

THE OFFICE OF THE SECRETARY OF STATE  
STATE OF GEORGIA

IN THE MATTER OF:

STATE ELECTION BOARD MEETING

GEORGIA STATE CAPITOL BUILDING  
ROOM 341  
ATLANTA, GEORGIA 30334

TUESDAY, DECEMBER 17, 2013  
9:00 A.M.

PRESIDING OFFICER: BRIAN P. KEMP  
SECRETARY OF STATE  
STATE OF GEORGIA

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APPEARANCES:

Brian P. Kemp, Secretary Of State, State of Georgia

David J. Worley, Member, State Election Board

Tex McIver, Member, State Election Board

Rebecca Sullivan, Member, State Election Board

ALSO PRESENT:

Chris Harvey, Esquire

David Walbert, Esquire

Russ Willard, Esquire

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TRANSCRIPT LEGEND

|            |    |                                                                                   |
|------------|----|-----------------------------------------------------------------------------------|
| [sic]      | -- | Exactly as spoken.                                                                |
| (phonetic) | -- | Exact spelling unknown.                                                           |
| --         | -- | (Dash) Interruption in speech.                                                    |
| . . .      | -- | (Ellipsis) Indicates halting speech, unfinished sentence, or omission of word(s). |
| Uh-huh     | -- | Affirmative response.                                                             |
| Uh-uh      | -- | Negative response.                                                                |

Quoted material is typed as spoken.

9:00 a.m.

## PROCEEDINGS

**SECRETARY KEMP:** Okay. Welcome again, everyone to the special call State Election Board meeting, Tuesday, December 17<sup>th</sup>, 9 a.m. I want to go ahead and call the meeting to order.

We think Mr. McIver is en route. So we'll go ahead and get started today. We'll bow our heads – briefly for the invocation and then we'll say the Pledge and then we'll get started.

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### INVOCATION

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### PLEDGE OF ALLEGIANCE

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**SECRETARY KEMP:** Just a couple of quick announcements, Mr. Simpson is not with us today. He had some back surgery so we certainly wish him well with his recovery and look forward to having him back soon. Also, I just want to remind everybody, as I often do, this is a probable cause hearing. Basically, what we're here today to do is to determine if there is enough evidence for the board to take certain actions with the different cases that are before us like being referred to the attorney general's office or send them back for further investigation or dismissing the case altogether.

With that being said, the way this is going to work today is, we're going to let Mr. Harvey present the different cases before us one at a time. Once he goes through that we'll then allow the election board members to ask questions of him and then once we're finished with that we'll let Mr. Walbert, the attorney for Fulton County, give a presentation or make remarks or be able to address the board however he sees fit. And then, we'll also see if there's anyone who would like to make a public comment involved with these cases. So with that Mr. Harvey, I'm going to let you present to us SEB Case No. 2012 No. 156 which is the 2012 General Election case for Fulton County.

**MR. HARVEY:** Thank you, Mr. Secretary, members of the board. This election drew a large amount of scrutiny. It's -- everybody knows that elections are about accountability. Accountability for elected officials and also the accountability of people performing the elections to make sure the results are properly and accurately reported. On November 6, 2012, Fulton County held a general election that included the offices of the President, members of Congress,

and other officials and there were significant problems with the election. What I've got on the screen now is the left side is stacks of provisional ballots and on the right side is a copy of a certification that was submitted by Fulton County in which they say that a true and accurate count of votes cast is represented therein. I think by the end of the presentation there will be reason to believe that that might be called into question.

There are five key areas that I want to discuss on the November 6th general election. They involve pre-election failures, absentee ballot problems, problems at polling places, problems with provisional voting, and problems with provisional tabulation and notification of voters. The pre-election failures begin in the days, weeks, and months prior to the election. One of the most important jobs of election officials prior to election is making sure that election --voter registration applications get processed by the deadline. In this case, the deadline for registering to vote in this election in Georgia was October 9<sup>th</sup>. And there's always a flood of voter registration applications in the days, weeks, and months leading up to the election.

Fulton County, as we were shown, was unable to complete the task of properly entering all those registration applications. These include new voters, voters who were changing addresses, voters who were changing names, voters who had additional information, whether they lacked sufficient ID, or they asked questions of the citizenship status. There were thousands and thousands of these applications that came to Fulton County. In the past, Fulton County had brought in additional data processors to meet this need. In this case, Fulton County did not. There ended up being a significant problem as a result. When they failed to update the voter registration system, they ended up with a huge supplemental list that I'll talk about in a little bit more detail that included over 6000 voters who were not included in the ExpressPoll.

When it came to Election Day Fulton County also failed to prepare precincts with the number of provisional ballots and paperwork and they demonstrated that poll workers were inadequately trained and largely unprepared to deal with a lot of the challenges that they would count. In the electors list, when most people go to vote and they show their identification they're pulled up on a machine that is called an ExpressPoll. And that ExpressPoll contains all the registered voters within a county each; county has their own list. That's important because if somebody is not on that list, according to the poll worker sitting there, they're not eligible to vote and secondary steps have to be taken. In order to complete the ExpressPoll, the information has to be entered in the system, in this case by October 26, 2012. After October 26, any additional entries would not be in the ExpressPoll system and would have to go on the supplemental list. Supplemental list are usually quite small.

In this case, Fulton County had over 6000 voters that were on the provisional -- I'm sorry, that were on the supplemental list. That list was closed on Saturday, November 1<sup>st</sup>. In addition, on Sunday and Monday, days prior to the election, an additional over 300 voters were then added after the supplemental list was posted so those voters were essentially invisible to election officials. They were not going to be able to ExpressPoll and they were not going to be on the supplemental list that poll workers would look for to find voters who were not on the ExpressPoll. There were another 412 voters that were entered after the supplemental list was printed.

And on November 5<sup>th</sup>, this is a copy of an email I sent to Secretary Kemp and the elections director. I sent investigators to Fulton County to check on the – we had gotten a large number of complaints regarding people not showing up as being registered to vote in Fulton County. I sent two investigators over to Fulton County to check with the elections director, Sharon Mitchell, to see if they had solved the problem. Ms. Mitchell informed the investigators that everything was taken care of, everything had been entered. There were a few extra that they had found on Monday, but everything was going to be fine. That ended up not being correct.

This is the short summary of the people that were added after the close of the ExpressPoll: Seventy-three of those people voted. Eleven of those 73 that voted provisional ballots were rejected by Fulton County even though they were properly registered. And this will come up a little bit more when we get into the provisional ballot tabulation system. But these are 11 voters who were entered late into the system by Fulton County and then when they were offered a provisional ballot and voted it when Fulton County went to check on it and Fulton County again said, oh, you're not in the system your ballot is rejected. So these are 11 voters who were not – whose vote did not count.

Fulton County conducted an internal survey, internal audit, into their practices and one of the more telling responses came here from an election official who said, visiting Fulton County, registration elections officials could not obtain clear verification of the staffing and heavy workload requirements because voters registration cards were moved from the sign out location and placed around the office so no one would be able to identify the workload. Cards were hidden at employee work stations, thousands of voter registration cards were not entered into the system or addresses updated and that's from a Fulton County poll worker.

Ralph Jones in Fulton County election office admitted that in the pressure before the election that they stopped entering address changes in the voter registration system, which again, caused a voter who had moved and presumably changed their address to go to the wrong voter precinct attempt to vote and be told that they weren't on the list and either be forced to go somewhere else or vote a provisional ballot. And in a lot of cases people would be in line for several hours getting to the ExpressPoll to be told, oh, you're not registered to vote. You either have to go to a different precinct or you have to go to a provisional ballot.

There was some debate back and forth as to whether or not the Fulton County was largely responsible for the failures to enter the information in the voter registration system or whether not it was the result of errors or delays from the Secretary Of State's office. And what we determined was that the Secretary Of State's office had a system where they had to call Fulton County and in several cases Fulton County would normally come and pick up two boxes of voter registration applications in the days before the cutoff. There were some days when no Fulton County staff responded to pick up those registration applications. There were times when Fulton County said they would only take two even when there were more boxes.

The Secretary Of State's office had an all hands on deck pressed right before the deadline were everybody in the office including upper-level managers and staff were clearing these voter registration applications and sorting them to get to the counties. The evidence is that Fulton County can't really lay the blame for the late registration on the Secretary Of State's office.

There's a 145 report, I cannot profess to say I know exactly what 145 is, but it's a report that summarizes all the data entry that's done by the counties in the days -- you can pick any timeframe. In the days before the election, these show the last time that entries were made. So you can see starting the 26<sup>th</sup> and going through the 5th there were three days when entries were made after 10 p.m., but there were several days where entries were made one, three, and several at the normal closing time.

So the idea that there was some type of huge push doesn't appear to be substantiated by the 145 report. The total 145 report, and this where I'm going to compare Dekalb County to Fulton County, from October 1st until November 1st, 2012, Dekalb County processed 278,190 entries into their VR system. And they did that with 34 workers. And this is everything from absentee ballot applications to new voters to change of address forms to missing ID. This is basic total entry into the voter registration system. Dekalb County did 278,190 in 30 days or between October and November. Fulton County did just slightly more in that same time period with a hundred workers. Fulton County completed 284,317 entries and they still did not complete the entries into the VR system.

I mentioned this before, the most obvious reason why the VR systems is not updated appears to be -- this was reported by Gary Smith, who was the election consultant Fulton County hired to evaluate their elections, he mentioned this and this was also the most constant and consistent complaint that poll workers had in this internal poll I mentioned, was that Fulton County did not supplement their office with temporary workers.

In terms of failing to prepare precincts and poll workers, there was no specific increase in the number of provisional ballots that were distributed after it would've been known that they were going to have a huge supplemental list. They did not identify precincts that might have problems and give them additional provisional ballots. There was no communication with poll workers about this huge supplemental list that was coming. It ended up that almost 2500 provisional ballots had to be printed and distributed on Election Day.

The communication system, which had been billed as state-of-the-art and which may have been state-of-the-art, was ineffective and failed miserably on Election Day. And that's based on reports from poll workers, monitors we had on the ground, and a lot of people. The communications system simply did not work. There are some reports that it was untested before it was put into place. And lastly, poll workers seemed remarkably ill-trained to handle supplemental lists and provisional ballots. Sir?

**SECRETARY KEMP:** I just would like the record to show that Mr. McIver has arrived.

**MR. MCIVER:** Mr. Secretary, my apologies.

**SECRETARY KEMP:** No, no, not a problem. Go ahead Mr. Harvey

**MR. HARVEY:** When you're dealing with 10,000 provisional ballots, which is a huge increase and wouldn't normally happen, many poll workers simply didn't have the experience to deal with that certainly in those numbers and in some cases not at all. And lastly, there were at least

two precincts where the supplemental list was not provided to the poll workers. And this would be devastating to poll workers when you have the VR system and the ExpressPoll that is missing over 6,000 names on it. To not have a supplemental list to go to as your backup list proved pretty damaging to lease two precincts in Fulton County.

As far as absentee ballot problems go, they were relatively small compared to previous elections and in light of everything else that happened. We did get approximately 22 complaints received, most of the ballots didn't arrive, and the ballots arrived late or on Election Day. We had three cases where more than one ballot was sent to individual voters. And we had reports of ballots that were mailed back in plenty of time but were not received and accredited by Fulton County. This is -- again, part of the survey from a poll worker in Fulton County -- it's difficult to read but it says under What did not go well?, on the date that all ballots were to mail out for applications received prior to that date, all ballots did not go out within the two day period.

Once the volume picked up and Advance Voting began, efficiency declined because staff was pulled to work Advance Voting. In addition, there was a lack of communication between the application processing team and the mailing team. This resulted in the entry of absentee ballot issues being late or not entered at all, in violation of state law.

And again, we found that was true although to a much smaller extent than we received in other cases in Fulton County. These are three copies of the second absentee ballot that was sent to three voters in Fulton County. The Hovaters, Mr. and Mrs. Hovater, each received two ballots and Ms. Keuller received two ballots. They both returned -- all three people returned their unvoted second absentee ballots to the Secretary Of State's office. But it's not known if there were others that were mailed out and not returned or voted or what happened to any of them. I mentioned this at the January 31st hearing and I'll just sort of put it into the record again.

Rollie Buchanan, it's a case where he requested an absentee ballot in early October and he did a remarkable job of documenting the steps he took and the conversations he had and the documentation with Fulton County election officials to try to get an absentee ballot mailed to I believe is was New York. And it ended up after repeated phone calls and repeated faxing of applications and repeated assurances that things would happen his ballot arrived actually on Election Day in New York and was unable to be voted and cast by him even though he took extraordinary steps. And again, somebody that has taken extraordinary steps with an absentee ballot and still not getting it is certainly problematic as far as absentee ballots go.

Moving on to the problems at polling places: I've got three complaints that are fairly typical. We received over 120 different complaints about polling places. And again, without reading every single word of all these complaints they're essentially in the record. This gentleman, Mr. Hamby, was lamenting the fact that his 18-year-old son, who was looking forward to his first time voting, was not able to vote. The poll worker shook her head and apologized as this was becoming a frequent occurrence at her polling place. He says how he's really sad how this young man was excited to take part in the American dream and was declined because of the gross mismanagement and complete inaptness of Fulton County.

This is a complaint from Rebecca Roesener who was complaining -- her complaint ends up being

a sort of impression as we'll see later in this report. She reports that she moved to Georgia from across the country. Imagine my frustration when arriving at my polling place I was told multiple times that under no uncertain terms that I would not be allowed to vote even though I was at the proper polling location and had register to vote before the cut-off time. Only when I insisted that I be allowed to speak to the polling judge was I allowed to vote using a provisional ballot. At that point, it was clearly pointed out to me that if Fulton County did not bother to find out if I was a registered voter, they can choose to not count my ballot. I am a registered voter, and yet I was told I am not. If Fulton County can't figure out if I am register in the four weeks between when I registered and the election, how are they planning to do that in the three days following the election?

And the third is from Molly Jones: I moved to Midtown from Fairburn about 3 years ago and have changed my address. My polling place was Grady High School. When I arrived to vote there, they told me that I had to vote in Fairburn. I was not given a provisional ballot and was not allowed to vote. And this is – these next two slides, and you can't read them, but they are in the PowerPoint as the record and they're a little bit more legible. I can certainly make them more legible. These are some of the complaints that we received about polling places. And they contain complaints for everything from long lines to not being allowed to vote provisionally, to machines not working, poll workers not understanding how to work the equipment, waited an hour and a half to get the provisional ballot.

So you can see we were inundated with complaints about polling place problems on the Election Day. And then, sort of a summary of the problems at the polls, you had over 5,000 properly registered voters who had to vote provisional ballots. And this will speak somewhat, I believe, to the performance of the poll workers, 3,732 voters who cast provisional ballots were in the ExpressPoll who should have voted on DRE. It's baffling how that many people who were in the ExpressPoll system were not able to vote on the DRE. Now, you could argue that if every single one of those people went to the wrong precinct they may have voted a provisional ballot. I don't think the evidence would support that at all. Whether the poll workers didn't know how to look people up there's really no explanation why that number of voters would not be allowed to vote on DRE and would have to vote provisional ballots.

In addition, there were about 1100 voters who were on the supplemental list should have been allowed to vote on the DRE but had to vote provisional ballots. There were several precincts that ran out of provisional ballots and caused delays of hours, in some cases, before provisional ballots could be brought to them. If you recall back in January I read some affidavits from people who waited hours and had to make three and sometimes four trips back to polling places to see if more provisional ballots had been delivered, in some cases, having to go after the closing of the polls. As I mentioned, Fulton County printed almost 2500 provisional ballots. The last batch was printed at almost 6:30 p.m. and was delivered after 7 p.m. Of course, people that were in line to vote were still able to vote, but one has to wonder how many people would've made multiple trips back to a polling place after being told there are no provisional ballots to be cast.

There didn't appear to be any coherent or effective plan to deliver or stock the provisional ballots



as they began to run out. Our office contacted Fulton County officials early in the day after we started getting multiple reports that there were an usually high number of provisional ballots and precincts that were running out of ballots. There didn't seem to be much of a plan for delivering those provisional ballots. Poll managers reported spending hours on the telephone trying to get assistance, which often never materialized. And some voters were simply told they would not be able to vote at all because they weren't on the list.

ExpressPoll recapping and DRE recap problems, part of the accounting process at the end of the night with voting is that you have the ExpressPoll which would indicate how many voter cards were created which should indicate the number of people who voted or at least were issued a ballot. The DRE should show the number of votes that were cast on a specific machine or on all the machines in the precinct and those numbers should add up. If there are one or two exceptions it could be accounted for.

Of the 247 recap sheets provided to the Secretary Of State's office, 138 of them appear to be accurate, but 109 of them had errors, omissions, or other problems. This chart highlights some of the worst problems, some of the most disparity in the DRE and ExpressPoll Recap sheets. And if you look at the -- the two arrows show the difference in what the DRE and the statements of votes cast and the ExpressPoll show with these 18 or 19 precincts you end up with a difference of almost 2,000 those between what the ExpressPoll says and with the DRE Recap sheets said. In some cases, recap sheets were not filled out properly. In some cases, they were completed. But again, you've got a massive problem, I think, with accountability trying to reconcile systems.

With regard to provisional ballot problems and this is the largest area of concern in this election I believe. How many people voted provisionally in Fulton County? I'm not confident that anybody would ever be able to answer that question with much precision at all. I'm not sure how well you would be able to ballpark it. Fulton County had approximately 95 - 9600 provisional ballots that were cast on Election Day. Of that, Fulton County reported that almost 2500 were out of precinct provisional ballots. And out of precinct provisional ballots is if I were registered in the Sandy Springs precinct and instead I went a Midtown precinct and it was late they would let me vote a provisional ballot in Midtown because I wouldn't able to get to my precinct is Sandy Springs.

The fact that there were 2442 may not be as obvious as it would appear because remember the voter registration system had not been updated and addresses had not been changed so even if all 2442 voters did go to the wrong precinct, it's not clear that it would've been their fault and it's not clear that all of those voters actually went to the wrong precinct. But anyway, these provisional ballots accounted for about 54 percent of all the provisional ballots cast in the state in that election. And as the board members know, that voting a provisional ballot is sort of a "vote of last resort." It's the last attempt to protect somebody's right to vote if they believe their properly registered. The problem on the backside of that is it becomes incredibly intensive both during the vote casting process and on the backend when it comes to the documentation and the security and the counting and the verification of those ballots.

So as soon as somebody issues -- decides a provisional ballot must be issued they start a chain of

paper and human accountability that goes through several iterations. And if any one of those steps is omitted or failed you can come up with some significant problems. This chart represents different numbers of provisional ballots that were reported. Now granted, some of the early columns were estimates that were given either to the media or the Secretary Of State's office, but the final number appears to be about 9,585 although the report that was given to the Secretary Of State's office said 9,575. It appears they did the math wrong and were off by 10.

You'll see, and I'll point out several times, nowhere in any of this accounting do provisional ballots add up with voters with provisional voter certificates, with the envelopes themselves, with the list of voters, with people getting credit for voting, for people having their provisional votes rejected. And just to quickly run through so that everybody understands how significant this process is, I want to just very quickly go through what a poll worker is supposed to do with a provisional vote. He supposed to have the voter complete a voter's certificate, check the voter's ID, they then enter the voter's name on a list of provisional voters, the poll worker enters the voter's name, precinct and the other data on the outer envelope and they provide the ballot and two envelopes to the voter. The voter then returns it to the poll worker who verifies the information is complete, marks the reason for the provisional ballot, directs voter to deposit the ballot, then takes the voter's certificate and voter registration application puts those together and puts them off to the side.

So you can see that that so far is a fairly -- already it's a document intensive procedure, accounting procedure. The provisional ballot documentation process was practically and largely ignored by many poll workers of Fulton County. I'll go into each of these in a little bit more detail but I just want to get them out there. First, the provisional voter's certificates were often not completed properly if they were completed all. Many provisional ballot envelopes were not properly marked or documented. The lists of provisional voters were often not completed properly, if at all. Many voters were not given voter registration applications as is required in most cases when somebody goes to file a provisional ballot. And all provisional voters were not given information about checking their ballot status after the election.

Completing a provisional voter's certificate is important in determining why a voter is voting provisionally. There are several reasons why somebody might want to vote provisionally. This is what a provisional voter's certificate looks like. You see on the left is the front side and the right is the backside. The front is properly filled out by this voter. You'll notice on the back and this is the actual certificate not just a blank one, none of the information on the back is completed in terms of why this person is indicating why they believe they are eligible to vote and what the poll officer's marking as to the type of provisional voter.

In Precinct 03A, there were 91 certificates that were just like this completed on the front but no indication whatsoever on the back. Like I said, there were 91 provisional voter certificates and most errors were failing to designate why a voter was voting provisionally. All this stuff comes back to the verification processes. Its information, it's not just there because somebody thought it would be a good idea to put in there. There were poll workers that had difficulty accepting and documenting ballot envelopes. There were many poll workers that did not know how to process, secure, and accept provisional ballot envelopes. We mentioned this at the January hearing about

six Bridget Jackson ballots that were accepted by the poll workers.

The reason it's so important for the provisional ballot envelopes to be properly documented is that once they're voted the ballots themselves should be secured in a container until the time that the decision is made whether it should be accepted or rejected. Once the list of accepted ballots is determined then the worker is to go and pull every one of those envelopes that has the accepted person on it and they open it and they count that ballot. When these ballots are put away properly and you get a list of the names of the people that are supposed to vote there's no way to go back and determine who these people are if their names are not properly documented on the ballot envelope. Fulton County explained it was determined that this was an error on the part of the poll worker.

There did not appear to be anything nefarious about it, but you'll notice even as the poll worker improperly put her name rather than the voters name on it, in several cases she failed to complete the provisional code as to why, first of all, what type of election it was and the provisional code. In this case, you'll see the one on the right 90003 she's marked Democrat for some reason. In the general primary that should never be marked. There were several times were she marked some but she didn't mark others and it's just an indication of poor ballot security in this case.

Provisional ballot recaps polls, and this is something that we talked about at the January meeting as well, the recap sheet errors are – again, it's even probably more important for the provisional ballots the documentation be done properly because there is no digital company there's no digital fall back where you can go to ExpressPoll or you can go to DRE and say we definitely have an X number of votes cast on this machine. With provisional ballots you're dealing with people, you're dealing with paper, and dealing with things that can be accidentally destroyed, intentionally destroyed, accidentally altered, intentionally altered, and it became clear that a lot of people simply did not know how to complete recap sheets.

This is an example, again, of what we used in January. This shows Precinct 11G and you'll see that there's no serialization for provisional ballots. There are 59 names on a list where there's absolutely no accounting for how many ballots they started out with, how many were cast, how many were unused. The list of voters on the right again has no ballot style that was issued and no indication as to whether or not ballots were accepted or rejected. You'll notice here the poll worker said that they had to bring some more ballots but there's no indication of how many extra ballots were brought, what happened to the extra ballots were they accounted for, were they destroyed, were they voted, were they transferred to somebody else, there's simply no answer to that.

And this is Precinct 01A provisional recap sheet you can see is completely blank. That's as much documentation that was done in Precinct 018A for the recap sheets. And as you'll see, Precinct 01A had, depending on how you do the math, over a hundred provisional ballots were cast. Again, no indication on any of this stuff, how many did they start with, how many were voted, how many were returned? And then the list of provisional voters, as I mentioned before every voter that votes a provisional ballot was supposed to be added manually to a list. And that list is what's used to document the acceptance or the rejection it's what's supposed to be used to document the acceptance or the rejection of the ballots. The list of provisional voters, again,

many were incomplete, they were incorrect, they were missing, some didn't exist at all, and some were severely undocumented. This again is Precinct 03A, and the list of provisional voters on the left appears to have been done properly at the precinct and you'll see the notations accepted/rejected. You also see the precincts that the voter was voting in, is written in red. And on the right, is a second part of the list that was obviously created after the election for what reason we're not sure, it shows acceptance or rejection of these provisional ballots. In those cases, it doesn't show when they were accepted and what precinct they were voting in. Did the poll manager start doing it properly and then stop, was the one on the right labeling correctly, who completed it, we simply don't know.

This is a random list of provisional voters. There was a stack, a fairly large stack of lists that were just like this. Notice there's no indication whatsoever of what precinct it was, what time it was voted, anything even frankly what election it was. We presume it was from the general election because it was with all the others from the general election, but if you look at this briefly you'll see that it appears that it was worked properly; however, you've got five voters where there's no indication if ballots were accepted or rejected. And in this case, all five of these voters had registered prior to the deadline. None of them received credit for voting and Fulton County did not provide provisional ballot envelopes for these five voters.

You'll notice at the bottom left where it says rejected ballot Gheorghe, Sima or Sima Gheorghe, has a provisional ballot rejected but he was registered prior to the October deadline. We've got voters that were not given credit for voting though the ballots were marked as accepted. So again, you get back to the question, how many people voted, whose votes counted? It's very difficult to understand; very difficult to determine.

More provisional ballot problems at the polls, a lot of poll workers did not provide the required documentation with provisional ballots. When somebody votes a provisional ballot because they are not on the list, they are required to be given a voter registration application. And anyone who votes provisional ballot is required to be given written documentation that explains how they can check on the progress of the ballot. We had many reports of people that didn't receive any voter's registration application for the provisional ballots. I think if you recall back in January the question was raised, how many voter registration applications they have received since the election? They weren't sure.

Fulton County subsequently reported that their provisional voter registration applications got commingled with the regular voter registration applications so they really couldn't say how many provisional voter registration applications came in. But just by example, these are 22 people that we spoke with in the course the investigation who voted a provisional ballot and we just asked them, hey, did you get the voter registration application when you voted a provisional ballot? All 22 of these people did not get voter registration applications. And one of the problems with that is that if these people were, in fact, not registered to vote they're still not registered to vote. That was the reason for issuing the voter registration application because for whatever reason it didn't get entered, it was lost or it was destroyed, it was incorrectly coded now they at least, if they didn't get a vote this election, they'll be registered to vote in the next one.

If you'll notice, based on the registration date entry which is the second last column on the right, all of these people were entered right before the election so it's unlikely that they would have shown up on the ExpressPoll which would indicate that they should assume to have not been registered and should have been given a voter registration application. And we had cases where people assumed they'd been denied the opportunity to even vote a provisional ballot. In some cases, it was because there were simply no provisional ballots to offer them. But in some cases, we had voters who actually asked to vote provisional ballots and were simply told they could not and they left without voting a provisional ballot.

We get to provisional ballot verification process; all provisional ballots have to be determined by 5 o'clock on the Friday after the election. Fulton County didn't even start verifying their 9,575 provisional ballots until Thursday after the election so they lost an entire day of verification. The law actually allows election officials to pick up provisional ballots from the precinct while the polls are still open so that they can start the verification process. And again, when provisional ballots were provisioned by the lawmakers they envisioned one or two people voting provisional ballots had to be checked. They weren't thinking 10,000 people voting provisional ballots in the largest county in the state.

So if they started Thursday morning that gave them 41 hours to validate 9,575 provisional ballots. If they took three and a half minutes per ballot verification, which I think is a pretty conservative estimate, it would have taken 443 hours to complete the process. Fulton officials did not work around the clock, although, they did work some late shifts. Ralph Jones further testified that in addition to one person checking basically we had two people check every provisional vote. So you can take all of those numbers and double them because according to election officials they had every provisional ballot checked by at least two people.

In order to check – just briefly going through the process, they would check the “Go” screen, which was in the VR system that would show whether or not somebody was registered, show where they were registered, when they were registered. If somebody showed up on the “Go” screen they would be approved if they were registered in time, their provisional ballot would be approved and would be moved to the side to be counted. If it was not in the “Go” system the next step would be to go to the unprocessed voter registration applications that had come in that were in boxes and go through each of those to try to find if the person's voter registration application came in late. Lastly, they would check the Department of Driver Services website to determine if somebody registered to vote. So you can see as a three and a half minute per ballot twice that seems a very conservative estimate, and we'll see that there are significant failures with provisional ballot verification.

We had provisional ballots that were rejected for people who registered to vote. In the case of the McGlashans, this was a husband-and-wife who registered at the same time at the same address. They both went to vote at their designated precinct. Mr. McGlashan was allowed to vote Mrs. McGlashan was not. Mr. McGlashan's ballot was accepted Mrs. McGlashan's ballot was not. You also had voters who had provisional ballots accepted even though they weren't registered to vote and I've got some slides that will indicate that. The provisional ballots were not secured during the tabulation process.

When I went over to the Fulton County elections office the day after the election, there were provisional ballot envelopes that were scattered through cubicles, there were 2 or 3 rooms where the ballots were being evaluated, they were at computer stations with individuals handling them, writing on them, marking on them, they were then returned to a central room. So the ballots themselves, which were required to be kept basically under lock-and-key during the verification process, were simply not done at all. Fulton County could not even produce physical evidence that everybody listed as voting provisionally cast a ballot.

I'll get into the 10th Precinct provisional ballot analysis but there were hundreds and hundreds of people that were listed as having voted a provisional ballot but when we asked to see the envelope the person cast Fulton County was not able to present us the envelope and/or the voter's certificate the person would have marked. There were voters that were shown to have voted provisional ballots who never cast provisional ballots. We found 95 names that were listed as having cast provisional ballots and voting on DRE so the concern there was the voter casting two ballots, and that could conceivably happen. What we found when we talked to as many of the 95 as we could, most of those people only voted on DRE. Most of them did not cast a provisional ballot and they did not have a provisional ballot certificate. How they ended up on the list of accepted provisional ballots is a mystery. And this is just documentation on Mrs. McGlashan this is her email explaining her attempts to voting and having been rejected. And on the right is a letter of rejection saying that Fulton County was not able to determine that she was properly registered when in fact she was.

These are people from Precinct 01A whose names were on the list of accepted provisional ballots who don't care to be in the voter registration system. How these people had ballots accepted is a mystery, as well? There didn't appear to be any type of system for the recording acceptance or rejection of a provisional ballot. If you recall on those provisional voter lists some of them indicated if the ballots were accepted or rejected others were completely blank. The envelopes themselves were marked accepted or rejected and as you recall in January Ms. Mitchell testified that that was the ultimate answer as to whether or not a ballot was accepted or rejected. You go to the ballot envelope itself rather than the lists. So how they were able to put together a list of all the provisional ballots that were accepted or rejected is mysterious and is probably why there are so many errors because there was not a single system that was used.

Fulton County didn't follow their own policies regarding handling provisional ballots and the chain of custody that Fulton County had in place on paper was virtually ignored. And this is the 10th Precinct provisional ballot analysis. We showed you this in January, and again, if you go down the columns to the left, if you just take these 10 precincts and take the numbers of list provisional voters the total was 911. If you take the list on the recap sheet it's 789. If you take the provisional voter certificates that Fulton County was able to produce it's 755. If you take the actual provisional ballot envelopes that Fulton County was able to produce you get 649. So almost a 300 voter discrepancy between what's on the list of voters, what's on the recap sheet, and what they were able to actually show us? Here's an envelope that was cast by Joe Lector that shows they voted a provisional ballot.

**SECRETARY KEMP:** Mr. Harvey, just a quick question. Up to this point you've basically been talking about countywide numbers for the election, correct?

**MR. HARVEY:** Yes.

**SECRETARY KEMP:** And then on this provisional ballot your investigators just did 10 precincts out of 300?

**MR. HARVEY:** Yes, sir. Out of 342 I believe. So yeah, these numbers are just for 10 precincts that we highlighted. Certainly, not every precinct was problematic but there were more precincts than this that had similar problems. You can see, just in here you've got a 300 number difference between what's from the beginning to end the highest possible to lowest possible. If you'll also recall in January the poll managers that were subpoenaed to testify in front of the State's Election Board said that none of these poll managers were questioned by election officials when they turned their documents in. They were not asked to account for not having a recap sheet, for not having the same number of provisional ballots that they had listed, for having missing information, nobody was challenged or questioned. And the question is where are all the documents?

You then get into the notification of provisional voter's ballot rejection. The law requires that if a provisional voter's ballot is rejected for any reason that they be notified by US mail of the reason for the rejection. Fulton County provided 4,681 letters of rejection that they sent to provisional ballot voters. The 34 of them had no reason for why the ballots were rejected. Thirty-five of the letters had no city, state, or zip code on the address. 11,154 letters had no mailing address at all. And you'll see this is one where there's no reason for the rejection that would normally be up there; there were 34 of those. Thirty-five of these simply had a street name without any city or zip code. And then, over 1100 of these that were sent out had simply the voters name and had no address at all. There was absolutely no way this letter could've gotten to the voter.

The theory as to why there's no additional information is because the provisional voter certificates were not filled out completely in a lot of these cases and the only way you would get the voters name and address is from a provisional voter certificate. If those are not properly filled out and/or retained and/or used to document the ballots you would end up with the situation that you have here where there is absolutely no way that letter is getting to the voter. Now, if you go, and this is a little more specific than I mentioned before, if you go by the provisional ballots or the voter lists Fulton County is missing 267. If you go to the recap sheets of just these ten precincts Fulton County is missing 131 provisional ballots. If you go according to the number of voter certificates Fulton County is missing 203 provisional ballots. And again, just out of those ten precincts.

This is a document that was presented in January that caused a lot of concern. This is the SS14 where you had voters that were added to the list of provisional voters after it was turned in, in red ink and they were all accepted. If you call, in January when asked about why this was done or what would account for this, the election officials didn't have any explanation. They also didn't have an explanation when we asked them in December about this same issue. It turns out that

apparently, again, apparently these five voters went to the wrong precinct and they may have filled out a voters certificate but they never cast a provisional ballot and the reconciliation process back at the election office somebody thought, well, we need to add these voters. We've got a voter certificate I assume they cast a ballot and so they were added to the list. And then when somebody looked them up to see if their vote should have counted they would've seen, hey, they're in the system we would accept their ballot. So their ballots were accepted when, in fact, they really weren't cast so they didn't vote two ballots. There again, on the left they have -- this is from the list of provisional ballots that were accepted from Fulton County and then the numbered of list of voters from Precinct 7A. And you'll see that Ms. Bradshaw is listed on both lists as are the other four voters that were in SS14.

And again, the concern that there was some type of nefarious activity, I think, is larger than -- I don't believe there's an indication that somebody was intentionally trying to make it appear that somebody was voting twice, but again, unless you go through every single one of these names there's really no way you can determine how many voters cast ballots and why they ended up on one list or another. Of the letters that were provided there were no letters that were sent out of 45, again, that's just out of the ten precincts, 45 Out Of Precinct voters who had their provisional ballots duplicated. And again, if somebody votes out of precinct and they're properly registered their ballot has to be taken and it has to be duplicated down to the point where they're no longer eligible to vote for a candidate. So in this case it was the presidential election.

If I voted in Buckhead and I live in Sandy Springs they would accept my vote for President, Congress, and possibly for County Commissioner, but once it got down to the very local election if I was in a different school board district then if what was available in Buckhead they would not count that. So my ballot would only be completed down to the most common candidate or the most common issue. Forty-five voters were in this position out of these 10 precincts and there were no letters that were sent to them; none indicating that the ballot had been duplicated. Again, this gets back to the other thing about all the red writing and there was a lot of concern about that at the January election.

The standard practice of the election officials explained to the -- when they met at the Fulton County commissioners, I think the next day or maybe two days after the meeting with the State Election Board, they explained, oh, this is very common, we use the red ink so it won't be confused with what happens at the precinct. If you recall, they weren't able to say anything like that on the day that they met with the State Election Board. And frankly, the provisional ballot system was in such a wreck that red writing and trying to manipulate something in the provisional ballot system had been just about all but impossible.

When we get to the list of violations we were able to determine in this case, in Fulton County, we've got I think four pages. I'm not going to go through each of them individually unless somebody would like me to. They range from the registration issues, to the provisional ballot issues, security of provisional ballots, SEB rules regarding documentation of provisional ballots. And again, I'll be happy to go over them if somebody wanted me to but I think that would be pretty time intensive. And at this point, that concludes the presentation of SEB 2012-156.

**SECRETARY KEMP:** Thank you, Mr. Harvey. We're now going to take some questions from



the board for Mr. Harvey and then we'll give Mr. Walbert an opportunity to address the board and make remarks. Three quick questions that I have, it appears to me that we've had people that were disenfranchised that never even got a vote that were not properly registered even though they made the deadline. Would you agree with that?

**MR. HARVEY:** Yes, sir.

**SECRETARY KEMP:** It also appears that we have the disenfranchised that actually voted but then their ballot or vote was rejected?

**MR. HARVEY:** Yes, sir. That's correct too.

**SECRETARY KEMP:** And then, we had people that it appears voted that should not have voted.

**MR. HARVEY:** They're at least recorded as having voted. But then again, in some of these cases peoples name would be on the list of ballots that were accepted and then there's no envelope for them. So whether they actually cast ballots or not we don't know but there are certainly people that are listed as having credit or whose ballots were accepted who were not registered to vote.

**SECRETARY KEMP:** So I guess this is a little in-line with one of the last points you made about the provisional ballots that they were out of precinct and they were not duplicated. Potentially, you could have people that were voting in some of the more local races like the school board or county commission seats because they were voting out of precinct they could have been voting in the wrong election.

**MR. HARVEY:** They could have. I want to just clarify a little bit. Whether all these were duplicated properly we don't know. We do know that, the point I made at the end, was that they were not properly notified that their ballots had been duplicated. That's presuming that they were properly duplicated. That's assuming they were properly duplicated.

SECRETARY KEMP: Any other questions from the board for Mr. Harvey? Mr. Walbert.

**MR. WALBERT:** My name is David Walbert. I represent the respondents to some extent in this case. Just to be clear, I don't represent, if there is personal individual cases against the ex-Sam Westmoreland or Ms. Mitchell, I'm here on behalf of the County and I represent them in an official capacity who would be their successor now at this time. My address is Parks Chesin and Walbert, 75 14th Street Northeast, Atlanta, Georgia 30309. And I appreciate the opportunity to respond, the members of the board and Mr. Secretary. I want to say just a few general things here; make a few different points.

Number one, I think it's important to keep in mind that we have never actually, until we got the report from Mr. Harvey dated February 26<sup>th</sup>, that's the first time we've gotten a written specification of allegations against the Fulton County Board with all this almost a year going on at this point. I think one of Mr. Harvey's last points I was disappointed in was his comment that at the January 31st hearing at which time we had been given zero prior notice of what the

allegations would be. That was a matter that Mr. Harvey didn't show at that time and I'm not belittling that but that was all without any notice about what the allegations were. And he sits there and says today Mr. Jones I think it was said that he used red ink on something several days after but didn't offer that at the time of the January 31st hearing. If we put this in context remember that that was a probable cause hearing. There was no evidence given by our side on that, no response of evidence and we had no prior notice at all of what the questions or allegations were. So I think that needs to be put in context.

There are many things in Mr. Harvey's allegations that we would take issue with. In saying that, I don't mean to sit here and say that the Fulton County elections were handled entirely appropriate at that time. But let's do keep in mind several things I think that are most important which is, what happens going forward? Fulton County Board of Elections had gone through some tremendous problems with leadership; we agree to that. I think you all know the history of Mr. Westmoreland how he ended up becoming the chairperson of the board. He was in over his head and that's reflected in the lack of leadership and the changes administratively he implemented like many of the actual problems that occurred since that time.

And then Ms. Mitchell was the interim head or interim director of the department waiting until there was a new permanent director that was hired. And there has been a complete wholesale change in the board itself. They've got four new appointees and chairperson here Mary Carole Cooney who is here today is fantastic in terms of her knowledge, her dedication, and her leadership. Ms. Cooney, I think most of you know, is very experienced, very well-respected attorney and been with the City of Atlanta for years and has been in her own practice subsequent to that point in time. Under her leadership, they have hired just in the last few months a new director of the Atlanta -- executive director of the Fulton County Department of Registration Elections Mr. Rick Barron who was in Austin, Texas prior to that time after a comprehensive and intensive nationwide search for someone who could lead the Department of Elections and get rid of some of the problems it has had in the past.

So on the one hand, we're very much focused on dealing with the future and doing as good a job as is possible. Looking back to these other matters, I think it is appropriate that this be referred to the attorney general because the gulf of factored perception of what happened is so great that I think in that context of hearings, unfortunately, is the only way to kind of shake this down to the kind of -- what really were problems that need to be addressed retrospectively. Just to give you a couple of examples: Mr. Harvey talks about provisional ballots and the number of provisional ballots and that being such a great problem in Fulton County.

There were a large number of provisional ballots in Fulton County which was not at all inconsistent with what is seen in other counties of that size around the nation. And I think you all have at this point a response that we did to the January 31st hearing that we did in March and provided that initially to Mr. Harvey and I understood it didn't get to the board so I sent copies to the board itself. One of the things that we point out in there is very, very important, I think it was glossed over by Mr. Harvey, is what federal law says about provisional ballots. Yes, Fulton County is liberal, for a lack of a different term, in the provision of provisional ballots in these elections and it's our view that we're following a clear explicit mandate of federal law. And it's

says that, and I'm quoting, "in the election for federal office a person must be permitted to cast a -- must be permitted to cast a provisional ballot if his or her name does not appear on the official list of eligible voters for the polling place." So as we read that and that's Section 1542 of 42 USC that law as we read it specifically demands that the County give a provisional ballot to a voter whose voting out of precinct. The State Election Board -- the state law is a little different than that and the State Election Board is different from that. It's more restrictive and it's like Mr. Harvey said in his report. And as he says in here -- and he dances around this issue and doesn't come to grips with it and it's critical to resolve this question of the number of provisional voters, which way Fulton County needs to go. And again, I think the federal law is pretty clear on this but that's something that needs to be resolved because as their current practice is it's going to continue to have a lot of provisional ballots.

It's going to continue to have that if Fulton County continues to do what it historically has, which if you read federal law that seems to be what they need to be doing. Mr. Harvey says, well, you know, you could, and this is more consistent with the state rule, one could have directed people to come to the wrong precinct to go to another precinct. That's really what I recall an exact language in the state rule is required. It would seem to be a direct conflict with what the "must language" of the federal statute. Point being, why there's so many provisional ballots is not because of incompetence or so something like that the vast number of them are because of people and they do have a traditional expectation to be able to vote out of precinct in Fulton County because they have and that does seem to be mandated. If that gets stopped and that's another question that's a legal issue but that's something that needs to be addressed and that goes more to the heart of provisional ballots than anything else that's been said.

**SECRETARY KEMP:** Mr. Walbert, let me ask you a question about that because if you're stating federal law then you're also saying that Fulton would be in violation of that federal law because there are a lot of people that didn't get provisional ballots that tried to go vote.

**MR. WALBERT:** Well, that would be a -- we're going to have the hearing, because that's where we take great issue. I think another problem, Mr. Secretary, is you know one of the things we get is 150 anonymous complaints about the people saying this or that and the ones that we finally get out who it is and we can track it down, you know, it's out of 375,000 voters 150 people are making different complaints about not having been given a voter registration or being offered that and so on.

**SECRETARY KEMP:** You know, you use the word incompetence but, you know, wouldn't you agree that when you don't properly get people registered to vote and they're not in the system correctly whether on the electronic poll or on the paper list and even if they are the paper list doesn't get to the precinct then you get into the part where you're talking about federal law and getting provisional ballots out. The point is that should have never happened to start with and I personally talked to people that tried to vote in the primary election in July that never got registered and they finally gave up and called the Secretary Of State's office and after four calls we finally got the child registered and she got to vote in the general election. I mean, that's where our frustration comes from and that's completely documented. I if you want to dispute that we're glad to see any documentation that you have.

**MR. WALBERT:** Here's what is completely documented is that Fulton County received from the Secretary Of State's office 3,849 applications after the close of the ExpressPolls. That's a fact. So when we talk about we're going out at registration and who got it wrong -- Mr. Harvey says 40 temporary workers were hired by Fulton County and unless I'm having a hearing problem I thought he just said that there were no extra people brought in and that was the problem. In fact, it was 40 temporary people brought in solely to be processing these applications. And almost 4,000 were received from the Secretary's office after the close of the ExpressPoll, which is of course, weeks after the deadline for registering, but they had either got to one of the legally enabled agencies that could take them and they were slow getting them to your office or they were at your office.

As Mr. Harvey said, "all hands on deck" were trying to get those processed in the Secretary Of State's office. They would be there for weeks at times before they got from the Secretary Of State's office to Fulton County. That's what caused 3,849 of them to get there actually after the time then they could have possibly -- even if we put them in instantaneously and 3849 of them ended up too late to even get in the ExpressPoll. So there's problem's all -- I hear the allegations and I think there's two sides to these stories. And I think that's one of the problems about getting all of these things resolved.

I think that's why, unfortunately -- because really, our goal here, and I think Mr. McIver's suggestion was the best thing happened in the January 31st hearing and that is, let's come up with a -- I want to hear a creative solution because the issue here is to make this as good as possible going forward, we're all for that. And we, of course, explored that. I still hope that that will be the outcome of going forward here. We have totally new leadership and we have real professional leadership on the Fulton County Board. We don't want to gloss over what's happened in the past nor do we want to get accused of things that are one side of the story. That's the problem we're having at this point. And I think with the attorney general it's the place to maybe dig into some of the facts more.

There are two sides and some of them are right some of them are wrong, whatever, everybody would be focused I think on what's the best way at going forward. I think that is everybody's interest. So that's really -- I don't want to go through all the litany of accusations and so on and talk about the response. You do have my response from the January 31<sup>st</sup> hearing and I appreciate you all taking that into consideration. But we are in agreement, and I don't know if this my motion, but we are in agreement with the -- being referred to the attorney general so that there can be further investigation of the facts and hearings as necessary or propose resolutions of the entire matter however that falls.

**SECRETARY KEMP:** Any other questions for Mr. Walbert? Mr. Worley.

**MR. WORLEY:** Mr. Walbert, Mr. Harvey indicated in his presentation that there were various numbers, what was the actual number of provisional ballots cast in Fulton County in the general election in 2012? Which is the correct number in your opinion?

**MR. WALBERT:** I thought it was 9575. He said there was a mistake in the arithmetic. I'm not aware of that. And let's be clear, Mr. Worley, about cast, some people use cast meaning

accepted as opposed to filled out. We're talking about filled out.

**MR. WORLEY**: Yes, I meant filled out. How many were filled out in the 2008 general election?

**MR. WALBERT**: That would have been radically different. I don't know that offhand.

**SECRETARY KEMP**: Does anybody from the elections division staff happen to know that number?

(Let the record reflect, there was no response.)

**MR. WALBERT**: One thing I might add, Mr. Worley, I think Mr. Harvey is right that on occasion the reasons for acceptance or rejection of the provisional ballot is not written on the ballot envelope and the reason for that is the primary system for recording that data it's all computerized. When a person does it it's entered into the computer. So it's not like there's no record of that, it's just that it's not duplicated hand written on the thing. Rural counties often just write it and they do it by hand. That's not what you do in a county of this size. And so all those entries and that data is there. So it's not like that data doesn't exist.

**MR. WORLEY**: I have another question. You indicated there had been some personnel changes in the election's office; could you go into that in a little more detail?

**MR. WALBERT**: Yes. More specifically, again, it was a very intensive nationwide search for an executive director with professional leadership abilities and experience in election management with no ax to grind and no agendas and so on. And that was extended out through the very intensive efforts of Ms. Cooney and the other people on the board but Ms. Cooney in particular and advertisement was done nationwide. A number of people were interviewed in June I believe it was. Mr. Rick Barron from Austin, Texas was hired to be the new executive director. He has moved here with his family to Atlanta from Austin and he is the head that we are very optimistic that will be what it needs.

**MR. WORLEY**: Has Mr. Baron made any personnel changes in the office?

**MR. WALBERT**: I don't want to answer that question, Mr. Worley. I think this would be me speaking way out of school but --

**MR. WORLEY**: Is Ms. Mitchell still there?

**MR. WALBERT**: Oh, I'm sorry, Ms. Mitchell is not there.

**MR. WORLEY**: Do you know of any other people who --

**MR. WALBERT**: I don't. I can't say that's accurate. I do think, in all fairness, there needs to be a better system of determining who are poll managers and some sense of greater control of that to make sure that the best possible people are available. And Fulton County, you know, has got financial constraints and so on maybe worse than other people because it's got some special laws and so on. I do think that focusing on and I think Mr. Harvey and I would agree on some

things probably more than one would think from me sitting here throwing trash at him this morning but I think that getting -- making a real effort to get good poll managers is very important.

**SECRETARY KEMP:** Mr. McIver.

**MR. MCIVER:** Mr. Walbert, can you identify for me, who in here is from Fulton County?

**MR. WALBERT:** The chairperson of the board, Ms. Mary Carole Cooney and I don't know -- and this individual here.

**COMMISSIONER HOUSEMAN:** Commissioner Houseman.

**SECRETARY KEMP:** Commissioner Liz Houseman. Welcome to you both.

**MR. MCIVER:** Mr. Barron's not here?

**MR. WALBERT:** No. He asked whether he needed to be here and I said I thought this would be a matter that would be referred. You know, he will certainly see all this. When we get a transcript and he's read the transcript of January. I assure you, his being here is not a lack of interest. Hopefully he's gotten -- it's not that at all.

**MR. MCIVER:** Well, you anticipated my question. Should we draw any inference from that --

**MR. WALBERT:** You should criticize the --

**MR. MCIVER:** -- other than the Commissioner and the Chair seems to be a lack of interest from the staff --

**MR. WALBERT:** You should criticize his lawyer if you're going to criticize someone, Mr. McIver. I didn't see a value of his being here as opposed to something else. Not that this is irrelevant, I actually thought this was going to be a -- I didn't realize we were going to go into this kind of presentation. I actually thought the hearing was going to be something where we would agree it would be referred to the attorney general for further hearing is what I thought. I didn't realize that Mr. Harvey would be getting into this kind of presentation. We will get from Mr. Harvey his slides and I think there's a transcript so I'm sure he would have given -- it did turn out to be substantive in that regard. Mr. Barron will most surely be involved.

**MR. MCIVER:** So we shouldn't draw an inference?

**MR. WALBERT:** No. The only inference you could draw really would be criticizing his lawyer.

**SECRETARY KEMP:** Well, let me just say this for the record. Despite some of the issues, in my opinion anyway, I think we have and continue to have in Fulton County past Mr. Barron has shown a lot of good initiatives through the last election process here in the last few months in working with our office so we're certainly embracing that. And my goal and this Board's to, like Mr. Walbert said, is to have well run elections in Fulton County. But I will caveat that with, you

know, I still remain deeply concerned about what happened. This problem, it seems to recycle every few years and that's, I think, unacceptable in my opinion especially when you're having people that are disenfranchised during the elections process and you're seeing the systematic problems in one county in the state and nowhere else -- you know the rest of the 150 cases. And I think that's what we've got to reach a conclusion so we don't have to deal with this again in the future and that's certainly my goal. Are there any other questions for Mr. Walbert? All right, do we have anyone else that wishes to speak on this matter? Commissioner Houseman, did you want to speak?

**COMMISSIONER HOUSEMAN:** I would like to say that I do have a staff attorney here from Fulton County.

**SECRETARY KEMP:** Let the record show that there is also a staff attorney from Fulton County in the room with Commissioner Houseman. All right, anyone else wishes to speak on this matter? Ms. Ford, if you don't mind I'd like for you to address the board just on exactly how the voter registration process works leading up to the election and what we were doing and what your staff is doing and what our past practice in getting voter registrations to Fulton County and how they are getting them from us just so we're clear on that matter.

**MS. FORD:** Linda Ford, 323 8<sup>th</sup> Street NE Unit 6, Atlanta, Georgia 30309. Our office receives voter registration forms into our mailroom. And it is as has been stated in the weeks and particularly the days before the general election we get thousands of those applications in for every county in the state. We date stamp those so that if an application for example is mailed on the Monday of the voter registration deadline, which I believe was October 9<sup>th</sup> for the general election, if it is date stamped any time up until that Friday coming into our mailroom then that voter registration application is deemed when the County receives it eligible to be registered to vote if it does not have a postmark on it. And so that way we're given -- we're airing on the side of the voter. Because you'd be surprised how many voter registration applications we receive that are not postmarked for whatever reason. And so that way it relieves any doubt when the County gets that.

And then of course, we are also receiving in the mail during that whole week voter registration applications that were mailed on the voter registration deadline, which was October 9<sup>th</sup> of this case. So those are all shipped out to the counties. Every day we get trays and trays of mail and during that week and the week preceding we ask investigators, we ask people from the front office, we have people come up from Macon to go through those applications to make sure they're date stamped, sort them into the counties, and then they're mailed out to the counties. So there is no sorting into a specific county and holding that county. They're all sorted and they're all going out.

For Fulton County, we had an arrangement because, of course, they're only two blocks down the street, where somebody from Fulton County would come every day and pick up those voter registration applications. And that way they don't have to be mailed two blocks down the street and that seemed to have worked out very well. Leading up to the voter registration deadline we did have some issues. Some days they would not come and we had to reach out to Fulton County to ask them to send someone and also some days they would come and not pick up all of

the voter registration applications in which case we call Fulton County and reported that to them. And that was what I believe you heard Mr. Harvey speaking to.

**SECRETARY KEMP:** Any questions for Ms. Ford? Okay, anyone else wishing to speak on this matter?

**MR. HARVEY:** Yes, Mr. Secretary. If I could just clarify two things that are in response to what Mr. Walbert said: One, as far as the provisional ballots go, I don't think that anything I said was necessarily designed to indicate that Fulton County should not issue the provisional ballots. It was unfortunate that the voter registration system caused that to happen but if Fulton County issued 50,000 provisional ballots they're obligated to account for every single one. And I think in my opinion that's the bigger concern not the issuing of provisional ballots but the lack of documentation and security.

And the second, Mr. Walbert mentioned 3,000 voter registration applications were sent after the deadline, it was practice that our office continued to send voter registration applications to the counties even after the deadline. And these could have been some that came in a week before the election. We had a continuous stream so if any county received a voter registration application say the week before the election it would be up to them to determine if they want triage or do they want -- you know we're not going to touch these until after the election because we know these people won't be registered.

**SECRETARY KEMP:** And they shouldn't be registered because they didn't --

**MR. HARVEY:** Correct. The other practice could be that we would just hold everything that came in and then unleash on them after the election but we don't do that. We keep a steady stream of voter registration applications coming through the days leading up to the election. I don't know, specifically, the 3,000 he spoke about, but yes, it would be an accurate statement to say we continue to send voter registration applications after the deadline but they may well be not suitable for registration.

**SECRETARY KEMP:** Anyone else wishing to speak? This is the last call on this particular case, 2012 No. 156. If not, do we have a motion? Any discussion with the board?

**MR. WORLEY:** I make a motion. Mr. Secretary, I make a motion that we refer Case No. SEB 2012-156 to the attorney general's office.

**SECRETARY KEMP:** We have a motion from Mr. Worley do we have a second?

**MR. MCIVER:** Second.

**SECRETARY KEMP:** Second from Mr. McIver. Any other discussions?

**MR. WILLARD:** Mr. Chairman, can the record reflect which respondents the board is finding probable cause against to refer over to our office?

**SECRETARY KEMP:** Mr. Harvey, do you have any suggestions on that?



**MR. HARVEY:** In this case we've got Sharon Mitchell who was the acting election superintendent at the Fulton County Board of Registration and Elections is the only respondents.

**MR. WILLARD:** So I would amend my motion to reflect that we're referring that case and those two respondents to the attorney general's office.

**SECRETARY KEMP:** Okay, and Mr. McIver do you want to second that amended motion?

**MR. MCIVER:** Yes, sir.

**SECRETARY KEMP:** He does. We have a motion and a second to refer the AG's office. Any other discussion amongst the board? Hearing none, all in favor signify by saying, aye.

(Let the record reflect that the vote was aye unanimously.)

**SECRETARY KEMP:** All oppose; same sign. The motion will carry and we have referred that case. Mr. Harvey, we also got SEB Case No. 2012 No. 56, with issues that were dealt with in the primary election. Mr. Walbert, do you want us to present the case or do you have a preference?

**MR. WALBERT:** Thank you, Mr. Secretary. I had the impression from talking to Mr. Harvey that there was on that he was recommending further action and one of them not.

**SECRETARY KEMP:** That's correct. I think the next case dealing with the 2011 case was the recommendation from Mr. Harvey to dismiss. We can certainly do that. I just want to handle this.

**MR. WALBERT:** No problem. We're happy with taking his report and if he wants to put the slides in as part of the complaint if you will and I will deal with that after the referral.

**SECRETARY KEMP:** All right. Let me just call for the record so we can properly do this. Let me just call the next Case SEB No. 2012 No. 56 which is the 2012 primary election case against Fulton County. Mr. Walbert, the County's attorney, has agreed that he will be all right with us referring the case to the AG's office. Was there anyone here that wanted to speak in regard to this case? Did any of the board members have an issue with us doing that without hearing a report? Mr. Harvey, do you need the name of the respondents?

**MR. HARVEY:** In this case, it would be Sam Westmoreland is the elections superintendent and the board.

**SECRETARY KEMP:** Do we have a motion?

**MR. WORLEY:** Mr. Secretary, can we make a motion to accept the PowerPoint presentation and print a copy and send it to the board on SEB 2012-156.

**SECRETARY KEMP:** Well, we can. Is that a motion?

**MR. WORLEY:** Yes.

**SECRETARY KEMP:** All right. Mr. Worley makes a motion to accept the investigative

report, the PowerPoint, and make it part of what we will be taking action on, do we have a second?

**MR. MCIVER**: Second.

**SECRETARY KEMP**: Mr. McIver seconds. Any other discussions? Hearing none, all in favor signify by saying, aye. All oppose; same sign. That motion carries and we have accepted the report. Now, we're ready for a motion on SEB Case No. 56.

(Let the record reflect that the vote was aye unanimously.)

**MR. MCIVER**: I motion to bond over Case No. 56.

**SECRETARY KEMP**: All right, Mr. McIver has a motion to bond over 2012 No. 56 SEB case with Sam Westmoreland and Fulton County Elections as respondents.

**MR. WORLEY**: I second.

**SECRETARY KEMP**: We have a second. Any other discussion? Hearing none, all in favor signify by saying, aye.

(Let the record reflect that the vote was aye unanimously.)

**SECRETARY KEMP**: All oppose; same sign. That motion carries and we have referred that case. The last case on our agenda today is SEB Case No. 2011 No. 110. I'll just call that case. Real quickly, Mr. Harvey, if you would just give us a brief description.

**MR. HARVEY**: Yes, sir. This case involved allegations or concerns that Fulton County former residence of public housing facilities in Fulton County where the facilities had been demolished and people were still registered to vote at those addresses. A previous SEB case in 2009 from a complaint indicated that almost nobody falsely or improperly voted from those addresses. In this case, there was no election at hand. The concern was that there were thousands of people registered at addresses that didn't even exist anymore. That becomes a problem from a voter registration status point of view.

The only way to change somebody's voter registration is to delete them or alter them for a legal reason. Death, felony conviction, somebody rescinding their voter registration, the way the law is written in Georgia with regards to residents, it gives a very wide latitude to voters to move and that plan on returning. There's simply no indication that anybody that was registered in Fulton County had done anything wrong in terms of either voting from where they shouldn't have or anything else. It's possible that any summer all of those voters may have intended to return back to the location after it was rebuilt.

It sort of became a controversy when Mr. Westmoreland sent about 2400 letters to voters saying that they were going to be challenged because they didn't live where they registered. Fulton County backed off of that. They didn't challenge any voters. And then shortly before the general election, Ms. Mitchell decided she replace these voters in a pending status and require them to show proof of residency before they were allowed to vote in the general election.

After receiving some encouragement from our office they checked with their attorneys before they took such a step Fulton County decided not to take that step. So there were no voters that were in any way changed or affected or disenfranchised. There was no violation. Fulton County would have to deal with these questionable voters like any other voters. There simply doesn't appear to be any violation of state election law and I recommend this case be dismissed.

**SECRETARY KEMP:** Any questions for Mr. Harvey? Hearing none, anyone else wishing to speak on this matter? Okay, last call. Hearing none, do we have a motion on SEB Case No. 2011 No. 110? The recommendation is to dismiss. Any thoughts you want to share with us, Mr. McIver?

**MR. MCIVER:** I'm perplexed, sir, that's all. Inaudible.

**SECRETARY KEMP:** Anything else, Mr. Harvey?

**MR. HARVEY:** No, sir.

**MR. WORLEY:** I'll make a motion that we accept Mr. Harvey's recommendation to dismiss.

**SECRETARY KEMP:** We've got a motion to dismiss? Do we have a second? I'll second. All in favor -- or any other discussions? Hearing none, all in favor signify by saying, aye.

**SECRETARY KEMP:** All oppose; same sign.

**MR. MCIVER:** Aye.

**SECRETARY KEMP:** That motion carries 3 to 1 so that case has been dismissed. I believe that takes care of all of our business here today unless the board members have any other comments. I believe this will be our last meeting before Christmas and the holidays so I wish everybody the best this season and safe travels. We'll see you in the New Year. Thank you very much. I guess we need a motion to adjourn.

**MR. MCIVER:** I so move.

**MR. WORLEY:** I second.

**SECRETARY KEMP:** Mr. McIver moves that we adjourn and Mr. Worley seconds. Any discussion? Hearing none, all in favor signify by saying, aye.

(Let the record reflect that the vote was aye unanimously.)

**SECRETARY KEMP:** All oppose; same sign. That motion carries. Everybody have a great day.

(Whereupon, the proceedings ended at 10:35 a.m.)

CERTIFICATE

STATE OF GEORGIA        )

COUNTY OF COBB         )

I, Debra Montgomery, Certified Court Reporter,  
certify that the foregoing transcript is a true,  
correct and complete record of the said proceedings;  
that I am not a relative, employee, attorney or  
counsel of any of the parties; nor financially  
interested in the action.

This certificate is expressly withdrawn and  
denied upon disassembly and/or photocopying of the  
foregoing transcript, or any portion thereof, unless  
such disassembly or photocopying is done by the  
undersigned Certified Court Reporter and original  
signature and official seal is attached hereto.

WITNESS my hand and seal at Marietta, Cobb  
County, Georgia is the 7<sup>th</sup> day of January, 2014.

  
Debra Montgomery  
Certificate No. 2838