changing electronic recorded votes. I'm in full support of Mr. Favorito's arguments. And I want to only say one thing, until the issue is fixed, Georgia does not meet the criteria of a true democracy."

Chairperson Handel - "Thank you. Thank you so much. Ms. Gloria Tatum. And if we could also have Ms. Jesse Bickel ready to go after Ms. Tatum."

Mr. Gloria Tatum - "Good morning. Can you hear me?"

Chairperson Handel - "Yes. If you just speak right in it, we can."

Ms. Tatum - "Thank you for this opportunity to speak. I'm not a lawyer. I'm not a computer expert. I'm a Georgia voter. And I take that very seriously. And I don't have confidence in the current system. Most of the people I know don't have confidence in the current voting system, because we can't verify our votes. And if you have no way of verifying how you voted, this undermines democracy, and this really frightens me. It

frightens a lot of other voters. In Georgia, our votes sometimes get flipped. Doris Bennett who lives in Cobb County and couldn't be here today, on one election her vote flipped four times. She had to punch it five times before it showed the right person. And still we don't know -- and I can give you Doris' phone number, she wanted me to tell you that. I also databases can be manipulated without detection. The voting system was improperly certified, and more importantly illegally patched. Diebold admits a programming error that allow votes to be dropped. My friends in other states, they laugh and they call Georgia the poster child for voter fraud. That embarrasses me because Georgia deserves better. Our voters deserve better. I think we're the only state in the nation now that has unverifiable voting. And as I said before, this undermines democracy. My father always told me that there was no shame in making a mistake, but there was if you didn't learn from that mistake, and you didn't correct that mistake. Georgia has made a mistake with this unverifiable voter system. And like I said, there's no shame in making a mistake. But when you don't learn from it, when you don't correct it, there is shame."

Chairperson Handel - "All right thank you very much."

Ms. Tatum - "Georgia has made a mistake, they need to correct it."

Chairperson Handel - "Thank you very much. Is it Bickel?"

Mr. Jesse Bickel - "Yes. I'm Jesse Bickel. I'm a citizen of Georgia. I don't have the same -- necessarily the same value for democracy, but I do have a value for republican government. The Constitution in Article 4, Section 4 says that every state should be guaranteed a republican government. And I don't think there's any one thing that's more important for a republic to spend its time and effort on than free and fair elections. While I haven't seen personally the fraud that's been alleged or the unverifiable -- I understand it's unverifiable elections we have right now. I'm not confident that there's all kind of fraud going on at the moment, but a system that's unverifiable is open to future abuse from some other administration. So I would encourage the Board to make sure that there's a verifiable voting system, a paper trail and anything else, no matter what the cost, to make sure that we have free and fair elections or else it undermines our republic. Thanks."

Chairperson Handel - "Thank you very much. Our first order of business, colleagues, is approval of minutes. You have two sets

of minutes. Under Tab 1, our January 21st meeting. And under Tab 2, the minutes from the March 17th meeting. I always look at Mr. Evans, because he --."

Mr. Evans - "Under -- If I may?"

Chairperson Handel - "Yes."

Mr. Evans - "On page 3."

Chairperson Handel - "Are we on January 21?"

Mr. Evans - "Yes, Tab 1."

Chairperson Handel - "Yes."

Mr. Evans - "The reference to a blanket motion."

Chairperson Handel - "Under which? Under D or E?"

Mr. Evans - "E."

Chairperson Handel - "E, okay."

Mr. Evans - "Yeah. I don't think that's right."

Chairperson Handel - "Yes. I had that circled. I wasn't sure what that meant, as well. Wes, do you?"

Mr. Wesley Taylor - "No, ma'am. I'm not sure."

Chairperson Handel - "All right."

Mr. Evans - "I would just -- Madam Chair, if you would accept a suggestion."

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

Mr. Evans - "I would just say Chairperson Handel made a motion, that going forward."

Chairperson Handel - "Got it."

Mr. Evans - "And subject to that one revision, I would move for the adoption of the minutes."

Chairperson Handel - "All right. Is there a second?"

Mr. McIver - "Second."

Chairperson Handel - "A motion and a second for the minutes as adopted. Any other questions? Or as amended, rather. Any other questions? All in favor, please say aye."

(Whereupon, there was a chorus of ayes)

Chairperson Handel - "Any opposed? All right. How about our March 17 minutes? Any changes to that?"

Mr. Evans - "There was one change here. On page two."

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

Mr. Evans - "The paragraph beginning, Randy Evans wanted the record to reflect. I think I actually said, It was the worst case I had seen since serving on the Board. Maybe appalled was designed to capture that."

Chairperson Handel - "Yes. Okay."

Mr. Evans - "And the reason that's important, Madam Chair, is because I think it would then merit the most significant penalty that we have ever proposed."

Chairperson Handel - "The most serious or spirited, did you say? Serious?"

Mr. Evans - "Serious violation that I have seen in my service on the Board. And subject to that revision, I would move for the adoption of those minutes."

Chairperson Handel - "I'll second. Any other questions or comments, guys? I have a motion and a second for the minutes as amended. All in favor."

(Whereupon, there was a chorus of ayes)

Chairperson Handel - "Any opposed? All right. Those are approved. All right. The next order of business we have from the AG's Office, Stefan Ritter. We will take back up SEB Case 2007-00004 and 2007-00041. Fulton County. If I can ask, when we have long Consent Orders like this between, Mr. Ritter, your office and Rhonda, it would really be helpful for us to get these ahead of time so that we have time to actually read through them."

Mr. Ritter - "I apologize for that, and I agree completely."

Chairperson Handel - "Okay. Super. Thank you."

Mr. Ritter - "In fact, that was the first thing that I was going to address. Let me just remind the Board where we left this matter. When we last spoke, we went through the facts of the case, and the Stipulation of Facts was approved by the Board. We presented a proposed Consent Order. This is a negotiated Consent Order. I don't think either party was completely happy with it. Certainly, I would have liked greater sanctions. But we went through the Consent Order, and Mr. Evans made some very careful and detailed and, frankly, I think thoughtful suggestions to that Order. And we went back and made those corrections. And I went through the transcript of the meeting, which I've received late Wednesday, and then I actually had hearings on Wednesday and Thursday of last week and made the changes on Friday. But we continued to go back-and-forth on the language that would be added until this morning."

Chairperson Handel - "Okay."

Mr. Ritter - "That is why you didn't receive an advanced copy of these. I apologize for that. However, I will go through point-by-point...."

Chairperson Handel - "Great."

Mr. Ritter - "...as to every change that's been made. I have a red line that I prepared for myself."

Chairperson Handel - "Super."

Mr. Ritter - "And I will touch on each one of those. So if I could, and, of course, and other thoughts that you have are welcomed. But let me tell you where we are. Beginning on page 5, this is a minor change. But just to let you know, I've added a little language at the end of the sentence that begins with: Based on the above, the Board finds the following violations. That's a change from what it said. And then, instead of a bulleted list, it's a numbered list. The only reason for that change, is to make it easier to refer to those specific violations later in the Order. Let me move on then to page 7, we have several changes. On page 7, under paragraph one numbered Cease and Desist. Mr. Evans suggested that we put a reference into the Authority of the Board Statute, which is 21-

2-30, 3.1. So I've added that the beginning of that paragraph, under number 1. Then in number 2, we discussed at the meeting of the nature of the audits that would be conducted by FCBRE, that's the Fulton County Board of Registration and Elections. And the rule of the Remedial Fund in conducting some of those audits by a third-party auditor monitoring those. What we propose is a sentence at the end, what you see begins -- and this is -- begins the fifth line down: In addition, a third party auditor as designated by the SOS and is paid for out of the remedial fund, shall review these audits and shall be permitted to conduct periodic reviews of these during the 12-month term of the remedial fund. Make sure that's reflected correctly in what you've got. Again, we've been making changes to it this morning: To ensure FCBRE's compliance with the laws that are the subject of this Consent Order. And that reflects what the Board discussed on pages 54-55, and then 56-57 of the minutes that I received from your office. Mr. Evans also suggested in the next paragraph, which begins with: By consenting to this Order. That we change the word affirms to confirms and certifies. So the FCBRE is not just affirming that it has fully implemented all the measures but it's, in fact, affirming and certifying that, and that change has been made. Moving on to page 8. In paragraph B, Mr. Evans suggested regarding a written documentation of FCBRE's efforts to contact voters and to obtain a voter registration card voted for those voters that include contact by the Fulton County Sheriff's Office, which could occur in some instances. This is not ordering that office to make those contacts, but it just reflects the fact that it could. And, in fact, he dictated the language, and I've included that, and including but not limited to in-person contact by the Fulton County Sheriff's Office, which is the language that was suggested by Mr. Evans at the last meeting. In paragraph C, of page 8 of 12, we have added in the fourth line down and rewritten that sentence so that it begins: At the date of execution of this Order, FCBRE has either a voter registration card application or scanned on file -- excuse me -- that should be: A scanned signature on file. I apologize for the typo: For all active voters except for 316 voters, 316 out of 5,500 -- excuse me -- 552,559 voters, equals .057188 percent of the active voters. And what that reflects is a request by the Board, Mr. Evans, that we re-examine the numbers that were in this paragraph before, which were high, to not be correct as to the actual number. They did go back and check that and found 316 only remaining. So there's been a substantial clear-up on that. But we have reflected that specifically in this Order. Again, that was from page 44 of the prior transcript. Paragraph D, we've added the phrase:

Including retention periods required by law. So the first sentence now says: FCBRE will report -- excuse me -- or will self report any incident where election documents carry either statutory retention period are found to be missing, including retention periods required by law. We had discussed trying to list all of the retention periods in the Election Code. But, in fact, that has been an unmanageable task. I went through and tried to search all those periods. There are periods that we knew were there that didn't come in the search, and also there are some outside of it. Frankly, I think it unfairly ties our hands as the Election Board to say that we're only limited to certain periods listed. I think it's all periods required by law and that Fulton County is obligated by law to follow those. I'm moving onto page 9, paragraph E, subpart A. The request was made that Secretary of State, rather than the State Election Board be the director under the fund. And so throughout I have changed SEB to reflect Secretary of State or SOS through part E, which is the remedial fund provisions. It then specifically provides in part A: Part of the fund shall be used for third-party audits of FCBRE. And that was specifically requested by this Board. I think that's an excellent idea and use of the fund. Let me address here for a moment and mention something that I think is important that I learned really at the last meeting, and then followed up on. It turns out that a prior consultant was hired, and in fact did develop a list of things that Fulton County can do. I think, therefore, we're somewhat down the road on what it should be doing."

Chairperson Handel - "Yes."

Mr. Ritter - "And that provides some guidance on that. If I could then move to page 10. All of the changes until we get to paragraph three, the reprimand, are simply a typographic to reflect Secretary of State. In reprimand, Mr. Evans suggested that we delete some of the language which is general in nature, describing what the reprimand was for and be specific as to the violations. And so now those are enumerated above, and lists specific statutes that apply to each one of those violations. As you can see, 21-2-73, 21-2-13B, 21-2-15A, to which I will note there are numerous violations of that statute. 21-2-36A, 21-2-390, 21-2-500A, and our regulations at 183-1-6-.03, subpart 301. Investigative costs, Mr. Evans requested that we list in addition to the investigative costs, which will be paid by them of the Secretary of State's Office, which is the 19-thousand-and-some dollars. But we also list the amount that was paid by Fulton County itself in this case. And I think the point here being that this enormous amount, \$468 thousand --."

Chairperson Handel - "Except, Mr. Ritter, wasn't the 468, I thought that was inclusive of attorney's fees?"

Mr. Ritter - "It was. And the transcript showed that we were to include the attorney's fees in that amount, so I did."

Chairperson Handel - "Well, then the language isn't right, because attorney's fees have nothing to do with remediating the conditions that led to the complaint."

Mr. Ritter - "Frankly, I agree with that."

Chairperson Handel - "Okay."

Mr. Ritter - "But I have tried to reflect what was said at the last meeting. And the meeting said to include attorney's fees, the whole amount, so I include --."

Chairperson Handel - "What were the attorney's fees again? How much were they?"

Mr. Ritter - "I'd have to have Mr. Parks speak on that. But I believe they were about \$150 thousand."

Chairperson Handel - "All right."

Mr. Ritter - "And that amount is listed in the Stipulation of Facts. I can get that if necessary."

Chairperson Handel - "That's fine."

Mr. Ritter - "All right. On page 11, in civil penalty, Mr. Evans requested that we break down the amount of civil penalty by violation. So if we turn to the enumeration of the different violations by number, that are previously listed on page 5. And, specifically, as pointed out by Mr. Evans: Such a penalty would consist of 5,000 for a violation of paragraph one of five. And 5,000 for violation, paragraph two. But paragraph one has several different statutes. But all together, those involved the deputization issues. Paragraph two, \$5,000 maximum applied per violator for the violations for some of the destruction of the cards. Paragraph three, \$5,000 for the violations. Paragraph four, \$5,000 for the violations, paragraph five. \$2,000 for the violation in paragraph 7 -- or excuse me, 6. And 1,000 for the violation in paragraph 7. And just so that you know what those, I'll remind you. Six and 7, which are the

lower ones, are the failure to retain the absentee ballot application for 24 months and then to destroy it. And number 7, was the failure to retain a voter certificate for 24 months. And then we had 99 thousand, roughly, or 92 thousand different applications that were thrown away. I think that fine is entirely merited. I will note just for the record here, that we disagree about that fine. They think that fine is too much. That's their right. This isn't negotiated. I will say for my part on behalf of the Board, I think we could seek a much higher fine. For one thing, this fine does not break it out by individual violator. But I want that to be noted. I agree with the overall amount of this fine, as I previously said. Other respondents, we continue to reserve our rights regarding other respondents. That reflects the changes as I understood them, and went through the transcripts as carefully as I could. Of course, it's a lengthy transcript. We tried to pick up everything that was there. May I answer any questions?"

Chairperson Handel - "Questions, colleagues?"

Mr. McIver - "Please."

Chairperson Handel - "Yes, Mr. McIver."

Mr. McIver - "Please. Paragraph two."

Chairperson Handel - "What page?"

Mr. McIver - "On page 7. I'm sorry. Yes, page 7 of 12, Mr. Ritter. Paragraph two, the last sentence. Read that again, because somewhere I had picked up 12 months. And I don't see that reflected."

Mr. Ritter - "I'm sorry. I think that was discussed this morning. I don't think that's a critical change. Let me just -- what you have and what I think is fair, Mr. Parks can speak: In addition, a third-party auditor is designated by the SOS and is paid for out of the remedial fund -- there's a B in there, I think: Shall review these audits and shall be permitted to conduct periodic reviews of these to ensure FCBRE's compliance with the laws that are the subject -- are the subject of this Consent Order. There's a typo there. In my copy, one of the drafts I think is not tracking, because I was reading off of a red line. It says: Shall be permitted to conduct periodic reviews of these during the 12-month term of the remedial fund to ensure FCRBE's compliance with the laws that are the subject of this Consent Order. The periodic reviews of these during a

12-month term under remedial fund is something that was discussed and negotiated by the parties. Frankly, I think it's understood that we're paying out of the remedial fund for a third party to look at these, than we're looking at it for a 12-month period, whether we put that in the Consent Order or not. I'm sorry that my red line didn't track exactly what you have there. But that's I think what I just --."

Mr. McIver - "Well, the question is, your spoken words were different than these printed words. So what is it that you want us to consider approving?"

Mr. Ritter - "I would suggest this. I would suggest: In addition, a third-party auditor is designated by the SOS and is paid for out of the remedial fund, shall review these audits and shall be permitted to conduct periodic reviews of these during the 12-month term of the remedial fund to ensure FCBRE's compliance with the laws that are the subject of this Consent Order. That just puts a more specific timeframe on it to make it clear what we're doing. But I think, regardless, it's understood. I think it's at a minor change. But -- And I do apologize for the miscommunication. And I have that written down and I can make sure that that is given to you. If you'd like that in writing, I can give that to you."

Chairperson Handel - "All right."

Mr. McIver - "Page 8, sub C."

Mr. Ritter - "Sure."

Mr. McIver - "Line 6 -- no. Line 5. I'm sorry. Near the end of the line you have: Applications are scanned. Do you intend to add the word, signature?"

Mr. Ritter - "Yes. I'm sorry. The word, signature, has been deleted there apparently. In addition, the next phrase was an added phrase, I think. The word, signature was inadvertently deleted."

Mr. McIver - "All right. So the adverb, scanned, stays and then the --."

Mr. Ritter - "Scanned signature; correct."

Mr. Parks - "If I might, Mr. Ritter. We had it's the image of the application. I don't want to be misled, it's not just the

signature."

Mr. Ritter - "So it should say, scanned signature and application?"

Mr. Parks - "Mine says, image. So -- And mine is correct. But I know we've had several drafts. Mine says: Scanned image. But you might want to say: Scanned image of the application, just to be correct. I think that's a little better than just a pure signature. I don't want --."

Chairperson Handel - "Really. And we need to say: Scanned application with the signature."

Mr. Parks - "That will be fine."

Chairperson Handel - "Because -- Okay."

Mr. Parks - "It's more than just a signature, that was my point."

Chairperson Handel - "Great."

Mr. Ritter - "Okay. Scanned application with the signature."

Chairperson Handel - "Got it."

Mr. McIver - "Just one second."

Chairperson Handel - "You're fine. I've been writing, too."

Mr. McIver - "Page 10, paragraph four, line two. I think this is a typo. But the sentence beginning in the second line: In addition FCBRE -- Isn't that certifies?"

Mr. Ritter - "Yes. That typo has been picked up and corrected on my red one. I'm sorry. That was not changed on your printout."

Mr. McIver - "Does anybody on the Board have an appetite for including the phrase in that sentence, that it includes attorney fees?"

Chairperson Handel - "Yes. I was going to ask that to say -- if we could say: It's already paid out in excess of \$318 thousand in remediating some of the conditions leading to the Complainant in the present case, as well, as approximately \$150 thousand in

attorney's fees. Just so it's broken out, so it's clear."

Mr. Parks - "That's not right."

Chairperson Handel - "Well, what ever the number -- Tell us what the correct numbers are then."

Mr. Parks - "I didn't -- We remainder over 350, includes consultants, over-time help, new employees, temporary employees. It includes a whole number of different things, which we were originally called to delete because the State did not want that in there. It only wanted the money that we spent on actual improvement of the process. So I can give you a whole breakdown, if you'd want."

Chairperson Handel - "But the 468 includes attorney's fees?"

Mr. Parks - "Yes. But the difference between the --."

Chairperson Handel - "Okay. Approximately how much were the attorney's fees in this?"

Mr. Parks - "I have to go get them. I don't know."

Chairperson Handel - "I think -- For me, that is an important figure, because I've been at Fulton County, so I know what Mr. Parks' legal bills look like. And I think that it's a significant amount. And it's not appropriate to imply that attorney's fees are remedial actions, because they're not. The attorney's fees were by and large for this. And wouldn't have been incurred if there weren't any violations in the first place. So maybe, could we leave a blank and have it filled in?"

Mr. Ritter - "Well, I'd be happy to do that and you approve it with those corrections. The actual amount of the remediation, less the attorney's fees, consultant fees, and so forth, is listed in the Stipulation of Facts."

Chairperson Handel - "Okay."

Mr. Ritter - "If I may say."

Chairperson Handel - "Yes."

Mr. Ritter - "I'm respectful, and, of course, the Order will reflect it however the Board wants it to be. I can say for my own part, I do not think this second sentence in the

investigative cost is necessary, because that's not an actual sanction against them. And we already have that amount listed in the Stipulated Facts."

Chairperson Handel - "Where is it?"

Mr. Ritter - "We're looking at page 10."

Chairperson Handel - "No, no, no. Where -- I'm asking again if it's in the Stipulated Facts, where is the amount that was spent on attorney's fees? It troubles me --."

Mr. Ritter - "It's not listed in the Stipulated -- The Stipulated Facts were left out --."

Chairperson Handel - "The other document."

Mr. Ritter - "Yes."

Chairperson Handel - "It troubles me to have a Consent Order that includes -- Because it specifically says that 468 was spent in remediating the conditions."

Mr. Ritter - "Right."

Chairperson Handel - "And that troubles me since legal fees don't remediate anything."

Mr. Ritter - "I completely agree with you. And frankly, my own personal view is that that entire sentence should be struck, not just the amount. The actual amount, not including attorney's fees and so forth, is listed in the Stipulated Facts. If we needed a reference as to what someone actually incurred in having to deal with this, we could go to the Stipulated Facts. I reflected this because of the Board's wishes, but --."

Chairperson Handel - "Right."

Mr. Ritter - "But I agree with you."

Mr. Parks - "Ms. Handel."

Chairperson Handel - "Again -- Hang on a second. We're discussing here. We'll ask you if we have a question. Again, this document, colleagues, is going to be taken separately. And so when it is reviewed by people of Fulton County, the citizens, who want to know what has Fulton County done in terms of total

dollars for corrective actions, they did not spend \$468 thousand to correct the problem. It's some amount less than that. And I think it is important to reflect a difference between what was actually done to remediate, and what it cost the County in legal fees, because the elections division didn't do their job correctly in the first place. That is a very relevant piece of information if you are a citizen in the County. So I would like to see that broken out."

Mr. Evans - "Madam Chair, could I --."

Chairperson Handel - "I'm sorry. Did you have any more corrections?"

Mr. McIver - "I'll yield to Mr. Evans. I just have another typo."

Chairperson Handel - "Okay."

Mr. Evans - "Well, first, I'm not sure I agree on the attorney's fee issue, because based on what I've heard it sounds like a lot of what Mr. Parks did was remedial in developing --."

Mr. Parks - "It was. That's the point."

Mr. Evans - "Now, let me finish."

Mr. Parks - "Okay."

Mr. Evans - "Once when I was a young lawyer, a Judge was trying to be helpful to me and I interrupted him and he said, Never stop somebody who's being helpful. But it struck me, Mr. Parks, that a large part of what you and your firm did was the creation of the remedial plan, the complete and full investigation. And I can't say that representing County in front of us would be part of a remedial plan. But I do believe that a large part of all of the getting your arms around refining this down so it's a manageable problem, and then defining remedies and working toward creating a plan that solves those problems would be the kind of numbers that I would spend or I would recommend that a client spend on an consultant or an att -- which could be an attorney to help create those. So my narrow purpose, Madam Chair, on that paragraph four was to create a framework for future respondents to understand the full array of monies that it could cost them. And in a moment when we come to that part I have some suggested revisions to make that clearer. And I think probably some breakout of the 468 is appropriate to say. And,

Mr. Parks, it doesn't have to be exact. But if we could say 400, you know, was spent on remedial, and 68 was spent -- and throw the word, approximately or in the range of, I think you'd probably find, and I think we'd be fine. Because we really do want to capture the idea that a large part, as I understand here from what you've said, a large of what you did was more in the range of helping figure out what the solution was, and not defend. I haven't heard you try to defend what I consider to be the indefensible, which is, you know, just throwing away cards. We know that was a problem. We all figured that out. So I'll make a suggestion when we get to those kind of changes, but I just wanted to weigh in just on the fee issue."

Chairperson Handel - "If you've got a change, go ahead."

Mr. Evans - "I was just going to walk through my document."

Chairperson Handel - "Oh. You've got a whole bunch more."

Mr. Evans - "Yes."

Chairperson Handel - "Okay. Because I was trying to keep Tex --."

Mr. Evans - "I didn't want to interfere with Tex finishing up."

Chairperson Handel - "No."

Mr. McIver - "If I can have the floor back. It is important, I think, that this document, Mr. Ritter, also acts as guidance for other counties, which there are 158. So it makes a lot of sense to me that we adopt, not the exact, some form of the Secretary's suggestion, so that when they see a situation like this, and they delve into it, they go: Oh, my god, the attorney fees are outrageous, the consultant fees are outrageous, the remediation is outrageous. And breaking it down I think makes it a better deterrent document, in my view. And that's the reason for bringing it up and asking if any of the Board members had an appetite for making that change. Because I really think that this will be -- We know GEOA has their convention, I believe in May or June, and then VREG comes along. And no doubt this is going to be circulated. And I sincerely hope so. I hope somebody stands up and talks about it. I know that the Secretary is a speaker at those meetings, and perhaps she'll devote some of her time to it. But this should be guidance for others. And that's part of our role here, and that's the reason for the suggestion. Perhaps Mr. Evans has more specific support

for that. But that's where, I think, a number of us are coming from."

Mr. Ritter - "I understand. Thank you very much for explaining."

Chairperson Handel - "Any other changes?"

Mr. McIver - "No. I'm through. Thank you."

Chairperson Handel - "Okay. Mr. Evans, did you want to walk through your changes?"

Mr. Evans - "Sure."

Chairperson Handel - "All right. I'm trying to keep a little notepad. And there wasn't any -- Did you objection to the page 7, 8 and other page 10?"

Mr. Evans - "The changes that were discussed before? No."

Chairperson Handel - "Uh-huh (affirmative). Okay. Great. All right. Mr. Israel, did you have any comments?"

Mr. Israel - "No, not yet."

Chairperson Handel - "Okay."

Mr. Evans - "Okay. And some of this, Madam Chair, may be a deal killer but it really is, I think, reflective of what I would feel comfortable with. On the first page, and I've written on my draft very legibly, clearly as I can so that I can hand this to you."

Mr. Ritter - "Thank you."

Mr. Evans - "But I'll go over these just for the record and so that Mr. Parks and his clients can follow along. The first paragraph, where it says: Hereby, enters into the following Consent Order. I would delete the rest of that sentence: For purpose of resolving the matter without further litigation. The last sentence: Should the State Election Board not approve, I would delete, since we're going to act on this one way or the other and it's recognized that in the event we don't impose an order then the matter is revived and the litigation is ongoing. Under Stipulation of Fact, I think you actually have to attach and incorporate by reference what you've done with other

documents."

Mr. Ritter - "I'm happy to attach that."

Mr. Evans - "So we just need to basically -- here it say: As attached and incorporated by reference as Exhibit A."

Mr. Ritter - "Yes."

Mr. Evans - "The next paragraph, I just think we need to clean it up a little bit. I would include at the end of the first sentence, the citation to 21-2-33.1. And then in the next sentence, there's just an error. It's sanctioned sanctioning. But a matter of great dispute, I think under the law, is whether we have the authority to impose a civil penalty as opposed to sanction. And in order to steer wide and clear of the issue of sanctioning, I propose the following language: The Board may issue such orders as necessary to assure compliance with applicable laws. And then in the next page, where it says: To require an election superintendent to undertake. I would just delete an election superintendent to undertake. I think we have the authority to require remedial action, period. On page four, it's just a spacing between the last -- right before 2 -- 21-2-500. On page 5, at the very bottom there."

Mr. Ritter - "Yes."

Mr. Evans - "On the sentence: In light of the Stipulated Facts and by the agreement of the parties, the Board finds that -- I would delete, certain provisions and regulations were violated. And just say: The Board finds that violations of these laws occurred. And then in the next sentence: Based on the above, the Board finds and the respondents have admitted the following violations. In paragraph two on that page, there is a sentence that says: Respondents assert. See where it says, on paragraph two, the last sentence: Respondents assert?"

Mr. Ritter - "Yes."

Mr. Evans - "Yes. That has no meaning to me, so I delete that."

Mr. Ritter - "Yes, sir."

Mr. Evans - " If they want to put that in the record, that's fine. It doesn't need to be in the Order. This is our Order."

Mr. Ritter - "Fair enough."

Mr. Evans - "On page --."

Mr. Ritter - "I'm sorry to interrupt you, Mr. Evans. The same is true for paragraph one, the same assertion?"

Mr. Evans - "That's correct. Yes."

Chairperson Handel - "Okay."

Mr. Evans - "On page 7. Under the Cease and Desist paragraph, after the word, supra, I would insert: And shall fully comply with all provisions of this Consent Order. Only because I want to bring to bear the contempt power in the event we have a violation of the order, as opposed to another proceeding. I did not understand why, and maybe I misread, but why only the FCBRE was subject to the Cease and Desist in the next sentence? Should that be FCBRE, April Pye, John Sullivan and Ira Turnipseed? In the second sentence of the Cease and Desist paragraph. I think it should be all of the respondents."

Mr. Ritter - "Okay."

Mr. Evans - "And I think I heard this was caught. Paragraph two, at the end of the very first paragraph, there's a period before the word, Consent Order."

Mr. Ritter - "Correct."

Mr. Evans - "Okay. Got that one. And the very last line: All measures identified in the FCBRE remedial plan attached hereto. And then insert: Incorporated by this reference, attached is Exhibit B. On page 8, under C, what was the word we agreed on after the word, scanned? Because I heard Mr. McIver, and then you, and Mr. Parks all had different -- And so, what did you say it was, Mr. Parks, image?"

Mr. Parks - "I put scanned applications with the signature."

Mr. Evans - "Yes, I had scanned application but I just didn't know what the right word was. Under C?"

Mr. Parks - "Right."

Mr. Evans - "One, two, three, four, fifth line down, the word, scanned."

Mr. Ritter - "So after scanned, it would say, application with this signature. So the whole sentence reads: At the date of execution of this Order, FCBRE has either a voter registration card application or scanned application with the signature on file for all active voters except for 316 voters, period."

Mr. Evans - "That's fine. On D, there's a big difference under the law between shall and will in Georgia, no good reason but there is. And so indeed, where it says, will, it needs to be change to shall. Did we decide not to include a list of document retention laws?"

Mr. Ritter - "I'm requesting that, and the reason is because it's unmanageable to do that. It's going to tie our hands to do that. There are numerous different retention periods. And frankly, if I say that they have a certain list of document retention periods, and we miss one...."

Chairperson Handel - "Right."

Mr. Ritter - "...which is likely to happen, because, frankly, these change all of the time. And in addition, there are regulatory provisions, there are federal provisions. My suggestion is to simply say, all applicable laws as we have here because, I think they're on notice of the law, and they have to comply with all of those. I think the specificity is not going to help us in this instance."

Mr. Evans - "Well, the reason I worry about that is because if you have a specific list of statutes, then you can get away with a non-time limited self-reporting requirement. If you have an unspecified list of statutes, then you have to have a time limitation, which is the self-reporting obligation exists for a year or two years. And so as to the enforceability of the Order, we have to figure out which one we want to go with. If we want to go with an unspecified list, then I think we'll have to put in a 12 month, 24 month. We might be able to get away with a 36-month self-reporting limitation. If we go with a specified list of statutes, we can leave it without duration, as I understand the law. And so that was the only reason that was particularly important to me under D, is that we're imposing a self-reporting limitation, which I assume is in addition to what the law requires. The law doesn't require self reporting. And so the question is how do we deal with that. And I'm not worried about the problem as it exists today or tomorrow. I worry about it when we have a new Fulton County Commission, a new Chairman who doesn't want to follow this anymore, and he

comes along and he says, well, you know, that's not enforceable because you've got a non-time limit duration requirement on an unspecified statute. So I don't know what the solution is. We just have to pick -- I think we have to make a pick there or we have to make a selection, or we can leave it and just understand it's probably, you know, it's one that there will be a little bit of a risk for."

Mr. McIver - "Madam Chair. Mr. Evans, is it specific enough to simply refer to the Election Code?"

Mr. Evans - "I think we can refer to the chapter. I think that would get us where we need to go."

Mr. Ritter - "That's fine, but I want to also make sure we're also including federal provisions. And we'll have to make sure that we are covering everything under the NVRA and the HAVA, to make sure that we've covered those as well. Albeit, their retention requirements are not extensive. But nonetheless, we have to make sure that they do exist, and we have to make sure that they are complied with. So if you would -- chapter 2, and National Voter Registration Act and Help America Vote Act?"

Mr. Evans - "Yes. Those three citations will be fine. I just think you have to --."

Mr. McIver - "In your view that makes it specific enough, so we don't have to time limit?"

Mr. Evans - "I think so. I think that will get you where you need to go. Although, you know, Tex, you and I both know, there are no guarantees when it comes to litigation."

Mr. McIver - "Especially with somebody who is so outstanding as Mr. Parks on the other side. I'm sure we'd have that issue."

Mr. Evans - "On page 9."

Chairperson Handel - "Mr. Evans, can I ask you real quick?"

Mr. Evans - "Sure."

Chairperson Handel - "At the bottom, are you going to change both wills?"

Mr. Evans - "Yes. Every -- I changed -- I tried to change every will to shall."

Chairperson Handel - "Great. Super."

Mr. Ritter - "All wills to shalls."

Chairperson Handel - "Great. Thank you. Just to clarify."

Mr. Evans - "On page 9, at the very top, where it says: Take corrective measures. I would change that to: Submit for approval by the Secretary of State corrective measures. It's just I don't have enough confidence to allow them to decide what the corrective measures are to be taken. And then at the end of that paragraph, after the word, review, I would insert: And shall commence training as approved by the Secretary of State as soon as possible. I had a question under E, A."

Chairperson Handel - "I'm sorry. Can I just say one more thing under D?"

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

Chairperson Handel - "The second line at the top there, it says, form, that should be, from. All right."

Mr. Ritter - "Thank you. We missed that one. Sorry."

Mr. Evans - "This is just a stylistic thing. I probably would change those numbered paragraphs under E to numbers, because it's a little confusing to go E, A, instead of B-1."

Mr. Ritter - "Yes. I agree."

Mr. Evans - "And then under E, what is E-1, just a phrase that didn't quite follow with me is the phrase, ordinary expenses and expenses necessary to comply with the legal obligation shall not be paid from the remedial fund. If we say that only -- that the only funds that can be spent are funds directed by the Secretary of State, wouldn't that be a sufficient protection? Because she could then make sure that they're not going to spend ordinary expenses. To me, the protection is to say they can't spend the money. And I just -- that phrase is just a little confusing to me. I'm not sure that it adds anything."

Mr. Ritter - "Well, it is the applicative of the obligation already to spend only as directed."

Mr. Evans - "I would actually delete that sentence."

Mr. Ritter - "Okay."

Mr. Evans - "And then in the next sentence I would say: The Secretary of State in her discretion. So that -- to be candid with you, so that there could never be a claim against the Secretary of State, because we will have vested in her, you know, discretion, means that unless she took the money, that there's no basis for any suit. I would put: The Secretary of State in her discretion shall direct the expenditure of the remedial fund, provided expenditures are for election training, equipment and/or administration of elections in Fulton County. So under three, as I understand it, if the Secretary of State decided to spend no money, the full 100 would go to the general fund?"

Mr. Ritter - "I think so."

Mr. Evans - "Under four, should be the word, shall."

Mr. Parks - "Mr. Evans."

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

Mr. Parks - "That's not correct."

Mr. Evans - "Okay. Maybe I misread that."

Mr. Parks - "If there's no C of D, if there's no -- If you don't tell us to spend it, it doesn't become a sanction. It becomes a sanction if you tell us to spend it and we don't."

Mr. Evans - "The question is, what happens is you fund the fund. And at the end of the 12 months, the money isn't spent. What happens to the balance?"

Mr. Parks - "It would go back to Fulton County."

Mr. Evans - "No."

Mr. Parks - "Because otherwise it's not -- we don't have our guarantee that it's going to be used for stuff that is -- That's the whole action of the deal, because, otherwise, you could just say we're not going to spend a penny of it and it become a sanction."

Mr. Evans - "Right. And I think --."

Mr. Parks - "Because I know --."

Mr. Evans - "No. I hear you. I understand your concern, and I don't think -- We already know we'll have an independent auditor. So we know that it won't be completely unspent, because we're going to have this independent auditor whose job it is to verify compliance, and otherwise assist with self-reporting. I have to tell you as a fiscal conservative, I just have a real problem with anything that requires me to spend government money. The use-it-or-lose-it idea just never appeals to me. But that's something I guess we'll have to get to the end and see. But that's how it's currently worded; isn't it? Do you disagree on --."

Mr. Parks - "If it is, it's a mistake."

Mr. Evans - "Well look at -- I'm going to continue on."

Mr. Parks - "Okay."

Mr. Evans - "You may want to look at three on page 9. And we'll come back to that."

Mr. Ritter - "Mr. Parks, can I ask that you come up here when you speak, because it's recorded and --."

Mr. Evans - "Under paragraph four, Madam Chair, I changed that to shall. And paragraph five, again, to avoid this sanction issue, I would change the word sanctions to civil penalty. And then the work -- Let me ask this question, just a math question. If we added up all these numbers, the 19624, the 468, and the 120, was does that number total? Does anyone have a calculator? You would think as a lawyer I would be very proficient at adding up numbers getting paid, but it's not my strong suit."

Mr. Ritter - "It's roughly \$608 thousand."

Chairperson Handel - "It's 607,624, I believe."

Mr. Ritter - "The 468, of course, is a rounded number anyway."

Mr. Evans - "That's fine. I just need to know what is the 19624, plus the 468, plus 120."

Chairperson Handel - "607,624."

Mr. Evans - "So I would add an introductory paragraph to paragraph -- I would re-label paragraph four to say: Civil Penalty."

Mr. Ritter - "Well, then you're combining four and five?"

Mr. Evans - "Yes. You'll see in a moment. And, then, so four is Civil Penalty and the introductory paragraph, Madam Chair, would be the following: The total amount of \$607,624, which respondents shall pay or shall have paid as a result of its violations include the following. And then sub-A would be investigative cost. Or as my Dad would say, investigative cost. And then under investigative cost, it would be: Respondents shall pay the expenses incurred by the office of the Secretary of State in its investigations in the matter of 19,624,076. And then B would be, Costs for Remedial Plan and Attorney's Fees. And that paragraph would be FBRE shall -- or FCBRE has paid in excess of 468 thousand in remediating some of the conditions leading to the complaint of which approximately 68 thousand were attorney's fees associated with representing the respondent before the SEB. C would be: Further Civil Penalties. And then I would have the following, because there is no -- this is what we contend and this is what they contend. This is what we're willing to enter. It should say: The SEB herewith imposes the following additional penalties and remedies for -- and then it would say the violations acknowledged, delete would support a Civil Penalty in an amount. So the first sentence would read the following under C: The SEB herewith imposes the following additional penalties and remedies for the violations acknowledged by FCBRE in the amount of 120 thousand as follows. So it goes all the way down to, with a total penalty. See, are you with me?"

Mr. Ritter - "Yes."

Mr. Evans - "Totaling 92 thousand, for a total penalty, strike, that would be supported being at least. With a total penalty of 120 thousand to be payable as provided herein as follows: 20 thousand to the State Revenue Fund; 100 thousand into a segregated account, the Remedial Fund to be used as provided herein."

Mr. Ritter - "Can I comment about it?"

Mr. Evans - "Yes."

Mr. Ritter - "The problem with drafting it that way and the reason we did not draft it that way, we considered that, and I'm talking about the last part, where: The penalties imposed and partially going into one fund. That is, in the view of the Attorney General's Office and prior case law, an earmark of the penalty as opposed to staying the penalty and keeping the account in their control. If we earmark it, and say this penalty has to be paid in this account, then it's not going to be a valid penalty under Georgia Law."

Mr. Evans - "Well, then --."

Mr. Ritter - "The effect may be the same, but we have drafted it so that it doesn't say that the penalty is going into the account. But we're staying the penalty, but they're going to fund an account. And that's -- It may seem like an inconsequential difference, but asking them the ones who are funding the account rather than having the penalty going into the account, does make a difference in the view of our office of the law. The AG's Office would not be of the view of doing it the way you suggested would be valid."

Mr. Evans - "So the 468 thousand, is that an earmark?"

Mr. Ritter - "That amount, no. That amount was paid by them. That wasn't imposed as a penalty at all."

Mr. Evans - "But we're requiring that they confirm and have paid that as part of the remedial plan."

Mr. Ritter - "We'll, we're requiring that they did in fact extend that amount. But that's not meaning that we're imposing it as a penalty. We just want them to know that, that doesn't mean that -- and that they have -- that their amounts that they represent that they said they spent, which we, frankly, have contended in the case are irrelevant because, first, those amounts didn't remediate the problem. And they weren't spent as an amount as a penalty in the case. But we still want to know that those amounts are correct, and they're affirming to them -- us that they are. Other than that, we can conduct an audit --."

Mr. Evans - "You and I just have different goals in that regard. My goal is for, as Mr. McIver pointed out, is that for the next respondent to come along to understand that the bar is about a half-million dollars if you want to do this."

Mr. Ritter - "I understand."

Mr. Evans - "So in that regard, I want to make sure that we send that signal, and that that is kind of the price tag. Second, is so if they have already paid the 100 into a segregated fund, and we confirm that the 100 is there, that would make it the same as confirming that they spent the 468?"

Mr. Ritter - "I think so."

Mr. Evans - "So maybe the solution is that we get the order done, make as a condition of the entry of the order, or confirmation that the 100 is in a segregated fund, and we just have a confirmation that that's been done."

Mr. Ritter - "That's fine. I have no problem with that. My concern is with --."

Mr. Evans - "No. I'm fine. I'm just trying to -- I know what I want to get done."

Mr. Ritter - "I understand."

Mr. Evans - "And I'm trying to work within the boundaries of what you're giving very good legal advice of how to get it done."

Mr. Ritter - "Right."

Mr. Evans - "And I'm hoping that if we can both get what we want, it will be fine."

Mr. Ritter - "I agree with that. And I'm really just looking for the exact language to put down in here to reflect what you want. And that's why I expressed that one concern about -- that one phrase about, we impose a penalty of 120 thousand, of which, 100 thousand is paid into the fund. I think that could be --."

Mr. Evans - "So what we could do is to say: The total amount being 120, 20 of which will be payable to the State Revenue Fund, and 100 of which has been paid by them into a segregated fund."

Chairperson Handel - "Uh-uh (negative)."

Mr. Ritter - "No. That doesn't work, because if you say that 100 of it has been paid, then that's the penalty itself that's been paid into the segregated account, and then it's an earmark."

That's a difference than what we have here. And that's different than the 468. We didn't take -- The 468 was never received by the State and then paid into the account, even indirectly by them paying it by our direction as a penalty. They paid that previous to this Board meeting, as opposed to the 100 thousand. If we formally would have that as a sanction that the State would essentially would take ownership of that money, but we're directing it to be paid into an account, then it's an earmark. If we don't take ownership of the money, that is to say, we're not saying it's a penalty. We're going to say that that amount is -- that we're agreeing to stay a certain amount in the penalty, but put the 100 -- they have put \$100 thousand into the account themselves, then we have a different situation. They maintain ownership and control over that money the whole time, and then we don't have an earmark."

Chairperson Handel - "Could we maybe do it by saying that the total amount of the sanction is 120 thousand, with 20 thousand payable to the State General Revenue Fund, and 100 thousand being stayed if the FCBRE does X,Y and Z with the fund? So that you get your total amount, then we get the word, stay, in to address Mr. Ritter's issues."

Mr. Evans - "Candidly, that doesn't make any sense to me."

Chairperson Handel - "Okay."

Mr. Evans - "And, Madam Chair, no -- it's not what you're saying that doesn't make sense."

Chairperson Handel - "Oh, over here, what Mr. Ritter's put out."

Mr. Evans - "What Mr. Ritter is saying doesn't make sense. Because if the issue is control, then the key is that we never come into possession of the 100. If the segregated fund is funded and established pre-Consent Order effectively and we simply confirm it. Because I got to be honest with you, if there is the slightest hint, which is what makes me very nervous about this, and I think we're working very hard to try to get to a solution, that the remedy for this is that Fulton County effectively got away with it for \$20 thousand, and then got to have basically its cake and eat it too, and then spend money on equipment it would otherwise need, that would be a travesty of justice."

Chairperson Handel - "Which has been my challenge with this from the beginning."

Mr. Evans - "Yes. And I am willing to work toward trying to do that. But I am very nervous about this spinning of what -- you know, what's reflected in the minutes is just a serious problem. And I'm willing to work, because I do think it's important for Fulton County, and I do think it's important for us to get this put behind us, but there is a line beyond which I can't go, and that would be that line. And I don't quite follow if the operative issue turns on control, then I'm fine with a pre-inception date, pre-effective date funding of the segregated fund with the proviso being that pre-effective date payments included attorney's fees, remedial plan, a segregated fund to fund the remedial plan as directed by the Secretary of State, and a post-order payment of 20 thousand, which is made to the State Treasury. I can live with that. What I can't live with is if you do what you're told to do the fine will have only been \$20 thousand."

Mr. Ritter - "Understood. And we came to this conclusion to try to work as we discussed last week with the idea that some of this money could be used for the benefit of the victims of this misconduct by Fulton County, which are the Fulton County taxpayers. And if they just pay this money to the general revenue fund. It hurts them twice. That being the case, though, we need to do it within the framework of what our office thinks is going to be legal. And we can't just say that we're going to have them pay a penalty and half or a 100 thousand of it is going into an account. So we carefully tried to structure this in a way that made it crystal-clear that this penalty of \$120 thousand was warranted, in fact a minimum amount that I think is warranted in this view -- or at this moment, and we stated repeatedly what this penalties is for, broke down the amounts in an Order per your suggestion, and so forth. And so I think it's crystal-clear from the Order in my view that this is a penalty. I'm not saying, as you pointed out to Mr. McIver earlier, that people can file suits, and argue all sorts of things. I've seen it all the time, and you have too. But I think it's clear that this is a civil penalty in the effect of 120 thousand, but we're not going to take it in a way as a penalty in ourselves and have it ordered into the account. Perhaps, and I don't know whether this is factually something that Fulton County can support. But in that final sentence, on what would be subpart C, if I could suggest this revision: In keeping with the Authority the State Election Board's Remedial Election Law's Violations, SEB stays the assessment of \$100 thousand of the civil penalty if FCBRE/FCBOC certifies that it has established a segregated account into which it has paid \$100

thousand to be used as directed above. And the remaining \$20 thousand to be paid forthwith as a civil penalty in the General Fund of the State of Georgia. I'll just add this. We have a common goal of wanting this to be crystal-clear as much as we can within the framework of the Law to future violators, or potential violators, of what their violation is going to cost them. And I'll just say for our purposes of the record, this is a one-time type of deal, creating such a segregated account. I think there's no question that we would expect civil penalties to be paid by vote. We don't expect this segregated account idea to be followed in the future. But we also don't expect these types of violations to, you know, damage the citizens in the way Fulton County citizens have been damaged by the conduct here."

Mr. Evans - "What if we change 4-B to say: They have paid in excess of 468 thousand in remediating some of the conditions leading to the complaint in the present case of which 68 thousand were attorney's fees, and have paid 100 thousand into a segregated fund to be directed by the Secretary of State?"

Mr. Ritter - "That suits me fine."

Mr. Evans - "And then C would be: As an additional penalty --."

Chairperson Handel - "And if I recall, our previous discussions were that if the fund was not established --."

Mr. Ritter - "They're going to pay it and I think the Order is clear on that."

Chairperson Handel - "And I would --."

Mr. Ritter - "And I would like to leave that last sentence that's -- or a part of that last sentence -- I'm sorry to interrupt you."

Chairperson Handel - "No. That's fine."

Mr. Ritter - "Part C, to make that clearer."

Chairperson Handel - "Yes. And I think there needs to be a timeframe in which the fund needs to be set. And the Consent Order needs to be -- remain open, and not final until such fund is set."

Mr. Parks - "It is in the Order. It's at 40 days."

Mr. Ritter - "Yes, it's correct. It would be in what would be E-5, on page 10, currently labeled -- fund."

Mr. McIver - "That's clear."

Chairperson Handel - "Are you taking a crack at some language?"

Mr. Evans - "Yes, I am."

Chairperson Handel - "Then while you're doing that, would you mind if I make one more comment? The only other issue in this for me is that the way this is set up, Mr. Ritter, there needs to be some line between the Secretary of State's Office and the Fulton County Elections Board and Fulton County Elections Office. Because irrespective of what this agency at the State level may or may not direct Fulton County to do out of the \$100 thousand, does not and can not in any way relieve them of their responsibility to follow the law. And I am gravely concerned that the way this is structured, that six months from now if, and I'm going to be optimistic that it will be if there instead of when, if there are additional violations in no way can Fulton County come back and point the finger at the Secretary of State's Office for not ordering them and directing them properly to do their jobs. Because when all is said and done, Fulton County has a legal obligation, regardless of this fund, regardless of what I may or may not want them to do to follow the law. And that must be crystal-clear in here."

Mr. Ritter - "Okay."

Chairperson Handel - "And I couldn't find any such language that dealt with that."

Mr. Ritter - "Okay. Can I suggest that on page 10?"

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

Mr. Ritter - "After E, which is now would be five."

Chairperson Handel - "Right."

Mr. Ritter - "We add a part six."

Chairperson Handel - "Okay."

Mr. Ritter - "That says the establishment of the remedial fund

and the authority of the Secretary of State, SOS, to direct the expenditures under the remedial fund in no way absolves Fulton County or Registration and Elections or its officials from their duty to fully comply with Georgia Law."

Chairperson Handel - "Great. All right. I believe that covers it. Mr. McIver."

Mr. McIver - "Are you still writing, Randy?"

Mr. Evans - "Yes."

Mr. McIver - "If I might have the floor."

Chairperson Handel - "Yes. Please, yes."

Mr. McIver - "As just one Board member, Mr. Ritter, I want to know that the Law Department is confident that this document does two things. It would not impair our ability to act against this or any other party with respect to contempt. If there are other violations, clearly contempt I think is the road which we would pursue. So that's the first question I have for you. Does anything here impair us once it's recast as we best need to do, would impair us from moving towards Fulton County or any other parties to this agreement in terms of contempt?"

Mr. Ritter - "Let me answer that question. I think the answer is no, it does not impair us. Let me talk about what our contempt remedies are, and what the remedies are for violations of this. Other than, we believe that the penalty automatically becomes due, but what happens when any violator doesn't pay a penalty or comply with an Order of this Board? The Board itself, of course, can issue a resolution finding them in contempt. But where the rubber really hits the road is that you would direct our office, or the Secretary of State would direct our office to file an action for the Fulton County Superior Court in this case, to enforce the Order and to essentially require them to comply with their obligations under it. The actual enforcement Order would be something that we can go forward in terms of remedies would be something we need from Superior Court. Once they've done that, then we have the full contempt powers of equitable court, the Superior Court. We also could lien them, if we needed to, or whatever else we needed to do, should we have to go to Court. And our goal in cases like this is to get to a place where that doesn't have to happen. But we have filed several actions for several agencies, my clients, where we have done that, and we would do that if

necessary. In no way does this Order impair our ability to do that. In fact, I think our attempts to be clear about it increase the likelihood that we could do that."

Mr. McIver - "That's the statement I'm waiting to hear."

Mr. Ritter - "Right. And our goal is to make our case, should we go to Superior Court, an easy case, a direct case, one that the Judge can immediately grant judgment for us."

Mr. McIver - "The second part of that has to do with, first of all, you know my concern about this fund."

Mr. Ritter - "Yes, sir."

Mr. McIver - "It places us into a role that I'm troubled about. I would rather us sit here as the SEB in a rather pristine position and be able to deal with these issues as they come before us, instead of becoming, if you will, a partner or an ally or collaborator with Fulton County. Nonetheless, as Mr. Evans has already said, I am very much for moving this matter forward, bringing it to conclusion. We have a lot of other work to do. Fulton County has a lot of other work to do on their own. So I don't intend to pursue further my objections about this fund. But I want assurances from the law department that whatever we have and end up with in this document, which is approved, does not impair the ability of the SEB, and I'll speak on behalf of the Secretary, or the SOS, to function in our role. Now, I know she's addressed the SOS, but it's broader than that really."

Mr. Ritter - "I don't think it impairs you at all. I think if anything this is a power-granting document to this Board, but also primarily to the SOS. I don't think it limits what the SOS and the Board can do. And that's my understanding and what my advice and belief is about this document. And I can tell you that on behalf of the Attorney General's Office."

Mr. McIver - "Well, just so that we're clear, the law that created this Board was for a very specific purpose. And I don't want this document to impugn or impair our purpose in any way whatsoever. And that's the assurance that I really want from the law department before I cast my vote."

Mr. Ritter - "I don't think it impairs your purpose whatsoever. Of course, Mr. McIver, I can't give you guarantees that someone won't sue, that they won't make claims, because people can make

all sorts of crazy calls. I don't think this impairs the authority of this Board or the Secretary of State whatsoever."

Mr. McIver - "So if those challenges come as you describe --."

Mr. Ritter - "We'll defend them and we will --."

Mr. McIver - "And as lawyers, we know that this is what our fabric of our society is to be able to challenge one another in a civil manner."

Mr. Ritter - "We will aggressively defend the authority of this Board."

Mr. McIver - "We would expect Mr. Baker to come to our side."

Mr. Ritter - "Yes. You can expect the Attorney General's Office. I don't know about him personally being there. It could be, but I don't understand you to mean that."

Mr. McIver - "Well, look, he's a friend of mine, but I have been disappointed in his lack of stepping forward in some instances where I thought it was really called for, and in a couple of instances involving this Board. And I'm not asking you to speak for the Attorney General here, I know that would be inappropriate. But I just want to feel comfortable with that whatever we're doing doesn't in any way limit our purpose in being, which was the statute which brought this Board into existence."

Mr. Ritter - "I don't think it does. I'm telling you that my opinion is that it does not. In fact, I was careful to make sure that the Order recites the authority of this Board. And I will tell you that as far as I'm concerned, and as far as our office is concerned, we plan to aggressively defend the authority of this Board to act."

Mr. McIver - "Thank you. I've just been handed a note. I don't have any idea how accurate it is. No offense to you, Mr. Taylor, but that the Attorney General Baker just announced that he's a candidate for Governor. It's starting to get crowded in here."

Chairperson Handel - "It is."

Mr. McIver - "And that's the reason I'm looking to say that if this is true, and, again, who knows at this point. But if this

is accurate, again, I only use his name from the standpoint that we are friends, but I want to know the Law Department will be standing with us if this fight starts, instead of saying, well, this is an impediment and the State Election Board is not going to be able to function in the way that the Legislature and the Governor years ago intended."

Mr. Ritter - "Well, let me ask you a question. A caveat, what I have to say first by saying that you know lawyers never want to make guarantees. We will never use this Consent Order to argue that the State Election Board is limited in its authority."

Mr. McIver - "Or concede an argument by the other side that we're limited."

Mr. Ritter - "You mean, related to this Consent Order or in some other case?"

Mr. McIver - "Yes."

Mr. Ritter - "Consider it, no. I don't think it limits the State Election Board's authority whatsoever, nor the Secretary of State's."

Mr. McIver - "Madam Secretary, I think I've beat this horse enough, but those are my concerns."

Chairperson Handel - "Do you want -- In that paragraph that Stefan read out about, does not absolve Fulton County -- have it be the SEB and the SOS?"

Mr. McIver - "Well, I think Mr. Evans may get to that. I would expand the new 6 to include that."

Chairperson Handel - "Great."

Mr. McIver - "But those are my concerns."

Chairperson Handel - "So it's SOS and SEB, Mr. Ritter."

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

Chairperson Handel - "Great."

Mr. McIver - "I don't think we, as a Board, by virtue of an action like this can really restrict the authority of this Board and what our obligations are. We're here to do the people's

work."

Mr. Ritter - "I full agree with that, and I, you know, that you issue an order today does not mean you're bound by the terms of this Order, or any other condition you put in there in a future case. I don't think that this Board is bound -- except the courts are bound by stare decisis of the trial orders."

Chairperson Handel - "All right."

Mr. McIver - "Those will conclude my concerns. Thank you."

Chairperson Handel - "All right. Thank you. Mr. Israel, are you still good?"

Mr. Israel - "Yes."

Chairperson Handel - "All right."

Mr. Evans - "All right. I think I have here -- so what I have is 4, which is entitled Civil Penalties, A, which is investigative costs. B, which are cause for remedial plan and attorney's fees. C, which is funding of remedial plan, and D, which is further civil penalties. So does that meet your -- your -- the boundaries? And under C it says they shall pay 100 thousand into a segregated account. The remedial fund is provided herein."

Mr. Ritter - "I -- Can I look at your language?"

Mr. Evans - "Sure."

Chairperson Handel - "Do you want to -- how about if we take a quick break and let you digest that and make sure we get it exactly right, because I would really like to be able to move forward today on it?"

Mr. Evans - "I completely agree."

Mr. Ritter - "Absolutely."

Chairperson Handel - "I'll make a motion that we take a ten-minute break."

Mr. Ritter - "Thank you."

Mr. Evans - "And Madam Chair, I'm fine with him sharing my notes

with Mr. Parks just to speed it up."

Chairperson Handel - "Absolutely."

Mr. McIver - "I would hope Mr. Parks would be involved."

Chairperson Handel - "All right. So we're going to take a break for about ten minutes, folks. Do I need a motion? I probably need a motion."

Mr. Evans - "So move."

Mr. Worley - "Second."

Chairperson Handel - "All in favor?"

(Whereupon, there was a chorus of ayes)

Chairperson Handel - "Thank you."

(Whereupon, a short break was taken)

Chairperson Handel - "All righty. I think we're going to come back in session, and please let the record show that David Worley is now with us as well."

Mr. Worley - "Madam Secretary, if I could just note for the record that I was required attend a hearing on motions for summary judgment on a case in Henry County Superior Court this morning that had been scheduled prior to this meeting."

Chairperson Handel - "Yes. Yes. You had let us know that, and I did say at the beginning that I knew you were going to be late. So thank you. It was an excused absence. And you have been able to talk with Wes and get caught up on where we are?"

Mr. Worley - "Yes."

Chairperson Handel - "Super. Awesome. Okay, Mr. Ritter."

Mr. Ritter - "Okay. And I thank you for the recess. I've reviewed Mr. Evans suggested language, which creates a new subparagraph C regarding the remedial fund where Fulton County is required to pay into the remedial fund, and that has the sanctions as -- of paragraph D. I've got -- and he also had an -- clause, and so forth. I'm fine with all of his proposed suggestions. I went through it, I think they're excellent, and

so I can say, on our part, we agree to those. I understand that Mr. Parks does not agree to those and I'll let Mr. Parks have his say about that. I do, however, want to make my view of the procedural posture of this case clear. This case has been in front of the ALJ for many months. We've negotiated this case carefully, we have Stipulated Facts in this case. In my opinion, the Board has the authority to issue an Order based on the facts. And I think that the changes that Mr. Evans has proposed fully reflect the understanding of the parties and what the underlying facts are. And I'll let Mr. Parks' note of disagreement reflect that. I have no problem with that. I don't think we need to proceed further in front of the ALJ. And if the Board approves this Order, unless you direct me to go back to the ALJ for an argument on sanctions or civil penalties and so forth, I think this Board fully has the authority to issue civil penalties and sanctions. In fact, there was a period when those issues were not even referred to ALJs, and we can fully withdraw that referral as well. The purpose of the ALJ, which is a very important purpose, is to hold a hearing to determine the facts of the case. If the ALJ issues an order on sanctions, it can be completely revised by this Board. Completely, in my opinion. And because of that, the ALJ's determination on that is not necessary, and for the purposes of finality moving this forward I would encourage us to reach an Order today and -- That's my opinion on it, and I will let Mr. Parks present his say. Thank you."

Mr. Parks - "Thank you. This is the reality of how we see it. We have negotiated this Consent Order, which requires both parties consent, with the help of the ALJ. The hearing is scheduled for April 15th and 16th. We reserve the right to -- we continue that hearing with the hope that we can reach a Consent Order here. That Consent Order -- the changes that we now are confronted with are just simply too substantial for me to be able to represent either the Board of Commissioners' opinion, or my own Board's opinion because -- and I hope that we would not be expected to do that at this point and time. I mean, these are not minor changes. But let me -- let me try to go over some of the issues that I think are sort of driving the changes that have been suggested here. First, I would -- I would ask this Board to consider a procedural terrain to the way these things are handled. Mr. Ritter and I spent a substantial amount of time dealing with language, which I ran by my constituencies. But apparently Mr. Ritter feels like he can't run by that you all in an ongoing basis, so what we're doing is we reach here without you all thinking, and maybe not even seeing the orders, which creates a tremendous inefficiency in

this process. Because I've spent a substantial amount of time on our side convincing people to accept what Mr. Ritter has proposed. So I don't know what the legalities are in terms of the Attorney General's interface with you all, but if you all could see these orders well in advance of your meetings so we could get back just the kind of detailed comment that we've gotten here today, we would be so much further along because I would have shared that with the other side, my clients, and with the Board of Commissioners and Mr. Alexander here today representing the County."

Mr. Evans - "Madam Chair, may I respond to that briefly?"

Chairperson Handel - "Absolutely."

Mr. Evans - "It reminds me of litigating a case in a class action where opposing counsel and I will have spent many hours working together, and then I appear in front of a judge whose job it is to protect the interest of the class without regard to what we lawyers think. And he says, this is what I can approve, and this is what I can't. And I remember once a colleague of mine saying to the judge, you know, Judge, if there was some way that we could get your buy-in before we showed up for Court here, that would really be great. And the Judge said, only if you would like to spend the night in jail because it would be an ex parte proceeding to ask for an advisory opinion in an adjudicatory proceeding. I appreciate the situation you're in, but I do also appreciate the role that we have which is a little different than a typical plaintiff and defendant in a lawsuit. We have a very important role to serve. This is an adjudicatory role, and as a result in an adjudicatory role we really don't have the -- anymore than a judge would have the ability to signal buy-in in advance of an opportunity for a full and fair hearing. So I appreciate your suggestion. I appreciate that it is a very inefficient process, and I know that I'm as frustrated as I'm sure you are. However, and I know the Chair shares this, as well as my colleagues, it is extremely important that we get this right. And I will tell you this, I mentioned to it earlier, I appreciate the political dynamics of trying to reach an accommodation, and we would like to get this resolved as well, however there aren't circumstances where we're going -- or I will vote for a proposal which is capable of being spun for anything other than this is going to be a serious penalty for a serious violation."

Mr. Parks - "And Mr. Evans, I take it -- as I said, there may be, as you said, legal impediments to that dialogue. I'm just

-- to the extent that there can be it moves the process along, move executive sessions, and whatever. Secondly, I want to speak to this attorney's fee issue. I got the impression that the Board thought that the attorney's fees being incurred by Fulton County was somehow high or expensive, or unnecessary. Let me just say for the record, that I charge Fulton County half an hourly rate. I do much of this work pro bono. The total attorney's fees -- I've had this client check in this case of \$114 thousand, over 70 percent of that was my firm conducting extensive training classes, reorganizing the way this County keeps its document, creating retention policies, drafting the remedial plan, and putting my people, lawyers and paralegals, onsite at the Fulton County Board of Registration and Elections to accomplish that goal over a six-month period. So maybe I misread it, but certainly, the vast minority of the money spent has been spent in this process, because from day-one we have been on the Consent Order track. We have never -- other than we're resolving the facts for stipulation and trying to come up with this with the help of the ALJ, I can't think of a whole lot of time where Mr. Ritter and I spent time arguing over the facts. Where we have argued is over the remedy. The posture of the case, right now, is one where I hope that this Board would not expect -- because I can't do that as a lawyer, just as you all couldn't comment on this Consent Order until you gathered as a body, commit the Board of Commissioners or the Board of Registration and Elections to all of these changes. Secondly, Mr. Ritter, I do have a very different view of where this case stands. The ALJ -- what -- a separate ALJ, mediated this case and it was largely, at least the font of the idea of this solution, which we then worked through the earmarked issues, worked into a document. It was never not the expectation that if we couldn't resolve this by a Consent Order, the very difficult legal issues over what can and can't be done in terms of remedy in this case would be argued to the ALJ. We have not argued those issues to this Board. We have not argued the law to this Board, and the reason that we didn't is that we were on the Consent Order track. So the kinds of things that can and can't be done, at least in our view, in terms of a remedy, we do think and we are set for April 15th and 16th to have the Administrative Law Judge review that. That, in my opinion, is in this Board's interest, although I -- we understand that it is not something that you are bound by. Certainly, we do not want to be in a situation or we have not made our record on those legal issues. This is a case, and whether this Board has a problem with the way 33.1 is written in terms of the civil penalty statute is written, is that you've got to have a concrete act tied to a \$5,000 civil penalty. That's the way it

worked. It may not seem like a lot, but at this point and time, the maximum fine this case could result in is \$40 thousand. That's it. There is no precedent, either in the revelations or the law, that allows a per-page fine on top of the \$5,000 fine. The Supreme Court has dealt with it, that's a punitive award. That's a punitive award. But whether it's --."

Mr. Evans - "Mr. Parks."

Chairperson Handel - "Can I just -- I mean, we're not going to argue this -- the facts here today."

Mr. Parks - "Exactly. My point is --."

Mr. Evans - "Well, what I was going to say --."

Chairperson Handel - "And please, go ahead, Mr. Evans."

Mr. Evans - "All I was going to say is --."

Chairperson Handel - "Because we have the Stipulation of Facts."

Mr. Evans - "No. If we're going to argue the law, then my reaction will be we'll have a briefing on it."

Chairperson Handel - "Exactly."

Mr. Evans - "We're not going to do that today."

Mr. Parks - "Exactly."

Mr. Evans - "All I need to know is do you -- if I may?"

Chairperson Handel - "Yes, please. I think you're going to ask --."

Mr. Evans - "If I'm stepping out of line --."

Chairperson Handel - "No. I think you're going to ask the same thing I was going to ask."

Mr. Evans - "Do you, or do you not, consent to the Order? If the answer is no, that's fine. We have Stipulated Facts. We'll have the Stipulated Facts, and then you can make your arguments to the Superior Court Judge. If the answer is we do consent, then we need to get a clean copy so that we're all on the same page, and we deal with the Consent Order as a drafted. But honestly, in all due respect to you and to my colleagues, I have

never seen the Board bend over backwards more to try to work toward reaching an accommodation in a case where the Respondent, in fact, deserved less accommodation. We have violations here that are the most serious in all of my years, and I am the senior member of this Board. I have been on this Board longer than anybody. I have seen unbelievable things. I have never seen a violation this bad, and the idea -- the mere idea that somehow, after devoting two full Board Meetings of trying to get to an accommodation that permitted us to move forward, is met with anything other than either we are very grateful and we agree, or we respectfully disagree because we're on different pages as far as the law, is just not going to work, I don't think. But I am only one. And I will tell you I was here when we revised the statute to deal with each violation. I remember the specific case that Secretary Cathy Cox came before us on that dealt with what was a violation. And I think you may be well served to go do a little legislative history background to check on the proposals submitted by this Board to seek clarification on that precise narrow issue that you're focused on. But that is no consequence to us today."

Mr. Parks - "No. It isn't."

Mr. Evans - "We need one thing, yes or no. If the answer is no, just say no."

Mr. Parks - "The answer is, I don't have the ability because the Boards that have to approve it haven't seen it yet."

Chairperson Handel - "Well --."

Mr. Parks - "I don't think it's unreasonable --."

Chairperson Handel - "If I could just ask a question, Mr. Parks, because yes, there's been changes made to the Order. But the overall parameters of the Consent Order in terms of the dollar amounts, the scope of the Consent Order remain exactly the same as they were when you came before us two weeks ago."

Mr. Parks - "I don't --."

Chairperson Handel - "There's no -- The dollar amounts haven't changed. I mean, the scope of it, the remedial fund, paying the investigative fees, it's all the same."

Mr. Parks - "I haven't even read --."

Chairperson Handel - "Mr. McIver."

Mr. Parks - "I --."

Chairperson Handel - "Hang on, because this is still -- we're not in a give and take back on this at this point, and that's per Mr. Evans' comment. So, Mr. McIver."

Mr. McIver - "Perhaps, we, the lawyers are more sympathetic, Mr. Parks, but it occurs to me you simply lack authority to make the decisions."

Mr. Parks - "Yes. I haven't even read these changes."

Mr. McIver - "And we're burning through some pretty valuable time here, so if you don't have the authority, you simply don't have it. And of course, that's requisite to you being able to make any pronouncement on behalf of your client."

Mr. Parks - "Yeah. Well, we went -- we went through all of the changes that were announced last time we were here as dispositive changes that if accepted would work. We got approval on that and submitted an Order. These are substantial changes."

Mr. McIver - "Well, we may differ on that, but the point is either you have authority or you don't."

Mr. Parks - "But -- you hit on it. What I perceive as something that -- you know, I can't tell a client this is not something we should look at. They would need to see it. It may well be that the client approves it. The Board of Commissioners may look at it, but they have to be able to see it. But I don't -- I think it would be -- I don't think, as a lawyer, I can just say it's fine."

Mr. McIver - "But we're not asking you to."

Mr. Parks - "Okay."

Mr. McIver - "Just stand in the well, as they say, and tell us what your authority is. And if you don't have the authority to agree to it, then we need to move on."

Mr. Parks - "Certainly. I would have to take the language back to let them look at it. I don't think it would be a lengthy

process, a couple of days. I mean, but they have to see the language."

Mr. McIver - "That clarifies it for me because -- I just -- If he doesn't have the authority then, again, we need to move forward with the language we have. Have you -- Take a look at it and see if you can have authority to go forward. You know that we're going to act. I hope there's no doubt in your mind about what we're going to do."

Mr. Parks - "Well, our position is that the Administrative Law Judge is -- Because we have not briefed that issue. We believe that it should be first briefed with the ALJ. You should have a recommendation from him before you act."

Mr. McIver - "Fine."

Mr. Parks - "That's where the case is pending. And if the Board says no to that, then I think that -- then that's something that -- the ALJ has a hearing scheduled. We have to go back to in. Mr. Ritter would make his arguments as to whether we shouldn't go forward or not. I mean, the judge may agree with you, but I don't think you just skip that step. And you certainly don't make this decision without at least letting the issues that would be argued on sanctions be briefed or heard because we've never argued those to you. I would be shocked. We're -- the Order has materially changed, and it's a yes or no, today, when I haven't even discussed it with my clients."

Chairperson Handel - "All right. If I might, since -- if I could -- I'm actually -- It's a little perplexing that the County Attorney is not here given --."

Mr. Parks - "Mr. Alexander --."

Chairperson Handel - "Well then, why don't y'all go take a look at it, then we'll table it for two hours and let y'all go look at it and see. I mean --."

Mr. Parks - "The actual people -- I mean, my Board has to see this. I can't -- Mr. Strickland, Mr. McDougal, the people that are on the Board would need to see these changes. I don't think that's unreasonable."

Mr. Worley - "Madam Chair."

Chairman Eaves - "All right. Mr. Worley."

Mr. Worley - "Is there anything, and Mr. Evans has an opinion on this, is there anything to prevent us from voting to approve the Consent Order with the changes that were made this morning, and saying that Fulton County will have 48 hours to take it or leave it?"

Chairperson Handel - "Mr. Ritter, can we do that?"

Mr. Ritter - "I think not. I think not."

Chairperson Handel - "Can we do that?"

Mr. Ritter - "And, yes, I think you can vote to do that. First of all, the referral to the ALJ, let's just get this clear."

Chairperson Handel - "Why don't you come over there so we can make sure we get everything."

Mr. Ritter - "With great respect to counsel, the ALJ serves the benefit and discretion of this Board. The ALJ's role is to assist the Board in issuing an order on the facts, which is not necessary in this case. This Board does not require ALJ to tell it what the law is. In fact, the legal determinations of the ALJ are completely reviewable, not only by this Board de novo, but should someone wish to appeal an order if they haven't consented to it, they can appeal it to a Superior Court and the legal issues are de novo reviewed by the Superior Court as well. And if there weren't an appealed from that, the Appellate Court beyond that would review it de novo. In short, we don't need an ALJ, and I could, at any time, withdraw the referral to the ALJ, unilaterally. That could happen. Not an issue, Mr. Parks' client may not like that, but it doesn't matter. This Board has the authority to issue an Order based on the facts, and I think it's appropriate. There is no need for preservation after the legal arguments regarding that, and I will state, for my part, that they have arguments they feel like they haven't made and preserve, and they feel like they would lose them under the George Case -- *George vs. Natural Resource of Flint River Mills*. Constitutional claims, for instance, we would waive that because the fact of the matter is, I think that we will win those arguments if we had to go there, but I don't really want to have to fight those arguments. I think it's a waste of attorney time and resources. As I understand, Mr. Evans' change, and I welcome their, again, review of those, which we have reviewed them. They make some linguistic changes on some of the structure, but the bottom line is the same. We cannot be here

meeting after meeting, as I have been I should note, month after month waiting for the Fulton County Board of Registration and Elections, and the Fulton County Board, itself, to look at these things and decide whether they like them and come back with nitpicking changes, or no, we want to change it this way or that way. And we will be here forever as, in fact, we largely have been trying to go back and forth on this. I think it's entirely appropriate for this Board to issue an order to say if they -- they have 48 hours to approve it. But the reality is, if they don't approve it, the Order is still going to be in place and they can appeal it if they don't like it, and we can take up our issues there. But I think when they review the Order they will say, and should say, this is what we were seeking. We don't like all of it, but you know what? They don't get to like all of it. They are the Respondents, and these are very serious charges. Thank you very much."

Chairperson Handel - "All right. Anything else, colleagues? Did you have any questions, Mr. Worley, on it?"

Mr. Parks - "Could I respond?"

Chairperson Handel - "It's up to the Board's pleasure if they are interested in a response. Short though, please, so we can conclude."

Mr. Parks - "The ALJ referral was by the Attorney General. When we went there we've had multiple hearings with this Judge. That's why we have not raised any of those issues here. To come in and then say, well, we'll withdraw the referral when we haven't any of those issues because they were supposed to be made at the ALJ, that's unfair misdirection. It's just unfair. You can't -- You can't say, well, up until just five minutes ago this case was going to proceed before the ALJ, and now it's not. You have no form in which to make arguments which are substantive and important if, in fact, we don't have consent to resolve this. We may well have consent. That's the larger point I want to make. All I'm saying is, as a lawyer, with one body that I don't represent, and one body that I do represent, that reviews these things and tells me whether they agree with them or not, I'm without authority. And since they were only announced just minutes ago, and I've not even have a copy of them, it's unreasonable to not provide a reasonable opportunity for the Respondents to review it, consider it, and decide whether they can consent. So the order -- And if there is a willingness on this part of the Board, and we don't want to hear anything further and we'll either pursue it as a Consent Order,

or as not a Consent Order, but an Order imposed and waive the fact that we didn't listen to legal arguments that were scheduled to be presented to the ALJ, but now won't be because of withdrawal of the reference and there's a waiver of that, well then that's fine, because that was my concern. I don't want a Superior Court Judge, if we didn't have consent, saying why weren't these arguments raised below? I would urge you to hear them. But if that's what -- because of the need to expedite this and resolve it, which I can understand from an administrative point of view, and we have waiver, as Mr. Ritter has said, then all we would ask for is a reasonable amount of time to see if we can't resolve this by consent, because after all, that's the paramount goal. That is not something -- I don't want -- When I'm telling you my concern is about how we're proceeding procedurally, for you to mishear me. I'm not saying that my energy and my motivation is not to pursue what I think is a good solution, both for the taxpayers, for the enforcement of the Election Code, and for this Board. Everybody got something in this deal. But I don't have the ability to say yes when the people that I'm obligating, both financially and legally, where potential contempt files could be used based upon the language which I haven't even read, that would be beyond the scope of what I think a lawyer could or should do. So some reasonable time to consider it, and then, you know, this body's preference on whether it would like to hear the arguments, but only in the event we don't have consent. You don't have to hear a word if you have consent. Thank you."

Chairperson Handel - "All right. Do we want to try a motion? Mr. Evans, you had expressed a little concern, but if we were to adopt this with language at the end that said, gave 48 hours to Fulton to review and get back to us, per Mr. Worley's suggestion. I'm trying to see if we've got some consensus on that."

Mr. Parks - "Just -- if I might, I don't know where people are on it. These are -- you know, when I'm dealing with the Board of Commissioners it's like -- could it be till Monday?"

Chairperson Handel - "Well, we'll see what the body's pleasure is."

Mr. Parks - "Yeah. You just give me as much time as I have, but I don't want a not consent coming from not being able to contact someone."

Chairperson Handel - "Right. Well, hopefully, they're all well aware that today was taking place and are anxiously awaiting a resolution."

Chairperson Handel - "Mr. Worley."

Mr. Worley - "And I would think you would be able to get in touch with at least a majority of both of those Boards by 5:00 p.m. Friday?"

Mr. McIver - "I think that's restrictive. I really would give him more time. As a defense lawyer who has to run down his clients all the time, and they're never on the right continent or anywhere else, if -- unless there's some real high degree of urgency here, because we all do want this brought to a close, I would be inclined to ask Mr. Parks the day that he wants, and reach as far as we can get to him to give him that time. And then the burden's on him to find his client and get us a reply."

Mr. Parks - "I would appreciate that, and also I know the more time you give me, the more likely it is I can get consent."

Chairperson Handel - "Well, having been on the Fulton County Board of Commissioners and worked with the Board of Elections, the more time that is given, the more time there will be to nitpick and to dispute all of it, with all due respect to my former colleagues. Mr. Evans, did you have a comment?"

Mr. Evans - "No. My worry is that we're being gamed, to be honest with you."

Chairperson Handel - "That's my concern."

Mr. Evans - "I mean, I'm worried about being gamed on the spin, and I'm worried about being gamed on the time. And the only reason I say that is because I've done my fair share of gaming. And I know -- I know how it works."

Mr. Parks - "Can we make sure that we have that on the record?"

Mr. Evans - "I just need one more day. I need a little more time, and --."

Mr. Parks - "I'm not doing that, Mr. Evans. I don't even know these -- I don't even represent one of these bodies. I just don't want there to not be consent because I couldn't get consensus. That is not a game."

Mr. Worley - "And if I could just say, for the record, having been on the opposite side of a case for Mr. Parks, that's not been my experience with him. He's acting in good faith."

Chairperson Handel - "Well, again, as a former Commissioner, I can assure you that as on something as important as this they will want to be reached. I would be amenable to -- rather than Friday at noon, make it Monday at noon. It gives you -- you know, today is Wednesday. You know, plenty of time to try to reach folks. But I think we have to have an end to this, and we can't continue to keep extending it."

Mr. McIver - "Would you be comfortable with Monday at noon?"

Mr. Parks - "If that's the will of the Board, that's what I will try to do."

Mr. McIver - "That's not what I asked."

Mr. Parks - "Yes. We'll work with that."

Mr. McIver - "All right."

Chairperson Handel - "Mr. Evans."

Mr. Evans - "Yeah. My inclination is to say there -- there are two possibilities, because I don't think we -- I don't want us to spend more Board time on this. We've worked really hard."

Chairperson Handel - "We have."

Mr. Evans - "We've spent a lot of time here trying to help somebody who really is, you know, in a position of defending some pretty egregious conduct. My inclination is to say the draft that I shared with Mr. Ritter, I don't know if you gave it back in there or not, but if not, you can have it back, that I would be fine with until Monday. But in the event that that cannot be reached by agreement, that we will then impose what Mr. McIver requested originally, which is a very traditional remedy, which will be a Cease and Desist Order, a reprimand, and a civil penalty in the amount of \$750 thousand. And we will let Mr. Parks make his arguments about how many violations we have here, and we'll see how that fares. But I don't think we should spend one more minute trying to work on a solution that we didn't create, but that we are charged with a responsibility of addressing."

Chairperson Handel - "All right. Is that a motion?"

Mr. Evans - "That is my motion."

Chairperson Handel - "Second. Comment? And that will be -- let me just clarify, Monday at noon or end of day?"

Mr. McIver - "Well, let's ask Mr. Parks, again, what time Monday would you be happy with?"

Chairperson Handel - "And then I'll come right to you, Mr. Worley. I just want to make sure we have the motion right."

Mr. McIver - "Close of business?"

Mr. Parks - "Yeah."

Chairperson Handel - "All right. Well, let's, again, knowing my experience, let's have a specific time because we've tried the close-of-business route and things have been delivered at 7:00 p.m. So let's make it 5:00 p.m., if the motion maker would accept that."

Mr. Evans - "Yeah. And I --."

Chairperson Handel - "All right."

Mr. Evans - "Given what I'm proposing, I'd be fine letting him have until Wednesday, because, to me, we're not going to spend any more time on it. I mean, it is either, you know, it really is like a plea bargain in a federal court, which is you have, Mr. Defendant, until this time to accept the plea in which case the judgment of the court becomes final."

Chairperson Handel - "Can I ask, is Wednesday a Board of Commissioners' Meeting day?"

Unidentified Speaker - "Today is."

Chairperson Handel - "Today is, so -- Well, they can always do a quick special call by phone, so -- and Wednesdays are typically work days for the folks. So if the motion maker wants to do Wednesday at five, I'm fine with that."

Mr. Evans - "I think -- I think, given that, we shouldn't spend any more time on it, I'd be fine with the additional time."

Chairperson Handel - "Okay. That's a motion. Mr. Worley."

Mr. Worley - "Well, am I to understand then, that if we don't hear back from Fulton County, then by operation of law we are assessing a \$750 thousand penalty?"

Mr. McIver - "That's correct."

Mr. Worley - "Okay. Because I -- Look, I don't defer to anyone, in my belief, that this was a very, very bad situation...."

Chairperson Handel - "Do me a favor, just so she can make sure she gets a comment card."

Mr. Worley - "...a very bad situation, but I don't want to spend more legal fees after this \$750 thousand penalty is imposed -- either legal -- Well, I don't want Fulton County to have to spend legal fees, and I don't want Mr. Ritter to have to spend time appealing that issue, which would almost certainly be appealed, and then have that going on. I don't have a problem with us coming back, or having a telephone conference, if we don't hear back from Fulton County or they don't agree in assessing, you know, some appropriate penalty at that point. But I don't want to automatically assess a \$750-thousand penalty without any further consideration of the legal viability of a penalty like that."

Chairperson Handel - "Any other comment? Mr. Israel, still good?"

Mr. Israel - "Yep."

Chairperson Handel - "All right. If there's no other comments, we have a motion and second. All in favor, please say aye."

(Whereupon, there was a chorus of ayes)

Chairperson Handel - "Any opposed?"

Mr. Worley - "No."

Chairperson Handel - "Okay. We have four ayes and one nay. Thank you very much. Our next item will be case reports. We've got three closure cases. The first one is 80005, Gwinnett County, Catherine Horton."

Mr. Chris Harvey - "Madam Secretary, members of the Board, these cases are being handled a little bit differently."

Chairperson Handel - "Oh. I'm sorry. It's under Tab 4, colleagues. Sorry."

Mr. Harvey - "These are being handled a little bit differently than the traditional cases we've had. In the 2008 Presidential Election we received a lot more complaints than normally. When got a complaint that merited some initial preliminary investigation, we would investigate that case. If it turned out there was nothing substantial or nothing that we could substantiate, we'd close it in this fashion in order to present it to you for your consideration for possible closure. This first case involves an elector in Gwinnett County named Catherine Horton who went to vote on Election Day. She was told she was not on the elector's list. She was allowed to vote a provisional ballot, since there was a dispute. The investigation revealed that Ms. Horton had been transferred -- her registration had been transferred to Fulton County in November of '08. And apparently, Fulton County got the wrong Catherine Horton. They got a Catherine Horton who had a different date of birth. So Gwinnett County accepted her provisional ballot and corrected her registration back to Gwinnett County. So the woman was allowed to vote and her voting status has been restored. So it's recommended that this case be closed."

Chairperson Handel - "Thank you very much. Any questions on this case?"

Mr. Evans - "So moved."

Mr. Worley - "Second."

Chairperson Handel - "All in favor, please say aye."

(Whereupon, there was a chorus of ayes)

Chairperson Handel - "Any opposed? There being none, that one is closed. The next case is 80006. DeKalb County."

Mr. Harvey - "This case came in as an anonymous complaint from somebody in a printing or copying shop who said there had been a woman coming who had been making copies of Georgia identification cards, not voter identification cards, but the ID

cards that are issued by the Department of Driver's Services. They had been cutting and pasting names on top of other licenses. The complainant did not identify themselves either by name or by business. They did send in a copy of an ID card that had a name on it. The number on the card is not a legitimate number. It appears to be a completely counterfeit ID. The woman's name on it we were able to track the former location where she lived, it was a rental property. The person said I knew her name, I don't really know where she is. The woman was never registered. And there doesn't appear to be any connection to voting. So it's recommended that this case be closed."

Mr. Evans - "Is there any reason we would not ask the GBI or law enforcement to investigate? I mean, to me and Mr. McIver who's taken a great interest in this over the years I've been on the Board of these counterfeit IDs. It would seem to me that whatever the copying place, they may have credit card voucher, they may have other data. But if we got a trail to run, we need to run it."

Mr. Harvey - "Right. Well, I understand that, sir. And we can refer it to DeKalb County Police for furtherance. Just to make clear, we don't know where the shop was. We don't know who the complainant was in this case. So all we have is a name of a woman on an ID card that is a counterfeit ID card. There is an address. We spoke to the only person that knew a connection and said that she had lived there in the past and thought she had entered a facility since then. But I'll be happy to refer it to --."

Mr. Evans - "Yes, I think you should. There is, in fact, if I understand this correctly, and my wife serves on the DDS Board, and so I only know indirectly. But I think they actually have a dedicated person or unit whose job it is, and I would at least get them this ID, because this name may match up with another name that they have in their databases participating. So I would say at a minimum, Madam Chair, I would move that we refer it to the appropriate law enforcement entity and then close our file. Because I agree, we don't have any evidence of an election law issue. But I think we would be remiss if we didn't take the step of referral."

Mr. Worley - "I second that motion."

Chairperson Handel - "A motion and a second."

Mr. McIver - "Just by way of discussion, DDS does this exactly,

Mr. Evans."

Chairperson Handel - "Uh-huh (affirmative), they do."

Mr. McIver - "And that was going to be my suggestion is that we shoot it to them. Perhaps, they would defer to GBI, I'm not sure. But DDS really is very dogged about these kind of issues. I'd start it there."

Chairperson Handel - "And I'd like to ask as we go into GEOA, if we could have less one when the IG group does their presentations, can we talk about fraudulent ID cards and walk through that with folks? Because I think they need to start to be cognizant that that could be a potential issue out there. All right. Any other questions? Motion and a second. All in favor."

(Whereupon, there was a chorus of ayes)

Chairperson Handel - "Any opposed? All right. Next case is 80007, Gwinnett County."

Mr. Harvey - "This case involved an elector named Howard Sorsdahl, who attempted to vote on the last day of advanced voting in the November election. When he was looked up by the Gwinnett County election officials, they had no record of him ever being registered. Mr. Sorsdahl contended that he was registered. He had two formerly issued precinct cards, the last one issued in 2002. They offered him a provisional ballot, but he declined to take provisional ballot. He contacted me directly. I spoke with him. He was deleted as an active voter in 2003 for not having voted in the last two general elections. His name was purged from the system in 2003 by the Secretary of State's Office, which is why Gwinnett County didn't have any record of him voting. He declined the provisional ballot. He was told about reregistering. And up until the last day or so he has not reregistered. We recommend this case closed."

Mr. Evans - "Was he given notice of today's hearing?"

Mr. Harvey - "No, sir."

Mr. Evans - "I would generally prefer that they -- that before I dismiss someone's case, they be given a chance to explain why it shouldn't be dismissed. So I would move to table to give notice and then have this up on the next one. Although, it does sound to me like as if Gwinnett County did everything that you're

supposed to do, which is offer a provisional ballot, check it out, and then I don't see anything. But I'm a little remiss in if we didn't give notice."

Mr. Harvey - "Yes, sir."

Mr. Evans - "Second."

Chairperson Handel - "All right. I have a motion and a second. Any other questions? All in favor?"

(Whereupon, there was a chorus of ayes)

Chairperson Handel - "Any opposed? All right. Thank you. The next item we just put on here if we need Executive Session. But in talking with both the Attorney General's Office and with outside SAGS, they said they do not have anything new to report. The next item is Elections Update and Legislative Update. Do you have the legislative stuff, Wes?"

Mr. Taylor - "No, ma'am. But Mr. Simms is on his way."

Chairperson Handel - "Oh, he's on his way. So you go ahead and get started. Great."

Mr. Taylor - "Madam Chair, members of the Board, I am quickly going to give you an update as to the activities of the Elections Division this year in 2009. We have a number of projects that we have undertaken and completed so far this year, and a number that are underway. At any point if you have any questions, obviously, please interrupt me, and ask and I'm happy to talk about any and all of it. What we've done so far this year is, initially, we responded to the election assistance commission's survey for the November, 2008, general election. We're under statutory obligation to respond to that survey. They did substantially alter the survey for this year, that took more than 200 hours to actually complete and to perform. But we did get that out into the EAC. We conducted -- We have already conducted a number of training sessions, one being from municipal clerks in Athens that we do, I think, almost every year. That was in February. We also conducted a training session for nursing home administrators on March 24th, which is the very first time that this office, that I'm aware of, has conducted training sessions for nursing home and assisted living facilities. That went very well. We have produced and provided a written material with guidelines as to how to assist throughout the entire process, as well as a power-point

presentation. We have three more scheduled that I will talk about later. We've also conducted regional meetings with local election officials. As you've heard me talk about before, we have done this a number of times around the State now. And we talk about a number of different issues. One, that I think or a couple that I think you'll be -- might be interested in is the DDS signature imaging and their voter registration project that they have underway. Mr. Evans, I'm sure you're aware, and Mr. McIver, the Department of Driver's Services is updating their database. They're updating their entire system. The delivery of voter registration information will be vastly improved. This should take place in August or September of this year. This process should begin. What that will mean for elections officials around the State is that they will get DDS information, including the signature. All of it will be electronically delivered, which is different than it is today. We should, if everything goes well, be able to eliminate the need for paper from the DDS to elections officials. The other aspect of this that should be a great benefit to voters, as well as elections officials, is applicants for driver's license will now get a paper receipt when they apply for a driver's license. It will show a picture of the driver's license once they are approved. On that paper receipt, there will also be a statement that will say one of two things. It will say you decided to register to vote, or you did not decide to register to vote for any of the number of reasons that there are, such as you're not eligible, you've already registered. But at that point in time, the individual will be able to say to themselves and to DDS, this is correct, this was my intention. And as I'm sure you have all heard over the years, a number of people have -- without that paper receipt, some people either don't remember correctly or that may not have been communicated as efficiently as it could have been before. During that we talked about this year is a year for voter list maintenance. Those activities are taking place, the national change of address form, our statutory responsibilities on updating changes of address. On voters, their status being changed to delete status if they haven't -- if they're on the inactive list and haven't voted in the last two general election cycles, as well as -- Well, those are the large ones that are taking place right now. As well as the no contact list. I'm sorry. Where people will be moving to the inactive list because they haven't had any contact with their elections officials in the last three years. We've also talked at length about the need for training of designated agencies, and their activities with respect to voter registration. We have a number of pieces of information that currently on the internet. We are constantly in contact with these different

designated agencies, such as librarians, Department of Labor. And we have talked also with the election officials about their responsibility to conduct training of educators, of folks in public schools, private schools, colleges within their counties. As you know, under the statutes, the principals or their designees are actually deputy registrars, and the registrars in the counties have the obligation to provide proper training in how you register students and employees. And so we have taken the affirmative step to make sure that folks are complying with their statutory obligations in this regard. The other is request for RFP for recommendations as to the statewide voter registration system. We are undergoing this project this year. We expect that to be completed this year, which is a complete holistic review of the voter registration system, along with recommendations for the future of where we go with it, either a new or improved voter registration system itself. That was scheduled to be actually out and in the system yesterday. DOAS informed us that they ran into some technical issues because it has to be all done electronically. It should be out today. And we were in close contact with DOAS the whole time. But it will go out today."

Mr. Harvey Davis - "It's out."

Chairperson Handel - "It went out? Oh, great. Awesome."

Mr. Taylor - "Perfect. So it's out. Ongoing projects, we have a number of things that we're dealing with. We are overhauling and creating a certification course materials in the certification courses for election officials. The reasoning behind that is what you all have talked about the entire time I've been here, which is if we improve the training, if we improve the knowledge and information, and the actual being able to digest that information by elections officials, we should see far less issues on election day than we do or have in the past. So we have in -- In keeping that in mind, we have created course manuals were there have not been any before. We have improved the delivery of the material, and that will only be evolving as we go forward. We are preparing continuing education training materials for nursing home administrators, as well as librarians. We have already talked with both of their licensing boards. We have talked with the continuing education folks that are actually in charge of that. We will be getting material that will allow them to actually get CE credits. And especially for -- What's interesting, the nursing home folks, it will help in all likelihood into their ethics requirements. And the lawyers on the Board will know that's the hardest one to

get. So we should see -- be a significant benefit for us in our communications with those folks that assist voters. The new elections supply ordering and inventory software, that is up and running. All counties now have a login and password to be able to order their elections supplies in time. The biggest issue for there is there have been sometimes supply ordering and delivery issues in the past. With this new system in place, that should be a thing of the past. We should not have any issues with the delivery of elections supplies. Implementation of the new online training system, that is going very well. We now have about 65 percent of the counties are now actually logged in to the new training system. That system, I think I talked about with you all in the past, it is a place where any of the training materials that our office produces will be available at the click of a button for any election official around the State. All right. The elections supplies, I think I mentioned this the last time. We are -- We have done a review of all elections supplies that we provide on Election Day. And we are in the process -- we should have all of the forms, with a holistic approach, taking a holistic view of all of the forms and supplies that are used throughout an election to make sure there's not redundancy, to make sure there's not confusion, either for the election official or for the voter, and to address all of the issues that we've all heard over the years in a holistic fashion, rather than a piecemeal form by form. We've already met. We've already reviewed it. We've already gotten input from election officials around the State. And that project should be completed by January -- I'm sorry -- by June, that is the project completion date, when we expect to send proposed forms to the Department of Justice for pre-clearance. The certification courses for municipalities, that is being created. We are creating the certification course for municipalities, that will be done and available and ready before the first municipal course that's taught in June. We already have four scheduled, training sessions and the certification sessions in June and July. Let me see. The credit for voting for absentee ballots by precinct, this is that one where the absentee ballots are loaded into one specific absentee precinct. There is now, we are working through the project of looking at the alternatives of how you move or how you are able to give credit for those absentee ballots for the voter's precinct, where the voter's actually -- where the voter's original precinct would be. And that project is underway and is moving forward very well. And the complete redraft of the GO Manual. If you're not familiar with this document, it's -- it is the document that voter registrars use in entering information in the voter registration system. We are doing a complete revision

of that manual in a how-to format, so that it will be easier for registrars in using the VR system, whether it's the current system as it is, whether it's a brand-new system so that we can see going forward less issues of keying entry errors or whatever it is. It should be a very simple, easy manual. I will tell you from the manuals our office has produced, since I've been in it should be a vast improvement over what they have right now."

Chairperson Handel - "Yes."

Mr. Tailor - "Okay. Scheduled events, I gave you both -- you all have two handouts. And I've just put the relevant election dates, registration deadlines there in the handouts if you want to look at any of those that are coming up. Also, we have, I wanted to let you know, the 15 different training sessions that we have already scheduled for this year for various different groups. And if you have any questions about that, I'm happy to talk about it."

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

Mr. Evans - "One of the items we talked about that we were going to follow up on after the dust settled from the last election was addressing expanded capacity for early voting. Which is, if you recall, the last time we experienced a surge in early voting. And in anticipation of that being kind of an ongoing issue, which is people take advantage of convenience. One of the things we talked about was expanding the number of facilities that could offer advance voting. And I was just curious as to where we were on that project."

Chairperson Handel - "That's in the legislation, which is perfect transition. So he'll get that on legislation. Did you have any other thing for Wes' report?"

Mr. Worley - "Well, maybe this relates to legislation, as well. Your mention of training for school officials?"

Mr. Tailor - "Yes, sir."

Mr. Worley - "And your list of scheduled training dates leads me to ask what preparations are being undertaken to train, particularly school officials who registering new voters or any of these people about the legislation that requires people to present birth certificates when they register, because that's obviously --."

Mr. Tailor - Yes, sir. And I'll let Mr. Simms address the legislative side of that. But from a training perspective, we will be putting that material together. They are deputy registrars, so the training material that we'll provide to the registrars and the information will also be equally as applicable to them. And of course, as you know, the amount and the types of IDs aren't just limited to birth certificate. But we'll make sure that folks understand what the law means to them and the obligations under the law. Yes, sir. Oh. And I'm sorry, just one last thing. We are addressing in training issues as well in preparing for early voting for future elections and how -- what worked and what didn't."

Chairperson Handel - "Mr. McIver."

Mr. McIver - "Before you finish, Mr. Tailor."

Mr. Tailor - "Oh. I'm sorry, Mr. McIver."

Mr. McIver - "I continue to be concerned about unauthorized groups involved in registration, ACORN being one. Let's just pick on one. Is there any thinking about an outreach to organizations like this to either have them do a far better job than perhaps even comes close to complying with Georgia Law? Or perhaps alerting them to the actions that might be brought against them if they continue in the way they've been doing? There are other organizations besides ACORN. I don't mean to single them out. But they clearly have a reputation for this kind of activity throughout the country."

Mr. Tailor - "Right. Yes, sir, there is. We've also been in contact with the attorney for ACORN about possibly possible rules, issues that could address some of those issues that we've seen that I'll bring before the board for your consideration."

Mr. McIver - "But that's an ongoing effort in your division?"

Mr. Tailor - "Yes, sir. Thank you."

Chairperson Handel - "Thanks, Wes'. As you can see, there's still a lot going on, even though it's not a presidential year, which is good."

Mr. Robb Simms - "Madam Chair, members of the Board, I'm Robb Simms, Deputy Secretary of State. I've got hopefully what will be a very brief update on the legislation, and legislative session, especially since we are on day 39 in the process."

Specifically, Mr. Worley, I think this touches on part of your question. We've had basically -- and I apologize, there's a duplication on HB 45. On the previous citizenship issue, there is one piece of legislation that is currently still in process, if you will, in the session, that is Senate Bill 86. It is pending in the House Rules Committee and is eligible for the supplemental calendar which will be contemplated this afternoon, which means if it comes out of Rules, it could be heard this evening or on day 40. We've discussed the specifics of the legislation at a previous meeting. But in brief, it requires proof of citizenship for voter registration purposes, that is not to say that a birth certificate would be required at the time of turning in a voter registration form. But simply, it would be required before the registration is fulfilled in the system, if you will. Other types of identification are included in the Law, include driver's licenses, passports. And there is a provision in the legislation specifically that states that the State Elections Board can promulgate rules to address questions in circumstances that may arise through the implementation of potential implementation of this law to create rules to give the Board some -- the ability to look into different types of documentation or application, if you will. Absentee ballot and early voting, this Bill is currently before the Senate, it's HB 86 representative Fran Millar. This really mirrors the pilot program that the Elections Division worked with Gwinnett County on in the 2008 elections in dealing with the tabulation and the reporting of absentee ballot results and having them specific to the precinct. For practical purposes, this really shouldn't have an impact on the counties or on the State as we've established through the pilot the way this can work, there shouldn't be any real cost associated. In fact, it may help lessen the burden just slightly for the counties in the production of absentee ballots and things of that nature. Address confidentiality, this is what we call Project Vote Safe. As we discussed at our last State Election Board meeting this legislation allowed an individual who had a protective order entered on their behalf, typically in spousal abuse situations, to have their information kept confidentially or for it not to be able to be released to the public through your voter registration list and things of that nature. All that practically means for election administration purposes is they register to vote like any other registered voter. They're in the system like any other registered voter. There would be a tag or identification as to their registration in the system that would indicate that when information requests are requested that this information is not to be made available to the public. Elections Clean-up, that's House Bill 540. Mr. Evans, this

touches specifically on the question you raised on accessibility for early voting in additional locations. That was a specific provision included in the Bill. Basically, that part said that the counties would have the ability to contract with private facilities to use the facility for election administration purposes for the conducting of elections, specially in the early voting process. There seemed to be differences in opinion in the last election cycle among several counties as to whether or not they could do this or they couldn't. So we were just trying to codify that in the law just to make it clear that counties could. Unfortunately, as of noon yesterday, this Bill did not -- this Bill is officially dead for the remainder of the 2009 Session. It died in Senate Rules. I don't -- I can't speak for any member of the Senator or for Senate Rules as to what their reasoning -- reasons were."

Mr. Evans - "It was because we addressed the campaign materials."

Mr. Simms - "I'm not sure. We --."

Mr. Evans - "Well, your sources are probably better than mine."

Mr. Simms - "Well, I don't want to venture off into speculation or political discussions. However, I will say there seems to be a question about early voting in and of itself, and that this was somehow going to some expansive effort to even have earlier early voting, and more early voting and things of that nature. As you all are aware, and as we try to make clear, both through the process and yesterday that that's just not the case. This was just allowing the counties to have the ability to contract for and have an additional location available if they thought it was necessary, considering the volume of early voting and the election. That was one thing that was brought to our attention. And I don't know if that was the reason for it. The question about the display of campaign materials had not been brought to our attention. And just for the Board's information, this Bill passed 170-0 in the House. To have any Bill pass unanimously in the House, let alone one dealing with elections is pretty remarkable. And it could pass out of Senate Committee without any real reservations being expressed either, so I just don't know."

Mr. Worley - "If I might. What was the issue about campaign activities?"

Mr. Simms - "There was a provision in the Bill -- and I don't

have the legislation specifically in front of me, that kind of addressed the location in which campaign -- or the restriction in which campaign materials can be displayed in proximity to a precinct, into a polling place. And there was also a provision to kind of clarify the exit polling process for media outlets. You all may recall that there was litigation. I think it was *NBC v. Cleland* from back in the late 80s, in which the media actually won an injunction and got relief for, I guess at that time there were restrictions even greater than what we had been putting in place in practice for where they could access voters as they were exiting. That's just part of the law. It never changed. It had never been updated since that ruling. So we're just trying to clean up -- basically, make the law say what had been the practical practice and application for the State for many, many years."

Mr. Evans - "It's a cruel part of legislative politics, that a single member of a Rules Committee in either chamber can bottle up a piece of legislation because their pollsters can't get access to exit polls."

Mr. Simms - "Mr. Evans, of all the things as even as election-oriented that we were working on this year and just things in general, our Elections Clean-up Bill was by far the least controversial of anything we were trying to --."

Mr. Evans - "No, no. Listen, I feel your pain. I completely agree with you. I'm in total agreement. However, I also know how Rules Committees work. My question, though, related to, and I think we talked about it at the January meeting, that by rule we could define government buildings."

Mr. Simms - "And I think that is something -- I don't necessarily -- I won't say the we disagree with that at all. I think our position was let's try and get it fixed into law."

Mr. Evans - "I have no complaints about the legislation, other than the ones that I voiced on publicly on one of the other Bills, which need not be revisited today. No. Mine is much more narrow, which is on putting aside -- assuming the Bill it is dead for this session, but in contemplation of building toward next year, it does strike me that we need to figure out ways to expand the availability, so that we don't have lines at advanced voting. One way the Board can do that without the Legislature, you know, having to be brought into the issue, is to use our rule-making power to address the definition of government buildings. That process takes a lot of time, because

we have to submit the notice, we have to permit public comment, we have to take public. We then have to adopt the rule, then we have to train on it. And in order to have all that ready by November 10, or preferably by, you know, July 10, when we start having the primaries, we would have to start that process relatively soon. What I would be hopeful is you and Wes, and whoever else you deem appropriate, would say here are some alternatives through the rule-making power for expanding the facilities that counties, if they so shall desire, can make available to increase the number of advanced voting facilities. And if we could get that by, say, the end of June. It's just a recommendation. You know, just say, here's what we would recommend within the boundaries of the law now that it hasn't been changed, that we can give some relief to expand the facilities that would be available, that would be great."

Chairperson Handel - "I think we can. One of the challenges that we ran into, which is why we wanted to see if we could get it changed in the law, was that county attorneys were saying that if it was a, quote, government building, the County had to physically own that building. Where we all interpreted, well, that could mean a lease. So what we need to sort through is can we by rule make a lease. And then I think as we do that, with or without the legislation, even if it passes, we probably need to put some criteria in place around some basic parameters that a facility must have in order to be a viable voting space, so that's definitely doable."

Mr. Evans - "I completely agree. And I wholeheartedly supported the Clean-up Bill. So there's no issue there. We gave it a whirl. It didn't fly. And so now we have to figure out the other ones. but I don't think people standing in line should ever be, you know, we've defaulted to. So I agree with the Secretary, I think there are many things that we can explore. My only point is we have to start exploring them really early because the lag time for the approval processes is so long."

Chairperson Handel - "Yes."

Mr. Evans - "And we have to get DOJ approval. I think once, Tex, you calculated that it took us about 180 days from the concept phase to the implementation phase."

Chairperson Handel - "The other thing we need to look at, too, is kind of that the DOJ approval part of it. Because for -- If you make a blanket rule that the counties have to have whatever a minimum of x-sites. But then it is an off-year election. I

mean, one of the issues that was expressed to us from the counties and that we observed was that the process currently doesn't give them any flexibility. So maybe one thing we need to think about is are there a set of criteria that would allow a county to, if they had five sites initially, bring on however many more. So we just have to sort through that if there is a way to do that to give them some flexibility. That would then still meet with Justice Department approval."

Mr. McIver - "I have a question."

Chairperson Handel - "Okay. Mr. McIver."

Mr. McIver - "Mr. Simms, as we all know there are two things you never want to see made are sausage and law. So my question really goes is this Bill really dead or is it still in a status that it could be resurrected very near the end and come back to life?"

Mr. Simms - "It's really dead in -- for the Senate consideration of the Bill, which was that original House version. As is always the case in these waning days of the session, you have a mad frenzy among all parties involved in all legislation to find relevant legislation and their title or at least subject area that they can tack language on that didn't make it through the process. We've looked and continue to look at bills that are still for consideration, particularly at the House, to see if there would be a way to offer amendments to include some of these provisions. The unfortunate thing is the elections legislation that was being done this year in large part was being driven by this office. So there wasn't a multitude of bills, you know, going back and forth on all these different issues. So our options are severely limited. But that's what we're trying to ascertain right now. Of course, referencing to the sounds-making analogy, it's been my experience, and I'm sure the Board's as well, that there's a lot of bad law that's made on the floor of the House and the Senate in the waning days of the legislation that ultimately has to be revisited in subsequent years, because there's just paper flying on the amendments and amendments. So I want to make sure that if we go down this route that we've got it very tightly written as to what we want to do. It's from the legislation, and it's not controversial where it brings on a whole new life of its own. So, in short, we're going to pursue those opportunities if they're there and see if we can get a lot of this stuff addressed."

Chairperson Handel - "All right. Anything else, colleagues?"

Mr. Evans - "Move to adjourn."

Mr. McIver - "Second."

Chairperson Handel - "All in favor."

(Whereupon, there was a chorus of ayes)

Chairperson Handel - "Thank you very much, folks."

(Whereupon, the meeting adjourned at 12:55 p.m.)