

SPECIAL CALLED  
STATE ELECTION BOARD MEETING

TRANSCRIPT OF MEETING

August 12, 2009  
10:15 a.m.

Sloppy Floyd Building  
2 MLK Jr. Drive, SE  
5th Floor, West Tower, Room 512  
Atlanta, Georgia

**CHAIRPERSON HANDEL:** I call the meeting to order. I do have a quorum with myself and Randy Evans and Dave, with our staff. We're good to start. We'll call the meeting to order. We'll start with the invocation followed by the pledge of allegiance.

(Whereupon, the invocation was given.)

(Whereupon, the pledge of allegiance was recited.)

**CHAIRPERSON HANDEL:** We just got word that Mr. Israel cannot join us now, but Mr. McIver will be here in about 15 minutes. Is there a way to turn these microphones down? I think we have some interference. I think it might be these little ones. Can everyone hear me okay? All right. We have -- the first order of business, Shawn, do you want me to go ahead and just call these three cases together?

**MS. LAGRUA:** Yes. They are all parts of a --

**CHAIRPERSON HANDEL:** All right. We have a combined case of State license board cases, 2008, Number 84, Number 104, Number 134 involving Fulton County. If Inspector General LaGrua could give us a quick overview, then we'll have an update -- just to refresh our memory -- we'll have an update from Mr. Ritter from the AG's office and then hear from Mr. Parks.

**MS. LAGRUA:** Thank you, Madam Chair. As members of the Board may recall, we heard this at the last State Election Board meeting. It involved allegations of misconduct on the part of Fulton County involving both the November 2008 General Election and runoff. The most significant of the violations involved absentee ballot issues that are not being sent out on time, people not receiving them and not being able to ultimately go. There are a number of other procedural issues at the actual polling places both during the primary -- or during the general election and during the runoff. At the Board meeting, these were presented. The State Election Board voted to refer these to the Attorney General's office but also gave Lee Parks, who was representing the majority of the respondents in this case, 30 days to provide a response to Mr. Ritter and then gave Mr. Ritter some time to respond back to Mr. Parks. If that's sufficient, then I'll turn it over to Mr. Ritter at this time.

**CHAIRPERSON HANDEL:** Okay; very good.

**MR. RITTER:** Thank you.

**CHAIRPERSON HANDEL:** Mr. Ritter, do you want me to go through the questions or wait for --

**MR. RITTER:** I'll wait for just a minute.

**CHAIRPERSON HANDEL:** Okay; thank you.

**MR. RITTER:** Again, really, this meeting today is by way of update; the meeting on May 12 where probable cause was found as to the violations, and probable cause was found as to every violation as to which it was recommended that probable cause be found in the inspector general's report and not on the ones in which probable cause was not recommended in the

inspector general's report. But, at that time, Mr. Parks requested, on behalf of his clients, which is a lengthy list of clients, as I understand it, to respond; and he did. He responded on June 12, disputed a lot of the facts, agreed with a fair number of the facts. In fact, I think the most important aspects of the case which were absentee ballot problems that occurred in Fulton County are effectively admitted by his response. I would anticipate that we would go looking for substantial sanctions on that at the time when that is finally brought before this Board. Of course, I'd like to have the entire case stay together. Based on that response, we discussed this, Mr. Parks and I. I went through this with the inspector general's office and their investigators in great detail. On the 30th of July, we sent a detailed set of stipulation of facts back to Mr. Parks trying to get stipulations on what I think are all of the relevant facts in this case. Certainly, I think that most of the key facts should be able to be stipulated by the parties to avoid trial or at least produce some of the trial burden on the parties should we have to go in front of ALJ. Frankly, I'm ready to go in front of ALJ today. But I do think that there are several factors that suggest we should probably spend a little more time negotiating this case. First of all, they have had since the 30th of July to respond to our stipulation of facts. I haven't gotten a formal redline copy of the response back. I did receive a letter this morning from Mr. Parks asking for more time. My understanding is -- and I'll let Mr. Parks address this further -- they have, in fact, three new board members, which he met with for the first time last night. They have a new director of the license division. They also have Norman Underwood who is here with us today who will be functioning as an auditor based on the prior case that was in front of this Board, and I'm sure he would like to look at the situation as well. To be candid, there is one other reason why I would like to wait. And, that is, I think their efforts that are going on right now are to make sure that the upcoming elections, particularly the November election in Fulton County or in the City of Atlanta, which may be hotly contested is one that our case isn't interfering with. Right now, this case is on the fast track. I could file a Statement of Matters Asserted by the end of this week without a problem. I'm happy to do that if so directed by this Board. I do think, however, that we can probably use a couple more months of negotiating. It would be imprudent to really proceed on this case aggressively for that November election. That's where we are. I'm not going to go through the detailed issues in the case because I think that's premature. Although, I have the response, which is about 40 pages long. So I've got admissions on a number of them. I think it's premature to go through all of those. I will say again though, to reiterate what Inspector General LaGrua stated, that I think that the most important violations have been admitted by them. We're really in posture now to talk about what the appropriate remedies are. Lastly, in that regard, let me know note to the Board, if you do not recall this, for whatever reason, Fulton County Board of Registrations and Elections is not a respondent in this case. We have, in fact, by my count ten individuals who are respondents including Representative Ralph Long who is not represented here today by Mr. Parks. In fact, there are three others who are not as well all for relatively minor claims but not the Board itself. The Board itself is not a respondent. Any guide that you can provide us as to how we should proceed with sanctions in this case is welcome. Thank you.

**CHAIRPERSON HANDEL:** All right; thank you. Any questions before I give Mr. Parks an opportunity to --

**MR. EVANS:** I just want to make sure procedurally I understand where we are. Procedurally, we had found probable cause on a number of issues. You are now in the process of handling it on behalf of the attorney general to either resolve it by trial or by agreement?

**MR. RITTER:** Correct. I would think that what we would present to the Board would be ultimately two documents, perhaps three. Those two documents are, first, stipulation of facts and, secondly, a Consent Order. Those two separate documents would be presented separately in this case because I think there are so many issues that we can't combine into one single order. The third possible document, if we have to go to trial, we are going to present the initial decision of the ALJ as well for consideration of the Board in supporting evidence for the Board to review. But, if we're not able to stipulate, that would be the situation. If we are able to stipulate, then I'll expect to stipulate. Then we'll have a proposed Consent Order. In the prior case, Mr. Evans, the primary problem with coming to our Consent Order were disputes, in my opinion, over what the appropriate remedy would be.

**MR. EVANS:** I guess we will wait to hear from the rest of the folks who need to address this. Candidly, in reviewing this in preparation for today and in preparation for the earlier May 12 hearing, it struck me that there was a distinction between the conduct that occurred prior to the close of the polls and the conduct that occurred after the close of the polls relating to the absentee ballots. I viewed there to be a qualitative difference between either negligence or just failure to comply technically and specifically with all of the various requirements that we have for the operation of good and solid elections that can have the integrity for voters and the conduct that involves the absentee ballots where it appeared that there was a much more conscious, deliberate, or considerate decision not to abide by the directions that were being given by the Secretary of State. So, honestly, I will tell you that, while I appreciate your preference that we treat these together as one, I am a little reluctant just because I see such a qualitative difference between the two categories of conduct.

**MR. RITTER:** Fair enough. I want you to know that -- well, first, by point of reference, I went through the summary of investigation. Secondly, what I saw was the actionable counts of which, based on the numbering in there, was either 23 or 24 depending on how you count; 23 or 24 different potential violations that were found probable cause by this Board. We've got admissions on many related to pretrial or pre-election conduct and some during the election conduct and then some related to runoff issues after the election. But there are contentions throughout that process of each stage of that. The absentee ballot issues both occurred on elections day and prior to elections day. Again, those are substantial. I'm not quite sure how I would divvy those out. My view is just one. There are a number of different separate acts, but there's one continuous course of conduct in this case, which we intend to prove. There is an entire singular story to be told about what was going on in Fulton County, which I would like to tell if I have to go to an ALJ.

**CHAIRPERSON HANDEL:** All right; if I can just ask one question. So, if this has to go to the ALJ, if we split up the case, will we only in that courtroom be allowed to talk about those specific violations and not be able to show the whole -- the broad picture of the breakdown?

**MR. RITTER:** I think that's right.

**CHAIRPERSON HANDEL:** Okay. I'm just trying to make sure I understand the difference.

**MR. RITTER:** I don't want to prejudge the evidentiary issues that will occur there.

**CHAIRPERSON HANDEL:** Sure.

**MR. RITTER:** I think there are questions about that. I don't know how it would be split out right now.

**CHAIRPERSON HANDEL:** Okay.

**MR. RITTER:** But, if we were to come to a proper Consent Order as to the ones that are already admitted, leaving the other ones, then I think we have how that was tried and so forth.

**CHAIRPERSON HANDEL:** Okay; all right. So, basically, what you need from the -- and Mr. Parks, we will definitely hear from you in one second; just make sure that we know what we need to determine today. One, if we're going to go straight to -- there comes Tex. Let the record show that Tex McIver is here. You came right on point. We're talking about what we need to do today to determine if we're going to go expeditiously to an ALG or continue attempting to negotiate.

**MR. RITTER:** Right.

**CHAIRPERSON HANDEL:** With either scenario, provide some guidance to you around not prejudging but some general guidance around sanctions. The last time we had the funds that we put dollars in et cetera on the route that we're going to go.

**MR. RITTER:** Exactly.

**CHAIRPERSON HANDEL:** Could you, for the Board, so that we will have this in our minds, give us a timeline for -- you mentioned that the ALG path was rather expedited at this point. Could you give us sort of that timeline so that we'll have it in our minds?

**MR. RITTER:** Well, just as background, depending on our workload, it normally takes us six months, sometimes a year before we can proceed to an ALG. We have so many cases. That's not just election board cases. But the group that we work in with Ann and others, we have numerous number of cases. We have typically 30 cases a month that come in. So we're on an expedited time frame right now since probable cause was found on May 12. We just received a response a little over -- about a month and a half ago. I'm happy for it to be that way. This is a very important case. Now, if we go in front of an ALG, if I were, for instance, to file a Statement of Matters Asserted which is a complaint or an initiating document in front of an ALG, typically, they would have 30 days to respond and a trial would normally set 45 days or later after that. In this case, right now, without stipulations and so forth, I think we're looking at at least a week-long trial given the 23 different counts that exist. After that, it takes ALG 30 days to issue an order. After that, it comes in front of this Board. Typically, we have a 30- or 60-day period for that. It would be unusual in a case of this request for us to go to trial within 45 days after a complaint would be filed. But I can't say that wouldn't happen. I think that the Office of State Administrative Hearings would work with us if we wanted to do it that way. That's what the posture is. I don't think, given that that's the case, however, that it would be wise to do that since that would put a trial really basically in the core of when the election is occurring this fall. But, that's again, up to the Board.

**CHAIRPERSON HANDEL:** All right; Mr. Parks.

**MR. PARKS:** Thank you.

**CHAIRPERSON HANDEL:** Mr. Parks, before we get started, if I could go through the list of respondents just so that we have on the record who you represent and who you don't; just so we have clarity on that, that will be great. I will start with -- is it Waheri Ojaniky?

**MR. PARKS:** Yes. I represent her.

**CHAIRPERSON HANDEL:** April Haude?

**MR. PARKS:** Yes.

**CHAIRPERSON HANDEL:** Brenda Williams?

**MR. PARKS:** Yes.

**CHAIRPERSON HANDEL:** Beverly Walker?

**MR. PARKS:** Yes.

**CHAIRPERSON HANDEL:** Dejuan Smith?

**MR. PARKS:** Yes.

**CHAIRPERSON HANDEL:** Shawn Kelley?

**MR. PARKS:** No, I do not. That is the gentleman that is on -- he's no longer with the department. He's on active duty in Iraq. We don't represent him.

**CHAIRPERSON HANDEL:** All right; Christopher Boddy?

**MR. PARKS:** No.

**CHAIRPERSON HANDEL:** Joseph -- is it Malger?

**MR. PARKS:** Yes.

**CHAIRPERSON HANDEL:** Ralph Long?

**MR. PARKS:** No.

**MS. LAGRUA:** Madam, Chair, Mr. Malger was the gentleman with Christopher Boddy at the North Precinct that was under the influence at the time.

**MR. PARKS:** I don't represent him.

**CHAIRPERSON HANDEL:** He is a no. I got it. So the individuals that you do represent are Ms. Ojaniky, Ms. Haude, Ms. Williams, Ms. Walker, Ms. Smith?

**MR. PARKS:** Yes, Madam Secretary.

**CHAIRPERSON HANDEL:** Okay. Then also, the Fulton County Board of Registrations and Elections has pointed out colleagues. They are not a respondent on this particular case, the individuals. So I guess we need to have -- So, Stefan, what do you need from us around that just to make sure everybody understands that the Board of Elections isn't a respondent?

**MR. RITTER:** Mr. Parks will address that.

**CHAIRPERSON HANDEL:** Okay; Mr. Parks.

**MR. PARKS:** Thank you. Again, just by way of some background on the chronology of this, we did have our meeting here on May 12. The cost of this 20-something odd allegation, I think, we all agree that it's a more comprehensive way of responding other than to submit something in writing. We submit a 41-page response based upon our investigation review of the IG Report. It is detailed factually, and it gives the legal position on those positions -- those matters where we have a difference of opinion on the statute by Mr. Ritter. A substantial number of these allegations are poll worker-related. I think -- I agree with Mr. Ritter that some of those are going to be expeditiously resolved. The two large issues in this case have to do with the handling of absentee ballots before the election and the counting of absentee ballots after the election as Mr. Evans noted. We have provided our factual analysis of that. As Mr. Ritter noted, we're not contesting a violation there. There are degrees that will relate to sanctions. There are explanations. But we're not here to be combative about that issue. This is by no means to -- from June 12 until August 1, I wrote Mr. Taylor on a number of occasions, as well as Mr. Ritter, urging some response of this report given the fact that I sense from this Board that they wanted this meeting to be a adjudicative. They wanted this meeting to be one where we are much further along then we are right now. That did not happen. On August 1, when we received the stipulation of facts, this is a very rough draft. There are parenthetical questions in it. There are a number of issues. I was not able to talk with my Board about it because the next scheduled meeting after I receive that was yesterday afternoon. Although, I communicated and sent it to them, they did not have any ability because they had to do this in a collective body, as you know, to meet and discuss this with me until yesterday. We have three new Board members as of June, as well the same time, a new executive director, Barry Garner. Attending the meeting here is Ron Edmonds, our new chair. Can you stand up, Ron?

(Ron complies with request.)

**MR. PARKS:** Bill Riley, a new board member and Stan Nephronzo, a new board member.

**CHAIRPERSON HANDEL:** Thank y'all for being here.

**MR. PARKS:** These new board members were represented along with our executive director, an incredible new amount of energy, pragmatic energy, in terms of reshaping and re-orienting how Fulton County conducts elections; and, as a sub-part of that, how Fulton County relates to this Board. That being said, as far as the fact that we are very mindful about the concerns of this Board to move this along as expeditiously as possible, quite frankly, me and Mr. Ritter simply have not had a moment to negotiate. That's just a function

of when we receive the documents and what we are about to undertake. The other issues that I want to raise are initiatives that this Board is taking just in the 30 days that they have been involved. That is going to be -- let me just list some of them, not all of them. But all of which, I think, would be pragmatic information that would be helpful to this Board when it decides what should be done about this matter. This Board is involved in systemic change. Hopefully, where that might not be a complete response to the sanction issue, it's going to be an important consideration in that context. We have initiated with Pitney-Bowes a process by which we will automate the absentee balloting process. Several of the larger counties have bought this technology. Without going into it in depth, you have people who are experts and they can explain it further. I'm certainly not an expert in it. But this is an all encompassing technology that takes the absentee ballot upon receipt and essentially remove human error from the process. It's amazing technology. This Board has committed to funding to put that in place. Naturally, it would be --

**CHAIRPERSON HANDEL:** Hang on a second; I'm sorry. It's not in place. So we've haven't received it and approved it by the Board of Commissioners?

**MR. PARKS:** We're in that process to have that. We anticipate that on a -- Pitney-Bowes has agreed on a trial basis to provide it for us in the upcoming election so we can actually have a dry run with it, if you will, which will give you all and us some idea of what we can do. We have seen other counties with this technology, and it is an amazing technology. We're committed to that. We have initiated with our county manager -- I don't know if it's a unique program. But it's going to be a great program to cross-train a significant number of technology and other skill set people within our existing county that work for us to be able to leave their desk to a two- to three-week period in which to conduct the elections and supplement our existing permanent staff; which, due to budgetary problems in Fulton County right now -- while I won't call it skeletal -- it's certainly not sufficient to conduct the number of municipal and county elections that we will continue to conduct on the general election day. Third, Mr. Garner has initiated personnel changes in a number of key manager positions. We're currently interviewing for those slots. We hope to have that in place and be able to present to you the experience and expertise we hope to put into those positions before we come to you with a final Consent Order, which I'm confident Mr. Ritter and I can work out. We are evaluating and re-training our existing work force. We realize that the existing evaluation process there was substandard and now people are going to have to actually go through an evaluation process that justifies their continued employment rather than assuming that seniority is enough. Lastly and most importantly, we really welcome Mr. Norman Underwood and his involvement. I have known him for a very long time. We think that his involvement in this actual process, not so much the litigation process, but the systemic changes that we hope to be making over the next 60 days; that his evaluation and concurrent should give this Board some level of confidence that the decisions on the direction that we're taking are ones that are going to do what I hope that we're all about here, long-term systemic change as oppose to a patchwork of sanctions that are not necessarily degenerative of that long-term change. But the fact of the matter is is that this Board is not only having to learn its job. It is facing a significant general election with ten or 11 municipalities with which we have contracted with to conduct those. All of these are admissions at this point in time which we hope to bring to fruition within the next 60 days, as well as this Board basically has no -- had no prior knowledge of this. They need some time to get up on this. They're the ones that have to vote on it. They're the ones that are going to have to sell it, if you will, to the Board of Commissioners. They're going to be the ones with the absentee ballot equipment, the cross

training, the information. These are the people that we need to be the ones to discuss this and convince our Board of Commissioners that this is the right way to go for our election department. So that, in a long way, I guess, is to say that we're concurring with Mr. Ritter that, if we have to go through the ALJ process, that's the law. We will do that. But this is a Board that believes that they would rather not do that. They would rather be able to come to you, not with promises of change, but with change in place. That, when you finally deal with this case, that you at least have that progress to judge this new board by, as well as in the context of our old process, an evaluation of a number of these respondents and their work in the general election that are you concerned about because that is also a part of our investigation and our analysis and our reaction to what happens in this. But that's certainly -- given the fact that I received the stipulation on August 1, their first insight into it was August 11. It doesn't mean that we're simply not able to articulate to you today the solution. But, hopefully, I have given you enough of the road map to what we see as the solution to give you confidence in going along with Mr. Ritter's suggestion that he -- the decision makers on your side at least as we construct a proposed solution is one that we are entering into in good faith and with no effort at all in delaying this process but to come to the right answer rather than just a quick answer. I'm happy to take any questions. I also welcome the opportunity for some of our Board members to speak to you so that you can hear directly from them on why they believe that Mr. Ritter's proposal is the best way to go.

**CHAIRPERSON HANDEL:** Questions? I think everybody would be more than happy to hear from the Board.

**MR. PARKS:** Okay; Mr. Edmonds.

**MR. EDMONDS:** Madam Chair and the Board, my name is Ron Edmonds. I'm an attorney by trade and profession. I'm really looking forward to serving as a chairperson of the Fulton County Election Board. Let me just tell you, I just really want to reiterate what he's said. We are excited about the prospect of, quite frankly, getting it right. Mr. Garner has been hired. He comes with a wealth of experience from down in Florida and all of the things that we believe will manifest itself to us having a clean, smooth election in November. This is what we're looking forward to. In reference to this particular issue, I can tell you he thank you that you e-mailed the Consent Order to us today, that he got it. I didn't have enough time and, quite frankly, I just didn't go through -- I didn't have the ability to sit back and see what I agree with and what I don't agree with. I will definitely do that before signing off on anything. But I'm just going to ask you that all, quite frankly, give us a little bit of time. Let us have this election in November. I think we are all going to be excited and happy with it. Then, afterwards, let's just deal with whatever sanctions are appropriate at that time. I thank you for your time. I look forward to seeing you (unclear). But, anyway, it's good to meet you.

**CHAIRPERSON HANDEL:** Thank you very much.

**MR. RILEY:** Good morning, I'm Bill Riley. I'm vice chair of the Board. I'll just say that my job in the past has been to build things. I take this job on in the same way. Some of you may know me. Some of you may not. I used to be the chief judge of the City of Atlanta. I rebuilt that system. When the mayor wanted us to combine the two courts, I built that system. When we had the Olympic court, I built that system. When we had the community court for drug and alcohol and people in -- disabled people, I built that court. Then we started

building other things. We were the lawyers who built Sandy Springs and Johns Creek and Milton. I see this is very similar to what that we did especially in the cities. In the cities, we had a short time frame that we would -- we had to start up. We had to take what we had and make it work. Really, it was Fulton County that we had to take what we had and start it up. Then we had to rebuild it. But we didn't have the opportunity to sit back and cast it all aside because we had to keep government running. We are in the same place here. What we need to do now is we need to focus all of your attention to all of the problems that the inspector general has pointed out that are particular to the last election and try to solve those problems now. We need to do that systemically as we can now. We also realize that we have to have - - that is the immediate goal in front of us. That's all we need to focus on. Then we have to have short-term goals for systemic change. We have to have long-term goals for systemic change. We've had that discussion with our director, and he has taken that direction. I would hate to have to ask him, at this point in time, to stop what we think is the most important thing, and that is to try to deliver you the cleanest, best election we can; and go back and start building to tell you how we're going to do short-term and long-term changes when he doesn't have the weeks to do that. So I would ask you to allow us to continue to do that and allow Mr. Ritter and Mr. Parks to work because, frankly, I see you as our advocate. The sanction, I hope is really part of the solution because I'm hopeful that -- I feel that Fulton County is behind us at this point in time and they are going to stand with us on this. But, at some point in time, I know that I may have to call on this Board to help me to get to where we need to be. So I would suggest that it's premature to talk about the sanction at this point because I don't know what to ask for yet. Hopefully, I won't have to ask you to give me a stick to help to work. But that's what I'm really looking for in the long-term and where to get to in the potential sanction is that, if I need to, I have to ask you. So thank you very much, and I want you to know we're going to all work with you.

**CHAIRPERSON HANDEL:** Thank you.

**MR. NEPHRONZO:** Hello, my name is Stan Nephronzo. I'm also a new member of the Board. I bring a different prospective. First of all, I worked at the polls for over 15 years. I'm probably one of the few people, as a Board member, to have that level of detailed experience in managing polling places. Also, I'm a retired CPA business consultant, so I view a lot of what goes on with the Board meetings from a financial standpoint and an organizational structure standpoint. One of the things that struck me about yesterday's meeting is Mr. Garner's operational report. Larry Garner, the director, already has taken great strides in the remedial fund that came out of the other session's allegations and addressed the areas of absentee ballot registration records with allocated funds at least on a proposed basis to deal with that. So I think this indicates to me that both the new director and the new Board members and even the staff seem to have a new level of energy towards solving the problem, and getting results. I agree with Councilman Parks that we do need some time to make sure the '09 election go well. But we are already using the remedial fund allocation to solve some of the problems that we addressed, not only in the '07 issues, but problems that alleged in the '08 issues. Thank you.

**CHAIRPERSON HANDEL:** Questions, colleagues?

**MR. EVANS:** I have to say I'm somewhat concerned. The level of problems are Enronlike. The people who most have to step up to the plate to fix these problems will be the Board of Commissioners. While I appreciate the talents and the credentials and seal of those who are

now on the Board of Elections, they don't have the ability to allocate resources over time. Candidly, Madam Chair, I don't view us as being the stick or the advocate or the allies for anyone. Our job is to make sure the job is done, and it's done right. We are the referees. We make sure the rules get followed. We don't help one team or the other team. Our job really is to make sure that the voters' votes are counted and done in a way that reflects the integrity that they expect, and it's reliable. When we have systems that produce more votes than there are registered voters and we have rules, which are continually insisted on compliance that goes -- those are disregarded. I have a report that indicates to me that we have neither the resources nor the manpower nor the procedures in place. It's just worrisome. I'm not sure what the answer is. One option, obviously, is we can take this and get a ruling. I suspect that what will happen is that we will get a ruling that does a little more than confirm that which we know which is that we had a complete meltdown of potentially catastrophic proportions had we had close elections. Given that we are not that far off from what will be one of the most contested elections in Georgia's history in both political parties, it's my expectation that the margin for error will only diminish. So I'm troubled by it and concerned by exactly where we go from here. I'm a little unclear just exactly what the issue is before us. I guess one is that -- the question is do we want to, in advance of ALJ, try to negotiate some kind of resolution. But I hear simultaneously members of the Fulton County Board of Elections saying we don't even have enough information upon which to effectively negotiate. I hear Mr. Parks saying, honestly, they haven't had an opportunity to begin the negotiations, and my general experience in life has been things really don't happen until you have a fixed deadline. So my belief, candidly, is that we should, the attorney general's office, request and get a trial date from the administrative law judge. If some proposals can be worked out in advance of that date, great. If they can't be worked out in advance of that date, then we try the case. There is little doubt in my mind, based on the good work of our investigator and the good work of Mr. Ritter, how that's going to turn out especially when we have as many admissions that are already in place. The stuff part for the Board, which the Secretary has already experienced in real time during the election itself, will be fashioned on an appropriate remedy that deals with both the retrospective which is the sanction that's appropriate for this level of misconduct combined with a prospective plan that permits us to ensure that in advance of the 2010 election circle that, in fact, these elections in Fulton County will be conducted in a way that is in compliance with our ruling. That would be -- I would expect we would probably take a better part of the day to fashion that level of relief only because the types of misconduct we have here is so egregious and they are so far -- they permeate so many different aspects of the process. I don't know what we're asked to do today. But, in fairness of trying to keep us moving along so that we're not here all day, I thought I would just pose the question of what it is, and simple and in a hurry, thoughts how we go from here. But my general recommendation would be get a trial date. If there is a proposed arrangement to resolve all of this in advance of the date, we call a meeting of the Board and we consider it. At some point, I think it will be incumbent upon all of us, specifically the Secretary, to make an announcement of the specific remedial actions that have been taken to assure that the voters of Fulton County, in fact, their election will be fair, accurate, and honest.

**MR. WORLEY:** I would attempt to agree with what Mr. Evans has said. I am very please with the quality and the experience and the dedication of the new members of the Board of Elections. I'm a little troubled with this idea that, if our role is to rule on problems so that there will be solutions before the next election, I'm a little uncomfortable with this idea of waiting until we see what happens in the next election before we make some corrections. But, given the efforts that Fulton County is making and given that Mr. Parks and Mr. Ritter

have, I think, done a good bit of what they have had the time to do up to this point, I'm willing to give them a little lead way on that. But I do agree that these problems are very egregious, and we need to make it clear to Fulton County, not necessarily the Board of Elections, but the county commissioners that this is something very serious and that we want to resolve it as quickly as possible.

**CHAIRPERSON HANDEL:** Okay; all right. I concur with both Mr. Worley and Mr. Evans that these are extraordinarily egregious violations here and certainly to see new members on the Board with the level of commitment that's been expressed here is extremely encouraging. Then to have Judge Underwood -- and, in a moment, I'll give you a moment, if you'd like, to address the Election Board as well. Judge Underwood, colleagues, is the individual that we asked and he very graciously accepted to sort of be an outside monitor over Fulton activities. What we'll be looking for coming up through him are reports around moving forward and clearing up some of these issues. For me, there are two separate things. First, there are -- I am also encouraged to hear the word systemic being expressed from Mr. Parks because that is -- has been the concern that I have personally had all along with this, and that was not born out in the '07 violations that were discussed before this Board previously. So, to have an acknowledgment of that, I think is very important because to fix everything is going to take a very broad systemic change within the elections division. I have some angst around trials right in the middle for the election time period. But I'll say this, I do agree with Mr. Evans that having a deadline in lies the things that typically make us take some action and take it expeditiously. So we need to find a way to do that. I want everyone to know that certainly for this one Board member the goal here is to ensure that things are corrected so that, not only for the internal operations of the group, but most importantly that the November elections goes smoothly because that will be imperative that that occurs. Mr. McIver, anything?

**MR. MCIVER:** No. I would like to hear from Judge Underwood.

**CHAIRPERSON HANDEL:** Yes. I would like to hear from Judge Underwood. Thank you, again, for your willingness to take on the initiative.

**JUDGE UNDERWOOD:** Well, thank you. Just to refresh your memory, our function is the product of a Consent Order that was entered into with respect to the prior case, not the '08 case, but I guess it was the '06 case. There was an agreement that was a part of the remedy and the solution. Going forward, it would be a special auditor. I've never been an auditor, but I think your chair is hoping that an old lawyer is sort of like a special auditor. But I'm interested in this area. I want to kind of tell you how I'm going to approach it. I'm working for you. I'm working pursuant to that order, so you tell me if this kind of makes sense. But what auditors do -- I've worked with a lot of auditors. As you know, auditors take a snapshot in time and through a lot of verification procedures they try to say what a situation is on that given day. This is a different concept in that the important time is, of course, elections day. What we want to do is back up and try to look at what's happening 30 days, 60 days off and see if we can make a reasonable prediction about what the situation is going to be on elections day. So I talked with Wes Taylor and with Larry Garner a good deal about this approach and this is generally how I propose to do it. I would like to -- I'm gathering this information now. But I would like to make the -- I propose to make the first report to you 60 days out. That would be the first week in September. That report would kind of look back. It wouldn't be a finding of fact in a legal sense. It would be observations about what

happened in the last election, what the problems were. There would be a lot of focus on registration. I'll try to explain that, when you're processing those registrations, the new registrations, if you get behind, then actually and psychologically, as you approach election, if you were behind on that, that sort of colors everything. I think that's one of the things that happened. In that report, there would be a lot of attention given to absentee -- the processing of absentee ballots. We would focus on what happened with handling the process and the request for absentee ballots. Then, again, I think it's sort of common sense. If you let those requests accumulate, if you don't process them quickly and have some way of basically staying current, then you're overwhelmed when elections day gets here. That's kind of looks like what happened here. On the processing of the actual ballots, by the time you get to elections day, those absentee ballots are there in particularly the kind of numbers they were the last time. If you have not taken a lot of steps to be ready, if you don't have your ducks in a row to process those, then you're in significant trouble from that point on. My notion would be to try to write that out to look back at what happened, not to assign specific blame to specific individuals, but to summarize what looks like the problem was, what the deficiencies were. In many respects, what I would write down and the way I would express it would be a product of Larry Garner's perception since he's become aboard. I've spent time with him and talked through it. I have a very favorable impression of his preparedness for this job and his attitude. I'm very confident that he is capable of managing a team that can perform at a very high level. I'm not going to jinx him by saying it will be perfect or create an expectation that it's going to be perfect. But I've had very extensive discussions with him. I'm convinced that he's got the background and understands how to get there. So that would be the first report to you is basically what you already know but just kind of put it down. Then 30 days would go by, so we are now 30 days out. We're into early voting. We're starting a process, absentee -- request for absentee ballots. I would hope to give you a report based upon these discussions with this management team as to what appears to me to be the level of preparedness, at that point, 30 days out or you're behind with -- you're caught up with processing the registrations, new registrations. How about the request? And very specifically are you getting your ducks in a row to count the absentee ballots. How do I get that information? The only way I know to get it is just to ask lots of questions. I don't think it would be pretentious to compare this, to you lawyers, this socratic method. But there is something sort of -- there's a lot of common sense if you just ask questions. If you ask somebody, "Are you prepared? Do you have a specific thing planned to handle this?" get to the nature of being what it is. Most of us, if we get past that question, if we're not quite there, we're going to try to get there. The general idea is that we try to promote and try to help them with preparation and the planning of this by asking a lot of questions. Then it would be my notion maybe five days, the last week, that I give you a final report. These will not be like you're used to getting but kind of a common sense summary of what I found out and what you sort of sense about the process. I have told Mr. Garner, and I'm going to tell all the members of the management team, I'm meeting with most of them in the next ten days. Nothing would please me more than to be able to write out some kind of positive trajectory. This is my county. I attach a great significance to this function. There's nothing more important in the world than public affairs and politics if you have an elections office that functions well and timely with integrity. My duty will be to call it as I see it; to tell you what the level of preparation is. But I hope that we are able to report a kind of a positive uproot trajectory of the preparation. One time, when there was an Arthur Andersen, I went through -- up to the Arthur Andersen campus and was sort of an instructor for their young accountants for a about a week. What I was telling them about was how to approach state governments and ask for business. But the first time I'd ever heard this term in the context of accounting and auditing, all week they were talking about

helping clients and navigating through whatever it is that they're navigating through -- through change, through problems. That seems to me to be a got term. They've had to do a lot of navigating here. My hope and expectation is, by asking questions, asking relevant questions and timely questions, that that will kind of help them as an agent of you. That's what I am in doing this. You will be kind of through me kind of help them navigate through what they all know was a very unacceptable, unsatisfactory, and embarrassing result last year with respect to the absentee ballots in particular. They wanted it -- I'm very persuaded that they want -- they don't want to kind of repeat that. They want that to be better. It would be presumptuous of me to have any comment on the subject matter you're discussing. I'm not suggesting that they have any -- nobody needs an incentive to have high performance in this kind of work other than the duty that's there. It would be done right because it has to be done right. But, to some extent with the posture that sounds to me like y'all put this in, the individuals involved do have an incentive for a very high performance; if nothing else, to demonstrate to you that they are capable of conducting an election in an efficient and very workable way. Anybody got any questions about that general game plan -- three reports, not fancy audit reports, but sort of common sense perceptions of what went wrong, where we are, and where we want to be? Anybody have any questions about that?

**MR. EVANS:** Madam Chair, may I?

**CHAIRPERSON HANDEL:** Yes.

**MR. EVANS:** It struck me that one of the most critical problems from Fulton County's perspective was the unexpected, dramatic increase in new voters registrations in a stressed time period, which was, as I understood it, about 134,000 applications, 78,000 of which were received on October 7. What would be very helpful to me -- it struck me in trying to think this through. There were two possibilities. One possibility is the dramatic increase in applications; while noteworthy, were not historical. In which case, this excuse really doesn't carry a lot of weight, which means that we have a different kind of problem. Then the other possibility is that, in fact, this was completely -- no, it was historical. It was something that no one could have foreseen. It was a tsunami of registrations in which case we needed to alter the way in which Fulton County and other counties project forward on a going forward basis. So it would be helpful at least from my prospective in the context of preparing your interim reports to note historically comparing apples to apples which would be presidential election years to election years and then, by a corresponding way, comparing non-presidential years off election cycles so that we can determine that our projection system is off and needs to be modified so that we have adequate resources for these events or confirm that, in fact, this was not extraordinary. It was notable but not extraordinary in which case we'd know that, in the course of considering sanctions, we conclude, "Well, this was a factor. It wasn't the kind of factor that it's being portrayed to be." To me, that really goes to the heart of the mitigation of how bad things were. The mitigation offered it's -- this was so impossible that nobody could do it. The second piece is equally important. It reminds me of what Wiley Butts once said, "You can have the greatest heart in the world. But, if you have no helmets, no uniforms, and no stadium, it doesn't do you a lot of winning football games." It would seem to me that it would be helpful to know the kinds of budget parameters early on before we get to the cusp of the election of the kind of manpower and resources that needs to be deployed in order to make sure that we don't have a repeat performance. It would seem to me that the best way, Madam Secretary, I can be convinced that Fulton County's heart is in the right place is to see the pocketbook match it with manpower resources, locations, facilities, et

cetera. The worse thing is to put really good people in the positions of serving on boards of elections and superintendent roles and to send them into battle with no helmet, no gun, and no uniform and then leave it to them to come down here and face us to explain why it is we had a disaster. So I personally believe this has to be backed up with arming and giving it tools and resources necessary to good people, not just sending them down here to face us. I appreciate everybody coming here. Truthfully, I would have been much more impressed if we had seen the chairman of the commission or someone -- a member of the board of commission come down here and say. "Hey, we got your message." Honestly, I'm not convinced yet they have the message.

**JUDGE UNDERWOOD:** On that point, I think Mr. Garner probably absolutely agree with you. I'm impressed that he's opened up communications with proper channels to begin stating -- making the case with those resources. Also, I think, while recognizing that you've got to have up-to-date stuff, you don't want to blame it totally on the stuff because people have got to perform. So I think he has a very good handle on what's available. If you don't have -- there is no question that some other process, just the basic data entry things, are not the latest and how you break out the causation of a delay between the slow equipment and the efficiency with which it's done. That's very tricky. I don't think anything that you've said would be -- I think Mr. Garner would agree with just about everything you've said. Thank you.

**CHAIRPERSON HANDEL:** Thank you so much. Mr. McIver has a question; I'm sorry, Judge.

**MR. MCIVER:** How are you, Judge?

**JUDGE UNDERWOOD:** Good.

**MR. MCIVER:** I, for one, believe we're blessed to have you involved as our monitor in this matter, a term certainly that I would use. You, in turn, are blessed to have somebody with the quality of Mr. Parks and Mr. Ritter here who have the skills to get this thing done. The question that I have, given that as a predicate, do you feel there are any restrictions on you in any way, either through the organization from which you have been hired, the way you have been retained in this instance, what your role is, what our expectations are of you, any restrictions on you that would impede you from doing the job that we expect to be done?

**JUDGE UNDERWOOD:** No, there are certainly no structural restrictions. The limitations would be my own ability to grasp a very complicated situation. But, to answer your question, no. If we don't identify problems, it's not because of any structural or limitations. I think the challenge is just to make this transition in operational attitude and day-to-day functions. You just have to get faster. We have to do things with more dispatch. That has a lot to do with the way it's been done; just management. I think Mr. Garner understands that. I'm not able to predict the pace at which those kinds of changes are going to be made, but I do have a sense that they are going to be made. But, to answer your question, I don't feel any limitations. I can look under any rock or any place that relevant information may be presented.

**MR. MCIVER:** Similarly, do you feel that all resources are available to you such as Mr. Taylor's office, certainly, access to this Board, so on and so forth; any limitations in that respect?

**MR. UNDERWOOD:** Mr. Taylor has been very helpful in helping me understand this. For example, he and I spent time alone after being out in the DeKalb office; just looking at how that works and trying to get an understanding. I couldn't ask for more cooperation and help. This is a relevant point. I think we talked about the positive experience that we had with DeKalb's office and with Linda Latimore. It was an implicit suggestion that Mr. Garner might want to do the same thing and he has. I thought that was a very good pickup by the staff that he has potential to go see -- this is his first experience in Georgia. Rather than coming in and saying, "We're going to do it like you did it in some other state," you go visit somebody with some experience, who's been through a lot of elections. So, to answer your question, I have had lots of help. I hope we can do something that's practical and useful. You can hold off on any praise until it's over, but I certainly hope that we can play a constructive role. I appreciate it.

**MR. MCIVER:** Let me leave you with this thought: Should there be additional resources that you think is necessary for you to accomplish your goal? I trust you won't hesitate to ask that this Board convene and consider that request? I can't imagine we would deny it; anything short of wanting a staff of 100 like they do in Washington.

**JUDGE UNDERWOOD:** I understand that, and I appreciate that. I think that -- you know the way it is with a task of this kind. You put bodies on it and you get lots more paper. But I really think what's needed here is sort of, not reams and reams of paper, but sort of practical assessment of where we are and so forth for Mr. Garner to get everybody working on the same page and going forward. Hopefully, we will have some good results.

**MR. MCIVER:** Thank you.

**CHAIRPERSON HANDEL:** Thank you very much. Mr. Evans, just one follow-up on new registrations point. That is an excellent one. In fact, all counties, including Fulton, were directed a year out from registration to began to prepare for historic levels of new voters' registrations. When all is said and done, we'll pull these numbers again for you. I think it was nine percent?

**MR. TAILOR:** I believe it's ten.

**CHAIRPERSON HANDEL:** Ten percent increase which parallel the increase in '04. But your point is well taken. Again, all of the counties starting well over a year out were directed to prepare for that. In fact, Mr. Parks might want to know that there were personal meetings with Fulton County on that specific point as well. I think what we need to have for Stefan is to give him some direction of whether we want to proceed with a smaller trial or negotiate. So I open that up for -- I've heard some comments from Mr. Evans around it, a little bit from Mr. Worley; if anyone has any additional comments there. Do you need a Motion from us on that?

**MR. RITTER:** No, not necessarily; just a sense of the Board. I want to be able to do what the Board wants to approve form of a Motion. We can file a smog with the request of the Court, immediately meet with counsel and have a status conference to discuss scheduling. If not, I would fully agree to having a set of deadlines in place would be very helpful regardless of whether we file a smog this week or in 30 days. Thirty days will be preferable from my

standpoint, but I will follow what the Board wants.

**CHAIRPERSON HANDEL:** All right; colleagues? Randy, you were in the place of let's just do it immediately?

**MR. EVANS:** Yes. I think we should just set a trial date and simultaneously have settle negotiations. If the discussions are fruitful, great. Then we reach a resolution. If they're not, we would not have lost time and, at that point, be looking for a trial date.

**MR. RITTER:** Yes.

**CHAIRPERSON HANDEL:** Mr. Worley?

**MR. WORLEY:** I would have to agree with that.

**CHAIRPERSON HANDEL:** Mr. McIver, do you tend to agree? I think you have some set directions.

**MR. MCIVER:** Fair enough.

**CHAIRPERSON HANDEL:** Very good. All right; thank you. Thank you everyone. The next order of business is we have a number of rules that we have been asked to look at over the past couple of weeks. I think maybe Mr. Tailor can just read when he goes through there. The action that we will need today probably is on the rules. One, are there any additional changes? Again, I know Wes tried to collect all of those from each of you. Then we need to decide if the Board is ready to oppose these per the requirement for new rules.

**MR. TAILOR:** Thank you, Madam Chair. I will go through and point out the provisions based on comments from the Board on some of these from what you've seen before. The very first one -- I've presented you with a list. The very first one that I'm going to discuss is 183-1-6-.01, Acceptance of Voter Registration Applications. Essentially, this rule addresses some issues that took place in the last election. And, that is, where there is not a date stamp or a postmark on a voter registration, what should the County do with that? This rule makes it clear that the County should date stamp it and that the registration application would have been made as of the date of the application, the date stamp thereon, and that the County then have seven days and only seven days to get that application to another county if that is, in fact, where the application goes.

**CHAIRPERSON HANDEL:** Any other questions on this one, colleague?

**MR. EVANS:** I think the only question that I raise when I met with Mr. Tailor was to make sure that Mr. Ritter or the AG's office had confirmed for us compliance with any and all orders that had been entered in the very civil proceedings relating to voter registration. My memory was that we had on an earlier day dealt with the time limit of not later than seven days. For some reason, we had decided in that meeting that we could not do that. But, if we can do it, I'm for it. I just want to make sure that we do not run a file of -- we don't run a file of order of the court.

**MR. TAILOR:** Just very quickly, I had discussed this with Mr. Ritter. I'll let him address

the question about court orders. My understanding is it does not conflict with any. Also, with respect to the other rule, that may have been considered. The one that I could identify is 183-1-6-.03 which deals with additional voter registration places and return voter registration application to the main office within ten days. That is a requirement in that rule. But this is a different scenario and should not conflict with that rule of having a different -- multiple voter registration.

**CHAIRPERSON HANDEL:** Do you concur, Mr. Ritter?

**MR. RITTER:** I do concur. I'm aware of no orders in place right now that this rule would violate. There was an issue before which we changed from 48 hours. I believe that's the rule that Wes is referring to. I'd have to look at it; that we changed the 48 hours to ten days. It's a different issue. I think seven days is reasonable. I don't think that it conflicts with any order that I'm aware of.

**CHAIRPERSON HANDEL:** All right. With that colleagues, do I have a -- we just need a Motion to Post; is that correct?

**MR. EVANS:** Council, solely on the reliance on the advice of counsel, I would move that we adopt.

**CHAIRPERSON HANDEL:** Adopt for posting?

**MR. EVANS:** Yes; that's correct.

**CHAIRPERSON HANDEL:** Is there a second?

**MR. MCIVER:** Second.

**CHAIRPERSON HANDEL:** All in favor?  
(Whereupon, there was a chorus of ayes.)

**CHAIRPERSON HANDEL:** Any oppose?  
(No response.)

**CHAIRPERSON HANDEL:** All right; the next one.

**MR. TAILOR:** The next rule is 183-1-6-.02. This rule is specific to Senate Bill -- the recently passed Senate Bill 86. It's the next in order of numbers. This rule -- if you will recall in Senate Bill 86, there is a provision, which allow the State of Election Board to pass a rule for additional documentation or methods of truth for voter registration applicants to prove their citizenship. This rule does that. I know you've had a chance to take a look at it. I'm happy to answer any questions that you might have.

**CHAIRPERSON HANDEL:** Questions in addition on this one, colleague?

**MR. EVANS:** The same thing, I remember us being sued over college fraternities wanting to register voters and the degree in which we offered rules that in any way inherent their ability to collect that registration. So, along those lines, I would like to have on the record, the

advice of counsel as to whether or not this conflicts with any other rulings that we have that have been imposed on us.

**MR. RITTER:** I'm happy to comment on that. Wes and I have briefly discussed this. First, to specifically answer your question, I'm aware of no order of the court that would invalidate this rule. Secondly, I think this rule is actually more lenient than previous rules. I think we have litigated, as I think everybody here knows, the issue about the prior Secretary of State's office by informal practice -- it wasn't even a regulation or ruling -- rejecting batch voter registration applications and also there was a great deal of vagueness about what private individuals can do in registering people to vote. You can't actually register them to vote, but there is nothing that prevents private individuals from copying and handing out voter registration applications. There are privacy concerns with sending those in. However, we have litigated that. There is no outstanding order on that right now against us. If we had to litigate it again, I would be prepared to do that.

**MR. EVANS:** In reliance on the advice of counsel, I would move for the adoption and posting of 183-1-6-.03.

**MR. TAILOR:** Madam Chair, that's -- I thought --

**CHAIRPERSON HANDEL:** Do we have a second?

**MR. WORLEY:** I just want to be clear. I thought Wes was talking about 183-1-6-.02.

**MR. TAILOR:** I was. But I understood from the conversation we have been talking about 03.

**MR. EVANS:** I thought it was 03 also.

**CHAIRPERSON HANDEL:** Which one are we on?

**MR. TAILOR:** They were discussing -- Mr. Ritter and Mr. Evans were discussing 183-1-6-.03.

**CHAIRPERSON HANDEL:** Okay. Let's go back to 183-1-6.02. Is that the one that you just gave us an overview on?

**MR. TAILOR:** Yes, ma'am.

**CHAIRPERSON HANDEL:** Okay. I guess we have the same question from Mr. Evans. He just wants to make sure that each of these has been said properly for any previous court rulings.

**MR. RITTER:** I have not seen this one before.

**MR. EVANS:** I'm not worried about an existing order on 183-1-11-.02. This rule --

**CHAIRPERSON HANDEL:** No, no.

**MR. TAILOR:** That's the wrong one. It's 6-.02. I can give you another copy.

**MR. EVANS:** Oh, 6-.02. All right; thank you. We're on the same page now.

**CHAIRPERSON HANDEL:** Are we on, just so we know, 183-1-6-.02?

**MR. TAILOR:** Yes, ma'am.

**CHAIRPERSON HANDEL:** Okay; questions on this one?

**MR. MCIVER:** Yes, ma'am.

**CHAIRPERSON HANDEL:** Okay; Mr. McIver.

**MR. MCIVER:** Mr. Tailor, although you were kind enough to engage in some discussion on this ruling, subsequently, I have two questions.

**MR. TAILOR:** Yes, sir.

**MR. MCIVER:** Only because our firm is employment lawyers heavily involved in immigration work. We represent a number of American-Indian tribes. We now that the identification processes are somewhat unorthodox. That might be the better way to say it. Sometimes it will be a set of cards, things of that nature. Let me take you to paragraph 2, sub-F, as in "Fred". Is this properly worded, "Bureau of Indian Affairs Card Number" as opposed to the card itself and the same would be true in the run-on phrases in the reminder of that section?

**MR. TAILOR:** Yes, sir. This was taken from the statute as well. So the number itself is the identification. That will be included on the voter registration application. So, yes, sir, the numbers are on there.

**MR. MCIVER:** So somebody might just verbally give a number?

**MR. TAILOR:** Well, no, sir. They would include that on the voter registration application itself.

**MR. MCIVER:** Then, is it the obligation of the County to then determine the source of that number and its authenticity?

**MR. TAILOR:** Under the current rule and under the statute, the number itself will be proof of citizenship.

**CHAIRPERSON HANDEL:** What if they just write 1-2-3-4-5?

**MR. TAILOR:** If somebody writes 1-2-3-4-5, then that is their Indian identification number, and that's their --

**CHAIRPERSON HANDEL:** No, no. I don't think that's what we're asking.

**MR. MCIVER:** How do you authenticate that? How do we make this easy for Fulton County if they get one of these?

**MR. TAILOR:** At this point, given the difference -- as you say, the difficulty in the way that Indian tribes keep their information, there is not a method for identifying -- authenticating the number that's included on the application.

**CHAIRPERSON HANDEL:** I still don't think that's what we're asking. How do you know that the number is a valid number, not whether or not the person got a card legally no legally, but that it is a valid number?

**MR. TAILOR:** That is what I was answering, yes, ma'am. There is not a necessary way, at this time, to authenticate the number itself. But, including the number, of course, and knowing that putting a false number on the voter registration application will be a felony.

**MR. MCIVER:** Let me take you back in time. In the earlier days, it was a photo ID. When the legislation was being considered, Mr. Evans and I were involved in that. For example, there was some concern about how would an American-Indian coming off of a reservation where they had not been subject to all of the identification and obligations that we might -- how would they then demonstrate to a registration person the fact that they are who they are? We then added language to the photo ID. One of the accepted forms was identification. You may remember that.

**MR. TAILOR:** Yes, sir.

**MR. MCIVER:** I then remember, because I spread this story in the AJC, that there was a chap in Georgia somewhere that decided that he was a Cherokee. I think it came to him in the middle of the night. He was selling or offering to sell before the Jargon Founding membership, I gather, for lack of a better term, to the Cherokee nation for which he would issue you a identification card and you, therefore, could vote under the requirements of a photo ID, all a completes hoax. Of course, that was dealt with. But I would like to know that we're not going to have to run that risk again. Whoever reads the record of this hearing may well pick up an idea on how to do that. But how is it that we somehow can authenticate the accuracy of that information and get around the old situation where this chap was literally selling memberships to his tribe here in Georgia?

**MR. TAILOR:** As in Arizona where Senate Bill 86 is modeled after, the number itself is the authenticating and is the proof of citizenship. It's deemed to be adequate proof of citizenship. Now, if it's determined afterwards that it is not in some manner, then that can be dealt with. But, at this time, I'm unaware of any method by which, unlike with the driver's license and those kinds of identification where that can maybe go back to the Indian tribe who issued the card and authenticate that.

**MR. MCIVER:** Isn't that true that the person, whatever their actions may be, would still need an identification at the time they vote? Is that right?

**MR. TAILOR:** Absolutely.

**MR. MCIVER:** Maybe that's the part that --

**CHAIRPERSON HANDEL:** Yeah.

**MR. MCIVER:** I would be concerned about that. A similar question would be to sub-G -- let me put my glasses on -- small 'b' here, American-Indian card issued. Now, there again, it sounds to me as if we've got to take a real hard look at it.

**MR. TAILOR:** Yes, sir.

**MR. MCIVER:** Again, I don't want to complicate -- it's already a tough job as a register by -  
-

**MR. TAILOR:** I understand, Mr. McIver. The sub part 'b' and the rest of those documents that are located there are taken actually out of the Medicare Guidelines as to evidence that is sufficient evidence for proof of citizenship in order to qualify for services under Medicare. So that's where these documents which the Board may consider, may alter, may say yes. But that's where these all came from.

**MR. MCIVER:** I think I've made my point.

**CHAIRPERSON HANDEL:** Okay. Any other questions, colleague? Mr. Evans and then Mr. Worley.

**MR. EVANS:** Has the statute been submitted for pre-clearance?

**MR. TAILOR:** No, sir, it has not.

**MR. EVANS:** For me, that's worrisome. Obviously, the United States Supreme Court has elevated the stakes for all of us, especially in those states subject to voter rights act. The Supreme Court created a way that you can basically be exempt from the application, which has a ten-year decade of a clean record. One way that you forfeit that is to implement or act in violation of the statute, which means that you then stay under the context of the Voting Rights Act. It would seem to me that a safer course of action for us, given the stakes that are at play, would be to submit the statute. If the justice department approves the statute and the context of that, given their expressed willingness to work with us on implementation, we can have rules of tracking them without much consequence. If the department of justice, the clients -- and I understand that historically the attorney general's office has always submitted the statute with the rule. But, however, the department of justice has made clear that they will indeed accept statutes prior to ruling of limitations. So, with that said, why would we not ask the attorney generals' office to submit immediately a statute for pre-clearance?

**CHAIRPERSON HANDEL:** In discussing the whole issue with DOJ, it was -- they know that we're going to submit everything as a packet. There was concurrence on that.

**MR. EVANS:** Right. But my question is why would we take that risk while that's an acceptable option? Why wouldn't we take the less -- the option that involves less risk to the State? The implications are so great. Is there a downside to submitting just the statute?

**MR. TAILOR:** Actually, I do believe there are, Mr. Evans, in that that statute allows for the

State Election Board to adopt rules to broaden the number of documents that they so choose, and that was approved. What that would end up doing is to actually give new registrants in the state of Georgia more opportunity to prove their citizenship than it was currently provided in Arizona, which was pre-cleared. They also pre-cleared their manual, which was, in fact, their rules. So, therefore, I think it would actually be more prudent and less likely to raise an objection if the rules and the statutes were submitted as one package so that the DOJ can deal with the entire issue; rather waiting and saying, "We'll deal with it then."

**MR. EVANS:** As I understood it -- maybe I misread all of this, which is possible. But, if you submit the statute without the rule, the department of justice is then permitted to contemplate in evaluating the statute, the most lenient rule. So every possible good permutation is presumed in the defense of the statute; whereas, if you submit it with the rule, you then are locked into what the rule says. It just seems to me, given the risk that we're talking about, that we're better off. If we have the basis of the Arizona pre-clearance to ride on the statute, and this mirrors -- and I agree with you. It absolutely mirrors it. Why would we not take that and run with it? Get a pre-clearance. We can then adopt the rules without minimizing the risk at stake.

**MR. SIMMS:** Madam Chair, may I?

**CHAIRPERSON HANDEL:** Yes.

**MR. SIMMS:** Mr. Evans, Mr. Taylor and I discussed precisely these questions and issues extensively with Dennis and Julie in the attorney general's office both, the Secretary of State's office and the attorney general' office. We also engaged in extensive conversation with the attorneys from the civil rights division specific to the summation of Senate Bill 86. It was both our -- I can't speak for the attorney general's office. But I can speak as to what my impression is and that it was all of our consensus opinion that, in fact, the lesser risk for the State was to proceed with the rule-making process and to provide the rules. Wes alluded to the manual. In addition to the statute for pre-clearance in one summation that, like I said, from our vantage point, from this office's vantage point, that was done specifically to lessen the risk as to convey or discuss both in person and via teleconference with the attorneys from the department of justice.

**MR. RITTER:** I can elaborate on that briefly. I can tell you, I have not personally been involved in those conversations. So there's substantial chance -- well, speaking out of -- I shouldn't speak.

**CHAIRPERSON HANDEL:** We welcome your comments.

**MR. RITTER:** I will tell you that, based on my conversations with people at the attorney general's office, Dennis and Julie particularly -- and I am supervisor at the election session -- that, based on their conversations with the department of justice, they feel that the chances will be improved by submitting statutes and the regulations together. Dia Genali [sic] prefers it to be done that way. But, you book standards to the side as to what things may actually say in terms of likelihood of success. This is not a situation where we would have great options to appeal an adverse ruling. The safer course is to submit the two of them together. It is a judgment call.

**MR. MCIVER:** How did Arizona proceed? Were theirs submitted together?

**MR. TAILOR:** I do an overall manual of the entire elections process. They do submit that every year. Was it done at the exact same time, I'm sure it must have been.

**MR. MCIVER:** They have been approved by DOJ?

**MR. TAILOR:** Yes, they have.

**CHAIRPERSON HANDEL:** Mr. Worley?

**MR. WORLEY:** I had a couple of questions.

**MR. TAILOR:** Yes, sir.

**MR. WORLEY:** I'm just going to refer to the page. Y'all said the subsection is wrong. But, on the third page, your proposed rule, section 2, at the top begins to discuss documents that can be used at hearings by a Board of Registrars to review the applicants and citizenship. Then, underneath that, item number -- Roman numeral little 4 says that among the documents or a list of documents that can be used. It says, "If created at least five years before the application for registration and showing a United States place of birth," what was the rationale for settling on five years as the term?

**MR. TAILOR:** Again, to mirror what Medicaid guidelines required. For all of those documents, it's the five years and showing the United States placement.

**MR. WORLEY:** Then, similarly, the one on the next page, they just worded it at the top of the page, Roman numeral, large capital ten. It talks about, "If other forms of documentation cannot be obtained, documentation may be provided at the hearing by written affidavit, signed under penalty of perjury, from two citizens, one of who cannot be related to the person in question." Is that also from the Medicare or Medicaid guidelines?

**MR. TAILOR:** Yes, sir.

**MR. WORLEY:** Thank you.

**MR. EVANS:** I think the only other question that I had, Madam Chair, was that, in advance to the meeting, I sent a note to Mr. Tailor asking that the attorney general give us an opinion as to whether or not the attorney general believed that the proposed rule comply with the Voting Rights Act.

**MR. TAILOR:** Yes, sir. I did talk with Mr. Dunn in the AG's office. I will let Mr. Ritter elaborate. But, from my discussion with Mr. Dunn, he felt, one, that the attorney general's role, with respect to the Voting Rights Act, he will -- well, the attorney general will make the submission and will make the arguments that the position on the State known as to the fact that this does not have a disparate impact with respect to the minority voters in the state of Georgia. Also, as a further response, Arizona has been pre-cleared with their statute already. So there is precedence already for this type of legislation not to violate the Voting Rights Act. As well, I mentioned, the proposed rule is not necessarily -- if you want to quantify it one

way or the other -- as strict as in Arizona. But, yet, it still accomplishes what the statute is set out to do.

**MR. EVANS:** So, translating that into Georgia, he's more than willing for us to go out on a limb, but he is not willing to go out on a limb one inch. We routinely ask the attorney general to give us advice as to whether or not conduct is constitutional and legal. I can send you any number of opinions where the attorney general has opined on whether or not the governor or any number of agencies are acting legally or not in compliance with the law. And, yet, what I hear is that, on this issue, he will not give us his opinion as to whether or not this complies with the Voting Rights Act; is that right?

**MR. RITTER:** I think that's not the message that we're conveying at all. To the contrary, I think quite clearly, we plan to submit this. It's been passed as a law. We plan to submit it and advocate for it as we would with any other appropriate law.

**MR. EVANS:** I'm asking a different question. My question is very narrow. The rules that are before us, do they comply with the Voting Rights Act? That's a really easy, yes, they do based on our best guess, based on the evaluation of the law or, no, they do not. That is a very different question from will you agree to submit them on our behalf and defend them. I understand that you're duty bound to submit them and defend them. What I would like to know, from the lawyer for the State constitutionally now to do so, is what does the lawyer for the State think as to the legality of the rules and will you give us that opinion?

**MR. RITTER:** First of all, I'm not going to offer you a formal opinion of the attorney general, as we sit here today. But let me answer your question. If I can tell you, on behalf of our office, if we thought the law was unconstitutional or illegal, we would not submit it. We plan to submit this law and defend it. I'm not going to second guess what the department of justice is going to do. I'm certainly not going to lay out rationale and arguments about the laws pros and cons in a meeting like this. I think that it's appropriate for us to submit the law and defend the law as we're not on duty bound to do but anxious to do. Frankly, we don't want to delay things with an opinion in it either. But I think that's the appropriate answer to your question.

**MR. EVANS:** Given the stakes which is that we're subject to the Voting Rights Act for an additional decade, if we get this wrong, I would move that we ask the attorney general for a formal opinion on whether or not the attorney general believes that the proposed rules comply with the Voting Rights Act.

**MR. MCIVER:** Is that Motion limited to the rules or the statute and the rules?

**MR. EVANS:** Just the rules. I think the statute is the statute.

**MR. MCIVER:** I second that Motion.

**CHAIRPERSON HANDEL:** Questions or comments. I need some sort of guidance out of the AG's office about whether or not -- can we do this? It's just a question.

**MR. RITTER:** I don't think that anything prevents us from receiving a question from the Board. Whether we think it's an appropriate question is another issue. Time frame on which

that question might be answered is another question. I can't tell you you can't vote on it. You can vote on it and ask a question and we can receive it. I don't think that it is necessarily the most prudent course, but that's within the forum to decide whether they want to ask the question or not.

**CHAIRPERSON HANDEL:** Doesn't the AG's office help draft the rules?

**MR. TAILOR:** Yes, ma'am.

**MR. RITTER:** We have reviewed the rules.

**CHAIRPERSON HANDEL:** You have reviewed the rules?

**MR. RITTER:** Yes.

**CHAIRPERSON HANDEL:** When you do your review, do you not, in general, look at the legality of them?

**MR. RITTER:** Yes, of course. I think we have made every effort to make sure they comply with the law.

**CHAIRPERSON HANDEL:** All right.

**MR. EVANS:** That's what makes me concerned. You would think it would be a pretty easy thing to opine; that which you have drafted is, in fact, legal. So it makes me -- it concerns me when the moment I have somebody say, yes, I drafted it. I'm more than prepared to put your name on it, but I'm not going to put mine on it by giving an opinion.

**CHAIRPERSON HANDEL:** Well, actually though, it is the attorney general's name on it when it's submitted.

**MR. EVANS:** Exactly. Then we should get the opinion. It shouldn't be a problem. It should be pretty quick if the attorney general will defend it and thinks it's legal, he should be able to say that to us.

**CHAIRPERSON HANDEL:** Any comments from anybody?

**MR. MCIVER:** Mr. Ritter, any idea of how long it would take the attorney general to opine on this matter?

**MR. RITTER:** I can't speculate to that. I don't know. Our opinions typically take 60 days, often plus. Particularly, we have a number of election days that are outstanding. Some are longer than that.

**MR. MCIVER:** You have already indicated, I gather, at least in your department, if not the attorney general, is well immersed in this issue already.

**MR. RITTER:** We have looked at this issue. Whether we're going to be doing an opinion rather than a submission, I don't know. I'm not going to make any promises one way or the

other. I don't know.

**MR. EVANS:** Would the level of care that you exercise be less for a submission than an opinion?

**MR. RITTER:** No.

**MR. EVANS:** Would the level of investigation and research be less than an opinion?

**MR. RITTER:** I can tell you that the number of people who will look at it and review has also been known to execute an opinion greater than for a submission. An opinion is actually reviewed and executed by the attorney general while the submission is not actually executed by the attorney general.

**MR. EVANS:** So you would be more careful that the attorney general's name is attached to it than you would be if our name is attached to it?

**MR. RITTER:** No. I said more people might look at it. I don't about anybody being more careful. The fact of the matter is, I can tell you that myself and everybody I work with would be as diligent as possible with the submission.

**MR. EVANS:** What is the purpose of having more people look at it?

**MR. RITTER:** Mr. Evans, as you know, the opinion itself comes from the attorney general himself. There are additional people in the office who would look at it.

**MR. EVANS:** Because I presume, since he's attaching his name to it rather than our name to it, he wants to be sure. Why would we be any less diligent in being sure before our names got attached to it?

**MR. RITTER:** I think that what you'll see with a submission is that the attorney general's office signs off on that submission. We consider that submission by the office.

**MR. EVANS:** As oppose to him?

**MR. RITTER:** His name is on that submission.

**MR. EVANS:** I would hope that he would expect no less from us than he would want for his own name.

**CHAIRPERSON HANDEL:** We already have a Motion and a second. Any other comments?

(No response.)

**CHAIRPERSON HANDEL:** All in favor?

(Whereupon, there was a chorus of ayes.)

**CHAIRPERSON HANDEL:** Any oppose?

(No response.)

**CHAIRPERSON HANDEL:** I guess I will now ask this question. I think we've got rules in front of us. We can take them pending AGs, or we can just table everything and --

**MR. EVANS:** Well, I think we have other rules. I think we were prepared to move on 183-1-6-.03.

**CHAIRPERSON HANDEL:** I think it was here in my questions that I meant --

**MR. RITTER:** If you haven't passed the rule, we're not going to opine over it, I'm sure. If you want to, go ahead and pass that rule.

**CHAIRPERSON HANDEL:** All right.

**MR. RITTER:** The rule is just a proposed rule. It's not active. But active or not, we'll opine, I'm sure, on the constitutionality or legality of that rule. Now, I can tell you, from prior practice, we're asked to, for instance, to opine on the statutes all the time that have not been inactive. We are asked to opine frequently on other rules and regulations and situations that haven't actually occurred. So you may want to pass the rule first before a petition to request an opinion to us.

**MR. EVANS:** Let me get this straight only because I've been at this a while. The attorney general never opines on a proposed course of conduct that has been outlined for the attorney general in advance of the action being taken?

**MR. RITTER:** I didn't say that.

**MR. EVANS:** I didn't think so.

**MR. RITTER:** What I said was I think the chances of the attorney general's office issuing an opinion on it are better if a rule is actually passed.

**MR. EVANS:** Well, the attorney general helped us draft it. The attorney general has got to put his name on it. Now, he needs to put his name on it with us.

**CHAIRPERSON HANDEL:** So it's the Body's pleasure to pass it and send it, or we can always send it and see what the response is. If we don't get a response, we can reset it.

**MR. EVANS:** Madam Chair, my Motion contemplated that we request an opinion, a formal opinion, from the attorney general. My working assumption is that, having done all of the due diligence in order to submit it to us, that's something that we can vote for. They have done all of the investigation, research, and other items. So the opinion could be pretty easily done.

**CHAIRPERSON HANDEL:** We can send it over based on the previous Motion and see what happens.

**MR. TAILOR:** Just practically, if we do wait, the statute is in place January 1, 2010.

**CHAIRPERSON HANDEL:** I think we're all well aware of that.

**MR. TAILOR:** Okay.

**CHAIRPERSON HANDEL:** Which of the rules that don't deal with the 86?

**MR. TAILOR:** None of the other rules deal with that section.

**CHAIRPERSON HANDEL:** All right. Let's go through them.

**MR. TAILOR:** 183-1-6-.03 is the rule that Mr. Evans and Mr. Ritter were already discussing. It deals with -- it's an existing rule in contemplation of Rule 183-1-6-.04, which deals specifically with third-party voter registration drive.

**CHAIRPERSON HANDEL:** Motion?

**MR. EVANS:** In reliance on the advice that we received earlier, I move for the adoption of posting 183-1-6-.03.

**CHAIRPERSON HANDEL:** Is there a second?

**MR. MCIVER:** Second.

**CHAIRPERSON HANDEL:** Any questions?  
(No response.)

**CHAIRPERSON HANDEL:** All in favor?  
(Whereupon, there was a chorus of ayes.)

**CHAIRPERSON HANDEL:** All right. That one is ready to post; next one.

**MR. TAILOR:** 183-1-6-.04. Again, this are private entities for voter registration and making the rules clear as to how they apply to third-party voter registration drives.

**CHAIRPERSON HANDEL:** Any questions on this one, folks?

**MR. WORLEY:** I have some questions.

**MR. TAILOR:** Yes.

**MR. WORLEY:** Mr. Tailor, if you look on page four and five of this rule.

**MR. TAILOR:** Yes.

**MR. WORLEY:** Actually, before we get to that, will you please tell us generally what is the reason for the new rule?

**MR. TAILOR:** Yes, sir. The reason is there is some uncertainty. As you remember, there was litigation with respect to existing voter registration drive rules of the SEB and how those

apply to third-party registration drives. Mr. Ritter can talk about that if you'd like more. But that case was dismissed. But there seems to be still some confusion as to how third-party registration drives should be conducted in the state of Georgia. Actually, these rules are taken and drafted with a number of third-party registration organizations and their input into these rules.

**MR. WORLEY:** Which organizations?

**MR. TAILOR:** I know we had a project vote -- NAACP was an organization -- the organizations represented by Mr. Hearn in that lawsuit.

**MR. WORLEY:** Okay. With regards to rules on page 4 of 5, the last section, Section C of Section 9 -- I'm sorry, Section 8 right above Section 9, it says, "With each transmittal of completed voter registration application, a private entity should include a transmittal summary sheet which, at a minimum, provides the name of the submitting individual, the name of the private entity sponsoring the voter registration programs if different from the submitting individual, the physical residence or business address of the submitting individual, the daytime and evening telephone numbers of the submitting individual, and the total number of applications being submitted. The Secretary of State may design and make available to private entities a model transmittal summary sheet." What was the rationale for requiring --

**MR. TAILOR:** The main rationale there, Mr. Worley, was so that -- there were instances and have been ever since voter registration drives were first instituted. Certain people thought voter registration -- I submitted my voter registration application. I gave it to an individual, and they submitted it. They didn't have to be a registrar. So this would be a way to allow, not only the third-party organization, but the registrar's office in the Secretary of State to know did these, in fact, -- were these submitted by the individual that you're registered with? So that there would be a trail so that folks could actually get back to, yes, in fact, I did provide my voter registration application.

**CHAIRPERSON HANDEL:** Anything else?

**MR. WORLEY:** I have just a general comment. This is a pretty comprehensive rule, which strikes me as proposing a number of pretty burdensome things among the third-party rules. That, having been said, you indicated that a number of these third-party groups had input in these rules. So I'm willing to vote to post these and provide comments and have a hearing. But I would be very interested to hear what -- any of these third parties and other third parties have an opportunity to come and speak to us.

**MR. RITTER:** Madam Chair, can I comment just a few minutes?

**CHAIRPERSON HANDEL:** Yes.

**MR. RITTER:** I was involved in some of the litigation involving challenges by these entities or individuals on their right to submit rules. I think we should emphasize first that the violation of these rules would not be a basis to deny someone's registration application itself. In no way would that have interfered with someone registered to vote or not. The real curtain is over the individuals who want to register to vote and have private entities or

individuals collect the voter registration information and do things with it that are improper. One of which we have seen in the past and many other states have seen as well is doing things like taking a large stack of voter registration applications and just leaving them in the trunk of their car. The question one should have is: If it doesn't prevent someone from registering to vote, what is the purpose of having rules? What rules actually do is provide basis to sanction those who collect such applications if they do things that are improper with those applications. I think it's entirely appropriate that the Board would exercise its jurisdiction to do that. I have reviewed these rules. But I will tell you they are similar to and, in fact, more lenient than the rules of some other states in terms of voter registration activities by third persons. One other brief comment just from a historical point, the Georgia regulations that governed regulatory practices in the past, I think, for a while, were misinterpreted as meaning that no private individual could go out and register or try to collect voter registration applications. Of course, a private individual is not registered to vote when they give an application to someone who is not a registrar. They have to give it to a registrar. If that private individual or entity collects it, there is no absolute submission of the application until the registrar actually receives it. The prior rule that existed in Georgia for a long time really applied to registrars and deputy registrars who govern third conduct. It didn't touch on what private individuals might do. But it does need -- some need to make sure that private individuals are not misacting when they go out and collect voter registration applications. That's what this rules does.

**MR. WORLEY:** I certainly recognize that as a concern. We got the ballots on the one hand. The assurance that someone who fills out a form at a third-party registration drive will have that submitted to a registrar with the potential chilling effect of burdensome regulations on the person conducting the drive. So that's something that I will be waiting with input from these third parties.

**MR. RITTER:** I think that's duly noted. If I can, let me just make one other comment. In NVRA, there was a finding by the House Committee that reviewed that that improper conduct by those who collect voter registration applications could actually be chilling on people's willingness to register, particularly those entities. They actually can encourage people to register with these entities if they know that there is corporate regulatory scheme in place

**CHAIRPERSON HANDEL:** All right. Do we have a Motion to Post on this one?

**MR. EVANS:** I so move.

**MR. MCIVER:** Second.

**CHAIRPERSON HANDEL:** Motion and second; all in favor?  
(Whereupon, there was a chorus of ayes.)

**MR. EVANS:** Madam Chair, can we ask that we specifically give Notice to the groups that sued us over this? I'd rather hear from them at the hearing than in court.

**CHAIRPERSON HANDEL:** Absolutely. We can definitely do that; next one.

**MR. TAILOR:** 183-1-10-.01; and that is Qualification of candidates for office. Both of

these subsections, by the way, are almost verbatim from the statute itself regarding insufficiency, if a candidate provides a check for insufficient funds. What the rule provides is a time period in which everyone is aware that the Notice that the insufficiency of funds was the bank's fault, and it gives that two-week period. For the Board's knowledge, I did contact local banking institutions and asked them what would be an appropriate period to generate such Notice. The two weeks were more than enough.

**CHAIRPERSON HANDEL:** Great; any questions on this one?

**MR. EVANS:** The only question I have is: Would a bank error be, for example, if you had all the overdraft protection and the bank failed to provide you with the overdraft protection?

**MR. TAILOR:** That's my understanding, yes, sir.

**MR. EVANS:** I just wondered if we were -- if there is a way where we make that clear because that's number one question I got which is there are many people who write checks. But it's on the assumption they have overdraft protection.

**MR. TAILOR:** If it is the Board's pleasure, I will be happy to take a look at that. It could even be a different subsequent rule or an amendment to this rule, if you'd like?

**MR. EVANS:** Yeah. We can do that as a result of a common period. So I would move that we post it with an idea that we provide that level of clarification to the banks.

**CHAIRPERSON HANDEL:** Second?

**MR. MCIVER:** Second.

**CHAIRPERSON HANDEL:** Motion and second; all in favor?  
(Whereupon, there was a chorus of ayes.)

**CHAIRPERSON HANDEL:** Any oppose?  
(No response.)

**CHAIRPERSON HANDEL:** All right; next one.

**MR. TAILOR:** 183-1-11-.02. It's Appearance of Candidate's Name on Ballot. This rule is specifically designed to address the issues that we have seen in the past on candidate confusion as well as election confusion in this regard. Just quickly, number 1 is taking -- it's modified from other states' rules and regulations about using different types of names or different variations of the first name. The second is taken from a 1984 attorney general's opinion; just apply it as a rule rather than an attorney general's opinion. The rest, again, is taken from similar states' rules with respect to how things should appear on the ballot. Two things that were brought to my attention, and I'll address. It was how a nickname should appear in sub-paragraph 4 and whether a nickname should be the name or should it appear in quotes. That really is an issue for the Board to decide. This is similar to other states' rules. I found no references and past SEB minutes, even though I looked regarding this. Similarly, with number 5, that is really more of a technical rule. But, at least, it makes people aware of that ahead of time that there is -- in order to be able to produce the ballot, that 25 characters

limitation is necessary because otherwise the ballot, it can be produced in a fashion that everybody can read it correctly. Again, I checked on this. I could not find a case that had dealt with this issue in the past or an issue that had come up. But, again, this is a pleasure point.

**MR. WORLEY:** Can I ask you a question?

**MR. TAILOR:** Yes.

**MR. WORLEY:** Paragraph 4 goes -- I just don't recall from the last election. But do you know how government Purdue's name was listed on the ballot? How it would be listed under these?

**MR. TAILOR:** I believe it was -- it just appeared as Sonny Perdue.

**MR. WORLEY:** But this rule would prohibit that?

**MR. TAILOR:** Yes. It would have to be Georgia "Sonny" Perdue.

**MR. WORLEY:** Yes. Is there a reason why we need to make that change?

**MR. TAILOR:** Again, because what we had seen in the last election were variations that caused questions. Can we do a certain type of nickname? Can we do a nickname at this rate? Can we do it before the first name? Can we do it in the middle of the first name or after the whole name? This was designed simply to give guidance around that.

**CHAIRPERSON HANDEL:** Excuse me.

**MR. TAILOR:** Yes, ma'am.

**MR. WORLEY:** Just to be clear, the statewide offices it is the Secretary of State who determines if Sonny Perdue is okay and then for local offices it's the County?

**MR. TAILOR:** Yes, sir. Then, for city, it would be the City.

**MR. WORLEY:** Right.

**MR. TAILOR:** But it would have to be consistent with any ruling that would be passed if you decide to pass a rule.

**MR. WORLEY:** Just for my part, I don't really see it.

**CHAIRPERSON HANDEL:** Give an example of what was the confusion with qualifying.

**MR. TAILOR:** As I said, we did have somewhere the nickname would appear. It's improper to have a nickname appear after the full name appeared. Some local officials had dealt with it differently.

**CHAIRPERSON HANDEL:** So it wasn't a question of whether the person went by the

nickname. It was a question of where the nickname went?

**MR. TAILOR:** In some, yes. Some were questions of what could the nickname include?

**MR. WORLEY:** Like Sonny, vote for me, Perdue. I think that's a pretty easy call.

**MR. TAILOR:** That one is easy. But there were some -- I think there was a lady with a tax -- I can't remember exactly what the nickname was. But it was tax champion.

**CHAIRPERSON HANDEL:** Oh, they wanted to put it on the ballot?

**MR. TAILOR:** Yes; and identifying her specific issues. Those are the things that generate these.

**CHAIRPERSON HANDEL:** Randy, do you have anything?

**MR. EVANS:** I'm not for this rule. I just don't think we have enough to fix a problem that isn't a big one. I can just see -- I remember when this came up before. For example, we had questions on hyphenated names for women who had been married and the degree in which this article impaired them. I remember we had a huge Muslim contingent, who was very concerned because this was being directed in their regard. Have we had a parade of complaints?

**CHAIRPERSON HANDEL:** That's what I was going to ask. Can we hold on this one? Can you bring us some specific examples of what the issues were?

**MR. TAILOR:** Yes, ma'am.

**CHAIRPERSON HANDEL:** In the meantime, we'll hold that. It's supercalifragilisticexpialidocious; still don't want to -- so we're going to hold that one. Okay; what's the next one?

**MR. TAILOR:** 183-1-12-.02. This is simply several revisions to an existing statute. This is a revised version of what you all have seen before. I'll quickly point out the revisions. The first sub-paragraph A, simply clarifies assistance, the word "assistance" in the coding rule. There has been confusion over that by definition over the years. The added language that was included here is after -- it's on the fifth line, "operate the voting equipment, including touching the video screen or button adjacent to the video screen of a DRE unit." That is taken directly from the definition sections of 21-2. The other is in sub-paragraph G. That defines early voting for later use of the rule; 'H' would be enclosed space. I did take out the original language that was taken from statutory reference to make it more clear -- "that must be clearly designated as the inner portion." That's what is on the first page. On the other, the next half, where I've had your rule, I made it clear that early voting needs to take place before early voting begins. There's some concern about should there be a front-end limit on that so the counties can't start it a year ahead of time. That isn't a concern because L&A can't begin until the ballots are ready. So there is a written time when that has to be done. Lastly, sub-paragraph D, the third tab in your rules, included absentee ballots within all precincts. All that is designed to do is clarify absentee ballots must be included in the election reporting so there is no confusion about that.

**MR. EVANS:** I move that we post 183-1-12-.02.

**MR. MCIVER:** I second it.

**CHAIRPERSON HANDEL:** All in favor?  
(Whereupon, there was a chorus of ayes.)

**CHAIRPERSON HANDEL:** All oppose?  
(No response.)

**CHAIRPERSON HANDEL:** All right; the next one.

**MR. TAILOR:** Yes, ma'am; 183-1-14-.06, 183-1-14-.07. In .06, this is designed specifically for voters, elected officials, everyone on the same page regardless of how the margin is of a spoiled ballot. It specializes what the registrar must do. When we get a spoiled ballot, the directions that must be included on the absentee ballot when it goes to the voters so that they understand what the requirements are; 183 -.07 version of this is the definition of a spoiled ballot. I attempted to draft a definition of a spoiled ballot based on practice and what is out there in other jurisdictions. There is no definition of the rules of spoiled.

**MR. EVANS:** Just an idea, could we change spoiled ballot from having an exhaustive list which is spoiled ballot shall include a ballot? Why don't we say, "Spoiled ballot includes a ballot?" That way we're never hoisted on our own -- having set forth in this exhaustive list. As it turned out, there's some definition we didn't think of. So, subject to that, I would move to post it.

**CHAIRPERSON HANDEL:** Motion to post this rule as amended. Is there a second?

**MR. WORLEY:** Second.

**CHAIRPERSON HANDEL:** Motion and second. Any oppose?

**MR. EVANS:** On both.

**CHAIRPERSON HANDEL:** Right, on both. We're doing them together.

**MR. WORLEY:** I want to make sure which ones we're doing together.

**CHAIRPERSON HANDEL:** We're doing 06 and 07. The Motion is to post 06 and 07 as amended; and a second. All in favor?  
(Whereupon, there was a chorus of ayes.)

**CHAIRPERSON HANDEL:** Any oppose?  
(No response.)

**MR. TAILOR:** In that same rule, '08 deals with additional sites for voting places especially with respect to the (unclear). This is revised from a previous 07. This definition of what is a

government building as contained in the statute and the rule is taken from Title 30 of handicapped persons and applied in the elections.

**MR. WORLEY:** Excuse me a minute. In my packet, I had 183-1-14-.07.

**CHAIRPERSON HANDEL:** I think he has two copies of 07.

**MR. TAILOR:** I apologize; .07 is the old, original version of .08. I apologize for the conclusion.

**MR. EVANS:** My question is: Could we add after the phrase "operated by" used by. I think we can -- if we give our registrars the maximum flexibility, it would seem to me that, if the county government, local government instead will be using the facilities, they would have met all the other non-discrimination requirements and all the other things that are attached to them, operation by state entity.

**MR. WORLEY:** Well, does that mean any existing polling place? I'm kind of confused because it would be currently used by local --

**MR. EVANS:** The answer would be yes.

**MR. WORLEY:** I'm fine with that. I just want it to be clear.

**MR. TAILOR:** I think, by this definition, it would essentially open up any facilities that the county government wishes to choose and use.

**MR. EVANS:** Subject to the other rules that also apply to governments.

**MR. TAILOR:** Correct.

**CHAIRPERSON HANDEL:** But would it also be subject to the other rules of an appropriate environment for security? A city might be -- and I don't know that any city is. But, in the interest of just being barred out, a city could potentially use a grocery store for some special projects. Obviously, a grocery store would not be an appropriate polling site for the obvious security aspect of it. I just want to make sure that this does not --

**MR. EVANS:** I think you're exactly right. But there may be other facilities owned/lease that they shouldn't use as well.

**CHAIRPERSON HANDEL:** Right. That's why I want to make sure that this does not supersede the parameters of what a polling site needs to be.

**MR. TAILOR:** That's correct.

**CHAIRPERSON HANDEL:** Okay. I just want to make sure.

**MR. EVANS:** So, with that modification, I move that we post it.

**CHAIRPERSON HANDEL:** Is there a second?

**MR. MCIVER:** Second.

**CHAIRPERSON HANDEL:** Motion to post as amended and second. Any other questions?  
(No response.)

**CHAIRPERSON HANDEL:** All in favor?  
(Whereupon, there was a chorus of ayes.)

**CHAIRPERSON HANDEL:** Any oppose?  
(No response.)

**CHAIRPERSON HANDEL:** All right; two more to do.

**MR. TAILOR:** We're on our last two.

**CHAIRPERSON HANDEL:** Are these appropriate to take together?

**MR. TAILOR:** No, ma'am. They're slightly different; 09 is a voted absentee ballot. It simply defines what an absentee ballot, which has been voted in the statute. It actually means -- because there is a definition of that in the Code. It has been a source of confusion. It simply clarifies that a ballot is deemed to have been voted when the registrar has certified it as a voted ballot. If there's a mistake, a minor mistake, which could include leaving off a date of birth, this would allow the voter to actually be able to cast the ballot rather than having that ballot rejected and not being able to be issued another ballot.

**CHAIRPERSON HANDEL:** Any questions on this one?

**MR. WORLEY:** Do you know how this works with someone canceling an absentee ballot that they mailed in and they come in?

**MR. TAILOR:** This rule and statute wouldn't have any affect on that. That is a separate statute on how to cancel an absentee ballot at the polling place if you choose to do that. This rule and statute deals much more with somebody returning an absentee ballot and makes a mistake on the outside of the envelope. If it's rejected under a strict reading of the statute, another ballot could not be issued to that voter. This allows for some parameters within which another ballot could be issued in that circumstance.

**MR. EVANS:** So the phrase received by the Board of Registrars, logistically, how did that happen? Is that the date of the stamp? Is that the date it's entered in the system?

**MR. TAILOR:** The received by is the date that the -- under the statute, it's the date that registrars receive in or get in the ballots from the voter. So, when it gets to the registrar's office, then it is received. Then, on that day, they are required by the statute to certify whether that ballot can be accepted under the statute, which is why I used that language.

**MR. EVANS:** But I think Dave's question was: When a voter decides to cancel, can they cancel after the received date?

**MR. TAILOR:** My understanding is no. That's what the statute provides is that -- and this rule doesn't change that. If somebody has voted and they made their decision and it's accepted and certified by a registrar, they cannot change their mind and cast a different vote somewhere down the road, no, sir.

**MR. EVANS:** That's my understanding as well. I just want to make sure.

**MR. TAILOR:** Yes.

**MR. EVANS:** So I move we post 183-1-14-.09.

**MR. TAILOR:** I second.

**CHAIRPERSON HANDEL:** Motion and second. All in favor?  
(Whereupon, there was a chorus of ayes.)

**CHAIRPERSON HANDEL:** Any oppose?  
(No response.)

**CHAIRPERSON HANDEL:** Okay; last one.

**MR. TAILOR:** This is the last one, Acceptance of Absentee Ballots from military and overseas citizens. This does deal -- really, the only difference from the statute itself is the rule. It does take into consideration where the envelope doesn't bear a postmark and what should the registrars do where no fault of the voters. USPS or a carrier does include a postmark on their ballot that's received within the three days. This rule will allow that ballot to be counted.

**MR. EVANS:** Wouldn't we be better off having a deemed postmarked date? If it doesn't have a postmark but it's deemed, you have a deemed postmark on the date of the receipt, which is the moment --

**MR. TAILOR:** Other than when you receive it. It would have to be deemed on elections day because postmarks --

**MR. EVANS:** So I deem them all received by the deadline.

**MR. TAILOR:** By the deadline, right. You could draft it that way or I don't -- however you'd like to draft the language is fine.

**MR. EVANS:** I move we post it.

**MR. MCIVER:** Second.

**CHAIRPERSON HANDEL:** Motion and second. Any other questions?  
(No response.)

**CHAIRPERSON HANDEL:** All in favor?  
(Whereupon, there was a chorus of ayes.)

**CHAIRPERSON HANDEL:** Any oppose?  
(No response.)

**MR. EVANS:** I would like to say that Wes did an absolutely outstanding job in putting all of this together. In the context of us discussing (unclear), he was very receptive. It was a pleasure to work with him. I appreciate his good work.

**CHAIRPERSON HANDEL:** Thank you very much. I appreciate that feedback. As we go forward, there's obviously always going to be areas of the rules that we need to update. So let's make sure we keep this in a continuous dialog. Any other business for today?  
(No response.)

**CHAIRPERSON HANDEL:** If not, I'll entertain a Motion to adjourn.

**MR. EVANS:** Absolutely, second.

**CHAIRPERSON HANDEL:** All in favor?  
(Whereupon, there was a chorus of ayes.)

**CHAIRPERSON HANDEL:** Thanks everybody.