In The Matter Of:

Athens-Clarke County Board Elections and Registration

March 11, 2020

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404 733 6070

Original File Athens-Clarke County Board of Elections.prn
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Secretary of State Election Board Emergency Hearing
STATE OF GEORGIA

Athens-Clarke County Board of Elections and Registration,	**§**	**SEB Case 2020-005**
Respondent	**§**	

The transcript of the proceedings before

The State Election Board, reported by Kaitlin Walsh, Certified Court Reporter, on the 11th day of March 2020, commencing at 10:00 a.m.

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Transcript Legend

[sic] - Exactly as said.

-- Break in speech continuity

... Indicates halting speech, unfinished sentence or omission of

word(s) when reading.

Quoted material is typed as spoken.

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P R O C E E D I N G S

MR. RAFFENSPERGER: Good morning, everyone. It's 10 o'clock. We'll call the meeting to order.

UNIDENTIFIED WOMAN: We can't hear you. Mic's low. Your mic is not on.

MR. RAFFENSPERGER: Can we turn the volume up? There it is. Great. Good morning. In the matter of Athens-Clarke County Board of Elections and Registration, this is case number 2020-005. We call the meeting in order. For everyone in attendance, this is a little bit different than a normal State Election Board meeting, and it's not really a judicial proceeding, I guess I'd call it quasi-judicial. We'll be taking witnesses from both sides and having discussion. The people that will be speaking today will be the attorneys and then any of the witnesses and then questions from, obviously, the SEB members to the people that will be presenting and also to the people that will be giving -- providing information. Before we get started, I understand that a representative from the Board of Elections would like to say a few comments to catch up to speed on where they are. And if you could -- if you could introduce yourself for the public record.

MR. SELLS: Yes. Thank you, Secretary Raffensperger. My name is Bryan Sells. I am in solo practice, and I'm representing the Athens-Clarke County Board of Elections

and Registration. With me is Thomas Mitchell of Carruthers and Mitchell. He is co-counseling with me, and I'd like to also recognize the Board, which is sitting here in the first row.

And I asked for the opportunity to speak before we begin the contested case hearing this morning just to update the Board on some factual developments since the notice of hearing came down. I've only been on this case for about 48 hours, but we have -- the Board has received from staff drawings of the polling places that have attempted to fit in the number of required voting machines, and those have come down, I think, yesterday. In reviewing some of those drawings, it is apparent that there are small spaces and there are larger spaces -- and by the way, this is Exhibit 18 in your binder. Those drawings are all in there. There are some small spaces where meeting the 250 rule is going to be a problem, but there are other spaces where it is apparent that it will be less of a problem, meeting the required number of voting machines on Election Day.

And we have also been working with your counsel, Mr. Germany, to try to come up with a solution that might protect the right to ballot secrecy but also allow the use of the ballot-marking devices in some of the -- some of these locations. So a way that we can, I think, meet all

of the Board's competing priorities.

We, Mr. Mitchell and I, polled our clients yesterday, and we have not had the opportunity to call an official meeting, but we can represent this morning that a majority of the Board is willing to consider alternative plans for these spaces in a way that would allow the use of ballot-marking devices but a smaller number of them, the number that would fit into the spaces that are available for -- for use as polling spaces -- polling places in the March 24th presidential preference primary and would still comply with the letter of the law regarding the 200 -- the one voting booth for every 250 members.

So the short version is: working with the Secretary of State's Office and with Mr. Germany, we think that there is a technical solution here that was not apparent a week ago. It has only become apparent in the last 48 hours, and we wanted to let you all know that. If you want to proceed with the hearing, we're prepared to defend the Board's actions, but -- but the Board is willing to try to reach a solution in time for the March 24th presidential preference primary.

MR. RAFFENSPERGER: Any Board members have any questions? Thank you. Mr. Germany, Counsel, if you could on your side explain who will be speaking today on behalf of the Secretary of State's Office and the State Election

Board?

MR. GERMANY: Yes, Mr. Chairman. My name is Ryan Germany, and I'm the General Counsel for the Secretary of State's Office. Myself and Charlene McGowan with the AG's Office will be presenting this case. I just wanted to make a short introduction before we call witnesses just to try to help you -- give you guys -- and the point of the witnesses is try to help give you guys a sense of what's going on. I don't envision examining them myself but letting them speak to you.

I think one thing to talk about before we get to the witnesses is a quick overview of Georgia law and State Election Board rules and regulations. OCGA 21-2-300 says the equipment used for casting and counting votes in county, state, and federal elections shall be the same in each county in this state. That is the crux of Georgia's unified voting system. The same statute, next paragraph, says once such equipment is certified by the Secretary of State as safe and practicable for use, all elections shall be conducted with the use of scanning ballots marked by electronic ballot markers. The Dominion system currently being used in 158 Georgia counties was first certified by the Secretary of State on August 9th, 2019 and was re-certified on February 19th, due to some software updates.

State Election Board rule 183-12 -- 183-1-12-.01 says

beginning with the 2020 presidential preference primary, all federal, state, and county elections voting in the polls including both Election Day and advance voting shall be conducted via ballots marked by electronic ballot markers. SEB rule 1-14-.02 has the same requirement to use electronic ballot markers for advance voting. That same rule 183-1-12-.01 also requires counties to have a sufficient amount of emergency paper backup ballots in the sense that something does not -- does not happen the way it's supposed to, so there's a backup plan built into both the law and State Election Board rules. However, that backup plan doesn't swallow the fact that Georgia has a unified voting system and that State statute and State Election Board rule clearly state here's what -- here's the equipment that we're going to use.

And I -- I know there was a big argument in the General Assembly about should we go hand-marked paper ballots? Should we go ballot-marking devices? There's an argument before that in the SAFE Commission, same thing. There's been arguments in court about it. So there are people who are very passionate about using hand-marked paper ballots, but that's not the way that the Georgia General Assembly, and in correspondence with this Board, has enacted Georgia law.

So just to give a little background: on March 3rd,

the Athens-Clarke County Board voted 3-2 to immediately stop using the ballot-marking devices. They found it impracticable to use ballot-marking devices in a way that protects ballot secrecy while allowing sufficient monitoring of the equipment.

One legal point I want to make before I wrap it up: the Georgia Supreme Court has held, in a fact pattern not too dissimilar from this case where a local government was interpreting a statute about what does to the greatest extent practicable mean -- Supreme Court said, "practicable is a word susceptible to a limited range of meanings, and to say that one must comply with the requirement to the greatest extent practicable is not to say that he must comply with it only if he feels like complying or he thinks it's a good idea. The statute leaves some flexibility to authorities in cases in which strict compliance would be impracticable, but that does not indicate that the provisions of the statute are not mandatory." And I think that's what we have here. We have a statute that is mandatory, and it allows for emergency provisions, but it doesn't allow for, basically, ignoring -- ignoring the statute.

"If the statute were entirely optional," the Supreme Court goes on to say, "there would be no need for a provision affording such flexibility." More importantly,

quoting from the same -- this is City of Marietta v. Summer Hour, a Supreme Court case from 2017 -- "more important, practicable does not mean convenient. In modern usage, practicable is commonly understood to mean capable of being accomplished or feasible in a particular situation. To say something is impracticable is to say that it reasonably cannot be done. It does not mean merely that it is convenient." And I think that's really the case, kind of where we are today.

And I appreciate Mr. Sells and Mr. Mitchell's outreach and willingness to resolve this issue. I think that's where we all want to be. Frankly, I wish we were there before without having to have had to get here because I think there are a lot of tools, and frankly, I think as you'll hear, the Board was made available -- was made known those tools in all their meetings leading up to this. You know, they enacted something that's already in the law as a backup -- as a backup procedure for cases where there's emergency situations, not you can't -- you just can't even try to do this.

MR. RAFFENSPERGER: Okay. Any questions from the Board for Mr. Germany before we get started?

MR. GERMANY: I was going to call -- I don't know if you want to say anything now or later...

MR. RAFFENSPERGER: Okay.

MR. SELLS: Again, members of the Board, I'll talk about the law in just a moment, but we have a slightly different view of the facts here. We have a Board of Elections and Registration caught between a rock and a hard place with the multiple requirements and, in many senses, conflicting requirements of the new Georgia voting statutes. Foremost among them is the 250 rule, one voting booth for every 250 voters, and another set of obligations is the prohibition on changing polling places within 60 days of a primary or a general election. And even if you have your 60 days, you have notice requirements before those 60 days, and so it really extends that time out to about 75 or 80 days.

And in this case, what the facts will show is that the deficiencies in the Athens-Clarke County polling places, specifically about 6 that are very small, did not become apparent until after the Secretary of State's Office did an inspection of those polling places, and at that point, it was too late to change them. And in fact, there was a threat to sue the Athens-Clarke County Board of Elections and Registration if they didn't change the polling places. And so, the Board faced one hand tied behind their back on not being able to change polling places and having to comply with this rule regarding the number of voting booths per voter.

And as early voting started, and you will hear, the number of ballot-marking devices in the one early voting place was too many to satisfy the Board's other obligation and constitutional obligation to protect the right to a secret ballot in Georgia. That is a right that appears not only in the Constitution but in about 20 places in the election code. So faced with those set of circumstances, this Board decided to use the mechanism that is available under Georgia law when the use of voting machines is not practicable, hand-marked paper ballots may be used in their stead.

And Mr. Germany talked about the uniform system, and, indeed, Georgia does have this new uniform system, but the uniform system contains an out clause, and that is in Section 2 of 21-2-300. It says unless otherwise authorized by law. So you must use these ballot-marking devices unless otherwise authorized by law, and the law upon which the Board relied was 21-2-334, which provides a relevant part that if for any other reason at any primary or election the use of voting machines wholly or in part is not practicable, the superintendent may arrange to have the voting for such candidates for offices or for such questions conducted by paper ballots.

So what does practicable mean? Well, we rely on the very same case that Mr. Germany relied on, City of

Mariette v. Summer Hour. That's 302 GA 645, a Georgia Supreme Court case from 2017. Now, practicable does not mean that the use of voting machines is simply optional -- that is not our position -- or that the obligation to use voting machines can be overcome simply by disagreeing with them. That is not our position. Practicable does not mean convenient, as Mr. Germany said. But to say that something is not practicable which is to say that it is not feasible in a particular situation or reasonably cannot be done. That is a paraphrase from the Summer Hour opinion.

So who gets to decide what is practicable and what is not practicable? Within limits, the Athens-Clarke County Board of Education -- Board of Elections and Registration gets to make that call. That's why the Sumter County case came out the way that it did because the judge in that case found -- and when I say the Sumter County case, I know you're familiar with the case challenging the use of ballot-marking devices in Sumter County. The judge in that case found that the Sumter County Board of Elections and Registration had some degree of discretion to determine whether it was practicable or not, and the Plaintiffs in that case -- or Petitioners -- had not established that the -- that the right was so clear as to eliminate that discretion. And we think that standard

applies here, so under the law, it is up to the Board of Educati -- of Elections and Registration to select and equip polling places and to ensure the secrecy of the ballot.

And we believe consequently that the legal standard for this State Election Board is -- has to be that you must find that no reasonable Board, faced with the circumstances that this Board faced, could find that the use of voting machines under the circumstances was not practicable. We think it's a very high standard. And if you do not apply that high standard, if you apply your own view of that, then judges in the courts of this state should be able to apply that view. And I daresay that there will be more lawsuits like the one in Sumter County, and judges in those cases will not be able to defer to the discretion of Boards of Elections.

So we think that is the law, and the facts as I have outlined them and as we will present them over the next few hours will support the Board of Elections' decision in this case, given the facts that they were presented as of last Tuesday. Thank you.

MR. RAFFENSPERGER: Mr. Germany?

MR. GERMANY: I call Chris Harvey.

MR. RAFFENSPERGER: Mr. Chris Harvey? Mr. Harvey, could you state your name and position?

THE WITNESS: Sure. My name is Chris Harvey. I'm the State Election Director for the Georgia Secretary of State's Office?

MR. GERMANY: I would just ask the court reporter to swear Mr. Harvey in.

THE COURT REPORTER: Do you swear or affirm the testimony that you're going to give today will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes, I do.

Whereupon,

CHRIS HARVEY

having been duly sworn, testified under oath as follows:

DIRECT EXAMINATION

BY MR. GERMANY:

Q Mr. Harvey, you are the State Elections Director. You just said that, correct?

A That's correct.

Q Could you give me a little more back -- a little more information on your background as it relates to elections?

A In August of 2007, I was hired by then Secretary of State Kar -- Karen Handel to be the Chief Investigator for the Secretary of State's Office. I spent the next 8 years largely focusing on election investigations, allegations of everything from voter fraud to problems with the mechanics of election to registration issues, all those kinds of things. And then, in

July of 2015, then Secretary Kemp appointed me State Election Director. I've been the State Election Director ever since.

Q In your current role, have you worked on the new -- on the implementation of the new voting system?

A Yes, I have.

Q Can you describe that process in terms of implementation and how it's -- and how it's been going, particularly as to your work with the county election directors?

A The implementation sort of has two -- two wings on it. One is physically getting the equipment and the materials to the counties so that they can prepare and train their poll workers and get their -- get their stuff ready to go. I have less of a role in that logistical aspect. There are other people in our office and with our partners who handle that.

I'm more involved in training the issues, updates on practical matters, answering questions about the system, how the system works, how the new code section -- how the new State Election Board rules work with the system. We've been providing weekly conference calls, email updates, webinars with our training staff, and I've been to probably dozens of meetings with individual counties and county regions talking about the system, talking about some of the challenges, some of the expectations, trying to get everybody as up to speed as quickly as possible.

Q Could you talk about some of those challenges specifically as they relate to privacy, ballot secrecy?

A Right. You know, well, the voter's interaction with the new system versus the old system is similar. The machines are a little bit different. With the old DRE systems, the screen was adjustable. You could -- you could lay it down more flat, and it would provide just generally less ability for somebody else to view the screen from different vantage points. The new system is a larger tablet, it's brighter, and it stands more upright, and it's not adjustable to the extent that the old one was. And so that provides just different mechanics of actually viewing it, both for the voter and for the people that may be in the polling place.

Historically, I've seen most counties have set up their -- their voting booths in the past so that they all sort of face into the perimeter of the room. Generally, they would be along the outside of the wall, of course, to take advantage of outlets and -- and room management, and they would generally face inward because there is a requirement in the law that they generally be visible to election personnel so that they can see them and keep an eye on them and make sure that they're secure, making sure nothing's attached to them, making sure nothing has been done with them. While that is a requirement of the code, the -- with these new voting systems, especially in smaller polling places because they tend to stand up more and are

larger and brighter, you know, I've had to tell counties that in some cases they need to turn them. You know, you can turn them 90 degrees. You can turn them 180 degrees. You can accomplish everything else that's necessary in the code. You can still maintain their security. You can still observe them as a poll worker, and it provides, you know, 100% more secrecy for the voter casting the ballot.

Q So how have you described to counties how they can meet the ballot secrecy while at the same time being able to sufficiently monitor the equipment?

A Well, the shortest answer is to turn them around. And then, beyond that, you know, voters are still going to have to physically access the machines. The idea -- and the law doesn't say that they have to be under 24/7, 365, every second surveillance under the visual inspection of a poll worker. It's not accurate. That's been probably more the practice than the actual requirement of the law.

The fact is as I went -- as I've been through the State, and I've spent a lot of time in Southwest Georgia where they've had special elections earlier this year, and I visited polling places, I've talked with poll workers, I've talked with poll managers, and I've talked with election directors to point out the fact if you've got a relatively small room, and you've got a table with two of the new ballot-marking devices on it, and they're facing the door that somebody were to walk in -- for

example, if you had two ballot-marking devices, and people are walking in this door behind me, and you've got room behind them, just turn them around, so that somebody walking in is going to view the back of the privacy screen around which they're surrounded.

The voters are going to, you know, not have any chance of that screen being exposed, and it really doesn't provide any other logistical challenges. Now, you may have to tape a cord down, and there are a few little things that you have to deal with, but in that case, and that's frankly the case in a lot of small polling places in South Georgia where you have maybe 2 or 3 BMDs in a small room, you just turn them around, and you solve the problem almost exclusively. The poll workers are still able to roam -- and when I talk about roam, I'm talking about spaces that are the size of a two-car garage -- they're able to travel back and forth behind them when there is no voter so that they can inspect them and meet the requirements under the law that they be inspected while they're not occupied by the voter.

But beyond just turning around 180 degrees in polling place setup, you can turn them at 90 degrees. You can -- instead of having 2 ballot-marking devices side-by-side so that the voters are standing next to each other and could have the possibility of looking into the next booth, you simply have them facing each other. So instead of having 2 facing the same

direction on the table, you have them face each other. And so the voters are essentially looking at each other. They're looking at the back of their ballot-marking devices. And again, that's the case in most small polling places where you've got a small number. So it's not an insurmountable problem by any stretch of the imagination.

Now, the larger the polling place, the more space becomes an issue. It becomes more of a problem, but there are ways of dealing with that. But it, you know, gosh, given the 2500, you know, polling places in Georgia, the different combinations are -- there's not simply a one-step solution for every polling place.

Q Is it your understanding of Georgia law that the poll manager can control traffic in the -- in the polling place?

A It is.

Q So that if there's somewhere where if people stood in a certain location, they could violate someone's right to a secret ballot, the poll manager has the authority to say no one can be back in that certain area. Is that your understanding?

A It is. There's a provision in the law that specifically gives the poll manager the ability to essentially direct traffic and control crowds in a polling place so that voters are not interfered with or secrecy is not interfered with or the good order of elections are not interfered with just by having crowds. You know, elections are supposed to be

public and supposed to be available to the public, and that's certainly a value, but at the same time, the poll manager has a requirement to maintain the integrity of the space, and that is provided for in the Georgia code.

Q Are you aware of some Georgia counties that have purchased third-party solutions above and beyond the privacy screen provided by the State to help ensure ballot secrecy?

A I am.

Q Before I show you this picture, can you talk about what is Georgia law on screens or curtains around a voting booth? I think we used to have that a lot more. With the DREs, we didn't, but has that come up in your conversations with counties?

A Not so much with counties. Some people have asked. There's no prohibition. There's no specific prohibition against having curtains or screens or other devices around polling places -- around screens.

Q Do you think that -- would that violate the law about being able to monitor?

A I don't. No. It -- it could be -- again, the monitoring, the viewing is when a voting both is unoccupied, and so if a screen were open while a voting booth were unoccupied, it wouldn't in any way interfere with the ability to be observed and monitored by election officials.

Q I'm going to show you a couple of pictures, and these

are marked as SEB 0108 and SEB 0109. Are those the kind of screens that you're familiar with are available in the election supply market?

A I am. I know this is a stand that's provided by a vendor. I've seen this stand used in South Georgia. Now, the curtains that I saw weren't quite as long as this. These are almost full body curtains. The ones I saw would have come maybe 3 or 4 feet down and not have covered the entire enclosure.

Q And you saw it -- there was -- something like that was being used in which county?

A I know Mitchell County was using something like this, again, with the screen stopping probably at about the waist of the voter.

MR. GERMANY: I'd like to admit these exhibits into the record as Exhibit 1.

(State's Exhibit 1 identified.)

MR. SELLS: No objection.

(State's Exhibit 1 admitted.)

BY MR. GERMANY:

Q Mr. Harvey, do you recognize the document in front of you as the certification of the state voting system from the Secretary of State's Office?

A Yes, I do.

MR. GERMANY: I'd like to admit that certification as

Exhibit 2.

(State's Exhibit 2 identified.)

MR. SELLS: No objection.

(State's Exhibit 2 admitted.)

BY MR. GERMANY:

Q Mr. Harvey, that is all I have for you, unless you have anything else you'd like to add?

A No, not at this time.

CROSS-EXAMINATION

BY MR. SELLS:

Q Mr. Harvey, I want to ask you about those curtains, if we could get those back on the screen, State Election Board 0108? What vendor sells those screens?

A The stand, I believe, is sold by Inclusion Solution. Like I said, the curtains on there, those are not the exact same curtains that I saw on the Inclusion Solution product in Mitchell County, but that may be used somewhere else.

Q Does -- does the Inclusion Solution product come with the screens or do those have to be purchased --

A Are you talking about the curtains or are you saying screens?

Q The curtains.

A I know you can configure the stands any way you want from Inclusion Solution.

Q And is that solution one that you made county

directors aware of via Firefly or some other method of dissemination?

A I don't think that I made them aware of it. I mean, there were vendors at our conference. Inclusion Solutions specifically has been very active in Georgia going to counties, going to county regional meetings, you know, doing what they do selling products to election directors. I -- I don't endorse or put forth or encourage anybody with any particular vendor. I don't think that's really my place.

Q Did you ever on Firefly or any other means of communication specifically authorize the use of this kind of solution?

A You know, in communicating with the counties on Firefly, we've talked -- and I may have said something about various stands that are available. I honestly don't know if I specifically mentioned Inclusion. I may have listed them as a possible vendor, along with some other folks, so I don't know if somewhere there is -- you know, Inclusion Solution is typed in a Firefly message or the Buzz. It could be on there, but I don't remember doing that.

Q And you don't have any reason to believe that the Athens-Clarke County Board of Elections and Registration had this photo or was aware of this potential solution last Tuesday, do you?

A I don't know what they were aware of last Tuesday.

Q Do you know what the lead time is on purchasing a solution like this?

A I don't.

Q And do you know whether there is a dispute or a potential dispute about whether curtains of this length allow poll monitors, poll watchers, to keep their eyes on a machine so as to prevent tampering with the new machines?

A Ask that again, please.

Q Do you whether there is concern out there regarding whether curtains prevent poll watchers from seeing whether a voter is tampering with the machines?

A I can't believe there's not a concern out there about that. I don't think it's a legitimate concern.

(Crowd noises)

MR. RAFFENSPERGER: At this time, I didn't start the meeting off with a preamble. There is no public comment at this, so comments of agreement, comments of disagreement, and if it continues, you will be asked to leave, and then when you can come back and be quiet, then you can reenter. But this is like a court proceeding, and if it was a true court proceeding, the Superior Court Judge would not tolerate any comments from the gallery so thank you for your respect, and we'll continue on. Counselor?

BY MR. SELLS:

Q And your office has not issued any formal advisory or opinion on -- other than perhaps sitting here today -- about whether this is consistent with state law regarding the need to observe -- be able to observe ballot-marking devices and other voting machines to prevent tampering?

A I don't believe we have. Again, in conversations and conference calls with counties, we've been stressing the need for privacy for voters, so to the extent that somebody may, you know, extend that, but, no. I've not issued an opinion. Our office hasn't issued a specific opinion on the length of curtains for -- for observation concerns.

Q And you're not suggesting here this morning that the Athens-Clarke County Board of Elections and Registration could have purchased these on Tuesday and had them available for all 20 polling places at the presidential preference primary, are you?

A I don't know -- again, I don't know what the order time is. I know that Inclusion Solution, like I said, they were at our conference in December of this year. They've been very active throughout the State, going to regional meetings and things like that, but I have no idea what the lead time is and what they could get and how quickly they could get it.

Q Okay. I don't want -- I think I only want to cover one other topic with you here on cross, and then we expect to recall you in during our case in chief, but I want to ask you

about the roll out a little bit of the new ballot-marking devices. Did the State pay for the ballot-marking devices?

A Yes.

Q Okay. And how were those devices allocated to Georgia's 159 counties?

A At the end of the day, they generally -- we allocated about one for 225 active registered voters in the county. We went through a couple iterations of that, but that's essentially the standard we came down to.

Q And where did you pick that number?

A It was -- you know, we knew the one to 250 was out there. We didn't want to create any type of burden on counties. We didn't want to, you know, have counties given less than they had before, and so that's -- that's the number we settled on.

Q So the number you settled on was to try to get close to the one BMD per 250 that is set out in the new law that was HB316?

A Yes. And so that, again, counties would have as much equipment as they need, keep lines as short as possible, let voters vote as efficiently as possible.

Q Do you know when Athens-Clarke County received its allotment of voting machines?

A I don't -- I don't know the date. I know in some cases, they got them -- counties got them in different waves.

I know they got some initially for training and demonstration purposes, and then they -- in some cases they would get half a shipment, and then they would get more. I don't know when they got their final shipment.

Q And as you sit here today, you -- you're not -- you can't be certain that the County received them in time to change polling places if needed to accommodate the number of BMDs they received in accordance with the law. Is that correct?

A I'm sorry. Repeat that, please.

Q As you sit here today, you're not suggesting that Athens-Clarke County received their BMDs in time to change polling places if necessary in order to accommodate the number of BMDs that the County received?

A I don't know when they received their equipment. I do know that they would have an idea of the amount of equipment they were going to receive well before they received it, but I can't tell you exactly when that would have been either.

Q Okay.

MR. RAFFENSPERGER: Mr. Sells, --

MR. GERMANY: I have one procedural that I was going to ask the Board, is that y'all's preference?

MR. RAFFENSPERGER: I would prefer if you just want to go ahead and ask any questions you have for Mr. Harvey at the present time and just, you know, let him -- let Mr. Germany

and the Attorney General's Office ask their questions and then you ask and that we clear it up.

MR. SELLS: We'll do it happily in direct, Your Honor, but we would prefer to put on our case as we have laid it out amongst counsel.

MR. RAFFENSPERGER: I'd prefer you just to ask all the questions you have for Mr. Harvey, and let's clear the deck, and then we'll call the next witness.

MR. SELLS: Okay. Well, then, give me a moment, please.

MR. RAFFENSPERGER: Okay.

MR. GERMANY: Can I ask one question that I forgot to ask?

MR. RAFFENSPERGER: Yes, Mr. Germany.

REDIRECT EXAMINATION

BY MR. GERMANY:

Q Chris, I meant to ask you, Mr. Harvey, in your experience of elections, have you worked with Charlotte Sosebee?

A Yes, I have.

Q Do you know her to be an experienced elections professional?

A Very.

RECROSS-EXAMINATION

BY MR. SELLS:

Q All right, Mr. Harvey. Are you aware of the constitutional and statutory right under Georgia law to cast a secret ballot?

A Yes, I am.

Q And are you aware of the Board of Elections' obligation to safeguard that right?

A Yes.

Q And are you aware of privacy concerns with respect to the new ballot-marking devices?

A Yes.

Q What has your office done to try address those concerns?

A Well, as I said before, we have -- we've had conference calls, we've put out materials, we've put out examples of possible solutions. I've been to regional meetings. I've talked to people individually. I've responded to individual questions about is this okay, is this not okay, is this wise, is this not wise regarding privacy. And I think probably more than anything else, I've -- I've been trying to raise the issue so that the election officials look at things a different way.

I know elections officials generally, you know, like to work in standard ways. They, you know, they've been using the same system, the same setup, and, in a lot of cases, the same polling places for years and years and years with the same

staff. And sometimes it's hard to envision things in a different way, and say, hey, we've always used this room, we've set up things this way, and I've -- throughout this implementation, I've been trying to stress to the counties that this is new, this is different. It's similar, but there are some additional challenges with this system that, of course, go beyond privacy.

I mean, now, we've got paper. We didn't have paper before. Now, we've got printers. Now, we've got fewer memory cards. Now, it's a different system, so they can't just take their past practices and just say well, we're going to do the exact same things with these new machines. The machines don't look the same. They don't take up the same space. They don't operate exactly the same. They're deceptively similar, again, from the voters' point of the view. And the voters, I think, will notice little change, but I think one of the main things I've been trying to do is alert the counties to the fact that it's not necessarily business as usual. It's business as similar, but some of the concerns that may not have had before, they need to have, and some of the obstacles that they had to deal with before, they don't have to deal with, but the challenges have been different.

Q Okay. One of the things you mentioned in response to that question was that you had issued some diagrams, and I'd like to take a look at those for the next few minutes. If we

could get SEB 055 on the screen, that would be helpful. Okay. Can we enlarge that so the witness can see it? Mr. Harvey, can you see that a little bit? If not --

A Can I step out and look at it?

Q -- that would be okay with me if it's okay with the Secretary?

MR. RAFFENSPERGER: Sure.

THE WITNESS: Okay.

BY MR. SELLS:

Q Can you describe what it is that we're looking at here?

A That is -- it's in email form, but it's a Buzz post.

Q Okay. What is the Buzz?

A The Buzz is a, sort of, a chatroom that's available for all the county election directors and election officials. It's a place where people can post either questions -- they can post notices, announcements, something that all the counties can sort of see in time. It's a communication system, basically, to get information out as widely as possible in a pretty efficient manner.

Q Okay. And what was the date of this Buzz post?

A It was February 13th of this year.

Q Okay. And what's the subject of the Buzz post? Do you remember this one?

A I do remember it.

Q Okay, so why don't you tell us?

A Polling place privacy for voters.

Q Okay. What prompted this Buzz post by you?

A A couple of things. Probably the thing that prompted it most was -- was my visit to Southwest Georgia and looking at some polling places and seeing how they were set up, and some concerns with the polling place setup, where there were questions about privacy for voters, and talking to some poll managers and poll officials who had said people had -- had expressed -- you know, I asked them, I said, how do people like the new voting system? How is it working? Do you have any problems? You know, kind of getting a feel for how it's going, and a couple of people mentioned that some people were concerned that, you know, they were concerned about privacy.

So in visiting, I probably went to 20 polling places in that area, and seeing different setups, I realized that one, it was a legitimate concern the way they were set up in one place, but secondly, that it's not an insurmountable problem. It's something that can be relatively easily fixed in most places, so instead -- again, instead of kind of breaking that mindset of well, we've always set up our polling places this way, and that was the answer I got when I asked people: well, we always set up this way. Realizing that just looking at it a little bit differently could solve a lot of concerns.

Q And when you say Southwest Georgia, do you mean

Sumter County?

A I actually -- I don't think I went to Sumter County. I went to a bunch of other counties in Southwest Georgia. I don't believe I actually made it to Sumter County.

Q And why Southwest Georgia? Is it because they had a special election where they used these ballot-marking devices?

A They had special elections both for House District 171, involving 3 counties, and then you had 7th District 13 that involved 9 or 10 counties, so I knew there would be a good opportunity to observe voters. You know, I wanted to see how voters were responding. I wanted to see how poll workers were responding. I wanted to see how the setup was going, and, you know, there's nothing like being there on the ground to see the problems and also identify the solutions.

Q And the new ballot-marking devices were used in those special elections?

A They were.

Q And your office became aware of complaints from the voters about ballot secrecy and privacy given the way that these machines were set up in those special elections, correct?

A In terms of complaints, I don't -- I don't believe we got a lot of complaints from voters directly to our office. Now, we may have gotten one or two, but it was -- it was mostly my own observations that really prompted this Buzz post.

Q Okay. So we're going to look at the other pages of

the Buzz post. Let's go to the very next page. It should be SEB 0056. Tell us what this is.

A This is a cover page. I -- when I did that Buzz post, I sketched out some very amateurish graphic designs and setups and diagrams and possible solutions, and then we had other people in the Secretary of State's Office produce them in a more professional look.

Q Okay. Before we go into the diagrams, and we're going to spend some time there, you've already said that the date of this post was February 13th. Did -- had you disseminated this at all before February 13th to county elections directors?

A I don't believe so. I don't -- I may have had communications with them, discussion with them, but I don't believe this was disseminated until that Buzz post. I think it was attached to the Buzz post.

Q Okay. So February 13th, 2020 would have been the first time that county elections directors had received this kind of guidance from your office as to how to lay out a precinct in order to protect voter privacy, correct?

A I don't believe it's -- it's the first time they would have seen this form. I don't believe it's the first time they would have been talked to about the issue, or we would have discussed the issue. Like I said, we have weekly conference calls both with the counties that were running the

special elections, and then we had statewide conference calls, so I believe we had talked about some of these things before then, but I believe this would be the first time they would have seen this document.

Q Right. I'm not talking about talking at people, but in terms of actual guidance on how to lay out a precinct with the new voting machines. They hadn't received this kind of guidance from your office until February 13th.

A Well, I consider guidance -- talking as guidance also, so I wouldn't concede that there was no guidance. I would say that this was the first time they would have seen a document in this way, but I don't think it's accurate to say that they didn't receive any guidance from us.

Q Okay. Did they receive verbal guidance, "turn the machines around" before this document?

A They very well may have. Again, I don't specifically recall all the -- everything that was said on every conference call, but I know in talking with some of the counties -- as a matter of fact, I spoke with some county election directors while I was down there. We called -- I'd visit a polling place and I would generally call the county election director, and I would tell them, hey, you may want to think about rearranging some of your polling places, there are privacy concerns. So in that sense, they would have gotten guidance within minutes of me seeing the polling places.

Q As you sit here today, can you point to me -- point me to any guidance that was received by Athens-Clarke County elections staff or the Board of Elections and Registration regarding the configuration of polling places prior to February 13th, 2020?

A I can't, but I can't say there wasn't some given.

Q Okay. Now, you would agree with me that February 13th, 2020 was past the date on which the Board of Elections could change polling places, right? Because 60 days before March 24th is January 24th or thereabouts, right?

A Correct.

Q So by the time they received this guidance, they could not have changed polling places in accordance with Georgia law, right?

A They could have changed advance voting locations.

Q My question is about polling places.

A That's correct.

Q Okay. Let's advance to the next page, and can we blow that up a little bit? Mr. Harvey, can you read the heading on this diagram?

A Ineffective -- parenthesis -- I think it's parenthesis -- (bad precinct layout) -- BMDs exposed to view.

Q All right. So would it be fair to say that this is a sketch from your office providing guidance as to what not to do?

A Yes.

Q Okay. So walk us through this, like, what about this is bad?

A Well, you've got the BMDs that are exposed to the view of people waiting to vote. People -- everyone is oriented looking at the BMDs. The people who are voting there, now, the voter would be blocking the screen to some extent, but there is still a possibility that somebody could see over, around -- somebody standing off to the side. It just creates a possibility that somebody could see a ballot-marking device.

Q So for example, I'm going to try to point over here. This person in the pink and green standing there (indicating) could see what the ballot-marking device where this person in the blue and white is standing from that vantage point (indicating). That would be one of the things that's bad about that layout, right?

A Potentially, yes. I could see that.

Q So -- so even if -- even if this person (indicating) was blocking the view of his or her ballot-marking device, this person (indicating) could see it crossways.

A Conceivably, yes.

Q Right.

A Of course, depending on space and distance and all that stuff.

Q Is there anything else about this layout that strikes

you as ineffective or bad?

A Well, again, that's just generally designed to show the orientation of the machines. Now, you've got the standard check-in. I mean, that's what we were trying to show in that diagram. That wasn't designed to show every possible consideration in setting up polling places. It was on the specific issue of BMD secrecy.

Q Okay. Great. Thank you. I should have asked the question: your Buzz post didn't contain this kind of narrative explaining what is bad about this photo, but left it up to the viewer to infer what's bad about it?

A That's correct. The Buzz post said what it said, but again, this was covered and has been covered in conference calls certainly since then, and I believe before then also.

Q Okay. Let me ask you one other thing and we'll see if we can get -- can you see my -- my laser pointer?

A I can.

Q Is another negative aspect about this layout that the poll workers behind this poll pad check-in desk (indicating) might also be able to see the face of the ballot-marking devices?

A Actually, in the design, the -- it doesn't -- I interpreted those people as other people waiting to vote. I would have the poll workers facing away from the machines, so I think those are voters waiting to vote rather than people

working the poll pad check-in. That's how I wrote it. That's how I envisioned it.

Q Okay. These three people in the center of the screen that I'm circling with the laser (indicating)?

A Yeah. Those are -- in my mind, those were observers or people waiting to vote. Those were not poll workers.

Q Okay. Well, whoever they are, is that another negative aspect --

A Yes.

Q -- that they can also potentially see cross-wize --

A Yes. No question. It's -- the point was that almost anybody in that configuration would have a better chance of seeing a ballot-marking device.

Q Okay. Let's advance one page and blow this one up. Can you read the heading on this one?

A It says effective/preferred precinct layout - BMD screens shielded.

Q Okay. So what is this diagram intended to illustrate?

A Well, it's intended to illustrate that if you turn the BMDs around, you greatly decrease the possibility that observers could see them.

Q What other aspects, if any, of this layout strike you as good or bad?

A Well, you would -- it shows a possibility of people

moving around the BMDs, so that there would be less chance that somebody would have to cross behind somebody casting a ballot as possible. Again, this is a generic, you know, polling place that, you know, may or may not exist in the real world. They're all a little bit different, but it does show, again, what people are able to see, and then the ways they may move to the ballot-marking devices to maximize privacy and secrecy.

Q Okay. I want to emphasize that last point that you just said that this diagram shows the way people may move to get to the ballot-marking devices. Those are the little red arrows, correct?

A Yes.

Q That's how voters are intended to get to the ballot-marking devices according to this effective or preferred layout, right?

A Again, if you've got the ability to have that space, that would be optimal. You don't always have that possibility.

Q And what you're trying to avoid with these arrows is having one voter pass behind another voter while the voter is attempting to vote. So for example, the gentlemen with the tie in the upper right hand corner, we would prefer that this person go around that side (indicating) rather than behind the voter there in the pink (indicating).

A Correct.

Q Correct? Okay. All right. Let's advance to the

next slide. All right. This page is SEB 0059. Can you read the heading on there?

A It says effective or preferred precinct layout - BMD screens shielded.

Q Okay. What is effective about this particular layout in your view?

A Well, again, it provides another shielding of the BMD screens. They're at a perpendicular angle to where the observers are standing, so they're not going to be able to see the screens. They're surrounded by a blue privacy shield. And essentially, it provides about the same protection as the previous demonstration, if you're in a configuration where for some reason maybe you couldn't get around behind the other side of the table. So it's just an alternative way of setting up BMDs, but it provides essentially the same kind of protection.

Q Okay. And again, we have the red arrows indicating how voters are supposed to get to their chosen BMD, correct?

A Ideally, yes.

Q Ideally. And all these people here in the middle are, you said, potential voters, right?

A Observers, voters, whoever.

Q Does it concern you at all that this voter here with the yellow hair and orange clothing might be able to see that BMD (indicating) or that this voter in the green clothing might be able to see that BMD (indicating) on the cross-wise just as

in the first diagram?

A That's a possibility. Again, it's not -- it's not taking every possibility into account. This is where the totality of polling place management -- we've talked about polling place management all year with the counties -- and that this is where you get things like what I was talking with Mr. Germany about, you know, setting up public areas and channeling people in such a way so that they get to vote efficiently, they get to move efficiently, you get people through as quickly as possible, so that's a -- yeah, that's a possibility that that could happen. And again, as I've said to the counties in conversations and emails since then, you know, use things like geometry and environment and angles so something like that won't happen.

Q Okay. You know, I should have asked this at the outset, but who drew these diagrams? I think you said you sketched them out, and somebody else did them.

A Yeah. I did very rough sketches, and then a woman that works in our office, Trisha -- I believe her name is Danskin -- actually created them based on my sketches.

Q Okay. Now, are these to-scale drawings?

A No.

Q And an actual polling place would need to have a lot more in it than what appears on these sketches, correct?

A That's correct. So again, they weren't designed to

be this is how to set up a polling place to cover every possibility. You can see that doesn't -- that doesn't show the scanner, that doesn't show the ballot box, it doesn't show --

Q All right. Well, you're anticipating my next question. So if one were to draw out an actual polling place to scale, what other items would need to be in that polling place? You said a ballot box?

A Correct.

Q A scanner?

A Well, the scanner and ballot box are -- is one item.

Q One item, and that's about as big as a photocopy machine?

A Right. Yes.

Q Okay. What else?

A Well, you would have to have a provisional ballot area for people to vote provisional ballots. And again, depending on the -- what's available in a polling place, you may have an area set aside for poll watchers, you may have an area set aside for media, you may have an area set aside just for public viewers. In some places, they would -- they wouldn't necessarily be in the same room where voting was taking place, but outside, they would have areas where people could take photographs or ballot selfies -- not ballot selfies, but selfies of them voting and things like that.

Q Okay. I'm not concerned with the outside, and I'm

not concerned with the optional areas, like a media area, but what would be required?

A You have to have the provisional ballot area and you have to have the scanner would be the two main things. With the current system, the BMDs that you have set aside for disabled voters with the ATIs could be just lined up as any other machine, and then somebody requesting that could be directed to that. But in some places, they may set up a separate area for voters with disabilities.

Q Okay. What else?

A You would have -- those would be the physical things that would be needed in a polling place, and then of course, you'd have poll workers.

Q Ah. I thought you were going to forget the poll workers.

A No, I'd never forget the poll workers.

Q How many poll workers?

A As many as you need, and we're encouraging counties to get as many as they can to help, again, with people using the new voting system.

Q Okay. So poll workers need a table?

A Well, not necessarily. I mean, you've got the check-in. You've got the check-in table, okay? You would have poll worker -- you would have areas for, you know, poll workers to either gather or take breaks, and that may be outside of the

actual voting area, but most of the poll workers, with the exception of the ones that are doing the check in, are standing.

Q They're standing?

A Standing or moving through the area.

Q Okay. What about a place for voters to review the ballots?

A You'd certainly have that, yes.

Q And that is required under state law, correct, or state rule?

A It's not that there's a specific place. Voters are instructed and have to be instructed to review their ballot. There doesn't have to be a separate area for them to do that. The other thing I would say: it may not be a separate area. You'd have a possibility of a magnifying glass and a magnifying devices, but in a lot of cases, the counties set that up actually in the booth itself with the BMD.

Q Okay. That's where I was going, magnifying glasses or whatever that has to --

A They have to be somewhere. They do. And I think from what I've seen, most of them provide those in the actual booth, but some of them will have a table or an area set up for people to do that.

Q Okay. So I've got ballot box and scanner, provisional ballot area, poll workers, magnifying glasses, what

else needs to be in a polling place on Election Day?

A Well, again, I mentioned the ATI for voters with disabilities. That may or may not be a separate area.

Q Okay. What about an area for voters to cast an emergency ballot?

A That's something that could be set up also.

Q You mentioned -- I think we're done with these diagrams -- you mentioned also in the list of things that your office had done with -- to address privacy concerns that you had held conference calls with county election directors. I think they were regional calls. Do you remember that testimony?

A We did -- when we first set up these conference calls, we would have them, like, the northern half of the state and the southern half of the state, and then we combined them into a single call. But initially, we started with north and south and then we combined it into one.

Q Okay. Do you remember a conference call on January 10th?

A Not specifically.

Q Okay. Can we put on the screen BOER 0082? This is Exhibit 82 in your book. Let's see if this refreshes your recollection of one of those conference calls.

MR. RAFFENSPERGER: What was that number again?

MR. SELLS: It was Exhibit 82, and while we're

waiting, I should offer the last set of diagrams that we just did as an exhibit. I don't if we have an extra copy that we can mark, but I can offer it. From the State Election Board, that was -- so we'll maybe offer that as Respondent's Exhibit 1?

(Respondent's Exhibit 1 identified.)

MR. GERMANY: Can you say the exhibit's numbers?

MR. SELLS: Yes, it's SEB 0055 to 0059. It's those diagrams that we were just looking at.

MR. GERMANY: No objection.

(Respondent's Exhibit 1 admitted.)

MR. SELLS: And we're marking that right now. Oh, she has stickers. Great. Thank you.

BY MR. SELLS:

Q All right. So Mr. Harvey, I'd like you to take a look at the notes on the screen. These are not your notes, but they are all -- represent to you notes of a conference call with you. Does that refresh your recollection of being on a conference call on January the 10th?

A I suppose so, yeah. That looks like something I would have talked about on a conference call.

Q And did you, in fact, talk about blackout screens on that conference call?

A Based on that, I probably did.

Q Okay. And did you, in fact, tell county elections

directors to hold off on buying blackout screens because the State was looking into providing them at that time?

A I did.

Q Okay.

A Well, I think -- I think what I said was I recommend that they not purchase them and that we were looking into the use of them rather than the -- and that if it was something that we were going to provide, we would probably provide them. But I don't think -- as you read that, it makes it sound like I may have said, hey, we're getting ready to buy them and give them to you, and that's -- I don't think that's what I said.

Q Now, January 10th is before January 24th, but with the publication -- advance publication requirements, isn't January 10th too late to change polling places for the March presidential preference primary? Can you do those calculations in your head?

A I didn't know there would be math. But yeah, I suspect so.

Q So at least as of January 10th, the guidance received by county elections directors was that the State was looking into providing blackout screens to address the privacy concern?

A Well, again, I've talked about this several times, and I don't believe I've ever said that that's something that we were going to provide. I said we looked into -- we were looking into the possibility that that may be something that we

were looking at, but I don't believe I ever said it in such a way like, you know, we're going to get them for you. There were a lot of questions about whether or not it was -- it was something that would be appropriate or acceptable with the new system. So I would -- I would not agree with the characterization that, you know, we're going to get these for you.

Q And for the record, this note is Exhibit 13 in our book. My co-counselor just told me.

(Respondent's Exhibit 13 identified.)

MR. SELLS: I think I initially gave you the wrong exhibit number, but it's Bates Stamp 0082, but maybe Exhibit 13. Do you all have it in front of you?

THE BOARD MEMBERS: Mmm-hmm.

MR. SELLS: Okay. We just used this to refresh Mr. Harvey's recollections, but we will call to ask to offer it into evidence later.

MR. GERMANY: No objections.

MR. RAFFENSPERGER: Okay.

MR. SELLS: If there are no objections, we'll just go ahead and get it in. We would offer Exhibit 13.

MR. RAFFENSPERGER: No objection.

(Respondent's Exhibit 13 admitted.)

BY MR. SELLS:

Q Mr. Harvey, do you keep notes or agendas or anything

that would memorialize what you plan to talk about on one of these calls?

A They were generally prepared by the training coordinator, and they would produce those and sort of use those as points, but I didn't produce them.

Q Okay.

A And we also took questions from -- people would type in questions on the call, and I would respond to those too.

Q And as you sit here today, you don't have any record of having instructed or guided county elections directors before January 10th to go ahead and buy the screens or as to how to lay out a precinct to ensure voter privacy, right?

A I have not reviewed any records. I know that I would not have encouraged counties to purchase blackout screens at any time, so that's the best I can answer for that.

MR. GERMANY: I just have a question. Blackout screens -- are we talking about the screen that goes, kind of, like a film? Or what are you referring to when you say black out screens?

THE WITNESS: I guess that's a good point. When we've been talking about blackout screens, I'm referring to a film that you put over a screen like a laptop or a phone that would shield it from the kind of sideways angle view. That's -- that's what I'm terming as black out screens.

MR. SELLS: Okay. Thank you for clarifying that.

BY MR. SELLS:

Q I want to shift topics a little bit and look at some more photos. And I'm going to ask for photos starting, let's see, at SEB 0093. Now, Mr. Harvey, do you recognize that photo?

A I don't think I specifically recognize that photo. I think I recognize what it is.

Q Okay. Do you know who took the photo?

A I don't.

Q Do you know where the photo was taken?

A I do not.

Q Do you know whether this was taken in Athens-Clarke County or not?

A I don't.

Q There's not much we can talk about about this photo, at least in terms of its providence, but why don't you tell me what you see there?

A What I see in that photo is a sideways view of about what I believe are ballot-marking devices. The blue -- the blue that you see are the privacy screens that go around the ballot-marking devices to shield them from the side. You see the instructions on the side, and I presume that there's a ballot-marking device in each of those screens, so where it says only poll workers and poll watchers, there's a ballot-marking device facing out to the right. I presume on the other

one -- and I think you may even be able to see the top of the BMD on the other side, again, facing out to the left on that photograph. And I -- I suspect that where you see the American flag elevated is an additional barrier and that there's presumably another ballot-marking device on either side of that, set up in the same orientation.

Q Okay. I want to focus in on that thing with the American flag on it. You said it's an additional barrier.

A I believe that is. I can't say for certain, but I believe that's...

Q Why would there be an additional barrier there?

A Just to provide additional secrecy for the voter.

Q Did the State provide these additional barriers to counties along with the ballot-marking devices?

A No.

Q Let's go to the next page, 0094. Does this appear to you to be another angle on those same machines?

A It does.

Q Okay. And this allows us to see a little bit better that American flag partition there in the middle, correct?

A Yes.

Q And, in fact, your hunch was right that it is separating two ballot-marking devices that are on one table side-by-side, correct?

A That is correct.

Q Now, again, why would anyone need an additional barrier above and beyond the blue privacy screens that were provided by the State along with the ballot-marking devices?

A It's -- I'm not sure that you need it, but in the interest of enhancing voters' security, secrecy, or privacy, that's another innovation that a county could put on it.

Q But again, you don't know where this photo was taken, and doesn't necessarily represent what was being offered in Athens-Clarke County, correct?

A That's correct. I don't know.

Q Do you know whether this photo was ever distributed to county elections directors?

A I don't.

Q So as you sit here today, you don't know whether county elections directors had this sort of diagram before it was too late to change polling places, correct?

A I don't know if they had that photograph.

Q Let's go to the next photograph. This is SEB 0095. Now, do you recognize this photo any more than the other ones?

A I've seen that photograph. I reviewed some photographs last evening, so I do remember seeing it because I saw hockey in it, and I thought hockey was unusual to see in a Georgia polling place.

Q Okay. Do you know if that's Athens-Clarke County?

A My memory is that it is not.

Q Okay. Do you know where it is?
A I want to say it's Spaulding County, but I can't say that for certain.
Q Now, the reason I wanted you to look at this photo is we actually have a person in it, who's standing in front of a ballot-marking device. Do you see that?
A I do.
Q And do you see how -- now, we don't know how tall that person is. It appears to be a woman. But do you see that her head is well above the top edge of the privacy screens there?
A I do.
Q Let's look at the next slide. So this is virtually the same view, but now, we have someone else in there, a second person. Not sure if that is a man or a woman, but, again, do you see that his or her head is well above the privacy screen with those ballot-marking devices on the table?
A I see it's above the screen.
Q Yeah. As you look at this photo or even think of the last one with the same polling place, do you see the tables that they're sitting on there?
A I do.
Q Is there anything unusual about those tables?
A From this perspective, I don't see anything unusual about them.

Q And, in fact, many counties use tables that look a lot like that as bases for the ballot-marking devices, correct?

A Well, again, that's a table. I don't know if there's anything specific about that table. I know a lot of counties use tables for ballot-marking devices. I don't know if their tables are like that. Those may be special tables.

Q These don't look, like, unusually low, for example.

A It's -- it's very difficult to tell from that perspective. Actually, they kind of do look a little bit low to me, if you follow the line. I know it's at an angle, but if you follow the line, it looks like the edge of the table would be sort of below waist of the person standing there, which seems maybe a little low. I don't know. I'm not a table expert.

Q I'm standing next to a table right now.

A Yeah, I would say -- I would say it's about -- I would say it's similar to that again.

Q And for the record, I'm not a table expert either, but I have one of those tables as my desk at home. I'm familiar with them. Let's go back to 0094, so just two slides ago, where we saw the partition. Now, those are a different kind of table, but those are, again, neither -- do they appear any higher or lower than your average table?

A No. They're in the range of normal, I would say.

Q Let's look at SEB 00 -- or excuse me, 0112. Do you

recognize this photo?

A I recognize what it shows. I don't recognize taking it or where it is.

Q Okay. So, again, we don't know that this is Athens-Clarke County, and it's probably not, right?

A I don't know where it is.

Q Okay. And you don't know who took it?

A I do not.

Q Okay. Well, what does it show to you?

A Well, it appears to show a person standing at a ballot-marking device, presumably voting or reviewing a ballot or interacting with that ballot-marking device.

Q Does this photograph illustrate in some way your diagram of an ineffectual or bad polling place design in that whoever is taking the photograph has a straight-on view of these machines over in front?

A Well, if that's taken from a public area, it does. If it's -- I know we've had people from our office going out and taking photographs. If that was taken in an area where an investigator or a monitor could do them, then it may not. It appears that people are standing up to the right, maybe waiting to vote or observing, and in that case, they're looking at the side, which is one of the ways that we recommended, so --

Q Okay.

A -- it really depends on who took the photograph. If

it was taken by an investigator in our office, it wouldn't concern me. If it was taken by somebody waiting to vote or from the perspective of somebody waiting to vote, it would concern me.

Q All right. Can we zoom back out on the photo and get the whole photo in the frame? It's a little cut off to the left, but does this photo illustrate how it is possible to see crosswise like we were talking about in your ineffectual diagram?

A Crosswise from what perspective?

Q From the perspective of whoever is taking the photograph, just as we saw in that diagram that you --

A Well, from whoever's taking the photograph, that's not even crosswise. That's -- that's dead on, so that's really more of the first bad example. If somebody's viewing it from this perspective, that's almost straight-on, but as you go farther to the left, it would be an angle problem.

Q Okay.

A If that's from a public area.

Q All right.

MR. GERMANY: I don't know if this will help, but I can say, and we're calling Ms. Watson next, all of these photographs were taken by our investigators in the regular course of election monitoring, and I was going to have Ms. Watson speak to them.

MR. SELLS: Okay.

MR. GERMANY: If that's helpful to you.

MR. SELLS: Well, it's helpful in that I won't offer them as exhibits until we get maybe some more authentication. I mean, I can offer them just because we've talked about them, but I'll hold off.

MR. GERMANY: And I was also going to say, none of them are Athens-Clarke.

MR. SELLS: Okay, good. I didn't think so.

BY MR. SELLS:

Q I'm going to shift to a different topic now, and it's this idea of a uniform -- the unified voting system that we have here in Georgia. Now, as you have already mentioned, there have been a number of tests of our new system here in Georgia in special elections, for absentee municipal elections last November. Can you tell me a little bit about what happened in Cobb County last November?

A In Cobb County last November, they had some municipal elections where they used -- did a pilot with hand-marked paper ballots to satisfy the order of Judge Totenberg, and I don't remember. I think they had 4 cities that were conducting municipal elections, and they did hand-marked paper ballots for those elections.

Q Now, the Cobb County pilot actually used the system that we obtained as a state from Dominion, correct? With the

exception of the touch-screen component of that system, right?

A Correct. They used the scanners for -- the same scanners that are used for the ballot-marking devices.

Q Right. So it's not your position that what Cobb County did was some alternate system of voting. It was actually a different use of the system that we obtained from Dominion, right?

A Well, it was a -- it was a court-ordered use of the system. So it is different, but it was court-ordered, and it used some components of the same Dominion system.

Q Right. And it was court-ordered because the Board of Elections in that case didn't have make a finding of impracticability or impossibility to use the new machines, but it was essentially the -- using the system that we ordered in a different way, a backup way, that one would use if one were to find that voting under the machines was impracticable, right?

A Well, I think the answer is yes. Although when you talked about the Board of Elections, they didn't really have a say. I mean, they agreed to do it, but they weren't the movers of that decision. It was ordered by Judge Totenberg.

Q Now, did your office prepare a report on summarizing the findings from that pilot program?

A I don't think that we've produced the final report yet.

Q Okay. I'd like -- I'd like to put up on the screen

BOER 420. And let's see, it's Exhibit 51. 51, thank you.

(Respondent's Exhibit 51 identified.)

Q Okay. The first page is a cover page. It says executive summary, initial findings pilot county's municipal election 2019, new Georgia statewide voting system. Do you see that?

A I do.

Q Do you recognize this document?

A I -- yes. I've seen it before, I believe.

Q Okay. What is it?

A It's a summary of the initial findings of the pilot.

Q Okay. And who produced it?

A Our office did. I didn't produce it myself.

Q Your office meaning the Secretary of State's Office?

MR. GERMANY: I'd stipulate that this --

MR. HARVEY: And I may be -- I may be -- confused.

MR. GERMANY: -- is a report produced by the Secretary of State's Office.

BY MR. SELLS:

Q And have you read this report?

A I think I read it when it came out. I have not reviewed it recently.

Q Okay. I'd like you to turn to the next page of this report, and this report talks about findings in the pilot counties that used the ballot-marking devices but also the

pilot in Cobb County, correct?

A Yes.

Q And if we could blow up the bottom paragraph on the page? Yeah. Do you see here the sentence that says, Cobb County volunteered to conduct a pilot election with the new system except using hand-marked paper ballots instead of ballot-marking devices?

A I do.

Q That pilot still included the poll pad, the polling place scanner, and new election management system. Do you see that?

A Yes, I do.

Q Do you disagree with that, those two sentences?

A The only clarification is that I asked Cobb County and they agreed, as opposed to them coming forward and saying we want to do it, but they certainly volunteered once I asked.

Q Okay. But you agree with me that Cobb County's pilot used the new system that is mandated under state law requiring, in fact, that we use the new system?

A It certainly used components of the new system.

MR. SELLS: I think that's all the questions I have.

MR. RAFFENSPERGER: Mr. Germany, do you have -- okay. Next witness?

MR. GERMANY: I call Frances Watson.

MR. RAFFENSPERGER: Frances Watson?

MR. SELLS: I'd like to offer 51 into evidence.

MR. GERMANY: That's the report we just looked at? No objection.

MR. RAFFENSPERGER: Okay. Done.

(Respondent's Exhibit 51 admitted.)

MR. GERMANY: Y'all are going to get her, the court reporter, a copy of those exhibits?

MR. RAFFENSPERGER: Do you want to swear in Frances Watson?

THE COURT REPORTER: That's why I'm crouching. Do you swear or affirm the testimony you're going to give today will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

Whereupon,

FRANCES WATSON

having been duly sworn, testified under oath as follows:

DIRECT EXAMINATION

BY MR. GERMANY:

Q Ms. Watson, could you introduce yourself and state your -- what you do as a profession, please?

A Yes. Frances Watson. I'm the Chief Investigator for the Investigations Division for the Secretary of State.

Q You might have to angle that a bit toward you.

A Okay.

Q As Chief Investigator, are you -- you oversee a team of investigators, correct?

A That is correct.

Q As part of your investigatory duties in the regular course of business, does that include election monitoring?

A It does.

Q Could you describe that process?

A Yes. Prior to elections, during early advance voting, and on Election Day, we have investigators that work throughout the state in the field going to various poll locations, and they have a form that they complete for poll inspections to check for various compliance issues. Did they open on time? Do they have the correct amount of poll workers? Do they have a provisional ballot station set up? Just various issues, are there any obvious issues that are taking place? We talk to the poll manager and ask them how is it going, is everything going okay? And once those are completed, then they report any issues or their findings back.

Q Are your investigators currently doing that monitoring in the early voting that’s occurring for the presidential preference primary?

A They are.

Q Is one of the things that they are asking about this time about privacy? Is that one of the things they’re looking for?

A Yes. They're specifically just observing voters. They are asking the managers are you having any specific complaints or any -- any, you know, issues? They're observing voters when they're voting to see if there are any particular issues that they can observe as far as voting secrecy.

Q I'm going to show you a few pictures. Before I do that, do you recall seeing the pictures that Mr. Sells was showing Chris Harvey?

A I do,

Q Do you recognize those as pictures that your investigators took?

A I do.

Q I'm going to show you first SEB 0076 and SEB 0081. Are those pictures that your investigator -- one of your investigators took in a polling place?

A They are.

Q Do you recognize that as a polling place in Floyd County?

A I have -- was not at the location, but it was reported by the investigator to be photographed in Floyd County.

Q I'm going to show you SEB 0069. Do you recognize that to be a picture of a polling place where early voting is going on that your investigator took, one of your investigators?

A It is.

Q I don't recall which County -- which County that's from, but it's not Athens-Clarke County, I will say that. I'm going to show you 0 -- SEB 0085 and SEB 0088. Do you recognize those as pictures that your investigator took of a polling place where early voting is currently ongoing?

A I do.

Q I'm going to show you SEB 0094, which I think is one that Mr. Sells showed. Do you recognize that document as a picture that your -- one of your investigators took of a polling place?

A Yes.

Q And finally, I'm going to show you SEB 0104 and SEB 0107. Do you recognize those documents as pictures that one of your investigators took of a polling place where early voting is currently ongoing?

A Yes.

MR. GERMANY: I move to admit each of those pictures, and I'd be happy to include the ones that you showed as well, Bryan.

MR. SELLS: I don't have an exception, if you'll stipulate that none of them are Athens-Clarke County. I think we were unclear about three of them.

MR. GERMANY: None of them are Athens-Clarke. And I'm just going to ask the court reporter to mark all of

these as one exhibit.

MR. SELLS: That's fine. What's the exhibit number?

THE COURT REPORTER: It's 3.

MR. GERMANY: It's going to be marked as Exhibit 3.

(State's Exhibit 3 identified and admitted)

BY MR. GERMANY

Q Ms. Watson, as your investigators are doing election monitoring and reporting, what are you hearing and seeing on the issue of ballot privacy?

A The only issue that was reported back from one of the investigators was during House District, I believe, 171 in South Georgia, and the voting machines were set up so that the people waiting to vote could see the machines. And they reported that issue back to me.

Q Your investigator reported that issue back to you?

A Yes.

Q What did you do with that information?

A I spoke with the Deputy Director -- or the Director of Elections, Chris Harvey, and he advised that he had been in that county and that they had spoke [sic] with the county about repositioning machines.

Q Did they resolve that? Did they reposition the machines to your knowledge?

A I do not have that information.

Q Are there any other issues that you've heard about,

reports you've received from your investigators with privacy?

A No, I have not had any other issues reported back to me.

MR. GERMANY: Nothing further.

CROSS-EXAMINATION

BY MR. SELLS:

Q Good morning, Ms. Watson. I'd like to start with 0069, if we could. This is one of the ones that was just admitted as Exhibit 3. Do you have that one in front of you?

A I do.

Q Okay. And you said this was taken by one of your investigators, correct?

A It was.

Q And what happens after the investigators take it? Do they text them to you or email them to you from the field or do they wait until they come back to the office? Tell me a little bit about that process.

A They can send them to me via their phone or they can wait until they get to the office and send me via email.

Q Okay. Do you recall seeing this particular photo on Election Day or only in connection with this proceeding?

A Only during early voting.

Q My question, though, is did the investigator bring this particular photo to your attention in any particular way?

A They did send that to me. That is correct.

Q Okay. And you reviewed this photo?
A Yes, I did.
Q Okay. Did either your investigator or your own review of the photo reveal any problems with this particular issue?
A There were no issues that we observed when we were there as far as voters voting or any issues as far as the secrecy of the ballot when we were on scene, so there was none that was reported to me as an issue. That's correct.
Q Okay. And so in your view this would comply with the constitutional right to ballot secrecy that we have under the Georgia constitution?
A Well, there was no voters voting, so in that particular moment, it would comply.
Q But we're talking about the configuration of polling places at this hearing, and that's what's critical.
A Right.
Q And so I'm asking you to look at the photo, and if you need more time, we'll give you more time.
A No, that's fine.
Q Does this configuration, in your view, comply with the constitutional right to ballot secrecy?
A I believe it does.
Q All right. I would like to zoom in on this area over here in the upper right-hand corner of the screen. Do you see

the window?

A I do.

Q Do you see the person in the window?

A I can't tell if that's a person or not.

Q Right there (indicating). Do you see that person's head?

A I do.

Q And do you think it's conceivable that that person could see someone voting on maybe these three or four machines right there (indicating)?

A I can't tell if there are blinds that are there, and that's a shadow. I can't tell from that picture.

Q Well, we can see her, if it's a her.

A Yeah, I can't tell. If there were people that were voting there, and there was a person behind them, it would be an issue. That is correct.

Q It would be an issue for you if there were a window where someone could see --

A Yes.

Q -- the face of the ballot.

A Yes.

Q Okay. But you didn't catch that window or this other window to the left, which is also facing several voting machines, when you reviewed this photo?

A Again, I can't tell if there is any kind of barrier

or any kind of blinds that are there.

MR. SELLS: Those are all my questions.

MR. GERMANY: Nothing further.

MR. RAFFENSPERGER: Next witness, Mr. Germany?

MR. GERMANY: We call Tom Feehan.

MR. RAFFENSPERGER: Take the oath.

THE WITNESS: Copy.

THE COURT REPORTER: Raise your right hand. Do you swear or affirm the testimony you're going to give today will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes, I do.

Whereupon,

TOM FEEHAN

having been duly sworn, testified under oath as follows:

DIRECT EXAMINATION

BY MR. GERMANY:

Q Mr. Feehan, could you introduce yourself and your current role, please?

A Yes. My name is Tom Feehan. I'm the Senior Project Manager for Georgia for Dominion Voting, and I'm running implementation for Dominion Voting.

Q Could you describe your background with elections?

A I've been in elections for 18 years. I started as an assistant project manager for implementation in 2002, and I've held a number of roles with various companies, project manager,

regional customer service manager, senior project manager. Most recently, in the last several years, it's been as a senior project manager for implementation.

Q I want to ask you about, in your role, are you familiar with the system that Georgia is implementing?

A Yes, I am.

Q I want to ask you about the monitoring and specifically, some of the monitoring options that are built into this system that were not in the previous system. For instance, is it your understanding that the touch screens in particular have -- basically, if they detect something foreign being plugged into them or something unrecognized, that they will up a prompt, stop -- it stops the voting process and requires a poll worker to enter their poll worker card to resolve.

A Yes, that's accurate.

Q Could you describe that a little bit?

A Sure. First of all, the ports are physically sealed by a cover and a tamper evidence seal over top of that cover, but what the system is designed to do -- the security feature of it is if anything is changed for instance on the USB ports, which are the ports that are used on it, the system automatically flashes up a message that says USB change port detected, and it freezes the machine. It disables it until action is taken, and that could be anything. It could be

simply unplugging the printer cable, the signal cable for the printer. It detects that as a change to the USB, so and the machine cannot be used until it is addressed by a poll worker.

Q Is this system that's being implemented in Georgia, the same equipment, is it used in other places for elections?

A It is.

Q Do you know which places?

A Specifically, the use that parallels or is most similar to Georgia is Pennsylvania, where it is used 100% to mark ballots in the same scanning system and the same, what we refer to as the ICX 21 prime, which is the 21 inch prime model, ballot-marking device.

Q That's the touch screen?

A Correct. Yes, sir.

Q Are you familiar with issues regarding voter secrecy or ballot privacy as it relates to this system?

A I have not heard any as it relates to this system used in other states.

Q Do you know if Dominion as part of their training on the new system, has that come up to your knowledge?

A I can speak only to Georgia training, but, yes, because the trainers fall under my purview. And both training sessions that were conducted for the counties, it was brought up that you should analyze your polling places. And we did not give specific instructions on layout because of the variation

potential, the options there are, but it was brought up by our trainers in the training, and then subsequently, we support each county with a county technician, and in that training, it brought up to the county technicians as well to observe that and recognize that.

MR. GERMANY: Thank you. No further questions.

CROSS-EXAMINATION

BY MR. SELLS:

Q Do you know whether other states that use the Dominion voting system have a constitutional right to ballot secrecy that is on a par with ours here in Georgia?

A I'm not familiar. I assume that the federal law for privacy applies to all the states, but I don't deal specifically with any other state vis-a-vis Dominion other than Georgia.

MR. SELLS: Those are all my questions.

MR. RAFFENSPERGER: Thank you. Mr. Germany, one more witness and then we'll take a lunch break after.

MR. GERMANY: I have one more short witness, and then we were -- we were also going to call Ms. Sosebee, but that one will take a little bit longer, so I think it's better to do that after lunch, if that works?

MR. RAFFENSPERGER: Okay.

MR. GERMANY: I call Melanie Fourchette. Ms. Fourchette, could you --

THE COURT REPORTER: Do you swear or affirm the testimony you're going to give today will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes, I do.

Whereupon,

MELANIE FOURCHETTE

having been duly sworn, testified under oath as follows:

DIRECT EXAMINATION

BY MR. GERMANY:

Q Ms. Fourchette, could you introduce yourself and your occupation, please?

A Yes. My name is Melanie Fourchette. I'm an analyst for the Office of Commissioner of Insurance and Fire Safety for the State of Georgia.

Q What did you -- previously, you were the training administrator at the Secretary of State's Office, correct?

A That's correct.

Q Can you tell me the dates of that role?

A Yes. I was hired as the training administrator in January of 2019 and left the office in February of 2020.

Q Can you tell me a little about your background in elections prior to becoming training administrator?

A Certainly. In 2010, I was employed by the Gwinnett County Elections and Voter Registration Office. I worked there for 6 years and then went to work for the Hall County Voter

Registration Elections Office prior to coming to the Secretary of State's Office in January -- February of 2017, where I was a liaison and then promoted to a lead liaison before my promotion to training administrator.

Q Thank you. In your role as training administrator, are you familiar with the new -- the new voting system that Georgia is implementing?

A Yes, I am.

Q Can you speak to -- let me ask you this first. Did you deal with counties a lot in your role?

A Yes, I did.

Q Can you speak to the discussions that came up about voter privacy or ballot secrecy as part of -- as part of your training? And I'm including both formal but also informal discussions.

A Yes. I was involved when Dominion began their training with the 159 counties and participated by being at different trainings and taking questions and just absorbing the training. And what questions would come up a lot would be deferred to me as a Secretary of State employee by the Dominion trainers. And of course, with a variation across the state of polling places, it was, you know, discussed about the position of the units, the large size of the screens, and the counties were instructed and encouraged to review all their polling places to make sure that they could set them up best for the

voters. And we took phone calls quite extensively. The phones rang off the -- quite a bit for me. I answered a lot of phone calls. I assisted Chris Harvey in the pilot county phone calls during the pilots as well as the weekly regional phone calls and as well as the phone calls done with the special elections people.

Q From your experience at the Secretary of State's Office and back to when you were a county election official, do you believe that it's impossible and impracticable for counties to utilize this system?

A No. I think it's very possible and very -- I think that the county elections directors know their polling places, they know their poll workers, and they know their voters. And I think it's -- there could be challenges there, but they're all possible -- possible to resolve.

Q You know, and it's a big transition, correct?

A Sure. It's a new way of voting in Georgia.

Q In your time in elections, have you worked with Charlotte Sosebee?

A Yes, I have.

Q And do you know her to be an experienced and qualified elections professional?

A Very much so. I actually worked with her in Hall County prior to her going to Athens-Clarke County and prior to me coming to the Secretary of State's Office.

MR. GERMANY: Thank you. No further questions.

CROSS-EXAMINATION

BY MR. SELLS:

Q Ms. Fourchette, you testified that the counties were encouraged to review their polling places. During which conference calls did that happen?

A Oh, I don't know if I could remember specifically which ones, but any time the conversation came up about the equipment and inspections and things like that, it was discussed.

Q It would have been before the polling -- the ballot-marking devices were delivered to the county, correct?

A Before, during, that whole time.

Q When did you leave the Secretary of State's Office?

A I'm a little confused about that question.

MR. GERMANY: Just to clarify, there was -- and I should have said this. There was a couple of deliveries -- as to what you were referring to as delivery -- people got demonstrations of equipment in the fall, and then larger shipments kind of began this year.

MR. SELLS: Well, if this is your witness testifying about counties being on notice, I want to -- I want to hear from her.

MR. GERMANY: I'm just asking for you to clarify which one when you say delivery.

MR. SELLS: Okay.

BY MR. SELLS:

Q Do you know when Athens-Clarke County received its ballot-marking devices?

A No.

Q So as you sit here today, you can't point to a single training where they were advised to review their polling places after they received the ballot-marking devices?

A No. I don't remember dates.

Q Okay. And were they specifically encouraged to review the polling places for electrical capability, the number of circuits required for the new machines, or were they encouraged to review them for other purposes?

A I don't remember those specifics.

Q Okay. Now, it was also your testimony that it is not impracticable to use the new ballot machines, correct?

A Well, I said it's possible to use them.

Q Okay. So it is not your testimony that it is not impracticable to use them?

A You know, that question goes to that definition that you both discussed earlier about impractical, so I'm not an attorney to where I could -- when I think about that word, it's is it impossible, but I don't know if that's the legal definition that you're using right now.

Q Okay. I want you to draw on all of your experience

as an election administrator and looking out at this room, how many ballot-marking devices do you think you could place in this room and comply with the statutory and constitutional right to ballot secrecy? Just give me a ballpark estimate.

A I don't think that I can give you that number.

Q Would it be 100?

A I don't know the size of this room. I can't -- I can't, you know --

Q Okay. So let me approach it this way. If Georgia law required you to fit 800 voting machines in this room and still comply with ballot secrecy and said you can't change rooms because it's too late to change, do you think you could fit 800 ballot-marking devices in this room?

MR. GERMANY: I would ask that we don't need to venture into the absurd, and can you keep your questions based in reality?

MR. SELLS: She just testified that it was not impracticable to use these machines, and space is what this hearing is all about, so she couldn't estimate, so we're going to have to get a little absurd.

MR GERMANY: Well, you can ask in a follow-up. You don't have to get absurd.

MR. RAFFENSPERGER: You can move on.

BY MR SELLS:

Q Isn't it true, Ms. Fourchette, that if you don't have

enough space to use the number of ballot machines, ballot-marking devices, that Georgia law requires that it becomes impracticable to use them in the space that you've got?

A Repeat that one more time to me.

Q Yeah. Isn't it true that if Georgia law requires more ballot-marking devices than you have space for, that you've got an impracticability to use the ballot-marking devices?

A I just think that's a very multi-faceted question there because we've always had voting equipment prior to this voting equipment that you still had to have the space for, so I just -- I'm not comfortable answering that question. I don't feel that I'm an expert in that field. I'm sorry. I don't feel comfortable answering that.

Q And in fact, Georgia didn't have that one for 250 rule when you were ever an election administrator, correct?

A That was not something that I oversaw at the county level.

Q Because it was passed last year, right?

A That was not something I oversaw when I was at the county level.

Q So, in fact, you have no expertise as to fitting the required number of ballot-marking devices into any polling place in a way that complies with the one to 250 rule.

A That is up to the county offices to determine that.

Q So to answer my question, you have no experience in that.

A I have experience in the use of the equipment, the size of the equipment, the information given to the counties, and that -- my expert level is -- is on the training level side of it. It's not doing their job for them at the county level.

Q So if you have expertise in the size of the equipment, please estimate for me how many ballot-marking devices would fit in this room --

MR. GERMANY: It's not -- he's already --

MR. SELLS: -- in compliance with the ballot secrecy requirements?

MR. GERMANY: He's already asked. He's already said she had no --

MR. RAFFENSPERGER: I think that's been asked already, and I think she said it was unknowable at this present time.

MR. SELLS: She's claiming expertise and then not answering my questions, Secretary.

MR. RAFFENSPERGER: Can you move onto the next question? And I would like to remind the people in the back there that you need to keep your comments to yourself. It would be appreciated. Thank you.

BY MR. SELLS:

Q You said you were an elections official in Gwinnett

County, right?

A I was employed by the Gwinnett County Voting Registration Election Office.

Q Okay. Have you ever been an elections official in Athens-Clarke County?

A No.

Q Have you ever set foot in any polling place in Athens-Clarke County?

A Yes.

Q When? Which ones?

A I don't remember the exact address, but I was actually visiting a friend, and there was Saturday voting going on, and so she said do you mind if I pop in here and go voting? And she went in, and I just kind of hung out in the lobby, but I don't remember the exact address.

Q What election was that?

A It was -- it was in 2016, I believe.

Q And we did not have ballot-marking devices in that election, correct?

A That's correct.

Q And you don't remember which polling place it was?

A It was over on the other side of the university, but I don't remember the -- it was a government building, but I don't remember the name of the building.

Q Was it a large space or a small space?

A Where the voting was actually taking place was -- I mean, I don't know. Small, medium, or large, it's kind of hard to define that term. It was an advance voting location, so there was quite a bit of machines in there, but I don't know what your definition of small or large is.

Q But they were the DRE machines, correct?

A That's correct.

Q Can you estimate how many ballot-marking devices would fit in the precinct that you saw, the polling place that you saw?

A No, I can't estimate that.

Q And you don't know, as you sit here today, whether that number would comply with the one to 250 rule either, can you?

A Not without the dimensions of the room and seeing the room, I wouldn't be able to make that guess.

Q If I showed you a room with dimensions, could you guess or estimate how many ballot-marking devices could fit in a -- in a space?

A Probably not. There's lots of other things that come into place with it: doorways, entry ways, electrical outlets, and things like that. Just the dimensions of the room isn't going to tell you everything. How the room is used will tell you that.

Q And you've never seen any drawings or diagrams

showing any polling places in Athens-Clarke County that contain the required number of ballot-marking devices in a way that complies with the statutory constitutional right to ballot secrecy in Georgia, correct?

A I've never seen any diagrams of Athens-Clarke County elections -- I mean, polling places.

MR. SELLS: Okay. Those are all my questions.

MR. GERMANY: Nothing further.

MR. RAFFENSPERGER: Okay. I think, Mr. Germany, you said your next witness would take a bit longer, so we'll -- it's 12 after 12. If it's possible, can we get back -- if we did a break, is 12:45 -- does that give you enough time or do you need a bit more time for lunch?

MS. SULLIVAN: I'd say one o'clock.

MR. RAFFENSPERGER: We'll say one o'clock, we'll be back. Recess until one.

(Court in recess)

(Court resumes)

MR. RAFFENSPERGER: Okay. We are called back to the hearing. It's 1:01, and Mr. Germany, we're ready for your next witness.

MS. MCGOWAN: We call Charlotte Sosebee.

MR. RAFFENSPERGER: Charlotte Sosebee?

THE COURT REPORTER: Do you swear or affirm the testimony you are about to give will be the truth, the whole

truth, and nothing but the truth?

THE WITNESS: I do.

Whereupon,

CHARLOTTE SOSEBEE

having been duly sworn, testified under oath as follows:

DIRECT EXAMINATION

BY MS. MCGOWAN:

Q Good afternoon. Would you state your name for the record and your current position?

A Yes. My name is Charlotte Sosebee, and I currently serve as the Director of Elections for Athens-Clarke County.

Q Thank you. And how long have you served in that position?

A For Athens-Clarke County, three years and about two months.

Q And first, I want to say thank you for being here today. I know this is a very busy time for you, so we appreciate your time. Can you describe to the Board your prior experience in managing elections?

A Yes. So in 1989, I decided to come over to Hall County and work in the capacity of Clerk to Elections. I spent 27 and a half years in Hall County working my way up to be Director. I started off, as I stated, clerk. I became the Interim Director of Elections at the end of the 2006 election and served in the capacity of interim until I was appointed

2011 to Chief Registrar, and then I left there in the -- in the 2016 elections and came over to Athens-Clarke County to serve in the capacity that I currently serve in.

Q So it's fair to say that you've been through a number of presidential elections and that you have experience in picking out precincts and laying them out and getting them ready for voters to vote?

A Yes.

Q And you're the one that supervised the transition to the new Dominion voting system for Athens-Clarke County, correct?

A That's correct.

Q And when did you receive the new equipment from the State?

A We received new equipment early February. I want to think it was February 3rd.

Q Did you receive any demo equipment before then that you could test out?

A Yes. We received our demo. I believe it was early December 2019.

Q I want to point you to one of the documents in that notebook if you want to open it up and turn to page -- it's under tab 1, and it is page -- it's labeled ACC BOER 0146, so if you look, the numbers are on the bottom.

MR. RAFFENSPERGER: What were those numbers again?

The last 4?

MS. MCGOWAN: Sure. It's ACC BOER 0146, and that's under tab 1.

BY MS. MCGOWAN:

Q Have you had a chance to look at that document?

A I have.

Q Is that an email that you received?

A Actually, it's an email that I sent to my supervisor Deborah Lonon, who is our Assistant City Manager.

Q And excuse me, you're correct. It's an email that you sent. And is this an accurate list of the voting equipment that Athens-Clarke County received from the State?

A Where you see ballot-marking devices, we have only received 298 of the 318, and I was told that we would receive the remaining of those units prior to the May primary, but the initial allotment was 298 ballot-marking devices, but the other items are correct.

Q Okay. So it's listed as 318, but you've received about 290, but you'll receive the rest at some point by May.

A That's correct.

Q And the total investment that the State has spent for equipment for Athens-Clarke County shown at the bottom there is $1,039,000, correct?

A That's correct.

Q And by the time you've received all the ballot-

marking devices, the State will have invested approximately $640,000 in -- in ballot-marking devices for the county. Where are the ballot-marking devices right now?

A They are currently stored in our voting machine equipment room on Lexington Road.

MS. MCGOWAN: I would like to tender this as Exhibit 4.

(State's Exhibit 4 identified.)

MR. RAFFENSPERGER: Okay.

MR. SELLS: No objection.

MR. RAFFENSPERGER: Okay. Entered.

(State's Exhibit 4 admitted.)

BY MS. MCGOWAN:

Q In addition to the equipment that you received from the State, did you purchase any additional equipment that is to go with the Dominion system, specifically anything that was designed for privacy reasons?

A Yes. We purchased 5 of the booths that are offered by Inclusion Solutions and other things like toners and carts. We purchased a number of things.

Q When you say booths, can you provide more of a description to the Board of what you did purchase?

A Well, it was -- similar -- well, it was exactly the booth that was shown in one of the exhibits earlier, and if I'll just kind of describe what it is, it's a booth that allows

us to use two ballot-marking devices to meet back-to-back of each other. And I simply invested in those because I knew that we had space issues in our office -- didn't purchase any more than what we needed in our office, but that was one of the third-party vendors that we used.

Q I'm showing you two pictures from Athens-Clarke County. Is that -- do those photographs show the booths that you're using?

A Yes.

MR. SELLS: Can we get a copy of those pictures please?

THE WITNESS: Exhibit 0119 and 0118.

MS. MCGOWAN: Those are the SEB documents we gave you. I'd like to tender those two photographs as Exhibit 5.

(State's Exhibit 5 identified.)

MR. SELLS: I want to object because Mr. Germany just previously made a representation that none of them were Athens-Clarke County in any of the photos, and we didn't object to the admission of the photographs on that basis. And I believe I just heard her testify that they are Athens-Clarke County, so we've got an inconsistency in testimony here, and I should be able to rely on Mr. Germany's representation.

MR. GERMANY: None of the photographs we were

discussing earlier were Athens-Clarke County, the ones I was referring to. These are Athens-Clarke County.

MR. SELLS: But they admitted all of them.

MR. GERMANY: I just admitted the ones that I showed you.

MR. RAFFENSPERGER: These were not admitted. These are new ones to be admitted.

MR. SELLS: All right.

MR RAFFENSPERGER: They're entered.

(State's Exhibit 5 admitted.)

MS. MCGOWAN: Thank you.

BY MS. MCGOWAN:

Q Did you also order paper ballots to prepare for the presidential preference primary?

A Yes.

Q And when were those ordered?

A We ordered ballots for our absentee voters -- in fact, I ordered three sets of orders. My first order were [sic] for absentee, and those were placed early January. I made a second order for emergency ballots, and I used the rule that is highlighted in state law, 10%, and then when I had an idea that we may be going on paper, I ordered the additional. So I have a little over 100% of the paper ballots to match the number of voters that we have in Athens-Clarke County.

Q And when did you make that last purchase when you

expected that you might have to move to all paper?

A It was sometime in February, mid-February.

Q Was it before the Board voted on March 3rd?

A Yes.

Q And just to clarify, I believe you said that you purchased enough to cover 100% of the electors on your elector list.

A I actually did more than 100%.

Q Never hurts to have extra paper.

A Yeah.

Q Did you receive training from the Secretary of State's Office in your preparation for rolling out the new Dominion system?

A I attended one training class, going to be the equivalent of the first training class, only for a short period. I had so many Open Records Requests and just chose to go back to the office and my staff. They would only allow, I think, three people in the room per county because of the size of the room, of course, and I just happened to be number four and saw that I needed to be in the office for other things.

Q But members of your staff did attend?

A Very much. Yes.

Q And as part of the training that either you or your staff received, did any of that pertain to voter privacy issues when voting with those ballot-marking devices and the touch

screens?

A Not specifically privacy, but we were trained on how to use the system and how to train our poll workers to prepare for Election Day.

Q Did you hear Mr. Harvey's testimony earlier when he talked about conference calls that he had had? Did you have an opportunity to be on any of those conference calls?

A Yes, and not all of them, but most I did, and those that I didn't, I was able to view them on our Firefly Buzz blog. I was able to view them there.

Q And we looked at some examples of layouts that the Secretary of State's Office provided with respect to voter privacy. Did you have a -- did you receive those or have an opportunity to review those?

A Yes, I did.

Q And if you'll turn in your notebook to -- back to tab 1, ACC BOER 0232 and 0233.

A Okay.

Q Had you seen those diagrams before?

A Yes.

Q And are these diagrams that the Secretary of State's Office provided, either through Firefly or another way?

A Yes.

MS. MCGOWAN: I'd like to tender documents ACC BOER 0232 and 0233 as Exhibit 6.

(State's Exhibit 6 identified.)

MR. SELLS: No objection.

(State's Exhibit 6 admitted.)

BY MS. MCGOWAN:

Q As the Director, do you consider yourself familiar with Athens-Clarke County's polling locations?

A Yes.

Q And did you develop a plan for polling location layouts that would protect voter privacy as voters are using the touch screens?

A Yes, I did.

Q Can you describe that plan please?

A Yes. So what I had is my staff had some area managers who visited our locations and based on the drawings that I received with the stats of the room, the size of the room, and how the room was laid out, I took these two layouts and made a decision which particular layout would work at each location based on how the DOE BMDs are turned.

Q And did you present this plan to the Athens-Clarke County Board of Elections on March 3rd?

A I did. These two, the exhibit 0232 and 0233.

Q Do you want to flip over towards the beginning to ACC BOER starting at 0078 through 0081? Is this the presentation or part of the presentation that you gave to the Board of Elections on March 3rd?

A Yes, it is.

Q If you'll turn to page 80, can you explain down below where it says layout number 1 and you have some precincts listed there -- can you explain what that indicated?

A Yes. So based on the sizes of our polling locations, I made indication which poll locations would this particular layout work for, and to be specific, this layout would work for locations that have space issues.

Q And you've visited all of these locations?

A I did when I first came to Athens-Clark County.

Q And is it still your opinion that -- that this particular layout would work for those precincts?

A Not specifically. So what I was trying to show in this diagram is the way the units would be turned, not specifically how many tables, that the poll pad check-in would be in the middle, that I would have two lines going in those two directions. And I did explain that to the Board on the day of the meeting.

Q So your plan was that these -- in these particular precincts, the booths would be turned towards the wall?

A That's correct.

Q And then turning over to the next page, 81, layout number 2, the same thing. You have the particular -- you have precincts listed in layout number 2. Are these precincts that have larger space?

A Yes.

Q And your expectation was for those precincts that the booths would be positioned the way that they're shown in this diagram?

A Right.

Q Did you express to the Board at the March 3rd meeting that you were confident that voter privacy could be achieved using either layout number 1 or layout number 2 for each of Athens-Clarke County's polling locations?

A Yes, I did.

Q And are you confident that these particular layouts will work for all of the spaces, still being compliant with the number of booths that you need to provide?

A Yes.

Q If you could turn to page 79, what are these photographs?

A So this photograph is the first day of advance voting in Athens-Clarke County. It was taken inside of our office located on Washington Street. And it is a setup of 8 units, one being for our ATI system for our voters with disabilities, but this was the layout that we had on the first day of advance voting.

Q And where is this location?

A On Washington Street, 155 Washington Street.

Q This is the first advance voting location that opened

up --

A Yes.

Q -- right?

A The first and only.

Q There will be additional early voting locations opening up next week, right?

A That's correct. Mmm-hmm.

Q And this won't be used on Election Day, this location?

A No, not at all.

Q And it's a rather small space, right?

A Yes, it is.

Q Were these curtains up that day, the first day of advance voting?

A Yes.

Q And was that done to protect voter privacy?

A Yes.

MS. MCGOWAN: I would like to tender documents ACC BOER 0078 through 0081 as the next Exhibit.

(State's Exhibit 7 identified.)

MR. SELLS: No objection. They may be in the record in some other form, but no objection.

MR RAFFENSPERGER: Okay. They're in.

(State's Exhibit 7 admitted.)

BY MS. MCGOWAN:

Q Have you any of the members of the Athens-Clarke County Board of Elections visited any of the precinct locations with you?

A With me? Our former Chairman had visited with me when there was a late opening at J.J. Harris and that was in the 2018 election, but I believe that's the only location that I've had one of the Board members visit with me.

Q No visits for this upcoming presidential primary?

A No.

Q If you could next please turn to ACC BOER starting at page 22 and then going to page 50, could you please identify what these documents are?

A Yes. These are documents that I received this week from one of my area managers, Lanie Lessard, and these are layouts that provides dimensions of rooms. It has specifically how -- the preliminary of how we would lay out each polling location. It shows our ballot-marking devices, our wheelchair so our disability marking, as well as our magnifiers, our poll checkers, our ballot box, but for every single location that we have for Election Day in Athens-Clarke County.

Q Down at the bottom on each of these pages for each precinct layout, it has a date of March 1st. Is that when these were completed?

A I believe so. I didn't receive them until this week, but, yes, I would imagine that it was because it's dated.

Q But did you know these were in process?
A I knew that they were in process to be given to our poll managers on how to set up the polling locations, but I wasn't sure how far we had gotten with them. It's used in a program that she has from a previous career, and so I was grateful, thankful to be able to have that resource in my office.
Q Would it be fair to say that at the time of the March 3rd meeting that you knew these sketches were being done, you just didn't have them at the time?
A That's correct.
Q And did you advise the Board at the March 3rd meeting that -- that these precinct layout sketches were being done?
A I didn't. I didn't know how far we were in it, and I wanted to be inclusive in knowing what I had done and what was available, so I didn't know for sure, and I didn't mention it. I just knew that between now and election day, there's a lot of things that's going to come up and going to happen, going to be in place before election day rolls out.
Q And these don't change the privacy plan that you had done up and presented to the Board on March 3rd?
A Could you repeat that?
Q You felt confident at March 3rd when you did your privacy plan that you presented to the Board that you had the information you needed to -- to put a workable plan in place.

A Yes.
Q When the Board voted on March 3rd to switch to hand-marked paper ballots, early voting had already been going on for, what, a day and a half or two full days?
A By the vote, it's two days, two full days.
Q So how many electors had already voted on those two days on the ballot-marking devices?
A About 500.
Q Did the Board have any discussion with you about what to do about the voters who already voted on the BMDs?
A That was my question after the vote, and I was told that they would still be counted.
Q Of the voters, of the about 500 who voted early on the BMDs, are you aware of any complaints about privacy issues?
A Prior to...
Q No. I'm talking about specifically for the voters who already had voted on March 2nd or 3rd at the early location. Do you have any complaints from them on voter privacy?
A I didn't receive any complaints from any voters. No.
Q Have you received any guidance, whether written or in a telephone conversation, from the Secretary of State's Office about when it's permissible for the County to use paper ballots?
A Yes. Through my years of experience, of course,

paper ballots has [sic] always been the emergency plan. Prior to the ballot-marking devices, it was also the plan with the DREs, and I knew from searching the code, the statute -- I call it my work Bible -- that that was permissible, and it is something that has been stated through the whole process of implementing the BMDs.

Q If you could turn to page ACC BOER 176 and 177

A Okay.

Q Does this look familiar to you?

A Yes.

Q Okay. Did you receive the Secure the Vote handbook, manual?

A I did. Mmm-hmm.

Q On page 177, it talks about using emergency paper ballots, and if you could look at the second sentence, it talks about events that are considered emergencies are power outages, malfunctions causing a sufficient number of electronic ballot markers to be unavailable for use, or waiting times longer than 30 minutes. Was that your understanding of what constitutes an emergency?

A Yes.

Q Did any of those circumstances occur on March 2nd or 3rd in the early voting location?

A No, they did not.

Q Are you having to train your poll workers in any

different way now that you've moved to -- now that the County has decided to move to hand-marked paper ballots?

A Yes, we will have to.

Q And what do you anticipate that will entail?

A Well, we've already planned to meet with all of our managers and to give them a walkthrough of the same process that we're using with advance voting, how we converted from BMDs to hand-marked ballots, and so that would mean, of course, incorporating a secrecy folder. They would have a totally different set of equipment, per say. Rather than ballot-marking devices, they would receive more paper ballots than planned, which was the 10% plus the provisional ballots. So that would be a change in training, as well as delivery. They'll have more ballot pens, of course, then we would initially send, which was two. I'm thinking that's about it, and probably how to set up their polling location, as far as assigning their poll workers. You won't have as many poll workers roaming to make sure that the traffic of the ballot that's printed from the printer with using the ballot-marking device. You wouldn't need as many poll workers tending to the ballot from that process, so we would have to at least bring our managers back in, so they are aware of the process and be able to script the process with their other workers.

MS. MCGOWAN: I have no further questions. Although, I'd like to tender documents 176 and 177 as the next

exhibit.

(State's Exhibit 8 identified.)

MR. SELLS: No objection.

MR. RAFFENSPERGER: Okay. Entered.

(State's Exhibit 8 admitted.)

MS. MCGOWAN: Thank you.

CROSS-EXAMINATION

BY MR. MITCHELL:

Q Before we get into the, kind of, the meatier testimony, I would like to clarify a couple of things. Have you been to all the precinct locations since the BMDs were delivered in early February?

A I have not. I've been to -- I know one in particular I have gone to, and it was where one of the area managers mentioned the difficulty of getting into one of the locations because of the flooring that's going to be done to it, so I went over to give a little bit of my direction as far as what would work, but that's it.

Q Have you relied on others to do the inspections and measurements and all that?

A Yes.

Q And who were the folks that you relied on for those items?

A So initially, it was the Secretary of State's Office surveyor who went out to the polling locations with our area

managers. And that's Lisa McGlaum, who is one of our elections assistants, Lanie Lessard, who is one of our area managers, and both these individuals are part of my staff and previously worked as poll managers. And then we had our Athens-Clarke County inspector, one of our facility directors, had gone with us.

Q Now, the booths from Inclusion Solution, have you bought any other booths from any other locations?

A I have not.

Q You're not going to use those in the poll -- in the Election Day precinct locations, are you?

A No, sir.

Q Great. Among the other equipment that you purchased, any other curtains or anything like that?

A So the Inclusion Solutions booth for an additional price came with curtains, and that's what I received. And I chose not to use the curtains.

Q And you haven't bought any other curtains or those other things that we saw in the photographs this morning?

A I have not.

Q Now, the -- with regard to -- you also have to comply with the law, correct?

A Yes, sir.

Q Right. And from your experience, you're familiar with what the requirements are?

A Yes.

Q Now, with regard to locations, even when there is going to be hand-marked paper ballots used, you still have the optical scanner there?

A That's correct.

Q Right. And there's still going to be a BMD there for the prepared location, is that correct?

A Yes. That's correct.

Q All right. Now, let's go back to when you first learned about the change in the voting requirements. When did you first become aware of the new machines that were going to be used?

A So my first, we'll say, introduction to the vote system was in 2017 when I was attending a conference, a federal conference in California, and I had a chance to see the other vote systems. I didn't know particularly the vote system of Dominion, but I was very familiar with the system from our current -- what we used at the time 2017, who our vendor was then, which was ES&S.

Q When did you become familiar with or knowledgeable about the fact that you were moving to Dominion?

A So in August when the announcement was made that --

Q Okay. What year?

A August 2019.

Q Okay.

A When we found out that Dominion had been the vendor of choice, I was in a conference in Florida, at another federal conference, and I was able to spend some time with Dominion because I had not spent time with them or learned anything about their system because of my involvement in our local conference. I serve as one of the officers, of course. And so my job during the conference is managing, you know, the flow of the conference, so I didn't really get to spend a lot of time with this particular vendor. But when I went to Florida and found out that we were going to be using the Dominion product, it was my job while I was there, noticing that they were there, to get familiar with them.

Q Did they have them set up on tables with the privacy screens like you've got them set up or are going to set them up here?

A They had it set up on this really nice blue booth that we are hoping to get a sample of and be able to implement maybe, but we did get to see -- I did. I got to see the ballot-marking device set up inside that booth.

Q That's not what y'all are using here?

A No, it's not.

Q All right. Now, if you would, take a look at -- looking at notebook's Exhibit 36, which is ACC BOER 0181. It's going to be in the file ACC BOER exhibits. If you will take a look at the third page of that document and the fourth block

from the bottom, what is the question that is part of this? First of all, can you identify this document?

(Respondent's Exhibit 36 identified.)

A Yes. So this is a conference call, a region conference call Q&A, that was conducted on January the 10th, 2020.

Q Okay. And is this -- when you say it's a conference call, what is the document? Is this a document that you have for one of those conference calls?

A It is.

Q And how do you get access to this document?

A I can access this on Firefly, which is the system that Mr. Harvey related to earlier.

Q All right. Now, when the -- with regard to -- when this question -- when this conference was held, had they given you the privacy screens yet?

A No, we had not received them.

Q Now, in addition to the privacy screens were there other concerns that were expressed on any of these conference calls?

A As it relates to privacy?

Q Yes.

A No. Not other than this that I recall.

Q Was there ever any discussion on the -- were you in the room this morning when Mr. Harvey was testifying?

A I was.

Q Do you ever recall any conversation about blackout screens or anything like that?

A Yes.

Q All right. And was -- did the Secretary of State indicate that they were going to provide anything like that for these devices?

A They didn't indicate that they were going to provide it. My thought was that they would give us direction on whether we could use them or not. I understand, you know, that through the years, certain things related to the equipment has to be certified, and so I wanted to wait and get directions as to whether they could be used or not.

MR. GERMANY: I just wanted to ask. When you're talking about blackout screens, are you talking about, kind of, a film that goes over?

MR. MITCHELL: Yes.

MR. GERMANY: Okay. I just wanted to make sure.

BY MR MITCHELL:

Q Now, turn over to exhibit -- what in that book is exhibit 23, and it's ACC BOER 146. We've already got that one done. Go back to 21. That's ACC BOER 143. Can you identify this document for me?

A Yes. This is an email thread between Lisa McGlaun, my elections assistant and I, and we're talking about -- well,

actually, there's a draft of an email where we're talking about the space issues and challenges that we have at certain locations in Athens-Clarke County.

Q And what is the date of that email?

A January 23rd.

Q Do you know whether or not whether any of your staff had done the measurements of any of these locations at that time?

A I don't believe we had done measurements by this time.

Q So even without the measurements being done, there were some locations you were concerned about space?

A Yes.

Q And was that in light of the fact that you had seen the size of the demo models of the BMDs?

A Yes. And I had concerns about space, particularly in one of these locations, which is our transit, initially when I first got here. I knew that was going to be an issue even with our DREs, but after the BMDs, yes. That number grew.

Q Okay. The number of locations that you were concerned about grew?

A Yes.

MR. MITCHELL: Okay. Now, I would tender Defendant's Exhibit 21.

(Respondent's Exhibit 21 identified.)

MS. MCGOWAN: No objection.
MR. RAFFENSPERGER: Entered.
(Respondent's Exhibit 21 admitted.)
BY MR. MITCHELL:
Q Turn over -- turn back to exhibit 4 in the notebook. Can you identify Defendant's Exhibit 4?
(Respondent's Exhibit 4 identified.)
A Yes. This is an email sent from our ACC Board Chair, Chairman Jesse Evans, and it is an email of him asking for information related to the description of the Cobb County pilot program and request of the list of equipment that we would need to carry out the program and inventory of the items and the plan to carry it out.
Q And what's the date of this email?
A January 23rd.
Q Right. Go to what in the notebook is marked as Exhibit 8, which is ACC BOER 0014. Can you identify --
MR. MITCHELL: I would tender Defendant's Exhibit 4.
MS. MCGOWAN: No objection.
(Respondent's Exhibit 4 admitted.)
BY MR. MITCHELL:
Q Can you identify Defendant's Exhibit 8?
(Respondent's Exhibit 8 identified)
A Yes. It's an email from Chairman Evans and copied with the other Board members and members of the staff of the

elections office. And it's an email that recalls the vote from the February 4th meeting to implement the -- well, it talks about the un-merging process that I had brought before the Board, first of all.

Q Explain what that is.

A Okay. So we have about four precincts that had been merged with other precincts and that came about in, starting probably 2014. And in several situations, it was because of the location that some of the voters were assigned to was being remodeled and so, rather than sending them to another location, they were joined with a location or a precinct that was attached to it nearby, and then it was merged.

So I had brought before the Board at the January meeting a potential or a recommendation to un-merge those precincts, so this right here is what Mr. Evans is referring to and stating that we should include in the discussion for the next meeting, for the special called meeting, the electrical capacity of our locations, to discuss the delivery plan, and getting an update on the polling locations for the May presidential preference primary, the voter privacy issues with the BMDs, the turnout for the election as well as how many voters, absentee voters, advance voters, election day voters that we are projecting for this election. It talks about the 2018 Winterville Train Depot voting machines that have been quarantined, and it -- an update, to include an update about an SEB case from 2018.

Q All right. But the un-merging of the polling locations, was space a problem? Was that the -- was that one of the limitations? Was that why you wanted to do it?

A Well, it had a lot to do with the 2018 voter turnouts and the lines that we had in 2018. And we realized that there was a lot of long lines at our merged precincts, so this will be a good time to, I guess, discuss un-merging those precincts so we wouldn't have the long lines that we had in 2018.

Q That's not going to happen for the March 24th one?

A Right.

MR. MITCHELL: I would tender Exhibit Number 8.

MS. MCGOWAN: No objection.

(Respondent's Exhibit 8 admitted.)

BY MR. MITCHELL:

Q Turn over one exhibit to Exhibit Number 9, ACC BOER 0017. Can you identify this email for me?

(Respondent's Exhibit 9 identified.)

A Yes. This is an email from Chairman Evans discussing the issue of lack of ballot privacy.

Q What's the date?

A The date is January 30th, 2020 -- and that the screen allows people to see from a distance.

Q I would point your atten -- direct your attention to the next-to-last paragraph that begins, "what methods."

A Yes. Yes, so what methods do we plan to use in

Athens-Clarke County to address the issue with privacy and secrecy of the ballot? The statement that I had mentioned possibly placing an order for equipment that will allow us to physically protect the secrecy of the ballots and that I should mail -- email a description of those options to the Board and include images of the equipment and resources that we plan to use.

Q Is it fair to say that your plan ultimately was and what you presented to the Board was the use of the layouts provided by the Secretary of State's Office?

A Yes. Partly. Yes.

MR. MITCHELL: All right. I'll tender Exhibit Number 9.

MS. MCGOWAN: No objection.

(Respondent's Exhibit 9 admitted.)

BY MR. MITCHELL:

Q Turn over to Exhibit Number 10. Can you identify -- this is ACC BOER 0019. Can you identify this document for me?

(Respondent's Exhibit 10 identified.)

A Yes. This is an email thread between Chris Harvey and I. On February 12th, I sent an email to Chris stating how creative my staff had been with trying to come up with a solution to privacy and what we had considered was lying the ballot-marking devices down flat on the table to address the privacy issue. And Chris, of course, responded and said he

didn't think that would be a good idea, and I can see -- I understand. And he -- I mention Carol Heard from Decatur County, the way she had turned her ballot-marking devices around, the backs of them, and that addressed immediately what -- the privacy issue. And then Chris mentioned something about some floor plans that would be coming, and I told him I would be looking forward to receiving those.

Q And at that point in time, you didn't have any floor plans?

A I did not.

Q But you've got them now?

A Yes.

Q Okay. And going back to the curtain issue, why did you choose not to use any kind of curtains or drapes or what-have-you?

A If I'm going to be honest, the color. I try to stay away from red and blue. I'm sorry, but I do. And then I knew that curtains was [sic] not going to allow us as poll workers or our poll workers to observe the use of the equipment. Tampering, taking photo shots of ballots, that needs to be observed by our workers, and so I did not want to create that atmosphere.

Q Y'all have issues with those kind of things in Athens-Clarke County before?

A Yes, I have.

MR. MITCHELL: I would tender Exhibit Number 10.

MS. MCGOWAN: No objection.

(Respondent's Exhibit 10 admitted.)

BY MR. MITCHELL:

Q Go to -- flip over in that book to Exhibit Number 28. It's ACC BOER 0155. Can you identify this document for me?

(Respondent's Exhibit 28 identified.)

A Yes. So this document is what I create and call my election prep, and prior to every election, I create this kind of layout. It works, and it's very useful, so...

Q Let's walk through just -- let's just walk through Winterville and walk the floor and cross back so you can -- so they're clear exactly what data is in those. I think it's self-explanatory, but let's -- in case there are questions, explain what that data is.

A Okay. So for Winterville, there's 2,727 voters. I figure 65% of our voters will vote, so I, based on that number -- how many poll workers, how many poll pads, ballot-marking devices, and access cards will be used at these polling locations.

Q Okay. Do you base your setup and the amount of resources that you assign to a particular location based on the active voters or on that 65%?

A Active voters.

Q Okay. And what are the sites at the bottom? What

are those?

A So those are our advance voting locations and what is allotted to those locations.

Q All right. There's three that have blanks across the rows. Why are those blank?

A Those are three locations that we're not using for the presidential preference primary, but we will use them throughout the year, and I just have them there for reference.

Q Placeholders?

A Yes.

MR. MITCHELL: All right. I'd tender Exhibit Number 28.

MS. MCGOWAN: No objection.

(Respondent's Exhibit 28 admitted.)

BY MR. MITCHELL:

Q When did you create this document?

A Probably early January, but I change it often, and my staff can support that.

Q So it's a working document?

A Yes, it is.

Q Do you know sitting here today whether the one that we're looking at is the most recent iteration?

A Yes, it is.

Q And there's a date on it, 2/27. Is that when this particular iteration was...

A Yes. It was when it was revised.
Q Is that revision date -- is that something that automatically gets applied to this document when you print it out or when you save it?
A Yes. Well, I automatically do it myself when I save it.
Q Come over to -- in the -- go over to Exhibit Number 17. It's a bulk exhibit. It's ACC BOER 0093 through 0128. If Mr. -- if you would put out pages 0105 and 0107. This bulk exhibit is a bunch of pages. What is this bulk exhibit? What are these?
(Respondent's Exhibit 17 identified.)
A These are sketches that I received prior to our board meeting.
Q Prior to which board meeting?
A March 3rd.
Q Okay. Do you know when you got these sketches?
A For a period of weeks in February.
Q Is this all you had prior to the March 3rd meeting?
A Yes. In fact, I didn't have as many as here. I had, I think, about 20 of them.
Q Okay. So you had about 20. Some of these you've gotten even since the March 3rd --
A Yes.
Q -- meeting. Okay. And would you characterize these

as scale drawings?

A Yes. These are just scale drawings, and it has dimensions of our locations, each location.

Q Let me ask a better question.

A Okay.

Q Are these what you are going to provide to your poll managers?

A No, sir.

Q Okay. These don't show setups, do they?

A Some of them, they do, but not as well as the others that were presented earlier.

MR. MITCHELL: All right. I would tender Exhibit Number 17.

MS. MCGOWAN: No objection.

(Respondent's Exhibit 17 admitted.)

BY MR. MITCHELL:

Q Do you know who did those sketches?

A Lanie Lessard did some. China Blake, one of our other election clerks in the office, did some of them. And I believe that's it.

Q Were you out on any of the sites when they did these?

A Well, I was in the early voting site. I was when China did the one in the office.

Q All right. If you would, go to Exhibit Number 12. I think opposing counsel entered into evidence the last couple

pages of this, which -- but the document itself, the full exhibit which starts at ACC BOER 0051, what is that document?

(Respondent's Exhibit 12 identified.)

A This is the document that was provided to the Board at the date of the last meeting, March the 3rd, and it was the document used for their voting meeting to determine the un-merging of the precincts and where I, at the end, provided the plan for the layouts of our polling locations.

Q Okay. So the documents that she showed you earlier, those required a longer PowerPoint presented to the Board that night?

A Yes.

Q There were other concerns they were dealing with that night?

A Yes.

MR. MITCHELL: And the -- I would tender the entirety of Exhibit Number 12.

MS. MCGOWAN: No objection.

(Respondent's Exhibit 12 admitted.)

BY MR. MITCHELL:

Q Did you create this document?

A I did.

Q Is there an actual time stamp or Bates stamp on it? Do you know when you finalized this before you presented it to them that night?

A I finalized it Friday prior and got it -- starting getting it copied and ready for display and -- but it's dated March the 3rd.

Q Okay. And this morning, when Mr. Harvey was talking to us, you were here then, correct?

A That is correct.

Q Okay. And the layout -- the document they had sent out from the Secretary of State's Office had another sketch that was called ineffective or something. Do you remember which one I'm talking about?

A Yes, I do.

Q Did you -- did you ever provide that one to the Board?

A I did not.

Q Take a look at -- I want to look at Exhibit Number 11. It starts at ACC BOER 0021, but I want to turn over to ACC BOER 0030, which is about 8 pages in. I think we actually put two emails together in this one. What is the date of the email received that's in Exhibit Number 11 but is ACC BOER 0030?

(Respondent's Exhibit 11 identified.)

A March 9th, 2020.

Q All right. What is -- who is this email from?

A It's from Lanie Lessard.

Q Is she the lady you referred to earlier that had interior design experience and, you know, the program that she

uses?

A Yes.

Q All right. And if you'll take a look at the sentence itself, is that actually the program that she uses?

A Chief Architect. Mmm-hmm.

Q Okay. And is that kind of, like, a CAD program or something?

A I'm not sure.

Q I've exhausted my technology knowledge with that question. Now, behind this email, what are the documents behind this email?

A Behind the email are the layouts for -- looks like all 20 of our election day polling locations.

Q Okay. Now, the advance voting sites are not in this one, correct?

A They're not.

Q All right. Are there scale drawings of the advance sites as well?

A There isn't, though some of these -- in fact, at least one is an advance voting location, but it would be set up differently.

Q And the same requirements don't apply to advance voting locations, do they?

A It doesn't.

Q Okay. Now, have you seen -- has Ms. Lessard done

these types of things for you before with other...

A Not for me she hasn't.

Q No? Okay. So this is the only -- this is the first election where you've had her do these type of scale drawings.

A That's correct.

Q And why is that?

A Well, the system changed.

Q When you say system changed, what do you mean?

A The ballot-marking devices were being used. First, it's the DREs. There were drawings prior to these, not done by Lanie Lessard, but there were, you know, drawings done that were more specific for the DREs.

Q Were they scale or were they more hand-drawn?

A I just only glanced at them when I was going through some files when I first come [sic] to Athens-Clarke County, so I can't remember specifically, but I want to think they were done pretty professionally.

Q Okay. Now, let's just take a look at -- I'm going to walk through some of these with Ms. Lessard, but let's take a look at ACC BOER 0031.

A Okay.

Q Can we get them up on the screen? Can you reorient that? Can you turn it clockwise four times because that's how it is in the books? Can you blow up the top third of it? What precinct location is this?

A This is our Winterville Train Depot precinct.

Q Okay. And as you understand these drawings, the little boxes are the voting booths, correct?

A That's correct.

Q And there's kind of a little above view of -- is that supposed to be a person or a voter?

A Yes, head and shoulders.

Q Okay. And so, the -- and where the voter is standing is where they're going to stand to vote, at least on this illustration, correct?

A That's correct.

Q The -- the way that the booths are set up, there's two with -- at the top of this particular location. Is that consistent with the Secretary of State's sketches?

A As it relates to how the booths are turned, it is, but not specifically what was provided by the State because the poll pads are sitting in the middle of the room for one. And then those sketches that the Secretary of State's Office provided did not have a review area, a ballot box, magnifiers, manager's table, indication of where our voter with disabilities would be stationed, as well as our provisional table.

Q Would you back out of the entire document for me? If the people are coming in, can they not see directly into those two booths at the top, at the top of this page?

A They cannot.
Q If they're standing there waiting to vote right inside this enclosed location, standing right here?
A Show me again.
Q If there's someone standing right there just as they come into the enclosed location, standing right there waiting to vote --
A No, they wouldn't be able to.
Q -- wouldn't they be able to see those --
A No.
Q Are you going to have curtains around that particular booth?
A No.
Q How would they not be able to see? Let me ask the question this way. For that particular configuration, didn't the Secretary of State's sketch show that it should be moved away from the wall and the ballot-marking device turned toward the wall?
A Yes, so they would face the wall. No. They wouldn't be able to see from there.
Q And if that particular set of booths had to be moved out away from the wall, would that be compliant with the Secretary of State's guidelines?
A Yes.
Q How far away from the wall do they have to be moved?

Do you know?

A I'm not sure.

Q Would that be a question for Ms. Lessard?

A Yeah. It could be. And can I just add too in training, in poll worker training, our poll workers are told to control the crowd, so you limit what you have inside the room, your lines. You have to control the crowd. You have to control the process of it. You don't want voters crossing one another, and one going in to vote, one coming out to vote. So at this particular precinct, only the voters that are assigned to cards would be in that area, so they would not be lined up per say waiting on a ballot-marking device.

Q Okay. Fair enough. Now, if I -- and as I understand it, there are 6 precincts that are a particular concern with the size, is that correct?

A That's correct.

Q Winterville is one of them --

A Yes.

Q -- which is 1A, correct? Another one is the Clarke Central Gym lobby, correct?

A I'm not sure. Maybe Lanie will be able to -- Clarke Central...

Q That's on page 0035. Is that more of a question for her?

A Yeah, but I can kind of look at this and tell. I

believe it is going to be a challenge for us, but I think it will be managed well because of -- again, as I stated, your line -- we wouldn't form a line inside the room. You would do as much as possible to have that line form outside the room.

Q Is Athens Transit also one of your small problem locations?

A It is.

Q That's at 0037.

A Mmm-hmm. It is.

Q That's 4A. And then the 3 fire stations are also small, tight?

A That's correct.

Q And those are Oglethorpe Road -- I'm sorry, Oglethorpe Avenue, which is 6D, which is at 0045?

A Mmm-hmm.

Q Five Points Fire Station, which is 7C, which is at 0047?

A Mmm-hmm. Right.

Q And Barnett Shoals, which is 8C, which is at 0050?

A That's correct. Mmm-hmm.

MR. MITCHELL: I would tender Exhibit Number 11.

MS. MCGOWAN: No objection.

(Respondent's Exhibit 11 admitted.)

BY MR. MITCHELL:

Q Do you know whether these are the final drawings?

A They are not final.
Q And when are they going to be final?
A They'll be final the night before the election, and if not, it'll be sometime next week when we will actually meet with our managers and show them the layouts and just like it was for us with advance voting, we had an idea on Saturday how they would be positioned. And when you put people in place and your voters in place, you have to change it up.
Q Let's talk about the advance voting location. How -- you've only got one, correct, right now?
A Yes.
Q You open up some others on Monday?
A Yes.
Q And how many ballot-marking devices did you intend to put in at that advance location?
A I intended to put 10.
Q And is that why you bought the 5 booths?
A Yes.
Q And what was -- how long did you all -- before you actually put on hands on it and began putting stuff up, how long did y'all spend thinking about it?
A Gosh. We've been thinking about this since January, from the point of one ballot-marking device being placed in our office to make some determination of how much space will be used for it, and then shortly after that, we received the

booths from Inclusion Solutions and was [sic] able to put that ballot-marking device in side of that booth. And so we've been playing around being very creative with the space that we have trying to determine how they will fit and what's the best solution for privacy.

Q And so you've been thinking about the advance voting location for weeks, essentially?

A Yes, sir.

Q And when you all actually went and set it up, was it that Friday before?

A Yes.

Q How long did y'all spend trying to get set up?

A So when I left the office on Friday, the equipment was already positioned in our office, and there was a group that stayed about 3 or 4 hours after 5 o'clock positioning our units. And then on Saturday, some of our workers were there bringing in resources from their -- we have an event planner in our office, so backdrops. They spent probably about 8 hours trying to provide privacy.

Q So 5 hours on Friday and 8 hours on Saturday?

A Probably about 6 hours on Saturday.

Q And how many BMDS did you all wind up being able to get in that location?

A 8.

Q If you'll turn to ACC BOER 092, which is Exhibit 16.

I think it's already in the record, but you can take a look at it there. I'm not going to tender it again. Is that a photograph?

(Respondent's Exhibit 16 identified.)

A Yes, it is.

Q Was that taken -- do you know when that photograph was taken?

A It was taken Monday morning, and I'm not sure what time, but I thought it would be a good idea to have it.

Q Right. Turn, if you would, to Defendant's Exhibit 38, which is ACC BOER 0377. The Board has probably figured this out, but we've marked the individual exhibits, but they're in Bates number order, even though that's not necessarily the logical order. Can you identify this document for me?

(Respondent's Exhibit 38 identified.)

A Yes. This is a polling station inspection report provided by the Secretary of State's Office, and it was used to survey our locations.

Q Is it still in use now? Is this the same setup list you use now?

A I believe it is.

Q Would you blow up on the monitor, I guess, the last three rows? Would you read the next-to-last block for us?

A In precincts in which optical-scan voting systems were used, what's the --

Q No. I'm sorry. I misdirected you. In the next-to-last block which starts were the voting compartments.

A Were the voting compartments, voting machine, or DRE units arranged in the voting room in a manner to allow monitoring by poll officials and to permit the public to observe the voting without affecting the privacy of the electors while voting in the...

Q Is there -- would you train your poll workers to follow this checklist even though it still references the DREs?

A Actually, who conducts this survey are my area managers, and they do this every year, but this right here is -- looks like an inspection that's done once our voting it set up.

Q And who will do that inspection?

A So normally, the Secretary of State's Office, when they send someone out, but my area managers, they also conduct the same survey on Election Day on their visits to the polling locations.

MR. MITCHELL: I would tender Defendant's Exhibit Number 38.

MS. MCGOWAN: What's that docume -- we have no objection to them.

(Respondent's Exhibit 38 admitted.)

MR. MITCHELL: And the next thing I want to do is get some exhibits entered. Can we just stipulate them, or do

I need to go through one by one? It's 54-70 in our book.

(Respondent's Exhibits 54-70 identified.)

MS. MCGOWAN: If they're the agendas that were published, then I have no -- we can stipulate them.

MR. MASHBURN: What's the exhibit number? I'm sorry.

MR. MITCHELL: It's Exhibits 54-70, and what those are are the agendas, and then I'll talk about --

MR. MASHBURN: That's exhibit numbers, not page numbers, right?

MR. MITCHELL: Yeah, let me give you -- that's a fair question. Let me give you the page numbers. It's ACC BOER 0445 through 0470.

MR. MASHBURHN: That's Exhibits 54 through 70?

MR. MITCHELL: Yes.

MR. MASHBURN: Thank you.

BY MR. MITCHELL:

Q Those documents, are those the agendas for the meetings of January?

A Yes.

Q Okay. And for example, the -- if you'll take a look at Exhibit Number 59, which is ACC BOER 0456, that's the summary minutes, correct?

A That's correct.

Q All right. But at the top, it's got unapproved. Can you tell us why it's stamped unapproved?

A So the following meeting, February 4th -- actually since December, I believe, all of the minutes are -- January, I believe. Since January 2020, all of our minutes haven't been approved by the Board because the minutes were not provided the day of the meetings.

Q So the clerks, they've given the summary minutes -- they've done the minutes that they're supposed to do under the Open Meetings law. They just simply haven't been approved by the Board. Is that a fair statement?

A Well, the clerks were the ones who were taking the minutes before the Board elected officers. And when the Board elected officers, it was under the understanding that the new Secretary would begin with the minutes, and I just asked this week if the Assistant Secretary who I appointed as our administrative assistant, Lisa Perkins, I asked that she go ahead and provide some type of outline of these meetings so we would be in compliance with the open meetings act.

Q Okay. Now, if you'll take a look at Exhibits, well --

MR. MITCHELL: I tender 54-70.

MS. MCGOWAN: No objection.

(Respondent's Exhibits 54-70 admitted.)

BY MR. MITCHELL:

Q Okay. Take a look at Exhibit 71, if you would, ACC BOER 0474 through 0506. We're going to talk about 72 also, but

right now I'm just talking about 71. Can you identify that document for me?

(Respondent's Exhibit 71 identified.)

A I know one of these documents is one that I used at the presentation to the Board prior to the hearings, and if my memory serves me correctly, this one particular is the one I introduced to the Board in the initial presentation of un-merging the precincts.

Q That would have been in January or the first meeting in February, correct?

A Yes.

Q Okay. And then the exhibit PowerPoint that's behind me, tab 72, which is BOER 0507 through 0539, what is that?

(Respondent's Exhibit 72 identified.)

A This presentation was presented before the Board during the hearings on February 19th and 25th, I believe, the dates.

Q Did you prepare both of these documents?

A I did.

Q And they're maintained in your office?

A Yes.

MR. MITCHELL: I would tender 71 and 72. Tender 71 and 72?

MS. MCGOWAN: No objection.

(Respondent's Exhibit 71 and 72 admitted.)

BY MR. MITCHELL:

Q Were you here when Ms. Fourchette was testifying?

A I was.

Q Do you know -- do you happen to know what location she was talking about?

A It sounded like our elections office.

Q Give me a minute. Let me just confirm that I've gotten in all the exhibits that I need to introduce for this witness.

MR. MASHBURN: Mr. Chairman, if I could --

MR. RAFFENSPERGER: Yes, sir.

MR. MASHBURN: Just to help with this, I've got you not having in 36 and 16.

THE COURT REPORTER: So do I. Same.

MR. MITCHELL: All right. I will tender Exhibits 36 and 16.

MS. MCGOWAN: No objection.

(Respondent's Exhibits 36 and 16 admitted.)

MR. MASHBURN: I've got those as Athens 16 and 17. Is that how you have them?

MR. MITCHELL: Yes.

THE COURT REPORTER: Everything else is in.

MR. MITCHELL: Thank you. Thank you, Ms. Sosebee.

MS. MCGOWAN: I have no questions. Thank you. At this point, we have no further witnesses other than we do

have questions for Chairman Evans, but I understand that the County intends to call him as a witness, so as long as we have the opportunity to question that witness during their case, then we have no further witnesses.

MR. RAFFENSPERGER: Okay. Call your first witness.

MR. MITCHELL: We call Lisa McGlaun.

THE COURT REPORTER: Do you swear or affirm the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

Whereupon,

LISA MCGLAUN

having been duly sworn, testified under oath as follows:

DIRECT EXAMINATION

BY MR. MITCHELL:

Q Good afternoon.

A Hi.

Q Tell the Board your name, please.

A Lisa McGlaun.

Q All right. And would you tell them what your role with the Board of Election and Registration is?

A I'm the Elections Assistant, working under Director Sosebee.

Q And how long have you worked for the Board of Elections?

A I took the first position with the Board of Elections as an assistant poll worker -- I'm sorry, assistant poll manager at our advance voting location in April of 2018.

Q So you started out as a volunteer, how long have you been on staff?

A Well, poll workers are actually paid.

Q Okay.

A So shortly after that, I started going in because they asked me to go into the office to work as a clerk, so it was only after I'd worked advance voting one time, so in May-June timeframe, I started coming into the office.

Q And that's May of '18?

A Yes.

Q And tell us, if you would, what kind of training you've had with regard to elections?

A Since that time, I've enjoyed the career so much I just took advantage of every opportunity I could to learn. I finished the GROC certification. I finished the GEOC certification. I've attended two conferences, which would be 24 hours of state training, I believe, that would be the way it was stated. At our last conference, I had the opportunity to present, so I feel like I've done everything I could in the short amount of time that I've had to learn to learn as much as I possibly could.

Q And kind of moving to what we're talking about today,

when did you become aware or start to work with or familiarize yourself with the Dominion system that Georgia is moving to?

A Okay. So at our first conference that I went to in Jekyll Island, which was back last May of ’19, I saw the system then, but, sort of what Charlotte said, at that time, Georgia was -- I think, ES&S was the vendor for Georgia at that time. So we were paying more attention to that one assuming that that might possibly be the way that Georgia would go when they bought equipment. So like Charlotte, I didn’t spend as much time with Dominion, but I did see the machines at that time. I began to pay attention to them more in September when I received the first photo of what it would look like.

Q And what about demonstrations? Did you handle that?

A I did.

Q If you would take the notebook that’s in front of you and would take a look at Exhibit 14, which is ACC BOER 0086 and 0087.

(Respondent’s Exhibit 14 identified.)

A Okay.

Q Can you identify those photos for me?

A So Exhibit 14 is a demonstration that we did at Athens Career Academy, which is a high school here in town. We took the voting machines out and demonstrated them there, presenting them to the students who would be moving up and possibly voting on these things very soon. And what was the

other one you wanted?

Q The one right behind it.

A That is also at Career Academy.

Q Are you in these photographs?

A I am.

Q Do they accurately depict the area where you are doing the demonstration that day?

A They do.

MR. MITCHELL: I would tender Defendant's Exhibit 14.

MS. MCGOWAN: No objection.

(Respondent's Exhibit 14 admitted.)

BY MR. MITCHELL:

Q Take a look, if you would, at Exhibit Number 1 in the notebook. What were -- when you learned that the State was moving to the Dominion product, what were -- what did you do in preparation to begin to get ready for the switch?

(Respondent's Exhibit 1A identified.)

A Well, first, we went to training, and I learned as much about them as I possibly could. Then, we began to talk about how the previous equipment was going to be cleared out of the warehouse, how we were going to stage the new equipment in the warehouse when we received it. We began talking about how this was all going to work in our polling locations and what changes we would have to make, how we would train our poll workers on these. I needed -- I and the other people who went

to training on our staff needed to be as well-versed as we could in order to pass on that information to the poll workers.

Q What were -- what were some of the things that you needed to work with in your polling locations?

A Well, I discovered more clearly at our conference -- I mean, this email is a little bit before our conference, but when we went to the conference in December, I discovered very clearly that electrical issues were going to be a challenge for me personally because I don't know anything about electricity except what I learned in high school, so to map out a circuit was not something that I was familiar with. So I knew that we were going to depend on this electrical survey contractor to at least give us the guidelines that we would follow in order to correct any problems that we had.

Q Let's take a look at Defendant's Exhibit Number 1. What is Defendant's Exhibit Number 1?

A You're asking me what is it?

Q Yes.

A It's an email that I sent to, I believe, Scott Tucker, who at the time and still is one of the representatives for Dominion that we talk to. And I guess at that time I thought that -- maybe I was still learning who all of our contacts were. I thought maybe at that time he might know something about our electrical surveys and when they would be coming out.

Q Could you move down and highlight the middle of that email? When you wrote -- when you emailed him on the 13th, what were you -- you mentioned the electricity. When you said, I thought it was everything, what did you mean by that?

A That's actually not in front of me, and I'm having trouble reading it somewhere.

Q Can you see it?

A Not really.

Q All right. Let me --

A Oh, thank you. Did I just turn to the wrong page? Yes, and I mean, they did inspect -- Okay. So in all fairness to Scott, it was not under Scott's purview. He was trying to give me some additional information to lead me in the right direction, so he was actually trying to solicit information from me about what was it I was actually asking about. So my comment back to him was I thought that -- when I said I thought it was everything actually I was referring to everything including ADA compliance. I just thought he was going to come out and maybe possibly help us with the arrangement of polling locations. I really didn't know what he was going to do. He or she.

Q So you'd begun to think about the polling location arrangement, but you weren't aware of who was actually going to assist you with that?

A No. And I knew that this was more for electrical. I

just didn't know what all he would be charged with doing.

Q All right. Take a look, if you would, what -- over the course of -- tell us what you did with regard to that issue, the electrical issue.

A Well, like I said, not knowing much about how this was all going to work with dealing with electricity and the equipment and what the capa -- what it would really require, I waited for him to come out. And then I planned -- he was with us for a week, going to each location with me, and Lanie went to some of them. I went to some of them. I wasn't able to go to all of them because of other obligations that I had. We did split up the duties, and between the two of us, we were with him at every location.

Q Did they have to upgrade the electrical system in a number of the locations?

A Yes.

Q Both the government's locations and some of the schools?

A Yes.

Q Okay. Who paid to do this work in schools?

A I don't have that knowledge.

Q All right. Now, the -- do the -- what was the reason that had to be done? And it may be self-evident, but why -- why did you have to have upgrades?

A After learning more, just gleaning information from

the surveyor that came out and reading information that was provided to us from Melanie Fourchette and through Chris Harvey and the Secretary of State, learning more about how the UPS units, the battery backups worked, and what their requirements were going to be and listening to what he was saying because he was not supposed to advise us about what to do. He was just there to do the surveys. I also learned that, so I began to listen to him very closely to what he was saying and what he was doing. And it was an issue that there were not enough circuits in the buildings to support the amount of machines that were supposed to be put into the polling locations.

Q The new circuit, the new outlets are added, correct?

A Yes.

Q Did they -- did you have the machines -- was that done after February when the machines were delivered or was it done before that?

A This was before. This was about a week before Christmas.

Q And did the layouts that we've seen -- have you seen the layouts from Ms. Lessard?

A Yes. Lanie and I have gone over them.

Q I'm sorry. What did you say?

A Lanie and I have gone over them.

Q Okay. Did you have those scale drawings before you did the electrical or before they did the electrical work?

A No.

Q And did you have any input into where they were putting the outlets or anything like that?

A I told them what our requirements were, and I knew that I was working within what their electricians, the school district electricians and the county electricians, felt like they could do within the space. But they were all very gracious and did exactly what we asked. They added -- I told them that we needed at least two outlets on a circuit in order to make this feasible because a lot of our locations, the problem was they had a lot of outlets, but not enough circuits. There were maybe five outlets on one circuit, and that's useless to me when I can only plug in a certain amount of UPS's into the circuit. So I asked them to reduce it -- reduce the amount of outlets on the circuit and when it needed something different like more outlets and more circuitry, to add that, and they did.

Q Have you been out to the sites where circuits and outlets were added --

A Yes.

Q -- once it was done. Have you discovered that there are still going to be some sites that are challenges given the numbers of cords and what-have-you?

A I'm sorry. Say that again?

Q Have you discovered that some of the sites are still

going to be challenging because of the number of cords and the number of units?

A Well, I still have some concerns, yes, but I feel like it's something that we can do. It just takes trying.

Q Have you -- have you looked at -- you said you've gone over with Ms. Lessard the most recent set of those scale drawings?

A Yes, in the time span that we had, which, you know, is not -- yes. We looked at them -- the longest amount of time together was yesterday or the day before, before we left work.

Q Can you identify whether you were going to be able to plug everything up that you're going to need to plug up or are you going to have to move some stuff around?

A I believe we'll be able to plug everything in.

Q Are you going to have to move anything around to do that?

A Well, her drawings are not final. And so I assume that when we get there and actually put things into the space and see how it actually looks and the flow of voters that there will be changes that will have to be made.

Q Now, the -- take a look at Exhibit Number 7. Can you identify this document for me?

(Respondent's Exhibit 7 identified.)

A It's an email between -- that I sent to, I believe she's the administrative assistant for our facilities

management department.

Q And does this kind of help us tie down when you were going to get the equipment?

A Yes.

Q All right. When was that?

A The 2nd. We actually received it on February 3rd.

Q Did you receive it in waves the way we heard about earlier?

A Yes. We did.

Q Take a look at Exhibit 33 if you would. That's ACC BOER 0170.

(Respondent's Exhibit 33 identified.)

A Okay.

Q Can you iden -- it's a six-page document. Can you identify these for me?

A This is the -- I don't know if you would call it a Bill of Lading, but it's what the truck driver had with him, the packing slip of what was on the truck when we received our first delivery. This is not the DRE -- I'm sorry, the BMDs. This is when we received our EMS system and the ballot on-demand printer and the ICC.

Q Is there a document among these receipts or these Bill of Ladings that tell us when we got the BMDs?

A The one on February 3rd, which would be the next one 0171.

Q Was this the day you took delivery of all of them except the demo model?

A No. This was the majority of the equipment. We still had not received at that time -- at that time, we received one ATI unit. We received the other 33. They came at a later time.

Q And what did you do with the equipment when you got it?

A Took a deep breath, gathered everyone together, and tried to figure out how to get it all off the pallets and into our warehouse, and we had that done within a day.

Q You didn't take them out to any of the polling locations and play with them at that time?

A No. I mean, this was the beginning of February. We didn't have time for that.

Q And that -- would that have even been proper to do?

A No. It would not.

MR. MITCHELL: I tender Defendant's Exhibit 33.

MS. MCGOWAN: No objection.

(Respondent's Exhibit 33 admitted.)

MR. MITCHELL: I would tender Defendant's Number Exhibit 1 as well.

MS. MCGOWAN: No objection.

(Respondent's Exhibit 1A admitted.)

MR. MITCHELL: And I would tender Exhibit Number 7.

MS. MCGOWAN: Which one was that?
MR. MITCHELL: That was the email that they had taken --
MS. MCGOWAN: No objection.
(Respondent's Exhibit 7 admitted.)
BY MR. MITCHELL:
Q All right. Go back to -- or turn over to Exhibit 13, which is ACC BOER 0082 through 0085. I think one of these pages is in, but I would present them as a bulk exhibit. Whose handwriting is this?
(Respondent's Exhibit 13 is identified, in its entirety.)
A That is mine.
Q And can you identify these handwritten notes for us?
A These are notes that I took -- whenever I'm on a conference call or listening or watching a webinar, I always take handwritten notes. It's just part of my background, the way I learn. So these are my handwritten notes from a conference call that was on Feb -- January 10th.
Q Do you know -- the comment that you recorded, do you know who made that comment?
A I really can't say, because at this point in the call, it may have been that they were taking questions and answering the questions on the fly and sometimes that would have been whoever was on the conference call that was

appropriate to answer that question. So when I wrote out on the side -- when I -- just in all transparency, I wrote the note of when the conference call was and that Mr. Harvey, who is usually the one who runs the conference calls, that's why I noted it out to the side, so when I submitted this, you would know what it was.

Q The comment "Do not buy yet. Hold off. State looking into providing" was that -- was that a comment made by whoever was on the phone from the Secretary of State's Office?

A Reading that comment, that was -- the blackout screens was the discussion that had been going on in the office among us, and it had been going, I know it had been going on with other counties around the State. So it was mentioned on the call, the blackout screens were mentioned on the call. And then the rest of it is basically my note to self and what to tell Charlotte, not that that was -- not that it was the State's intention to buy them for us. It was we shouldn't buy them yet. They're looking into the possibility of providing them.

Q Is that something the staff had considered doing?

A We had considered all kinds of things. And that was -- seemed to be one of the easiest options.

Q All right. Turn over to the next page, ACC BOER 0083.

A Okay.

Q Again, your notes? Is this your handwriting too?
A It is.
Q And this is actually going back in time a little bit, isn't it?
A Yes.
Q What's the date of this call?
A October 17th, 2019.
Q And again, was it -- was Mr. Harvey on the call?
A It's my recollection that he's been on every call that I've been on.
Q And the note that we have here: interest in BMDs, people getting into close space to observe, allowed but privacy must regulate access enclosed space, clear barriers are going to be very important, was that your note or was that a comment made by the Secretary of State's representative?
A From reading the way that's phrased, it would have been something that was being said on the call and I was paraphrasing so I could remember.
Q Was it coming from the Secretary of State's representative or was it coming from one of your colleagues?
A Oh, no. It would have been said on the call.
Q So when you were making notes, you were either writing down what the Secretary of State's representative was saying or you were writing, kind of, your --
A Notes to self.

Q -- notes to self. And when you say that it had been a concern and discussed, does that mean among your other colleagues --

A Yes.

Q -- around the state?

A Mmm-hmm.

Q Do you know whether this call was one of those North-South regional conference calls at this time or was this a statewide one?

A I put in the note to you that it was a webinar, so to me that would have been not one -- this would have been before we started the Friday calls, so it would have been a webinar that would have been a regional program.

Q And that would have been basically everybody --

A Within our region, right.

Q What is your region?

A I knew you were going to ask me that. That's a question for Charlotte. I'm sorry.

Q Okay. I was just wondering. All right. If you'll turn over to the next one, 0084, can you identify this one for me? Again, your handwriting, correct?

A Yes.

Q Okay. What is -- what is this one a note of?

A This was the February 13th webinar with Mr. Harvey and that was actually written at the time of the call because

this is the beginning of the page. This was the one where he presented the layout drawings of what would be a good, you know, effective layout and what might not be.

Q And so when this webinar was going on, you all had those drawings in front of you?

A They were presented at that time. That was the first time I had seen them.

Q And the comment there: it's okay to face BMDs to the wall, err on the side of privacy, be creative, make them private, was that again a comment made by the Secretary of State's Office or was that a note to self?

A That would have been paraphrasing what was said on the call.

Q And again, when you say said on the call --

A It would have been the speaker on the call who was instructing us and giving us -- imparting information to us. It would have been their words that I'm paraphrasing.

Q If you'll take a look at the last page, 0085, again, your handwriting?

A Yes, sir.

Q Okay. Can you tell us what this was?

A It was the same -- obviously, the topic came up again and the advice was again, turn them to the wall, heavy tape to secure the cords, be creative. And then my note to self: find cord solutions for early voting.

Q So there's going to be -- in some of those locations, are you going to be able to move those tables away from the walls and still have enough space?

A I think in the majority of them, yes. I mean, I do have concerns, but like I said, until I get in there with the tables, it's kind of the same thing that you found with our early voting location. You can plan it all out in your mind, scale drawings and everything else, and until you get in there and actually work with it, there's always -- I mean, I'm a perfectionist, so I want to know up front what I'm getting into, but there's always that little bit that I worry about until it's actually done. So that's what I'm talking about. There's a little bit that I still -- I want to see it, and then I can tell you 100%.

Q And we've talked about -- you heard me talk with Ms. Sosebee about the six that are a particular concern, the small locations. Do you concur that those are concerns especially after you get the tables out?

A They are a concern with space. I mean, they're very small.

Q And what type of -- does Athens-Clarke County own the tables they're going to use?

A We own 30, I believe it's 30 tables that we have for our own resources that we can send out. The rest of the tables we're going to rent from a rental supply company here in town.

Q What size?
A Well, when I discussed renting the tables with them, the amount that we needed, they told me they might not have enough 6-foot tables available, so they were going to fill in with 8-foot tables.
Q And when you say 6-foot table, is it a 6-foot table like this, which is about 6 by 18 inches or is it the larger 6-foot tables like what I call church dinner tables?
A No. It's just -- well, it's not the narrow -- I would consider those a narrow table, so I guess you would call it a 6-foot banquet table.
Q And if you don't have enough sixes, what are you going to use?
A The eights.
Q And how many booths are you going to put on the eights?
A Three.
Q How many on the sixes?
A Two.
Q Let's go back a minute. Take a look at Exhibit Number 20, which is ACC BOER 0140 through 0142.
(Respondent's Exhibit 20 identified.)
A Okay.
Q Can you identify Exhibit Number 20 for me?
A This is an email that I sent to Mr. Dexter Fisher,

who is, I believe, the Chief of Operations. I don't know his official title, but he is my contact at Clarke County School District. That's where I start when I need anything down in school locations.

Q And the spreadsheet attached to the email, did you prepare that spreadsheet?

A I did.

Q And what -- what is that?

A It was a way for --

Q What does it tell us?

A Okay. It tells -- it was telling Mr. Fisher the locations -- well, basically, it was going to tell him the locations I wanted him to have an electrician to look at. And I was telling him what was existing at the time in those locations, so I was telling him that at Whit Davis School, we use the gymnasium. There are 4 usable outlets in that space. There's two existing circuits.

Q The -- with regard to -- this is January 23rd. Had they completed this work?

A Yes.

Q And the Clarke Central Gym -- Clarke Central High School, what is the -- what is the polling location at Clarke Central? It's not the actual gym, is it?

A No. It's in the front lobby of the gym.

Q Okay. And that's one of the areas, one of the six

that's potentially a problem?

A Right.

Q That's a small area?

A It's really not that it's so small. It's actually larger than a couple of our locations. It's just a very odd layout. There's only -- one of the walls is not really a wall. It's a trophy case, so there aren't really any outlets on there except that we did discover two outlets on the back side of that trophy case that are usable. So it's just a very odd space to configure things in.

Q Okay.

A It's not a nice rectangle -- rectangular room.

MR. MITCHELL: I would tender Exhibit Number 20.

MR. GERMANY: No objection.

(Respondent's Exhibit 20 admitted.)

MR. MITCHELL: And I would also tender Exhibit 13.

MR. GERMANY: No objection.

(Respondent's Exhibit 13 admitted, in its entirety.)

BY MR. MITCHELL:

A Oh, and I apologize. There was also a notes section that I didn't see.

Q Did you prepare those notes as well?

A Yes.

Q Okay. How did you determine the number of voting machines that you would have to plug in at each polling place?

A I did not make that determination. Director Sosebee made that determination.

Q Okay. Did she talk with you about it?

A Well, I knew it was based on her calculations and it was based on the State's law of one for every 250 voters.

Q Okay. So that's how the determination was made, not necessarily how many you could get into an electrical --

A No, because we knew we had to follow the state law.

Q Similar document for the county billings, if you'll take a look at Exhibit 32, which is ACC BOER 0169. What is that document?

(Respondent's Exhibit 32 identified.)

A Do you mean -- I'm sorry, 32?

Q 32.

A Okay. Let me try the book. This is the spreadsheet that I developed for the Athens-Clarke County electrician that was going to go out to the county buildings.

Q You created this document?

A Yes.

Q And the -- this spreadsheet and the one you did for the schools, what was the basis of the information you put in these spreadsheets?

A We had not received our electrical surveys back yet, so it was the information from my notes that I gleaned from going around with the surveyor. I took notes of the,

basically, the information that he was taking note of.

Q And after you got the notes back from the inspector, did you compare them?

A I looked at them. I can't say that I compared them completely because I knew that when I went out, I was taking notes of everything that he took notes of. When I looked at the documents, I didn't really see any additional information in them that I didn't already have.

Q Was Ms. Sosebee's characterization of the challenge of setting up advance voting at the office accurate?

A Yes.

Q Were you there for the full 15 hours or whatever it was?

A I was there on Friday afternoon. I believe we were there until about 8 o'clock, and then we came back on Saturday. I had -- I believe I left -- I had to leave before some of the other, some of my other coworkers left, but I know I was there for probably three hours or more, and then they were there an additional time.

Q Did you go there on Monday morning --

A Yes.

Q -- when advance voting starting? Was the location set up on Monday morning when you all started like it was on Saturday afternoon?

A Yes.

Q With all the work that you did, what were you -- what were you trying to accomplish by reducing the number of devices and hanging the curtains and all that kind of thing?

A We were trying to accomplish so that the voter would feel secure that no one was looking over their shoulder, that we were giving them the best possibility ballot security that we could within the small space that we have.

MR. MITCHELL: That's all that I have.

MR. MASHBURN: Do you want to put in 32 before you step away?

MR. MITCHELL: Oh, I tender Exhibit 32.

MR. GERMANY: No objection.

(Respondent's Exhibit 32 admitted.)

MR. GERMANY: No questions. Thank you.

MR. RAFFENSPERGER: Next witness.

MR. MITCHELL: We call Lanie Lessard.

MR. RAFFENSPERGER: For scheduling time purposes, how many more witnesses do you expect today?

MR. SELLS: Three, after Lessard.

MR. RAFFENSPERGER: Okay. Thank you.

THE COURT REPORTER: Do you swear or affirm the testimony you are about to give is the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

Whereupon,

LANIE LESSARD

having been duly sworn, testified under oath as follows:

DIRECT EXAMINATION

BY MR. MITCHELL:

Q Would you tell the Board your name, please?

A Lanie Lessard.

Q And what is your role with the Board of Elections and Registration?

A Elections clerk.

Q And in that role, what do you do?

A I'm Area Manager on the date of elections and prior to elections. I work with training the election -- the poll workers. I help get the supplies ready and maintain the machines, making sure they're ready to go, doing the logic and accuracy testing and so forth on the machines.

Q How long have you worked for elections here in Athens?

A Well, I started --

Q How long have you been on staff?

A On staff, about five-six years.

Q And prior to that, how long -- what did you do prior to being on staff?

A I was a poll worker and then poll manager.

Q And what polling -- are the precincts that Athens has now the same as when you were working as a poll worker?

A I think they are. At that time, I wasn't concerned with all the other locations. I was just concerned with mine.

Q Okay. And over the last three to four months, have you had the opportunity to be in all the locations?

A Yes, I have.

Q And in all the advance voting locations?

A Yes.

Q And what was your purpose in being at all those locations?

A While it was different things. So one case I was actually helping to do a demonstration and then I was going over with the state inspector to show him the sites, to help him identify, you know, where we were going to be voting and what the electrical systems were in each location.

Q And what is your role with regard to setting up the polling locations?

A Well, now, it has become to try to help make sure the machines are attached to the right receptacles and not, you know, have any issues with overloading the system.

Q And what else do you do with regard to locating the machines and laying out the precincts?

A Well, what I've started doing is working on the actual CAD drawings of the layouts based on sketches that I had made on going out with the inspector from the State and with the county electrician and with the school electrician.

Q Had you done the scale drawings like we've seen today prior to this year? Had you done them for previous elections?

A I did it for my precinct, but I didn't do it for others.

Q So this is the -- is this the first time that they've -- that you've done this for all the precincts in the --

A It's the first time I've done it. Yes.

Q Do you know whether it's been done before? Have you seen scale drawings from others?

A It had been done when they first -- when we first started using the old DRE machines and at that time, again, I was working in my precinct. I sort of had blinders on.

Q Had you ever gotten anything from the Office of Elections for your precinct or was that just what you had done?

A I had done them.

Q What is your background with regard to -- why do you do that?

A I am an interior designer.

Q And you have access to a piece of software you can use for doing this type of thing?

A Yes, sir.

Q Let's take a look at -- in the notebook in front of you, take a look at Exhibit -- what's been previously admitted as Exhibit Number 11. I'll take you to about a third of the way through, starting at ACC BOER 0030. What's the date on

this email?
A March 9th.
Q And the from, Lanie Lessard, that's you.
A That's me.
Q All right. And the -- do you have these drawings in this form prior to last weekend?
A I did in a very rough draft.
Q You had it in rough --
A I had the rough draft sketches that I had made.
Q Okay. When you say sketches, you're talking about hand sketches?
A Yes, sir.
Q And the -- are these that we have before us in Exhibit Number 11, are they final today?
A No, sir.
Q Have you made any changes to the scale drawings since you provided these Monday morning?
A Only on paper with a pencil. I haven't finalized them on the CAD program yet.
Q Okay. And with -- the notes that you made on the paper, what was the basis on that? What have you been doing the last couple of days?
A Well, again, I went back to the schools primarily because I had not had a chance to see all of the schools yet after the, you know, we had talked about doing the drawings, so

I just wanted to see them with my eyes and with my drawings.

Q Had you been back in the locations since the electrical systems had been upgraded?

A Yes.

Q And is that -- let's walk through one of these since there's not an actual formal legend so that everybody's familiar when they're looking at this exactly what -- what we're looking at. So turn over to ACC BOER 0031. Are you looking at it?

A Yes.

Q All right. And although this is one of the smaller sites, would you say that the symbols we have on here is representative of what we're going to see on the other drawings?

A Yes.

Q And we'll go through -- and if you -- once we go through this one, we're going to turn over to the other ones and if there's anything that we see on the others that's not on this and we need to talk about it, you'll let me know.

A Sure.

Q All right. The way it's configured in the book -- well, can you give it a half clockwise turn? Okay. Along the top, the very top line just outside the boundary, what is that, that number? It's like 19.

A 19 feet, 4 inches. That's the dimension across the

interior of that space.

Q And then, and the way we'll do this is we'll just come from there inside the building. What is the thing in the middle at the very top? What is that, the square or the two squares?

A That is a 6-foot table that represents 2 voting booths.

Q And again, this, is it scale?

A Yes. They were done as to scale drawings, but because of printing them large enough to see, they are not to any particular scale as they are printed.

Q But we can get the -- we can get the idea from these what it's going to look like if you had to move things around.

A Right. I mean, actually, some of them are so small if I had done them at a scale to fit this paper, you wouldn't be able to tell me.

Q The two red circles that are in the middle of that box, what are those?

A Those represent the quad outlet that was installed by the Winterville -- by the Winterville electrician.

Q On these drawings, are we going to be able to tell which electrical outlets were installed just for this election and which ones were existing?

A On this particular drawing, the single ones are existing. The new ones are the double ones. The two that are

together representing the quads that were installed.

Q Is that going to be true on the other drawings as well or do you know?

A No. I got a little more creative after that.

Q Okay.

A I changed to color coding, but it's still not finalized.

Q What is the color coding just so we know?

A Well, I just wanted to make sure that each circuit was a different color to make it easier to see because these little numbers just weren't showing up.

Q If you go to the -- on this, if you go to the left, there's a red circle and then what looks to be a yellow triangle. What is that?

A It represents the receptacle number above and the breaker number below.

Q Okay. Now, standing in front of the box, you've got -- it's, like, an oval with wings. What does that represent?

A It's a head shot, over-the-head shot of a person's body.

Q Are the persons in your program drawn to scale? Are they scale as well?

A No. Well, nobody --

Q I understand what you're saying. Generally speaking --

A Yes, sir.
Q -- in general scale that -- I get it. Now, in the middle, what do the red arrows represent?
A Just sort of a traffic pattern. We try to have as many precincts as possible where we have an in and an out flow, using one entrance to go in and a difference entrance to come out, and this is representative of that. In just about all the drawings, I tried to kind of give an indication of the traffic flow.
Q When -- and then the kind of wave, half S, serpentine line, what is that?
A That is separating the enclosed space from a more public space.
Q Would you go out to the whole document? So this, is that going to be a hard barrier like a cubicle wall?
A It can be a rope with stanchions. It can be tape on the floor. It can be a row of chairs. It's whatever the -- whatever we can use to provide a separation.
Q Okay. And then what is this table right here (indicating)?
A Sorry.
Q You'll have to -- it's in the middle -- it's in the middle room right in the midst of the ballot location.
A Okay. That is -- that's representative of a mag -- what I call a magnifier station. It's a ballot review station,

so someone might want to look at something through either reader glasses or a magnifying sheet on top of their ballot. The ballots are printed right next to it.

Q Have you put one of those in each one of the locations?

A Yes, sir. I have.

Q Do those need to be in the enclosed space?

A Yes, sir.

Q And why is that?

A Well, they can't take that ballot outside of the enclosed space.

Q Got it. This over here to the left about a third of the way down this particular wall, what is that (indicating)?

A Each location has a manager's table and a provisional table. I kind of like to keep those two together, and so some of them are configured in straight lines and some are configured in a T shape or an L shape.

Q And what are the dimensions of the table -- or the S that you've put in here?

A They're all 6-foot tables.

Q Okay. So either the tables that Athens has or they're renting, that's what's going to be used in the polling places.

A A lot of the sites provide them for us as well, and there's some that -- they're all 6-foot tables for the most

part.

Q And they're all the 6-foot banquet tables like Ms. McGlaun --

A Well, some of them might be dining tables or they might be conference tables, but they're 6-foot tables.

Q All right. Let's see. And then, this area right here with the four locations or places, what are those (indicating)?

A Those represent the poll pads, which is the new form of checking in.

Q And is there a certain number required of those in each location?

A I'm not sure of the details of the requirements, but I'm thinking it's based on the number of voters.

Q Is that how you chose the number that you put in here?

A That was not my purview. I didn't do that.

Q And then, the -- these two boxes down here. What do those represent (indicating)?

A The larger box is the ballot box. That would be the scanner, tabulator, and the bin underneath it which would catch all the ballots. And then the last little smaller box represents the sticker table, where someone would get that beloved sticker.

Q The little peach sticker?

A Yes, sir.

Q Now, you've only -- in this particular drawing, you've only got 4, as I count them, 4 people in the polling location. On Election Day, there's not ever going to be a time when there's only going to be 4 people in this space, is there?

A That depends on the time of day and how it's controlled by the poll workers. There's enough room for there to be 10 poll -- 10 voters.

Q How many poll workers -- did you ever work Winterville?

A No, sir.

Q Do you know how many poll workers are going to be at Winterville or how many have been assigned?

A 10 traditional poll workers.

Q Do most of them generally show up for work that day?

A Oh, yeah.

Q Does that include the manager?

A Yes, sir.

Q Right. If you would, just take a minute, and turn the pages, the next 19 pages, and if you see something that is different that we need to explain to the Board what the symbol or the thing is --

A Well, first off, I would apologize that the drawings are not very dark because this is a color document. It shows up a lot better on my computer screen.

Q Sure.

A So it's really hard to tell where the exact placements are. And what I was doing with these was to try to show different turns and directions for each of these voting booths. So the larger areas, like the one following the page we just looked at, which was -- you're looking at now, 32, is a large gymnasium, and there's a lot more flexibility in where we can put the voting booths around the room and not so much concern as far as whether you have something against the wall or out from the wall. And you have, in larger areas, you'll notice here we have 10 poll pads. So every one of them is just very unique based on space.

Q Do you still have your book open to the Winterville drawing? Hold your hand there and turn over to Exhibit 28 but keep your -- keep that place right there.

A 28?

Q Exhibit 28, I'm sorry. The tabs on the side, go over to 28.

A Okay.

Q You've seen this document before. It's a spreadsheet --

A Yes, sir.

Q -- and for Winterville, it says that there's supposed to be 10 ballot-marking devices in that location. Am I reading that correctly?

A Yes, sir.
Q And how many do you have on the scale drawing that you have over there?
A 10.
Q Where are they? I count 8.
A You see the wheelchair?
Q I do.
A That's 2.
Q Okay.
A Next to that, 2 more.
Q Right.
A Oh, you're right. There are only 8. Sorry. There are 8 at this point, and that's why I put the word preliminary on there.
Q So are there -- as we sit here today, are you aware of any other locations where there needs to be additional ballot...
A Yes.
Q Can you id -- can you tell us which ones those might be?
A Well, particularly, Howard Strout, which is 2B.
Q 2B, which is ACC --
A Number 34?
Q -- BOER 0034, Precinct 2B, so that one's supposed to have how many?

A 18.
Q And how many are located in there now?
A Let's see -- 2, 4, 6, 8, 10.
Q Any others like that that you can think of?
A No, sir. And I just found out 2 that we have -- I didn't realize there were outlets on the floor which give us another opportunity for putting them there.
Q Now, the -- with regard to -- you heard my conversation with Ms. Sosebee about the 6 smaller locations, which are Multi-Modal, the 3 fire stations, Clarke Central Gym, and Winterville. I hadn't heard that Strout Elementary had a size problem. Is that more of a where the outlets are arranged problem?
A Strout actually has plenty of outlets and plenty of circuits. It's the floor space.
Q So that's another location where there's some concern about whether we're going to be able to get it --
A Well, this is an active school. They'll be in session that day, and the gymnasium or the cafeteria are not available.
Q Are -- for the setups that you've applied on these, are these the same setups that were used when the DREs were in use the last several years?
A No, sir.
Q This is different?

A Well, we used them around the walls without any problem, and there was never any issue with electrical outlets, so there was a less -- less of that kind of concern.

Q Take a look at Exhibit 15, if you would. Behind tab 15, it's ACC BOER 0088 through 0091. Can you identify those photographs for us?

(Respondent's Exhibit 15 identified.)

A That is the Transit Center.

Q What we call Multi-Modal?

A Multi-Modal.

Q Are you in one of the photographs?

A Yes.

Q They accurately represent what was depicted?

A Yes.

Q Did you -- you didn't take them, obviously, but did you take any of the ones you're not in?

A No.

Q I may have already asked you this. When do you plan on finalizing the scale drawings?

A Between now and Wednesday, next Wednesday.

Q When you -- when you were -- they weren't done until this past weekend. Did you focus on any in particular when you were -- over the last several weeks as you were putting them together?

A Not any more than the others. It just takes time

because we have to figure out where the locations are going to be, especially in the smaller size.

MR. MITCHELL: Okay. Thank you, Ms. Lessard.

MR. GERMANY: No questions.

MR. RAFFENSPERGER: Okay. Next witness?

MR. SELLS: The Respondents call Ms. Laura Camacho.

THE COURT REPORTER: Do you swear or affirm the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

Whereupon,

LAURA CAMACHO

having been duly sworn, testified under oath as follows:

DIRECT EXAMINATION

BY MR. SELLS

Q Good afternoon, Ms. Camacho. Would you please state your name for the record?

A Yes, good afternoon. My name is Laura Camacho.

Q And thank you for being here. Would you tell the Board in what County you live?

A Clarke County.

Q And are you registered to vote?

A Yes, I am.

Q And have you voted in the presidential preference primary?

A Yes. I did the early voting.
Q And on what day did you do the early voting?
A That was the first day. I think it was a Monday, March 2nd.
Q And did you cast your vote on one of the ballot-marking devices?
A Yes.
Q And did you have concerns as you voted or after you voted with regard to your privacy of your ballot or the ability of someone to see who you're casting a ballot for?
A Yes. I was a little surprised that I didn't see enough privacy barriers around the machines. Like it seemed like they should have had a barrier, like a soft one, like a curtain, but the curtain on the further side of the machine I was using, it was like a foot lower than the machine instead of being hanging on the side. There was some separation, but it was minimal, and it didn't feel like a super private situation, like, there were not a lot of people there, but if there had been, it could have been a problem.
Q Now, did the voting booth where you cast your ballot have a blue plastic screen on the side of it?
A Yeah. There was some kind of plastic barrier coming out, but it didn't feel very big. It was, I don't know, 10 inches, 7. It was fairly small.
Q And you feel like that wasn't enough to protect the

secrecy of your ballot?

A If I'm -- if I'm not trying to look, it's not like I could see everything on the other screen, but I felt like if maybe if I took a step or two back, I was able to see the other machine and vice versa somebody voting on the other machine, it would not be that difficult.

Q Now, in the machine that you voted at, if there were someone next to you, would they have to walk past your machine?

A Yes.

Q Okay.

A Definitely.

Q And would that add to your concerns about privacy?

A Yes. That was very noticeable, yes.

Q So if someone had walked behind you to get to the machine next to yours, they would have been able to see the face of your ballot, correct?

A Probably, that was my first thought. That this is going to be a problem.

MR. SELLS: Okay. I don't have any more questions.

MR. GERMANY: Just a couple of questions.

CROSS-EXAMINATION

BY MR. GERMANY:

Q Ms. Camacho, thank you for being here. Was there someone next to you when you voted?

A Not at the moment. The only person that was sitting

next to a machine was one of the workers, and she was sitting next to it, but she was in a lower position.

Q Did anyone walk behind you while you were voting?

A I'm not sure. I don't think they did. I was a little unsure, but I don't think it happened.

Q Gotcha. So you were concerned something may have -- could happen, but you're not concerned that your actual privacy, your ballot, was compromised.

A I'm not sure. I got help from the workers, because you get even -- you're given this paper scan and they help [sic] me take it to the machine. And I was, like, flipping it over to make sure they weren't seeing, so it didn't feel -- I didn't feel threatened. I don't think they cared who I was voting for, but it felt like if somebody wanted to see what I was doing, they could have. I don't know if anybody did.

MR. GERMANY: Thank you.

MR. SELLS: No further questions for Ms. Camacho.

MR. RAFFENSPERGER: Okay. Thank you, ma'am.

THE WITNESS: You're welcome.

MR. RAFFENSPERGER: Next witness?

MR. SELLS: The Respondents call Annemarie Zimeri.

THE COURT REPORTER: Do you swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

Whereupon,

ANNEMARIE ZIMERI

having been duly sworn, testified under oath as follows:

DIRECT EXAMINATION

BY MR. SELLS:

Q Good afternoon, Ms. Zimeri.

A Good afternoon.

Q Thank you for being here. Would you state and spell your last name? State your name and spell your last name for the record.

A Yes. Annemarie Zimeri, Z as in zebra, I, M as in Mary, e-r-i.

Q And in what County do you live?

A Athens-Clarke.

Q Are you a registered voter?

A Yes.

Q And have you cast your vote in the presidential preference primary?

A Yes.

Q When did you cast your ballot?

A Super Tuesday, the 24th.

Q That would have been last Tuesday?

A Yes.

Q Okay. And did you use the ballot-marking device at the elections office?

A Yeah, the downtown Board of Elections.

Q And did you have concerns about the privacy of your ballot or the secrecy of your ballot given the way that the machines were set up?

A Yes. I wasn't as concerned about my ballot on that date because there weren't voters filling all the booths, but it was clear to me that I would have been able to see other voters as I passed their booths. And the screens this year are almost perpendicular, whereas in the past, they were kind of laying down, and once you cast your vote, whomever you cast your vote for comes up in large font, and it's -- it's very clear to read from a distance. So if I were to walk to the booth that I walked to past the other three booths that were open, I would have easily been able to see it, and the poll workers -- it's a very small space, so the poll workers stationed there I'm sure could see what I was doing, and they certainly could see the paper because I had trouble with getting it to read in the scanner as well.

Q Did your booth have the blue plastic privacy screen attached to it?

A No. I recall at the top there was some cloths hanging down, and in the past, where there was the horizontal voting machines, there were these plastic measures up, but they weren't -- they were on the sides of the booth. They weren't on the sides of the actual screen.

Q And so was it possible to see over those things on the sides to look at another machine while you were standing to vote?

A I didn't try. I think you would as the past witness said have to back up a step. I think my concern is more while you're standing there to wait, the Board of Elections volunteers standing there and approaching your voting machine being able to see what others are doing.

Q If someone were walking behind you?

A Yeah. Yes. Correct.

MR. SELLS: Thank you. Those are all the questions I have.

MR. GERMANY: Just a couple of questions.

CROSS-EXAMINATION

BY MR. GERMANY:

Q Did anybody walk behind you while you were voting?

A No. As I said, I was -- there were very few people in there when I went there.

MR. GERMANY: Okay. Thank you.

MR. SELLS: Our next witness is going to take a while. Would the Board like a break at this point?

MR. RAFFENSPERGER: Yeah. We'll take a 10? 15? Be back at 3:30.

MR. SELLS: Okay.

(Court in recess.)

(Court resumes.)

MR. RAFFENSPERGER: Okay. If we could -- everyone take their seat and settle down, and we'll get going with the next witness. So Counselor, call your next witness.

MR SELLS: The Respondents call Mr. Jesse Evans.

THE COURT REPORTER: Do you swear or affirm the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes.

MR. RAFFENSPERGER: Okay. If everyone in the audience could be quiet now, thank you.

Whereupon,

JESSE EVANS

having been duly sworn, testified under oath as follows:

DIRECT EXAMINATION

BY MR. SELLS:

Q Good afternoon, Mr. Evans.

A Good afternoon.

Q Would you state your name for the record?

A Jesse Evans.

Q And what is your relationship to the Athens-Clarke County Board of Elections and Registration?

A I'm a Board member, and I'm the Chairman of the Board.

Q And how long have you been a member of the Board?

A I'm in my fourth year.

Q And how long have you been Chair?

A I was selected by my peers on January 21st of this year, and so since that day or the end of the meeting, so my first meeting as Chair would have been on February 4th.

Q What is your educational background?

A I went to -- I got my undergraduate degree at the University of Louisville. I majored in philosophy and psychology, and I minored in political science, history, and Latin American studies. I came here to UGA afterward and -- because I knew I wanted to teach, government civics actually, and UGA was the top, like, the fourth ranked in the nation program at the time for secondary education, so I came here, went to UGA for my Master of Arts in teaching. I specialize in political science, and I also got a reading endorsement while I was doing that.

Q Okay. And so what do you do for a living then?

A I teach government civics at a high school here in town, a Title 1 public high school. This is my seventh year doing that.

Q And how long have you been a voter in Athens-Clarke County?

A Well, I voted, you know, when I was in school here, so that would be 2011, around there, so, you know, going on around 9 years.

Q And as a voter in Athens-Clarke and as a member of the Board of Elections, are you familiar with the polling places used in elections here in Athens-Clarke?

A I am. I've voted in four different locations throughout my time here, and those locations are still used, you know, today. And as a Board member, I have visited polling locations, you know, during elections to make sure everything was going smoothly.

Q I want to begin by directing your attention to the issue of un-merging polling places that was discussed a little bit earlier by a number of witnesses. Do you recall that testimony?

A I do.

Q Okay. What was the issue with polling places having been merged and why was that problematic?

A IN November 2018, we had really long lines at these locations. They had combined -- we had combined polling locations -- precincts, two into one location, and, you know, 5,000, 6,000 voters instead of 2 or 3,000 in each, so there were very, very long lines, and people, quite naturally were upset, including myself. I was very upset about it. You know, some people can't wait that long to go, and it's seen as a form of voter suppression to have long, like, lengthy lines, and that's not something I want us to be doing here in Clarke County.

Q And so what did the Board do to try to address that issue?

A Well, right after the election we acknowledged within meetings and the staff -- we talked about how this was unacceptable and that they should be un-merged. I spent the next -- so since late 2018, early 2019, it's been a recurring topic that I've raised, and I kept being told we'll get to that later. We'll get to that later, like, you know, that's not the priority right now. We're on this right now. We'll come to that later. And so that sort of series of event happened all the way up to end of 2019, and finally, we met to discuss this January, once at, I think it was the January 21st special meeting, and that was the first time we actually had a serious conversation and looked at, like, proposals, and we've continued that process from there to now.

Q Okay. So the Board first put it on its agenda for the January 21st, 2020 special meeting, this issue of trying to un-merge the polling places to reduce the number of voters at each -- at the ones that were being un-merged?

A That was the -- yeah, that was the first time we actually sat down and discussed actually doing it, like looking at the data, looking at possible locations and stuff. As I said, I brought this up in previous meetings since late 2019 [sic], early 2019, but this is the first meeting we had to actually do that --

Q Okay.
A -- to actually act upon that.
Q I'd like to show you Exhibit 3, which is Bates Number 0004 to 0006, Board of Education -- excuse me, Board of Elections Bates Number 0004 to 0006, and it's marked as Exhibit 3. It is in the book in front of you.
(Respondent's Exhibit 3 identified.)
A What was the page?
Q It's the other book.
A Oh, this book?
Q It's tab 3.
A This book?
Q Yes. So can you identify this document?
A Yes.
Q What is it?
A It's a letter from the Lawyers' Committee for Civil Rights Under Law, the NAACP, and the People's Agenda. It's dated January 20th, 2020.
Q And did you, as a member of the Board, receive this letter?
A I did via email, and we also discussed it or had it provided to us on paper on the 21st of January.
Q And can you summarize the content of this letter?
A I can. Basically, these three organizations were concerned what -- that we were trying to look at un-merging the

polling locations for the polling locations that had been merged so close to the presidential primary -- pref -- for March 2020. So they were basically telling us that we shouldn't do that and that we're actually not legally permitted to do so because we were in the 60-day window of doing that, and if we did act on that, then there would be action taken against us.

Q So they advised you that you couldn't -- it was too late in effect to change polling locations for the March 24th primary. What was the Board's reaction to this letter?

A Well, we were advised by staff that we -- like the staff concurred with this, and we definitely wanted to comply with this. It was frustrating for me because again, we had been waiting since 2018 to do this, and I've been trying to, you know, reduce polling -- voting lines with these locations, and I didn't want to repeat the issue from 2018, but we decided to -- we agreed that we couldn't do it for the March elections, so we decided to move forward and do it for the May 2020 elections.

Q The May primary?

A Yes.

Q And has, in fact, the Board voted to un-merge several of the precincts for the May primary?

A We have.

Q And when did that vote take place?

A March 3rd.

Q March 3rd?

A Of 2020.

Q And could the un-merging of those several polling places alleviate some of the privacy concerns that we're discussing here today?

A Possibly. We haven't actually seen sketches for the other locations, so it's possible because -- and I say it's possible because we'd be reducing the number of people assigned to a polling location which would reduce the number of polling -- sorry, voting booths and machines needed at those polling locations. So it's possible.

Q Okay. So I want to ask you about your awareness of the privacy issues with the new ballot-marking devices. When did you first hear that there might be privacy issues with the new machines?

A I think people began approaching me about this as early as November 2019. But -- and, you know, the media picked it up as well. There were, you know, articles put out about this, particularly one in Dooly County. It was put out February 5th, I believe. I think 11 Alive might have done that one, but voters and poll workers in that area were concerned about it. Members of our community began speaking up at our meetings about it, and so, yeah. I became aware of it around November 2019, but also, staff was telling us that these

machines were -- we had a lot more machines, they were significantly larger in size, and this was just a concern as far as how we were going to fit -- where we were going to fit these and how we were going to fit them all in.

Q Given your familiarity with polling places in Athens-Clarke County, what did you make of those concerns?

A Those are very valid concerns. I've voted, like I said, in four different locations. I've voted in Lake Clarke, I've voted in Winterville, I've voted at -- at Clarke Central, and I've voted -- so Lake Clarke, Winterville, Clarke Central, oh and Cedar Hills High School. Yeah.

Q And Winterville is one of the polling locations that we were discussing earlier on the screen, right?

A Correct.

Q So what did -- did the Board raise the privacy issue with staff?

A Yes.

Q Approximately when did that take place?

A Maybe late, like, December 2019, January 2020 is when we really began talking seriously about, like, okay, we've got to do something about this to make sure that we're protecting ballot secrecy.

Q Okay. And let's see. If we could put up Exhibit 9, which is already in the record, and it should be behind tab 9 in your book, if you're not already there. And for the record,

can you identify this document?

A Yes. This is an email that I sent on January 30th to Director Sosebee and I cc'ed the Board, my fellow Board members, ACCBOE staff, our local assistant county attorney who's been helping us as the Board of Elections, and the Assistant City Manager of Athens-Clarke County. And -- go ahead.

Q And this is dated January 30th, 2020, right?

A Yes.

Q And you had discussed the issue of ballot secrecy prior to the day on which you sent this email, right?

A Yes, absolutely. We actually went very much in detail in the January 21st meeting.

Q Okay. In addition to the requests or questions in this email, did you ask staff to provide the Board with any other information?

A Do you mean at this point at January 30th or ever?

Q Ever.

A Oh, so after we had -- so during the February 4th regular meeting, Board members -- or excuse me, members of the public continued to come and speak about their concerns about secrecy and we as a Board requested from staff that they provide to scale drawings, like floor plans, of each of the 20 polling locations that would be used on the March 24th election day. So we wanted to -- we wanted to do it. We wanted to be -

- like the staff kept saying we can do this. We can do this. And we were like okay, we want to, like, see that we can definitely do this, so please produce these -- these floor plans, and staff agreed to do that. And we asked that they be provided well in advance of the March 3rd meeting, so that we would be able to, you know, process that, look at that before we get to the meeting.

Q Okay. Just to be clear, why did you want the drawings or sketches?

A Because there's a variety of -- like, each polling location is very different, and there's a -- so the space is very different, the layout is very different, and we had already been briefed that there were some concerns from staff about whether or not we were going to be able to actually use the number of BMDs required by law for the one per 250 rule. We talked about that in the January 21st meeting. And we really needed to see to scale drawings to know that we were going to be protecting ballot secrecy. I -- I teach government civics, right? Like, this is the law. Like, there are several statutes. It's the Georgia constitution, it's the state statutes, and it's the federal statute actually too. And I teach government civics. I'm very passionate about, you know, democracy, voting, and I wanted to make sure -- sorry. The phone call was a little bit of a distraction there.

So the -- I'm also familiar with, as a teacher of

government civics and in Georgia and growing up in Kentucky, I'm familiar with voter suppression efforts throughout the history of the Southeast -- Southeastern United States, and I just don't want that to be the case here. We have not allowed voter suppression, and ballot secrecy is a very serious thing, and it's required by law.

Q And there are other requirements of the law with respect to voting as well, right?

A Yes. So we have one voting booth or BMD -- we were told BMD -- per 250 voters assigned to a polling location, but we're also required to -- our poll workers are required to monitor the machines while in use to prevent any sort of tampering or if there's any sort of, you know -- as Director Sosebee mentioned earlier, like, people -- some people like to take pictures of things, and they're not supposed to have their phones out, so like we're supposed to be able to -- there are three things really, like, protect ballot secrecy, be able to monitor all equipment when it's being used, all BMDs, and then the third thing is we have to have one for every 250 people assigned to a polling location. We have to one voting booth or BMD.

Q Okay. I want to focus in on that one per 250 requirement. How did you become aware of that requirement?

A I believe it was staff that told us about this.

Q And did staff prepare a chart showing the number of

BMDs required by law in each polling place?

A They did. On January 21st, we looked at -- it was an electrical survey estimate provided by staff initially, and they had the required number of BMDs for each polling location listed right next to each polling location.

Q All right. If we could look at Exhibit 71, which is already in the record, and specifically, Bates ACC BOER 0477?

A Say it again?

Q Okay. 0477. It's in Exhibit 71. Do you have that in front of you now?

A Yes, sir. Thank you.

Q Okay. And I believe Ms. Sosebee testified that this was a PowerPoint presentation that she presented to the Board at a January or February meeting. Does that look familiar to you?

A It looks familiar, not identical to the one that we were shown, but it does look familiar.

Q Okay. And I know she presented multiple PowerPoints, and you may have seen a chart very much like this one on several occasions, and she said the numbers may change, but what was your understanding of the column that says BMDs required?

A So per the one -- the one voting booth per 250 rule, this is the number required by law that we are required that we have to have one voting booth for every 250 people, so that's

the total number required based upon the number of voters assigned to each voting location.

Q Okay. And if we could do a side-by-side with Exhibit 28, which is also already in the record. That was one Ms. Sosebee testified about. Okay. That's Exhibit 28. And Ms. Sosebee testified about this exhibit earlier, has the Board seen this or have you seen this document before today?

A I've seen documents like this, so yes. This is a pretty standard sort of table that we would look at going into Election Day. Honestly, I don't recall seeing this particular document though.

Q Okay. So the Board saw these electrical survey estimates showing the number of BMDs required at the polling places?

A Mmm-hmm. And I've seen previous -- so this is the same 20 polling locations that we've had in recent elections, and I've seen very similar numbers on those as well for similar documents like this.

Q Okay.

A As far as the active voters at each location.

Q Now, by the start of early voting last Monday, had the Board received the drawings that it asked for showing the positioning of the BMDs, the required number of BMDs, in the polling places in a manner that would protect voter privacy?

A No. We did not.

Q Now, I want to focus your attention to the beginning of early voting, advance voting, we'll call it. Did you show up on the first day of advance voting at the elections office?

A I did. It's something that, you know, we as Board members, that I've definitely done it during elections during my tenure as a Board member, just going to polling locations and popping in to make sure everything is going smoothly, offering any assistance that I can provide if there's ever anything that needs to be addressed, things like that.

Q Okay. And describe what you did and what you saw when you arrived at the elections office on the first day of early voting.

A When I walked in, I saw the setup -- the booths and the machine set up to my -- to my right as I walked in the door. At my one o'clock -- as if you know my 12 o'clock were right in front of me, and my one o'clock were the four voting booths that were right next to -- right in front of -- normally, when you walk in, there's -- you go to that one o'clock, and there's a sliding window that, like, staff is behind. So there's a, you know, a wall. There's staff office spaces and stuff behind that wall. So that's where people would go, where the public would go to, like, talk to staff, but on that day, there were four voting machines in front of it set up with a curtain on one side and a curtain on the other side as well. So I went to talk to staff to check in and see

how things were going, so if I go back to my 12 o'clock as I'm walking in the door -- in the front door, if I keep going -- there's a door that locks. There's a locked door that the general public don't [sic] have access to open unless a staff member helps them with that.

So I went back there and began speaking with staff. I saw someone that I knew that was actually there to qualify, and we spoke for a little bit in the hallway right there. There was a gentleman sitting right in front of me being helped by staff, a member of the public, so there were two members of the public in the back at the time. And then as you walk through the door, you know, there's a hallway and you've got offices and stuff on the other side or on the left and little areas and working spaces to the right, but to my immediate right, that's where the desk is, where staff sits to greet public and speak to them, you know, through that sliding window. And there were two staff members there, sitting there. One, who was closest to me, was speaking to the gentlemen sitting in the chair in the hallway, and the other was sitting further down on the other side of the desk.

Q And what did you see?

A So we got -- I was speaking and checking in about stuff and talking at people, and I just sort of glanced as I was talking. I was, like, looking around just like anybody does when they're talking, and I glanced to my right, and I

could see the screen of the voting machine, the BMD, through the window, through the sliding glass window area. Like, I could see that, like, just right there in front of me, which to me is a violation of ballot secrecy. Nobody is supposed to be able to see the ballot that somebody is using to vote. Go ahead.

Q About how far away from the voting machine, the face of the BMD, were you at that point?

A 5 feet, 6 feet? You know, I mean, it's hard, like -- you know, I was right there by where the desk is where they sit. You know, when they're greeting, so when they're looking out through the window, as staff members are. So, like, I was in the hall right next to that, and I was looking at an angle. As other people have discussed, over here how that angle could be a problem with ballot secrecy, I was at an angle, and there was the machine right there.

Q Was there a voter at that machine while you were looking at it?

A There was not.

Q If there had been a voter at that machine in front of the BMD, from the angle at which you were looking at it, would you have been able to see the face of the screen?

A Yes.

Q Did it matter to you from a privacy perspective that you were in essentially a non-public area?

A No. Because absolute ballot secrecy means that no -- even staff members -- we, the members of the Board of Elections, ACCBOE staff, nobody is supposed -- poll workers -- nobody is supposed to be able to see who you are selecting on your ballot, so and besides that, there were also members of the public coming in and out of the hall to quality or to have any of their voting issues troublesh -- like, the staff was troubleshooting I believe the gentleman who was sitting down. So it wasn't like there weren't members of the public back there to begin with. There were members of the public back there. And ballot secrecy is ballot secrecy. It doesn't matter who sees it.

Q Now, there's a photo of the elections office set up in the record, and I'd like you to look at that. It's Exhibit 12, and if it's all right with the Board, I'd like to hand the witness a laser pointer so he can point out what he's seeing on the screen.

MR. RAFFENSPERGER: Sure.

BY MR. SELLS:

Q You turn it on with that red button. It is Bates, within Exhibit 12, 0079. All right. So Mr. Evans, what I'd like for you to do as best you can is use the laser pointer to show the Board what it is that we're looking at and how that ties into your experience when you visited the advance voting site last Monday.

A Okay. So these pictures -- both of these pictures would have been taken like right in front of the main entrance, like when you walk through, so it's basically, like, stepping through. This one is looking at what I was calling the one o'clock here (indicating). That's what I was describing. This area is the one o'clock with -- these are the windows that staff is behind. This is the booth right there (indicating), the one closest to the window. That's the booth with the machine that I could see the screen for through the window, right through this window right here (indicating). And the window looks further to the left behind the curtain there (indicating), but, like, that's what I saw.

Q Okay. So just to be clear on that last point, the window in the office is partially obscured by the screen in the photo.

A In the photo.

Q But you were able to see through that window when you were standing in the back office?

A Yeah. I was on the other side of this wall right here -- this wall right here (indicating). That's where the staff offices and stuff are, most of them. There's one that's outside of it, but so I was back there. Basically, if I turned about, you know -- if that's one o'clock, just turned to 12 o'clock, you're walking into the row. I walked through, and I was on the other side of that door next to the desk that was

right behind these windows right here (indicating). And I did that, and I myself saw the ballot-marking device screen through that window.

Q Okay. And how about the photo on the right? Can you orient us as to how that is...

A Yeah. That's actually the 3 o'clock. You walk in -- this is the one o'clock (indicating). That's the 3 o'clock (indicating) for walking right in the front entrance.

Q Okay. And guarding the staff windows on the one on the right, correct?

A There's this curtain here --

Q Mmm-hmm.

A -- that's that curtain there in that picture (indicating).

Q Okay.

A So there's, like, not staff -- there's no -- this is the front of the building. There's no staff windows or anything like that on that side.

Q Was there any other aspect of the configuration or arrangement of the voting booths that gave you a concern about privacy?

A Yeah. So you can see that they're side-by-side here. These two are side-by-side, and as multiple people today have spoken about, if a person needs to get to the far machine there, they have to walk past this machine here (indicating).

Okay. So as you're walking past this machine here (indicating) and to get to that machine over by the window, you can actually see the ballot, the BMD screen. Same thing applies to the reverse side. You can actually -- as you're walking through here, right, to get to this area in the back (indicating), you could possibly see this screen here, and if you need to use the far machine in that corner over there, you have to go past this machine here, and you can see that screen as well (indicating).

Q Now, how did what you saw on the first day of advance voting impact your concerns about privacy at the Election Day polling locations?

A So we had been assured -- staff had told us on February 4th that there were no privacy concerns for early voting locations, so they were not providing us with drawings, like to scale drawings, for those locations. And staff assured us that there would be no issues whatsoever on those early voting sites, but that they would provide us with sketches for the 20 polling locations for Election Day. And so when I showed up to the one location where we had actually used the electronic -- the BMDs, for early voting, and I see that ballot secrecy is being violated. That caused me great concern because this is the one location that had been reviewed so far that staff had guaranteed us there would be no issues with this, and there was ballot secrecy violations in more ways than one. So that led me to really -- it confirmed the need for us

to be able to see the -- the drawings for each of the 20 polling locations for election day, but also, like, we needed to act to stop this from happening continuing with early voting, so we needed to stop it from happening here, at that location, but also we needed to prevent it from happening at the other -- at any other locations that were going to be utilized in early voting because again, we'd already -- we'd been told there were no concerns of ballot secrecy for early voting locations and then the only one that they've done so far, that staff had set up so far, the ballot secrecy was violated.

Q And as we've already, I think, been told, there were 10 machines allotted for this location, but there weren't 10 deployed, were there?

A No. There were 8. And that's because of the size and secrecy issues, as well.

Q So the Board had its regular meeting on March 3rd?

A We did.

Q Which was the second day of early voting, I believe?

A Yes.

Q So the day after you had this experience at the elections office. What did the Board do in response to the concerns that you saw?

A Well, we had -- we had not received the to scale drawings as we'd been told we would, and actually, on the

February 25th meeting, it was a hearing, a public hearing, about unmerging, we actually reminded staff that we needed to see those drawings before -- before, like, the March 3rd meeting, and they were never provided. And so we discussed the issue with this location, and we also looked at the two diagrams that were shown earlier today that were provided by the Secretary of State's Office. And we, as a Board, the majority of us realized that we cannot guarantee ballot secrecy at this point with the information in front of us, and in Clarke County, there was no way for us to guarantee ballot secrecy. Like, protecting ballot secrecy was impracticable. There was no way, like, that we had seen that it would actually be done, and they were already being -- it was already being violated, so we voted to stop the violation of ballot secrecy and to utilize the Cobb County pilot -- the program that Cobb County had piloted for hand-marked paper ballots as a way to guarantee ballot secrecy in our community.

Q Now, you mentioned the diagrams, and Ms. Sosebee went over those earlier that she had provided the Board with, the Secretary of State's diagrams indicating which polling places would be set up according to that general layout. Do you recall receiving those at the March 3rd meeting?

A I do.

Q And why were those not enough to reassure you and the Board?

A Well, the Board members, as well as members of our public, spoke about the issues with the two diagrams and how they were not satisfactory in meeting the requirements for -- even just the diagrams themselves are problematic as far as meeting the requirements for ballot secrecy and monitoring of the machines while in use. But also, like, when discussing those diagrams, you know, there was a lot of uncertainty about what would be actually, like, happening, where people would be, what -- we were missed a lot of the, like, equipment that's required to be in the room, and actually, the two diagrams, they were in no way to scale as far as, like, it wasn't a floor plan to scale so we could actually see the evidence that shows that we can do this at all of our locations. And that was concerning to the Board members.

Q So as of the time that the Board made its decision that brought us here today, it had not seen any scale sketches of the actual Athens-Clarke County polling places showing that the BMDs could be configured in a way that provided the number of required BMDs and guaranteed ballot secrecy at the same time, correct?

A Yeah. We -- we hadn't even seen hand-drawn sketches either. Like, we hadn't been provided those either. Like, no -- nothing to scale, no hand-drawn sketches that staff apparently had available somewhere that we never saw, and it was -- so yeah. One machine -- one voting booth or machine for

250 people, ballot secrecy, and the monitoring of equipment while in use, those three things -- we had no evidence that we could do those three things at that moment in time.

Q Now, since you've received the notice of this emergency hearing, you have seen diagrams such as the ones we were going over with Ms. Lessard just a few minutes ago, correct?

A Yeah. That was over the weekend, yeah.

Q And what's your reaction to those diagrams?

A They're problematic. So they -- we are required to have a certain number of BMDs, a certain number of voting booths, and as shown earlier today, like, Winterville does not have the required number. There were only, like, -- I went, line by line, each polling location, like, looking at all of the diagrams and also comparing them to the required number of BMDs that we'd been provided by staff -- with those numbers. And I think 3, maybe 4, had even the number of voting booth set up on the diagram that's required by law, only 3, maybe 4 out of 20. So -- and even those were problematic with ballot secrecy, so -- ballot secrecy and monitoring of equipment.

Q Were any of the diagrams that you reviewed in your view consistent with the guidance diagrams provided by the Secretary of State's Office?

A I don't recall any of them being, like, consistent with the two diagrams. You could see that the people in the

diagrams are actually on the inside of the machines instead of, you know, instead of the machines facing the wall, the machines were facing the interior. And in some of them, you've got some machines facing the wall and some of the machines facing the interior, so no. I didn't see those drawings actually complying with either of the diagrams.

Q Do you continue to have concerns about the ability to guarantee ballot secrecy given the number of BMDs that are required by law in each polling place in Athens-Clarke County?

A I do. As I said, the sketches -- and staff has said the sketches, they're not finalized, and -- but they're the only evidence that we have. And at this point, I haven't seen evidence that we are actually going to be able to meet those three things, the one per 250, the ballot secrecy protection -- absolute ballot secrecy protection, and the monitoring of equipment while in use.

Q Now, if you saw such a diagram, would your reaction change? In other words, if you saw a diagram that was consistent with the guidance diagrams provided by the Secretary of State's Office, had a required number of BMDs, and ensured ballot secrecy, what would your reaction be to something like that?

A If I saw diagrams that, like, were to scale that had the number of required BMDs, that protected absolute ballot secrecy, and that allowed for the monitoring of equipment while

in use, then, clearly, yeah. I would want to go ahead and continue with using the electronic equipment that we were planning to use at that specific location. There would be no reason for us to not use it if that specific location supports those three things. However, I haven't seen that, but I -- you know, that's something that the Board would have to revisit and make a decision about. If we do actually see that evidence that we can do that, that's what we'd do. Well, that's what I would want to do. We'd have to have a vote for that.

Q But as we stand here today, you haven't yet seen that evidence, correct?

A Correct. I have looked at all 20 of the diagrams that have been provided over the weekend, and I looked at them more than once and took notes and not a single one seemed to -- to meet all requirements by law and to be in compliance with the Secretary of State's guidelines and meet those three things that we've discussed the one in 250, the ballot secrecy, and the monitoring of equipment while in use.

MR. SELLS: May I have just a moment to confer? I need to tender Exhibit 3, please? It's the one that's not on the record. Yes, Exhibit Number 3. It's the letter from the Lawyers' Committee.

MS. MCGOWAN: No objection.

(Respondent's Exhibit 3 admitted.)

MR. SELLS: And those are all the question I have

right now.

MR. RAFFENSPERGER: Counselor?

CROSS-EXAMINATION

BY MS. MCGOWAN:

Q Good afternoon, Mr. Evans.

A Good afternoon.

Q I want to -- we've talked a lot about the March 3rd meeting when the Board's vote occurred. At that meeting, the Director, Ms. Sosebee, did present her privacy plan to the Board as to how she planned to lay out each precinct in order to accommodate voter privacy, correct?

A When you say privacy plan, are you referring to the two temp diagrams provided by the Secretary of State with each -- with polling locations, like, listed on the bottom of those two things, is that what you're referring to?

Q Yes.

A Yes.

Q And didn't she tell the Board at that time that she was confident that they could achieve voter privacy at each location by turning the voting booths?

A By turning the voting booths?

Q According to the layout that she presented.

A Oh, so using, like, for the ones that were listed on diagram 1 and then the ones that were listed on diagram 2, you mean that way?

Q Yes.
A Yes.
Q Why don't you trust her determination?
A So I -- for a variety of reasons. One is we were assured ballot secrecy would be -- absolute ballot secrecy would be protected for the early voting site at the Board of Elections Office, and it wasn't. I saw it with my own eyes. Two, I've personally been to these locations, and I, like, am familiar with the locations from voting at four different locations, two of which were the smaller locations that were of concern with space, but I've also visited others as well, so my own experience from voting and also being a Board member -- it's my fourth year. My own experience with this community led me to that, but also the diagrams that she showed were problematic for reasons that I've already discussed.
Q Well, let's talk about not the early voting location, but the other precincts that are planned for Election Day on March 24th, the day of primary when those will be in use. You said that you had asked for to scale drawings of those, and as you sit here now, you know that those were in process at the time, right?
A I'm sorry. Could you clarify the question?
Q The drawings done by Ms. Lessard. You had asked for precinct layouts that were to scale, but your testimony today is that you were not given those by March 3rd. Is that right?

A We were not provided any sort of sketches, hand-written sketches or to scale sketches, before that meeting or at that meeting.

Q Why not wait then until you had been provided the sketches?

A We were already violating ballot secrecy at a location that we were told -- we were assured --

Q But that was an early voting location, correct?

A Yes, ma'am.

Q And that one is not going to be used on -- come March 24th, the primary day?

A Yeah. I think that what I'm trying to say is that we had already -- we had taken the word, the assurance of our staff that that would not be an issue and that ballot secrecy would be protected, and that was just not the case. Like, it was -- so we trusted staff with that location, and it was violated. Like, so, and also my own experience, again, being at these location throughout the community led me to be pretty skeptical actually based on what I've seen of these locations and what staff told us about the problems, you know, their concerns. We needed evidence, okay. Like, and we had to stop the violation of ballot secrecy right then. It wouldn't be acceptable to just allow a ballot secrecy violation to continue.

Q So it's your testimony today that you lost all

confidence in the Director and her staff based on your one experience at the early voting location in the office?

A That's -- no. That's not true. There is -- there are reasons and previous experiences with the staff throughout my duration that have eroded our ability to trust that they -- that it would done.

Q So even though the Director of Elections came forward with her plan to achieve privacy that she believed was workable, you still decided that the Board needed to move forward on March 3rd to vote to move forward with hand-marked paper ballots instead?

A This is the last meeting that we had before March 24th, that we had scheduled before March 24th. And as I've said, it was already -- we were already violating ballot secrecy at the early voting location, and we needed to stop that, and we needed to prevent that from happening at any other -- any other early voting location and also prevent that from happening at any of the polling locations on Election Day.

Q Let's talk about your experience at the early voting location on March 2nd, and if I could turn your attention back to that photograph. That's document ACC BOER 0079. I think it's here.

A Do you mind if I -- so you said that I decided something, and I just want to make it clear that I alone didn't make any decisions. This was a vote done by the Board itself.

Q Fair enough, but you made the motion, correct, to move forward with --

A No.

Q -- hand-marked paper ballots?

A I did not.

Q Well, in your opinion, that was at least -- your personal decision, you voted in favor of moving forward with hand-marked paper ballots?

A I was one of three Board members of the five Board members -- a five member Board that voted for it, and I did not vote to make a motion for that.

Q Turning to your experience at the Board of Elections office, I believe your testimony was that -- we're looking at the photograph on the left. There is a series of -- it looks like three windows behind the voting booths, and you were actually in that office space back there?

A Mmm-hmm.

Q Looking into the voting space through the window, correct?

A Not intentionally. I was just standing --

Q But that's where you were looking?

A That's where I was, yes.

Q Do voters go back there?

A Yes.

Q During the vote?

A Not when they're voting, but yes. Like, that day whenever I came on that day, I had gotten off of work. I went by to check it out and to make sure that everything was going well and when I walked through that door, which -- so again, if this is one o'clock, further this way would be a door (indicating), so I went through that's door that's locked, but I went through that door, and there were two members of the public on the other side of the door already. Like, there was a gentleman sitting in a chair, speaking to, like, a staff member was addressing a concern to that person, and one of our -- actually one of our Commissioners was coming into quality for the election.

Q Isn't it possible that the poll workers could prevent traffic from -- from going back into that space?

A I'm sorry?

Q Isn't it possible that the poll manager, who is responsible for directing voter traffic, could prevent voters from going into that space?

A The doors are locked, like, the only way you're getting on the other side of that door is if somebody opens it for you.

Q Okay. So we could -- you could keep voters from being in that space since the doors lock by not allowing them back there, correct?

A So -- okay. The door is locked, and if you wanted to

prevent anybody from going through a locked door, the answer is yes. But when I went on the other side of that door and actually, in my previous experience as well, voters have been on Election Day -- or not on election day, during early voting, been in that area when they were having their problems addressed. I've seen it myself.

Q My question is isn't it possible to prevent voters from being in that area while there is voting going on?

A Yes.

Q Also, those are windows, right?

A Yeah, well, yes.

Q Could they be covered up?

A Yeah, it's possible.

Q This is just one of the early voting locations, right? There are at least -- the one that's going on right now, but three more will be opened up next week.

A Four more.

Q Four more. Did you visit any of those locations?

A I've been to multiple of those locations, yes.

Q Did you -- how recently?

A Well, we had our March 3rd meeting at one of them, which is the library.

Q But you don't have any assessment as to why it's not possible to achieve voter privacy at those locations?

A I do. And it's --

Q What's that assessment based on?
A My experience in those locations.
Q But you haven't seen the setup, correct?
A There is -- there is not setup to be seen. Like, nobody's -- I don't know what you mean. I'm using my own experience with the locations, my own experience of seeing the machines set up this way, and that's what I'm using to make these -- like, say that I need to make sure that we don't have continued violations. And also the fact that the Board's trust in staff when they assured us that they wouldn't be doing -- violating ballot secrecy at this location -- was the Board -- the staff did not live up to the assurances that they said.
Q And so even though the Director and the staff told -- advised the Board that they could achieve voter privacy for the other advance voting locations, you assumed contrary to that testimony, is that correct?
A I -- so I saw it violated here after receiving assurances, and I didn't have any evidence that it would be able to actually be done in any of the other locations.
Q Did you ask the county attorney's office to give you an opinion as to whether it was impossible or impracticable to use the BMD touch screens?
A I personally did not.
Q Do you know if any Board member did?
A I don't recall if that was actually the question that

was asked.

Q In fact, the county attorney at the March 3rd meeting actually advised you against moving forward with moving to hand-marked paper ballots, is that correct?

A My recollection is that the -- the county attorney did not say one way or the other that it was actually, like, practicable. He said that if we did this, then it would be challenged -- it's likely to be challenged. And, like, so that's my recollection is that he said that it is likely to be challenged is what he said if we do that. I don't recall him ever saying that it's definitely practicable to do that.

Q Did your -- the county attorney tell you at that time about the lawsuit that had been filed in Sumter County?

A He did mention that, yes.

Q Have you seen a copy of the Superior Court's order in that case?

A I have.

Q I'm sorry?

A Yes.

Q What is your understanding of the Court's order in that case?

A I'm sorry?

Q What is your understanding of how the Judge ruled in the Sumter County case?

A So it's my understanding that there are multiple

components to that case and it's ongoing, like still, that the Judge did give a decision about the request for him to direct the Sumter County Board of Elections to switch from BMDs to paper ballots, and it's my understanding that in his decision, he said that it's up to the Board, the local election officials, like, to make that decision, and they had to -- and he said in his decision that they need to protect absolute ballot secrecy while also ensuring that machines are being monitored when they are in use.

Q So I've handed you a copy of that Sumter County order, have you -- is that the particular order that you reviewed?

A I looked at multiple things. I've looked at summaries, I've looked at video actually of the Judge giving the decision that I just described, and I've looked at -- I believe I've seen this as well, but I can't be sure.

Q Okay.

MS. MCGOWAN: I'd like to tender that as Exhibit 9.

(State's Exhibit 9 identified.)

MR. RAFFENSPERGER: Entered.

(State's Exhibit 9 admitted.)

BY MS. MCGOWAN

Q Did you consult with the county attorney's office and get an opinion on when the use of paper ballots is permissible under Georgia's election code?

A Did I seek out our county attorney and ask that is what you're saying?
Q Yes.
A Me, personally?
Q Yes.
A We discussed as a Board in Board meetings that county attorneys were present at that question.
Q And did you get an opinion from the county attorney's office at those meetings?
A Like, did they, like, give an official --
Q Yes.
A -- opinion?
Q Correct.
A Not that I recall. I don't recall that.
Q Do you think that information would have been useful in making this determination whether you should switch to hand-marked paper ballots?
A Maybe, but I read the statute myself. I've seen the statute, like, I have the book with me. There's a green book sitting right there that I take with me to Board meetings and that is the relevant statute. It has to do with impracticability or impossibility -- are in that book, and I've read it and actually showed it to the Board member next to me during our discussion on March 3rd, that actual statute.
Q The vote that occurred on March 3rd to move forward

with hand-marked paper ballots, did that just apply to the presidential preference primary or is it for all future elections?

A I'm sorry. Would you say that one more time?

Q The vote that occurred on March 3rd, where the Board approved moving forward with hand-marked paper ballots instead of the BMD touch screens, does that apply to just the presidential preference primary or to all elections moving forward?

A The vote was just for this presidential preference primary.

Q Is it your position that the Board will reconsider its position for the May primary?

A Would you explain what you mean by that?

Q So do you plan to use the BMD touch screens for the May primary?

A As long as we can meet statutes that say that we have to have one BMD and voting booth, for every 250 people assigned to the polling location, and we have -- we're guaranteeing absolute ballot secrecy, and that we're able to ensure that all equipment can be monitored while in yes, then yes, we would continue with that if we could do that. There's time between now and then that we may be presented with, you know, other evidence possibly. I don't know. But we haven't made a decision about that as a Board.

Q You testified at the March 3rd meeting that the Board also discussed un-merging polling locations, is that --

A Yes.

Q -- correct? And you -- you mentioned that you believe that this could help alleviate some of the concerns with voter privacy, right?

A Maybe, maybe not. Like, again, I'm going to have to see the diagram, you know, with these particular spaces that we're -- that we're using for the four new locations, so that, you know -- and compare that to the required number of BMDs for that location. And also, I have to see -- so staff was telling us on February 4th that the way that they were going to go about protecting ballot secrecy is turning the machines a particular way, so in order for us to know that that's possible and practicable, we have to see the diagram showing -- to scale diagram showing that that's possible and practicable.

Q At some point -- I believe it was January or February, maybe you can help me with the precise date -- but did the Board vote to invoke a Plan B or come up with a Plan B?

A The Board, after hearing -- seeing -- hearing from the public concerns about secrecy after seeing the pictures of the inventory that we were getting, after hearing from the staff concerns about the size and the number of machines that we -- the increase in size and the number of machines that we were receiving for the new systems, the Board -- I'm sorry.

Repeat your question.

Q Do you understand Plan B to be to move to hand-marked paper ballots as opposed to using the BMD touch screens?

A No. Plan B is we literally said during the -- like we talked about it, like, in the meeting where we did this, like -- we wanted to use the process that Cobb County piloted in November of 2019 at the order of Judge Totenberg. You know, we wanted to use that as our process for the backup plan, if for some reason it became impossible or impracticable to continue with the electronic voting equipment, the BMDs.

Q This Cobb County pilot that you have referred to a number of times, you understand that that was part of a court order, correct?

A Yes.

Q And are you a party to that litigation?

A No.

Q Did you receive any legal opinion from your county attorney if the -- what you're referring to as the Cobb County pilot, was an available legal alternative for Athens-Clarke County?

A Are you asking me if the county attorney told me if we could or could not do that?

Q Correct.

A I don't recall the county attorney telling us we cannot use this process particularly as a Board to make a pilot

saying this is the way we're going to do this.

Q Did you ask for an opinion whether or not it was legally permissible to invoke what you've called the Cobb County pilot program?

A Again, attorneys are in the meetings with us whenever we're having our meetings, and they speak up whenever there's an issue with legality and whenever they realize an issue.

Q One moment please. Ms. Sosebee testified earlier that she received curtains along with the -- the voting booths. Isn't it an option for the County to install the curtains on the booths?

A I'm honestly not sure about that because again, we're supposed to be monitoring the equipment. It's my understanding, particularly in agreement with what the Judge in the Sumter County case said, that the equipment should be monitored while in use. So if you've got a curtain around a machine and a person inside it, how could it possibly be monitored while in use?

Q Are you familiar with OCGA 21-2-267, concerning the use of privacy screens and curtains and those kinds of things?

A I'd have to read the statute to know if I'm familiar with that or not.

Q Are you aware that this particular code provision allows counties to use curtains, screens, or doors on the upper part of the front of each compartment or booth so that in the

marking thereof they may be screened from the observation of others?

A Again, I'd have to see the statue myself to know that.

Q But you would agree that you didn't consult that provision or read that provision you went forward with your vote on March 3rd?

A The provision saying that --

Q That curtains could be used for privacy?

A With -- with the electronic voting equipment?

Q Yes.

A In ways that obstruct the ability to monitor the equipment, it says that?

Q It says the language that I have just read. Had you read this provision before voting on March 3rd?

A Not that I recall. It's possible, but I don't know. There are a lot of statutes in that book.

MS. MCGOWAN: I have no further questions.

MR. RAFFENSPERGER: We have a few -- the Board members have a few questions for the witness. Mr. Worley?

THE WITNESS: Ma'am, did you want this back?

MS. MCGOWAN: Oh, yes. Thank you.

MR. WORLEY: Thank you, Mr. Chair. Mr. Evans, I was struck by something that you said in your testimony, and I wrote it down, and I think what you said was -- and this

is in reference to the early voting location. You went in on, I think it was on March 2nd, the first day of early voting and saw that early voting location at the main office, is that right?

THE WITNESS: Yes, sir.

MR. WORLEY: And what you said was you came to the conclusion that we had to stop the violation of ballot secrecy right then. Isn't that what you testified to?

THE WITNESS: That was in reference to the March 3rd meeting, like, so the March 3rd meeting was what I was referring to when I said that we needed to stop it right then.

MR. WORLEY: Well, you didn't think when you saw the problems on March 2nd -- you didn't think you had to stop it -- stop it at that point?

THE WITNESS: So in my experience with staff throughout my tenure, my concerns are often dismissed as -- and we're often told, like, you know, basically, like, that we're treated as if our concerns aren't basically worth acting on. We already had tension with staff with this. We had staff behaving toward us in very unprofessional ways with this topic, and, like, I didn't feel comfortable addressing it in that moment with the staff.

MR. WORLEY: So on the day, on March 2nd, when you

were there in the office and you could see through the window to the voting booths, you didn't say anything to the staff at that point to say hey, we need to stop this. We need to do something.

THE WITNESS: Not in that moment, sir.

MR. WORLEY: Okay. Was there anything that you saw there on that day that raised concerns about how the staff was able to monitor the election equipment?

THE WITNESS: So the curtain, if you pull up the curtain --

MR. WORLEY: I think it's page 79, ACC BOER 0079. There.

THE WITNESS: So there were staff members when I went standing to the, like -- in this picture here, like, there were staff members standing to the left, like, you know, in this area over here, where it would be over here (indicating). And so -- and there was a staff member sitting behind the window back there, so the only concern that I would have had would have been monitoring what was happening on these machines in the back here or, you know, and from this angle here, you can't really see what a person is doing to a machine from this angle (indicating). So that would have been my concern with the tampering issue.

MR. WORLEY: And your concern about the tampering

issue or an inability to monitor, is that reflected anywhere in the Board minutes?

THE WITNESS: When you say the Board minutes...

MR. WORLEY: The minutes of the Board in this period leading up to March 3rd.

THE WITNESS: It's in the recordings. We've had -- minutes have not been verbatim minutes, but we do have recordings of meetings online, and we have discussed these issues.

MR. WORLEY: I don't have any further questions.

MR. RAFFENSPERGER: Ms. Le?

MS. LE: Thank you. Thank you. I do have a couple questions. That configuration up there, is that typical of other configurations in the past? You've been on the Board for four years, you said?

THE WITNESS: This is my fourth year.

MS. LE: Fourth year. And is that configuration similar to other configurations in the past with the DREs?

THE WITNESS: Actually, no. Like, that's not the way they've been set up in the past.

MS. LE: But not side-by-side ever?

THE WITNESS: Oh, you mean the side-by-side piece?

MS. LE: Yes.

THE WITNESS: Yeah. The DRE situation, they would have the side-by-side and the DREs could be laid back, so

that that would less of an issue for people to go and see --

MS. LE: But they are side-by-side, and the concern you had where when someone walks behind one, it would have been the same for the four years you've been there, no?

THE WITNESS: No, ma'am. Because the DREs -- so the DREs had smaller screens, they could be laid -- these machines are almost vertical, right? And they're bigger screens, and they're more brightly lit, and, like, the text is, like, different as well. Like, with the DREs, you could actually lay them back and as I believe Director Sosebee said earlier, our staff was actually trying to, like, find a way to lay these machines down, and they were advised not to do that. So it was a different experience with the previous system than with this system.

MS. LE: Because -- but the DREs are also upright too, right? So were those a concern back then and what do you do about that to protect the privacy?

THE WITNESS: No. I guess what I'm trying to say is the DREs did not sit in this position, like, necessarily. They can be folded back, and there were smaller screens and different lighting, like it was a very different experience with voters, like, visually. That's -- that's a very different thing than this. This is a very different system than what was used before.

MR. RAFFENSPERGER: I have a couple questions. One, really goes to a little bit what Mr. Worley -- Mr. Worley just asked you. But if you saw that situation -- I'm just on the window on the left -- why didn't you approach one of the, I believe Ms. Sosebee works actually out of that location if it's the main place where I visited once. Why didn't you go over and grab her and bring it to her attention and just go grab some 8 ½ by 11 white paper or a piece of drafting paper and just tape it up from the wall, if it was such a concern to you?

THE WITNESS: As I stated before, there have been, like -- there's been some tension recently and unprofessional behavior towards Board members by staff. And particularly, when -- there's a difference between when we're in a public meeting, and not always but usually if we're in a public meeting, it's one way, but if we're not actually in a public meeting, there are -- other things are said. And I just felt more comfortable addressing it as a Board instead of as an individual.

MR. RAFFENSPERGER: Okay. And I guess when you had your Board meeting, was there any transcript or a video made of that meeting?

THE WITNESS: Which meeting, sir?

MR. RAFFENSPERGER: When someone asked you if the county attorney gave you any legal advice --

THE WITNESS: The March 3rd meeting?

MR. RAFFENSPERGER: The March 3rd meeting.

THE WITNESS: Our meetings are recorded, sir.

MR. RAFFENSPERGER: The meeting has a recording. Do we have a transcript of that because you stated that the county attorney did not give you any advice that you would not prevail, and you would put yourself or your county in a precarious position, and I'd like to know if there is a transcript of that or the video?

THE WITNESS: Sir? Do you mind if I clarify? That's not what I was saying earlier. I was not saying that the county attorney didn't say that we would be -- that we would be challenged. I didn't say that. I didn't say that, like, the county attorney didn't say -- like, I was saying that the county attorney never gave a decision on whether or not this was actually practicable or possible. That's what I was saying.

MS. MCGOWAN: Mr. Secretary, there is audio recording of the meeting, and we're happen to admit that into the record. We could get a copy if opposing counsel would agree to stipulate, then we could put that in the record.

MR. MITCHELL: I've got it on my computer. We can drop it onto the flash drive and just put it in the record as Plaintiff's Exhibit 75.

(Respondent's Exhibit 75 identified.)

MR. RAFFENSPERGER: Yeah.

MS. MCGOWAN: We'll figure it out.

MR. RAFFENSPERGER: Okay. Thank you.

(Respondent's Exhibit 75 admitted.)

THE WITNESS: Do you mind, sir, if I say one more thing that's relevant to this? Is that okay?

MR. RAFFENSPERGER: Go ahead. Be quick.

THE WITNESS: So back in November 2018, our county attorney Ben was giving the Board very bad legal advice. I was the one person, like, on the Board looking at the statute. Like, we had members of precincts had petitioned for recanvass, and they submitted a petition for recanvass, and we were being advised by our county attorney, like, that we could vote not to do this even though the statute says if the three electors in a precinct petition for recanvass, that we shall do that. The word was shall, and he was trying to talk us out of it and saying vote no and don't do this. So with all due respect to county attorneys, they're there to advise, but the decision rests with the Board, and we made the right decision that day, the Board did, in continuing to do the recanvass, but it was a -- I mean, it was a battle, like, to do the right thing. And our county attorney at that point was not on the right side of that battle, so in my experience, county attorneys don't necessarily have the

final say on the legality of something, and that's not their area of expertise necessarily. Election law is not their area of expertise. That's my experience.

MR. RAFFENSPERGER: Mr. Worley?

MR. WORLEY: I just wanted to follow up on something you said. Essentially, you said you weren't comfortable taking your concerns to the staff.

THE WITNESS: By myself and in that moment.

MR. WORLEY: Yeah. Well, wouldn't it make more sense to take your concerns to the staff or go to the other Board members and then go to the staff rather than changing the method of voting for every person in Clarke County?

THE WITNESS: So we -- we met as a Board the very next day, and we were looking at, like, we were expecting prior to that meeting to see the evidence that we could actually meet these three standards that I've been referencing, one machine for every 250 voters in a polling location, absolute ballot secrecy, and monitoring election equipment while in use. This here doesn't satisfy that. That arrangement doesn't satisfy those requirements. And it's not just seeing through the window. When a voter is walking past, they can see the screen. Like, to get from here -- excuse me, here, like walking from here to here (indicating). If a voter is here to get to that machine,

a person can see their ballot when they're, like, walking by that other person. So it wasn't just seeing it through the window, it was this configuration here as well that was a concern.

And we had already been assured by staff -- like, staff had assured us repeatedly that this wouldn't happen, that this ballot secrecy would not be violated at any of these advanced polling locations. And also, staff had assured us that we would be provided in advance the evidence that we needed to know that we can guarantee absolute ballot secrecy. And they just didn't provide it, sir. And that's why -- based upon the information we had at the time, that's what we made our decision on on March 3rd.

MR. WORLEY: And you didn't make any attempt on March 3rd to work with the staff to reconfigure that configuration?

THE WITNESS: Are you asking -- that specific configuration there?

MR. WORLEY: Yeah.

THE WITNESS: Did we go to the Board office and try to help them figure them it out? Is that what you're asking?

MR. WORLEY: Yeah. Did you ask them, or did you tell them you need to reconfigure this? These are our

concerns. What can you do to fix this?

THE WITNESS: We were in a Board meeting at the library, sir. The Board meeting was at the library. It was not at the Board of Elections office.

MR. WORLEY: Right. But you didn't bring up the issue? You didn't say --

THE WITNESS: We did bring up --

MR. WORLEY: -- at the Board -- at the Board of Election office, you haven't configured in properly. How can we change that configuration at the Board of Elections office.

THE WITNESS: So I think you heard earlier that the staff worked, has been working for months to come up with this configuration, and they worked for 13 hours to get that as their best work, right? That's the best that they thought they could do, so, like, I don't -- you're saying that I should have gone to the Board of Elections office and rearranged their equipment for them or...?

MR. WORLEY: I'm asking you if you had any discussions with them at that point about your concerns and asked them to change that configuration.

THE WITNESS: In that moment at that meeting, we did not ask them to change the configuration.

MR. RAFFENSPERGER: Matt Mashburn?

MR. MASHBURN: I just have a request. Can we make --

can we enter the audio recordings of the March 3rd Board meeting and the March 9th Board meeting into the record?

MR. MITCHELL: Yes, sir.

MR. MASHBURN: Thank you.

MR SELLS: We'd actually like to enter all of the meetings since January into the record, audio recordings. I think just about all of them have been referred to today.

MS. MCGOWAN: We have no objection to that.

MR. RAFFENSPERGER: Okay. Order.

MS. LE: I'm sorry. I have one more. I think the last one.

MR. RAFFENSPERGER: Yes, ma'am.

MS. LE: What I'm hearing today, and tell me if I'm hearing correctly, is that you said earlier you don't have a lot of faith in your staff or the confidence --

THE WITNESS: We -- sorry.

MS. LE: -- and -- and the other thing I also heard is you don't have faith -- I'm paraphrasing -- in your attorneys, your Board attorneys either, so what will the Board do going forward in terms of operations?

THE WITNESS: So what I -- what I was saying about the staff is we would like -- we would like staff to show us actual diagrams to scale. They can create the diagrams and show us these diagrams, so we can know that they can -

- that they can actually -- we can actually do what they say they're going to be doing because they said they were going to be doing it with this machine -- with this setup here, and it didn't happen. So that's what I was saying is that we need to be able to be provided actual evidence as a Board to make decisions and not just we'll do our best. That's not acceptable as a Board of Elections.

And then the other thing was about the attorney -- clearly, we're going to seek legal counsel. That's what we do. The Board is the decision-making body. We ask for legal counsel, and then we make a decision based upon what they say, but also based upon what our knowledge is collectively. So that's, like -- it's not that the county attorney is the decision maker for the Board. The Board is the decision maker, and we take into account all the evidence that we can get including what the county attorney says. That's what I mean.

MR. RAFFENSPERGER: Thank you.

THE WITNESS: Thank you.

MR. RAFFENSPERGER: Next witness? Sir, we're -- you're done.

THE WITNESS: I'm done? Okay. Thank you.

MR. MITCHELL: I need to tender Exhibit 15. It was the photograph of the diagrams. I talked to Ms. Lessard about those.

MR. RAFFENSPERGER: Okay.

MS. MCGOWAN: No objection on those.

MR. RAFFENSPERGER: Ordered. Number 15.

(Respondent's Exhibit 15 admitted.)

MR. SELLS: We have no other witnesses.

MR. RAFFENSPERGER: Do you have any closing comments?

MS. MCGOWAN: Yes. Thank you, Board, for your time today. I will be brief because I know we've -- we've been here a long time. To put it simply, Georgia's election code requires that all counties use the ballot-marking device and optical scanner system that was approved by the General Assembly once it was certified by the Secretary of State that it complies with Georgia law, which is has been. This is not discretionary. There is a clear mandate from the General Assembly that counties use this equipment, and as we all know, the State made a significant investment in the Dominion system, funded over $1 million worth of equipment to Athens-Clarke County that is now not currently being used.

Now, certainly no one -- no one here today is arguing that voter privacy is not a legitimate concern. It is protected by the State constitution and in the election code. But it is not justification for scrapping the equipment all together and switching to hand-marked paper ballots. The Secretary of State's Office understands the

privacy concern and that is why it provided training materials and manuals and diagrams to help staff at the county level decide how they can best lay out their equipment and provided solutions on the phone with staff as to how they could achieve voter privacy. Here, the Director of Elections clearly took this issue seriously. She developed a privacy plan and frankly, it was ignored by the Board.

The Georgia election code and the Board's rules only permit the use of hand -- paper ballots in an emergency situation, when the use of voting equipment is impossible or impracticable. That's the language in the statute. What this means is a technical malfunction of the equipment, when it simply just doesn't work. Now, as Mr. Germany explained when we started the day off today, impossible or impracticable does not mean inconvenient. It doesn't mean when it's the preferred policy choice of a county board. The Georgia Supreme Court has defined -- well, we all know what impossible means, but the Georgia Supreme Court has defined the term impracticable as it's used in statute, and they have said to say that something is impracticable is to say that it reasonably cannot be done. It does not mean merely that it is inconvenient.

Now, here, we certainly don't dispute that this was a difficult decision before the Board and that they were

weighing competing interests between privacy and how to set up their locations and accommodate the number of voting booths that they had to provide by law, but here, I think it's pretty clear from the Chairman's testimony that the Board didn't really even consider whether privacy was achievable. It seemed to be a foregone conclusion when they went to vote. The staff worked hard as we saw to come up with a privacy plan. They had sketches made. The Board didn't wait to review those for each polling location. They instead moved forward with a hasty vote.

This vote was also against the advice of the county attorney. At the meeting, since the audio will be admitted into the record, you will hear them talk about this situation and how the same situation happened down in Sumter County and the very argument that voter privacy issues mandated that counties switch to hand-marked paper ballots that had already been rejected by the judge down in Sumter County. I was present at that hearing in Sumter County. What it was was an emergency hearing on a writ of mandamus where a voting rights organization had sued the County Board trying to force them to use hand-marked paper ballots based on privacy concerns. The Superior Court judge rejected that emergency motion, denied it, and what the judge found there was not the Board had discretion to make that decision. What the judge found was that there

wasn’t evidence that it was impossible or impracticable to achieve voter privacy, and many of the same exhibits and evidence were presented at that hearing as was today, where the judge was persuaded that options that were provided by the Secretary of State’s Office to achieve privacy were -- could be employed by that particular Board.

It’s also important to note that in addition to being able to achieve voter privacy with the BMD touch screens by using screens or curtains, any voter that has a concern about the privacy of their ballot and prefers to vote on paper can do so under Georgia law. Any voter can request an absentee ballot and vote by absentee ballot.

There’s been some discussion and testimony about this Cobb County pilot. As the Board is likely aware, this pilot was ordered by Judge Totenberg in the Curling case last summer. That plan was to test out an emergency back-stop in case the new Dominion equipment either didn’t come in on time, wasn’t available to be used, or hadn’t been certified by that time. It was not presented as an alternate option for counties. And the judge in that case has certainly not ordered that this back-stop plan be put into place.

So to conclude, we believe the evidence establishes that the Athens-Clarke County Board of Elections committed

violations of the Georgia election code, specifically 21-2-300, which requires that all counties use the Dominion ballot-marking devices with optical scanners. We've also cited codes 21-2-265, 266, and 267, which require Boards to approve polling locations that can accommodate the equipment that is required.

As far as options that are available to the Board, OCGA 21-2-33-.01 provides the particular remedies that are available. The Board can order the Athens-Clarke County Board of Elections to cease-and-desist using hand-marked paper ballots in a way that violates the election code. A public reprimand is also a remedy that is available. The Board can order that the County pay the Secretary of State's investigative costs, which I understand for this matter have become substantial because this has turned into a full-time endeavor for -- for many staff members of the Office since the emergency hearing was announced.

The Board may also impose a civil penalty of up to $5,000 per violation. The appropriate penalty is within the Board's discretion. It's also within your discretion to determine what's a violation? A violation could be each paper ballot that was cast improperly or it could be for each day the Board of Elections is not in compliance with the law, so it's up to you to determine both the amount per violation that should be imposed and the number

of violations.

In addition to the statutory provisions, as the notice of hearing provides notice of, we believe that there's also been violations of the SEB rule 183-1-12-.01 and 183-1-14-.02.

MR. SELLS: I want to again thank the Board for wading out here in all this testimony. I'm not sure you signed up for 7 hours of a hearing, but that's what we delivered today. I want to respond to a few things that my friend on this side of the table just said.

Number one, she said that hand-marked paper ballots are only available under Georgia law in the event of a technical malfunction. That is simply not the law. 21-2-344 is the statute which has existed for quite some time, and it allows the use of paper ballots when voting machines become impossible or impracticable to use or not practicable -- not practicable is the actual language.

And there is an Attorney General opinion directly on the point, and I'll get that citation. It is 1997 Georgia opinion of the Attorney General, at page 7. This was a 1997 opinion authored by Michael Bowers to Lewis Massey, the Secretary of State. And the issue there was not a technical malfunction, it was an impracticability or impossibility because the ballot language was too long to fit on the voting machines that were in use. And so that

became impracticable, and Mr. Bowers cites the 344 and says now applied to this situation, you've got impracticability and so you should use hand-marked paper ballots in order to maintain compliance with Georgia law. So I think it's clear that this failsafe can apply other than in situations where there is a technical malfunction or a power outage.

There's a separate section of Georgia code that applies to the emergency ballot situation, and that does apply not only to a technical malfunction or to a power outage, but it also applies in situations where the line is more than 30 minutes long, so there's yet another provision there. But that's not the provision that the Athens-Clarke County Board of Elections relied on. The Board of Elections here relied on 21-2-344.

Ms. McGowan also said that voter privacy is not a justification for scrapping ballot-marking devices, and we respectfully disagree with that position. Ballot secrecy is a constitutional right under Georgia law, and if it is impossible or impracticable to guarantee that right using the machines, then -- in a particular situation, then it is not only possible but actually a duty of a County Elections Board to declare that to be impossible or impracticable.

Now, having said that, this is not a case, and I hope

it became apparent from Mr. Evans' testimony, where the Athens-Clarke County Board of Elections took the position that the BMDs can never be used in a manner that is consistent with voter privacy or ballot secrecy. That is not our position. The position is what you heard here today that we couldn't fit enough machines, the required number of machines, in the space allowed in a way that would comply with the Secretary of State's diagrams that were specifically promulgated in order to guarantee ballot secrecy.

And in fact, even though the Board of Elections didn't have any sketches at the time they made this decision, the ones we have seen look an awful lot more like Mr. Harvey's examples of what not to do than what to do. And there is a real problem in Athens-Clarke County particularly with respect to about six polling places of whether you can fit the number of machines in the space in a manner that is remotely consistent with what Mr. Harvey laid out. And so this Board, being unable to add polling places or move polling places to a larger location, really did find itself between a rock and a hard place, and it may or may not be the only Board in the State dealing with those issues.

This is not about any other County. This is about the polling places that exist in Athens-Clarke County, and

the ones that, frankly, we're stuck with for the March 24th primary. We can make changes for the May primary, and we've already done that, and we can make more changes, if necessary, for the November election, and I think the Board indicated -- Mr. Evans indicated willingness to do that if necessary to comply with all of the legal requirements.

You heard Ms. McGowan say that this was a difficult decision by the Board, and it certainly was. It was not a hasty decision. Ballot secrecy was one -- was an issue the Board had asked about repeatedly for months and had asked them to provide more than mere assurances that ballot secrecy would be respected given the constraints that the Board was facing. The Board did not receive those drawings, and it -- given the information before it, it made what is clearly a reasonable decision. It may not be the one that the State Election Board would make. It may not be the one that another county would make.

But I think that in order to find a violation of law here, the State Election Board needs to find that no reasonable Board would find it impracticable to meet its many obligations under the law with the use of ballot-marking devices. Again, if the Board -- if this Board applies any other standard, then you take away discretion and you open the courthouse door to litigants who want to

capitalize on that lack of discretion to get judges to substitute their opinions for those of Boards of Elections around the state.

I will close where, in a way, I began, and it was part of Mr. Evans' testimony as well, that this Board remains open-minded and willing to work not only with staff but also with the Secretary of State's Office to try to come up with a solution that works in Athens-Clarke County that respects voter privacy, complies with the legal obligations for the number of voting booth required, and also complies with changes -- the restrictions on changing a polling place so many days before an election. We can't change polling places before the presidential primary, but there may be other things that we can do, working with the Secretary of State, that would provide a technical solution here. In fact, the Secretary of State's Office clearly has diagramming capabilities. I suggest that might be one area where we could collaborate and come up with the kind of evidence that the Board has been requesting for a way to allow them to ease back into the polling places in a way that respects voter privacy.

Voter privacy, ballot secrecy is clearly something that is important to the Board. It is a constitutional right, and it is one of several things that the Board has to consider when equipping its polling places and moving

forward with elections. I think it's beyond dispute based on the evidence in front of you that this Board did its level best, given the information in front of it to try to accommodate all of the many requirements that it faced. So if -- I think with that, I'll rest.

MR. RAFFENSPERGER: Any Board members have any comments or input? Would you make a -- go ahead.

MS. LE: I think what I heard today is a little bit concerning with how Clarke County -- Athens-Clarke County Board and its staff work, and we're up against a very important year. Elections is a demanding business to begin with, but what I heard today is concerning, and I hope -- it seems to be a, you know, disconnect between the Board and its, I guess, staff if you want to call it that, but I really hope you guys find a way to better communicate. It has to happen or else what I feel like -- the impression I got from this, hearing the testimony, especially that of Mr. Evans, is that this, what has been brought today, seems more like an event of miscommunication between the staff and the Board --

MR. RAFFENSPERGER: Excuse me.

MS. LE: -- because it could be resolved another way, the Board decided to take this extreme measure. I don't see impossibility or impracticability based on the definition with the law because I don't hear that other

options haven't been explored, like the windows, and, you know, those are very concerning, I understand. But they're not impracticable for this. So I think there's some here for the Board and its staff to figure out how to make this work. You're up against a big year. There's a lot on you, I understand. I was in elections, I understand. But we're not talking about is it easy or is it hard? We're talking about is it impracticable. And by that standard, I don't see it here today from what I'm hearing. And it is my sincere hope that you guys figure it out and work with the Secretary of State's Office. I think it can be done. Other counties are doing it too.

MR. RAFFENSPERGER: Worley? Mashburn?

MR. MASHBURN: The two major problems that I see with the Respondent's case today was that there's actually been no evidence introduced that anybody actually ever saw a ballot be cast. There is a hypothetical idea that somebody may be doing this, if they were doing that, could have maybe seen something. The Chairman's testimony today was that he saw a screen and that had there been a voter there, he believed that he might have been able to see the vote, but he didn't see an actual vote be cast. So I think you've got the burden of the proof, the Board had the burden of proof of establishing impossibility and impracticably -- impracticability. And I don't think they

met their burden of proof because they didn't introduce anybody today that actually saw a ballot be cast. There were two witnesses who said they were concerned about it. They didn't see a ballot be cast. They didn't testify that somebody else saw their ballot being cast. So there was no evidence.

Now, the absence of evidence also creates the second problem in your case. And I don't think I'm the only person to see this, but there's a lot of dysfunction going on in that office between the Board and the staff. There's a lot of dysfunction, but the problem is not whose fault is it? Or who didn't give me what I wanted? It was do we have enough evidence to make a determination that it's impossible or impracticable? And the Chairman's testimony again solidified that there wasn't the evidence. He didn't get the evidence that he wanted. And so the -- the default position is that it is possible and it is practicable. And in fact, that was the testimony of the Elections Supervisor that she said that, so to move off the default of possible and practicable, you have to have convincing and clear evidence that it's not. And the testimony that we heard today was well, the staff didn't get me the information from which to make that determination. Well, if that's the case, the status quo applies, and you don't make the change. So those are the

two things that I'm very concerned about with the Respondent's case.

MR. RAFFENSPERGER: Mr. Worley?

MR. WORLEY: First of all, I compliment the attorneys, and I compliment both sides. I particularly compliment Mr. Sells because I think he has a very difficult case, and I think he made a reasonable argument. But I don't think -- I don't think the Board, the Athens-Clarke County Election Board has actually been reasonable in what it's done. I do think that the standard is if you want to make a change like this, you have to show that it's impossible or impracticable. The Elections Supervisor testified that she told the Board it was not impossible or impracticable. And in this case, having listened to her testimony and the testimony of the other members of the staff and the testimony of the Chairman of the Board, I come down on the side of the Elections Supervisor.

And I think, after having heard the testimony, that I really don't think the Board was being reasonable and dealing with its concerns by making a wholesale change in every precinct when from the facts that we have, there are reasonable concerns about ballot privacy and secrecy in some limited number of precincts, but to me, the appropriate way to deal with that is not to make a

wholesale change as it was done. So I think -- I think the Board did violate the law. I think they do have the burden in showing impossibility and impracticability and they did not do that. I think they violated the statute in terms of an appropriate penalty. I would favor ordering them to cease-and-desist from using the hand-marked ballots at this point, and I would defer in further penalties until such time as the Secretary of State's Office has had a chance to work with the Board to reach a resolution of these privacy concerns, and if that can't be done, then I would consider a further penalty at that time.

MR. RAFFENSPERGER: Well, I'm in agreement with many of the comments that have been made by the Board. I've heard an awful lot of management dysfunction, and I've heard the Chair of the Board has an issue and believes that the county attorney has given bad legal advice, so he has no confidence in the county attorney's legal ability and then has also expressed dissatisfaction with county election officials. I have traveled to many of the counties throughout the State, and one thing I really have spoken highly of is the personal integrity of our county election officials, that -- it doesn't really matter what side of the aisle they're on. What 100% of them, what I have found, is they want to do a good job in the process.

But it's not our job to handle the day-to-day management of Athens-Clarke County elections, but I would highly recommend that you work collegiately as a team because this is a very important year. We're trying to keep lines down because we're expecting over 5 million people to show up for the November election, so therefore, when you, you know, decouple your precincts and have additional precinct locations, I think that'll be a good thing, and that's the right path that you're on.

But I concur with my members that have spoken so far today that I don't think that you've provided clear and convincing proof in your case and that you have actually, you know, violated, you know, the sections of code and SEB rules as stated by the Attorney General's Office.

Accordingly, we can bring this to a vote, but what I'm going to recommend first off is I would recommend a cease-and-desist, a public reprimand -- which I think we've just given you right now -- but also we've had some investigation costs, and, you know, we're going to -- we'll work that up and I believe that we should assess that, and we're going to send you an invoice for that because I think that is the appropriate reaction.

But also, you've been voting, you know, with hand-marked paper ballots for a week, and the question is what is the appropriate day for you to be ready to go back to

ballot-marking devices? And if you think you could stand it up and have it done tomorrow, then that would be it. But obviously, it's 5:20 tonight, and I don't think you can do that, but if you can try it Friday, and maybe I should ask Ms. Sosebee, once it's finished, you could stand that back up?

MS. SOSEBEE: Tomorrow.

MR. RAFFENSPERGER: You would actually be ready tomorrow morning?

MS. SOSEBEE: Yes.

MR. RAFFENSPERGER: Mr. Germany, you look like you want to say something?

MR. GERMANY: Please. I was just going to add --

MS. LE: You can have my mic.

MR. GERMANY: Sorry. I was just going to add that given what I heard today as well, I think it will be difficult to work to come up with a solution that's not ordered by the Board. I think that cease-and-desist order does accomplish that. I was going to propose a fine where we basically put a -- well, if they say they're back in compliance, we'll suspend it, given a certain time. Based on Director Sosebee's statement that they can be back in compliance tomorrow, I don't think a fine will be necessary, other than the investigative costs.

MR. RAFFENSPERGER: Okay.

MS. LE: I was actually going to -- I was thinking of making that proposal myself, which is $5,000 per day until full compliance to the satisfaction of your office at which point you can suspend.

MR. RAFFENSPERGER: Okay.

MR. GERMANY: I was thinking along the same lines, but given what Director Sosebee said, you know, I would be comfortable without imposing a civil penalty at this point.

MR. WORLEY: I -- it would be my preference to vote on some of these proposed penalties separately because I, for one, don't feel comfortable assessing the investigative costs without actually knowing what they are, so I would make a motion to order the Athens-Clarke County Board of Elections to cease-and-desist using hand-marked ballots immediately.

MS. SULLIVAN: Second.

MR. RAFFENSPERGER: Do we have any further discussion? All those in favor of issuing a cease-and-desist to Athens-Clarke County, signify by saying aye.

THE BOARD MEMBERS: Aye.

MR. RAFFENSPERGER: Any opposed? Motion carries.

MR. MASHBURN: I will support the Chairman's -- Secretary's remedy for administrative or investigative costs. And the reason -- the reason why I support that

idea is because our -- I had an open mind coming in, and as I heard the testimony develop today, what I -- what I started hearing is that there was a kind of a misunderstanding about decisions being made about policy and the implementation of the policy and I was like, okay. There's a simple disagreement. There's a simple misunderstanding there. But as the day went on, it sounded like there was more than that, and the concern that I have is that the citizens of Athens-Clarke County who want to vote with electronic devices were denied that, and it was stripped from them on a one-person vote. And so they, the people that want cast a ballot on paper have the right to do so. It's well established, and the Supreme Court has already held that. And so there needs to be something more. There does need to be a remedy for that. The other problem is the equipment was provided by the taxpayers of the State of Georgia, if I'm not mistaken.

MR. RAFFENSPERGER: You're correct.

MR. MASHBURN: It wasn't bought by Clarke County, and so Clarke County wasn't putting away their own equipment in their own county doing their own thing. They were dealing with equipment bought by the taxpayers all over Georgia. So there does need to be more than just the cease-and-desist and the reprimand, so I support strongly

the motion made by the Chairman to propose the investigative costs.

MR. RAFFENSPERGER: Mr. Germany, did you want to add something to that?

MR. GERMANY: I would -- I would support that as well. I do think we should talk about what those costs would be, and frankly, you know, I think we are all cognizant of the fact that we don't want necessarily to punish the citizens of Athens-Clarke County or the County Commission for what seems to be some dysfunction on the County Elections Board. So I think a reasonable number for that would be $2500. I think that's very low. I think the investigative costs are probably more than that, but I think that's a reasonable number to get the point across that there is a monetary component of this.

MR. RAFFENSPERGER: To Mr. Germany's point, I ran some numbers this morning and that was over $16,000 before I started calling, you know, someone in the accounting department, so I think your number is very fair. And I'll let it go at that. Do you want to make a motion?

MS. LE: Does that include the $5,000? Or is that a separate one?

MR. RAFFENSPERGER: No. That's a separate one.

MS. LE: Oh, okay. I motion for a fine of $2500...

MR. GERMANY: Investigative costs.

MS. LE: Investigative costs.

MR MASHBURN: I second the motion to impose the investigative -- investigative costs of $2500.

MR. RAFFENSPERGER: Any further discussion? Hearing none, all those in favor of the $2500 investigative cost to be assessed to the County Election Board of Athens-Clarke County, signify by saying aye.

THE BOARD MEMBERS: Aye.

MR. RAFFENSPERGER: Any opposed?

MR WORLEY: No.

MR. RAFFENSPERGER: Motion carries.

MS. LE: I'd like to propose, just to ensure timely compliance, $5000 per day per violation, per day per violation until Athens-Clarke County is in full compliance to the satisfaction of the Secretary of State's Office.

MR. RAFFENSPERGER: At which time it will be waived?

MS. LE: It could be waived.

MR. RAFFENSPERGER: Do we have a second?

MR. MASHBURN: I'll second that.

MR. RAFFENSPERGER: Do we have any discussion?

MR. WORLEY: So is it our understanding that if they revert to the ballot-marking devices tomorrow, there will be no penalty?

MR. RAFFENSPERGER: That is correct.

MR WORLEY: Okay.

MR. RAFFENSPERGER: Any further questions? Comments? I'll call the question. All those in favor of proposal introduced, the motion before us, signify by saying aye.

THE BOARD MEMBERS: Aye.

MR. RAFFENSPERGER: Any opposed? Motion carries. Does anyone have any more information -- any further comments before we adjourn?

MR. WORLEY: I would just have one further comment. There's been some discussion about dysfunction between the Board and the staff. We've heard testimony today. I don't see anything that the staff has done improperly in this situation, and I just wanted to state that on the record.

MR. RAFFENSPERGER: If that was a motion, I'd second it. Being it not, and it's late in the day, this meeting is adjourned.

(Meeting adjourned 5:30pm)

CERTIFICATE

STATE OF GEORGIA
COUNTY OF DEKALB

I, Kaitlin Walsh, Certified Court Reporter, hereby certify that the foregoing pages numbered 2 through 257 constitute a true, correct and accurate transcript of the testimony heard before me, an officer duly authorized to administer oaths, and was transcribed under my supervision.

I further certify that I am a disinterested party to this action and that I am neither of kin nor counsel to any of the parties hereto.

In witness whereof, I hereby affix my hand on this, the 16th day of April, 2020.

Kaitlin Walsh, CCR, CVR
CCR #: 5910-3132-3171-2256

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21
90 (2)
19:3;20:21
9th (4)
8:23;121:21;163:2;
234:2

EXHIBIT 1
SEB
Deponent
Date Rptr.
WWW.DEPOBOOKPRODUCTS.COM
SEB-0108

SEB-0109

THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the attached four (4) pages are true and correct copies of the Dominion Voting System Certification issued on February 19, 2020; KNOWiNK Electronic Poll Book Certification issued on January 17, 2020; KNOWiNK Electronic Poll Book Certification issued on October 11, 2019; and the Dominion Voting System Certification issued on August 9, 2019; all as the same appear on file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 9th day of March, in the year of our Lord Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth.

Brad Raffensperger

Brad Raffensperger, Secretary of State

EXHIBIT 2
JEB
Deponent
Date Rptr.
WWW.DEPOBOOKPRODUCTS.COM

THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the Dominion Voting System (EAC Certification Number DVS-DemSuite5.5-A), consisting of the Democracy Suite 5.5-A Election Management System Version 5.5.12.1, EMS Adjudication Version 5.5.8.1, ImageCast X Prime (ICX BMD) Ballot Marking Device Version 5.5.10.30, ImageCast Precinct (ICP) Precinct Scanning Device Version 5.5.3-0002, and ImageCast Central (ICC) Central Scanning Device Versions 5.5.3-0002 and 5.5.3.3, manufactured by Dominion Voting Systems, Inc., 1201 18th Street, STE 210, Denver, Colorado 80202, has been thoroughly examined and tested and found to be in compliance with the applicable provisions of the Georgia Election Code and Rules of the Secretary of State, and as a result of this inspection, it is my opinion that this kind of voting system and its components can be safely used by the electors of this state in all primaries and elections as provided in Chapter 2 of Title 21 of the Official Code of Georgia; provided however, that I hereby reserve my opinion to reexamine this voting system and its components at anytime so as to ensure that it continues to be one that can be safely used by the voters of this state.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 19th day of February, in the year of our Lord Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth

Brad Raffensperger

Brad Raffensperger, Secretary of State

THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the KNOWiNK PollPad Plus 2.5.0 electronic poll book, a product of Know Ink, LLC, 2111 Olive Street, Saint Louis, MO 63103, has been thoroughly examined and tested and found to be in compliance with the applicable provisions of the Georgia Election Code and Rules of the Secretary of State, and as a result of this inspection, it is my opinion that this kind of electronic poll book and its components can be safely used in all primaries and elections in this state as provided in Chapter 2 of Title 21 of the Official Code of Georgia; provided however, that I hereby reserve my opinion to reexamine this electronic poll book and its components at anytime so as to ensure that it continues to be one that can be safely used in this state.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 17th day of January, in the year of our Lord Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth

Brad Raffensperger

Brad Raffensperger, Secretary of State

THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the KNOWiNK PollPad Plus 2.4.7 electronic poll book, a product of Know Ink, LLC, 2111 Olive Street, Saint Louis, MO 63103, has been thoroughly examined and tested and found to be in compliance with the applicable provisions of the Georgia Election Code and Rules of the Secretary of State, and as a result of this inspection, it is my opinion that this electronic poll book and its components can be safely used in all primaries and elections in this state as provided in Chapter 2 of Title 21 of the Official Code of Georgia; provided however, that I hereby reserve my opinion to reexamine this electronic poll book and its components at anytime so as to ensure that it continues to be one that can be safely used in this state.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 11th day of October, in the year of our Lord Two Thousand and Nineteen and of the Independence of the United States of America the Two Hundred and Forty-Fourth

Brad Raffensperger

Brad Raffensperger, Secretary of State

THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

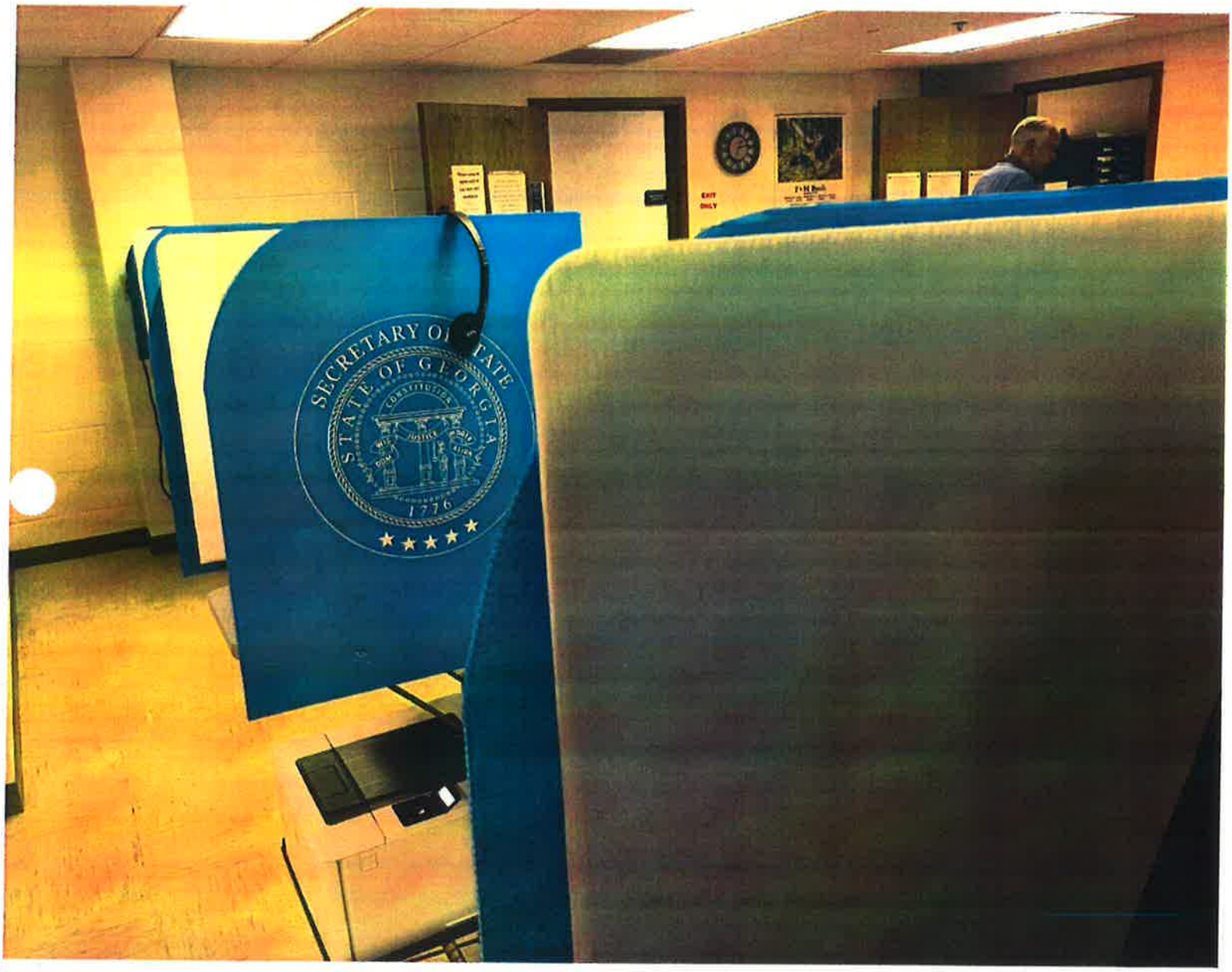
I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the Dominion Voting System (EAC Certification Number DVS-DemSuite5.5-A), consisting of the Democracy Suite 5.5-A Election Management System Version 5.5.12.1, EMS Adjudication Version 5.5.8.1, ImageCast X Prime (ICX BMD) Ballot Marking Device Version 5.5.10.30, ImageCast Precinct (ICP) Precinct Scanning Device Version 5.5.3-0002, and ImageCast Central (ICC) Central Scanning Device Version 5.5.3-0002, manufactured by Dominion Voting Systems, Inc., 1201 18th Street, STE 210, Denver, Colorado 80202, has been thoroughly examined and tested and found to be in compliance with the applicable provisions of the Georgia Election Code and Rules of the Secretary of State, and as a result of this inspection, it is my opinion that this kind of voting system and its components can be safely used by the electors of this state in all primaries and elections as provided in Chapter 2 of Title 21 of the Official Code of Georgia; provided however, that I hereby reserve my opinion to reexamine this voting system and its components at anytime so as to ensure that it continues to be one that can be safely used by the voters of this state.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 9th day of August, in the year of our Lord Two Thousand and Nineteen and of the Independence of the United States of America the Two Hundred and Forty-Fourth

Brad Raffensperger

Brad Raffensperger, Secretary of State



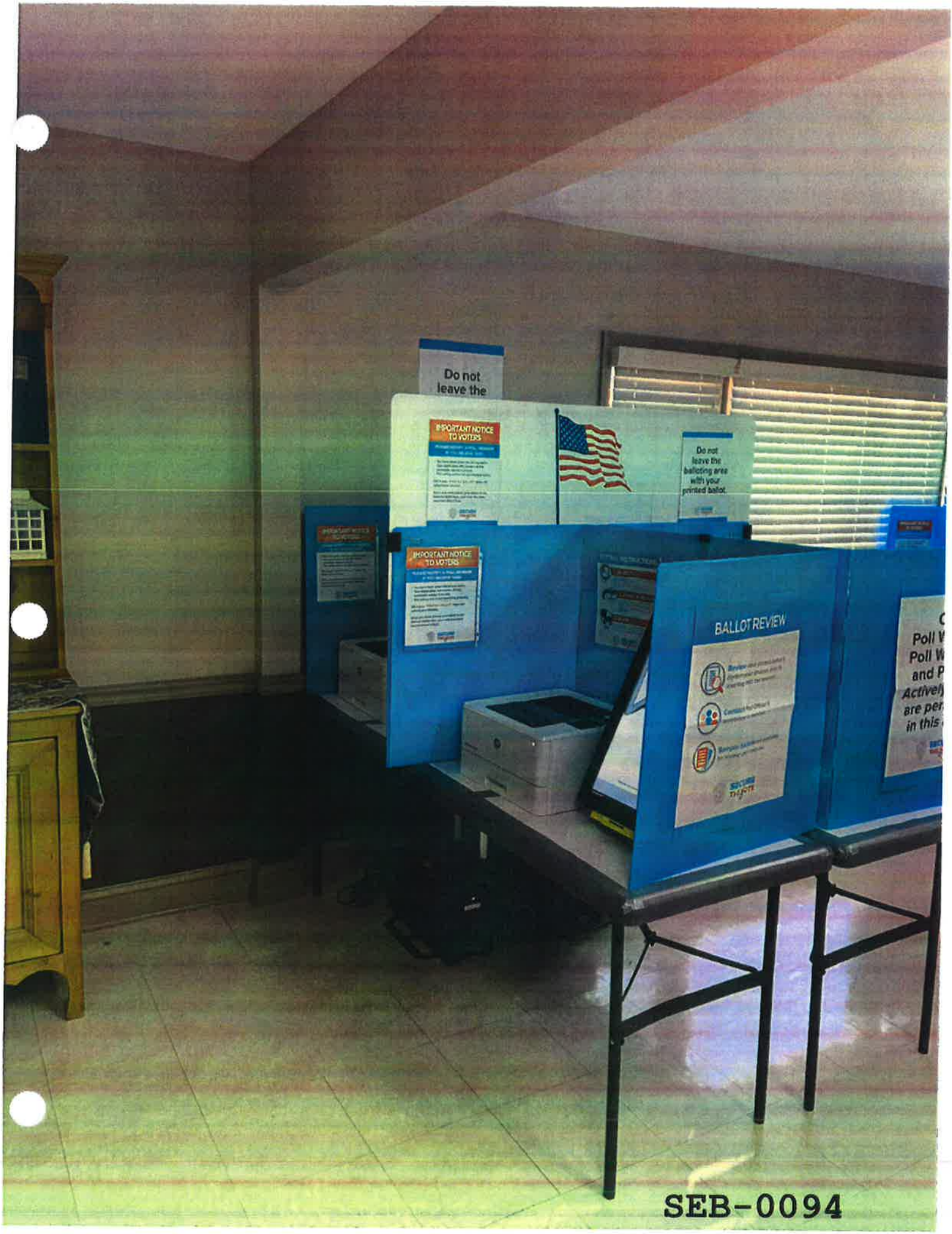
STATE'S EXHIBIT 3

PENGAD 800-631-6989

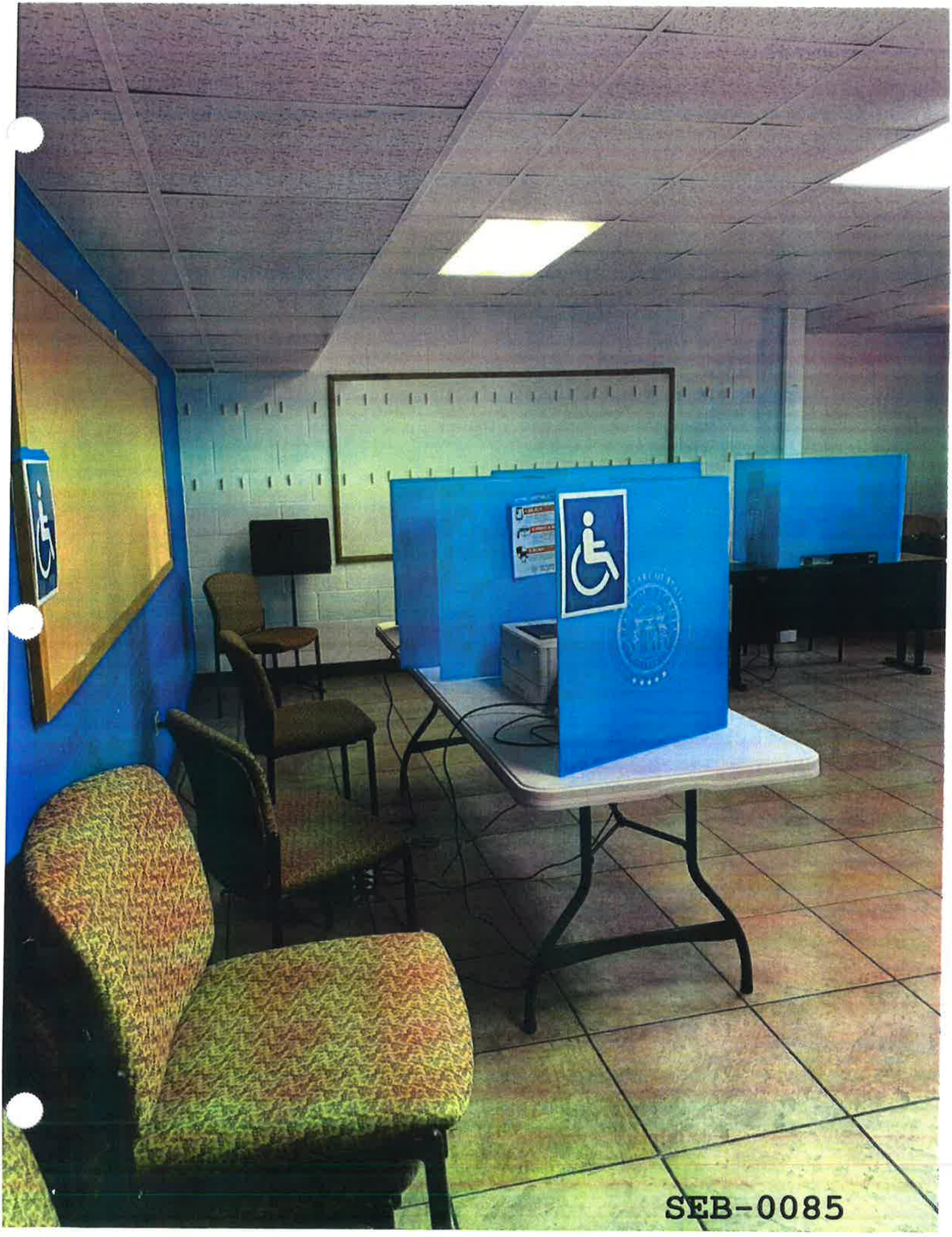
SEB-0104

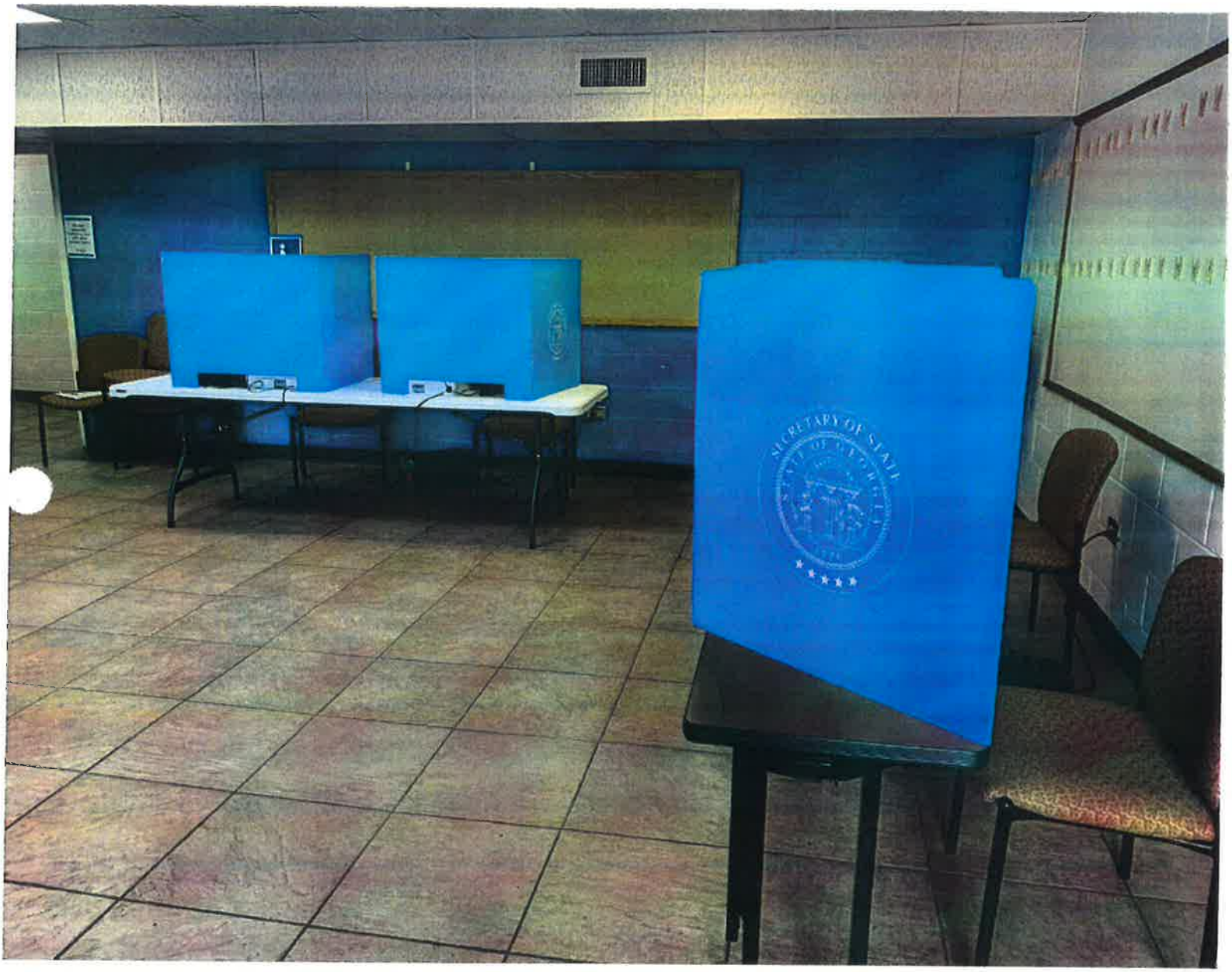
VOTE
VOTE
Do not leave the balloting area with your printed ballot.

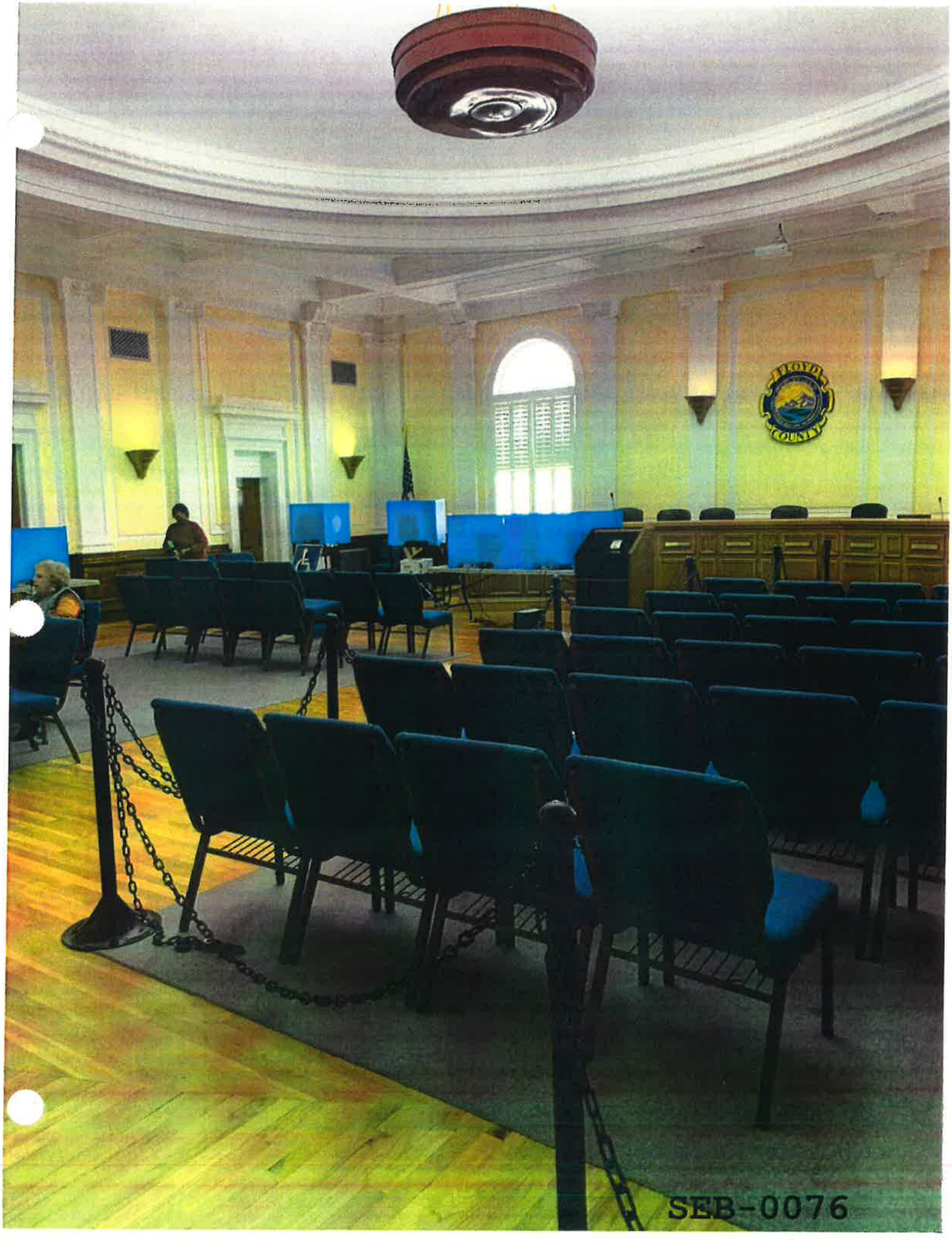
SEB-0107


Do not leave the
IMPORTANT NOTICE TO VOTERS
Do not leave the balloting area with your printed ballot.
IMPORTANT NOTICE TO VOTERS
BALLOT REVIEW

SEB-0094


SEB-0085


SECRETARY OF STATE



SEB-0076

Floyd

SEB-0081

Thomas Mitchell

From: Charlotte Sosebee <Charlotte.Sosebee@accgov.com>
Sent: Thursday, January 23, 2020 8:29 AM
To: Deborah Lonon
Cc: Lisa McGlaun
Subject: STATE DISTRIBUTION OF VOTING EQUIPMENT TO ACCGOV ELECTIONS

Good morning and Happy Thursday...

Below is the list of equipment ACCGov Elections will receive from the State's Budget:

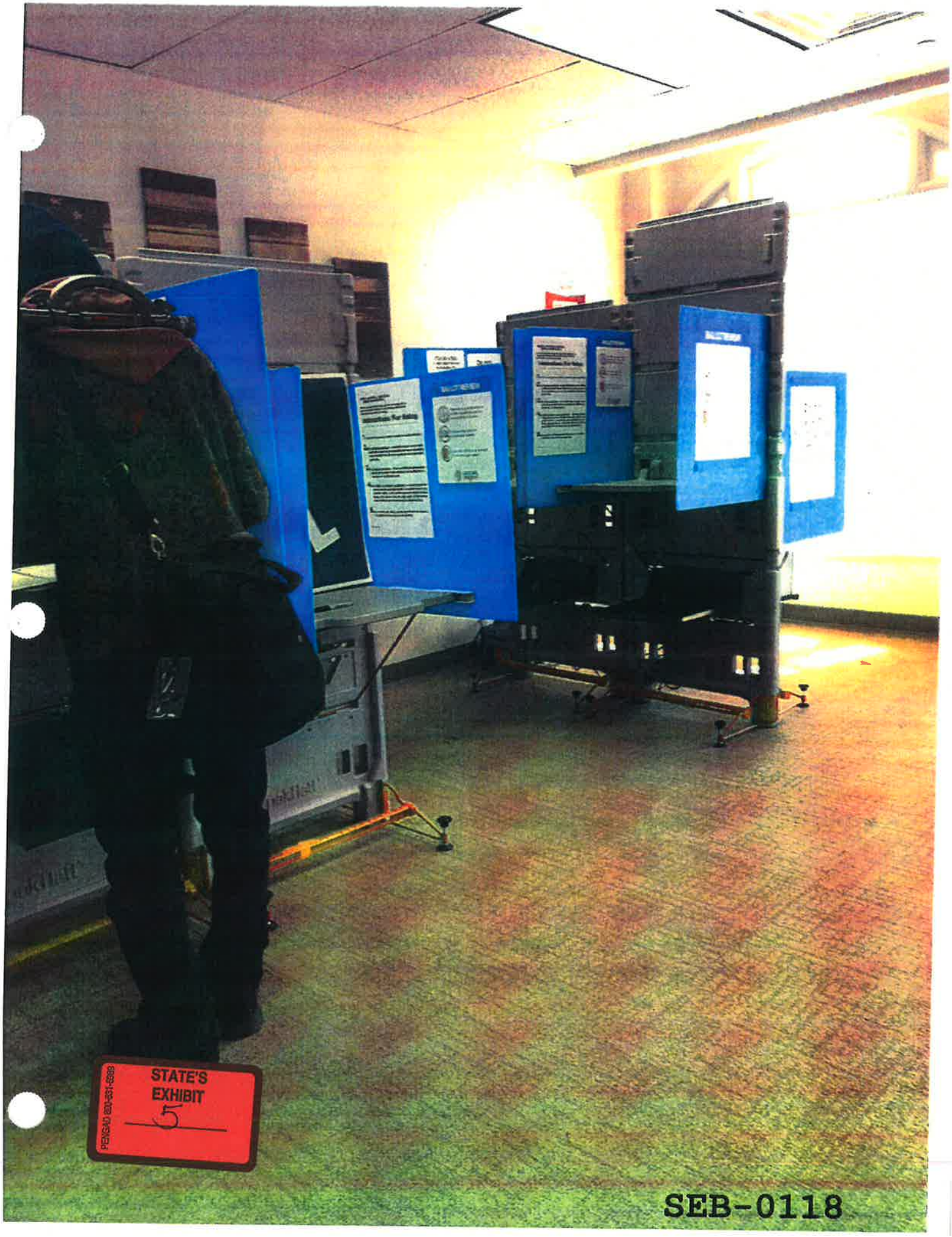
EQUIPMENT	UNITS	STATE'S INVESTMENT
Ballot Marking Devices (BMDs) includes printers	318	$ 641,142.06
Polling Place Scanners & Ballot Boxes (PPSs) (Tabulates ballots at the Polling Places)	34	$ 82,632.24
Central Scanning Device (CSD) (Tabulates Absentee Ballots)	1	$ 4,950.11
Poll Pads (Check-in System)	124	$ 108,066.00
Mobile Ballot Printer (MBP) (Ballot on Demand Printer)	1	$ 5,800.00
Software	-	$ 197,297.02
TOTAL	478	$1,039,887.43

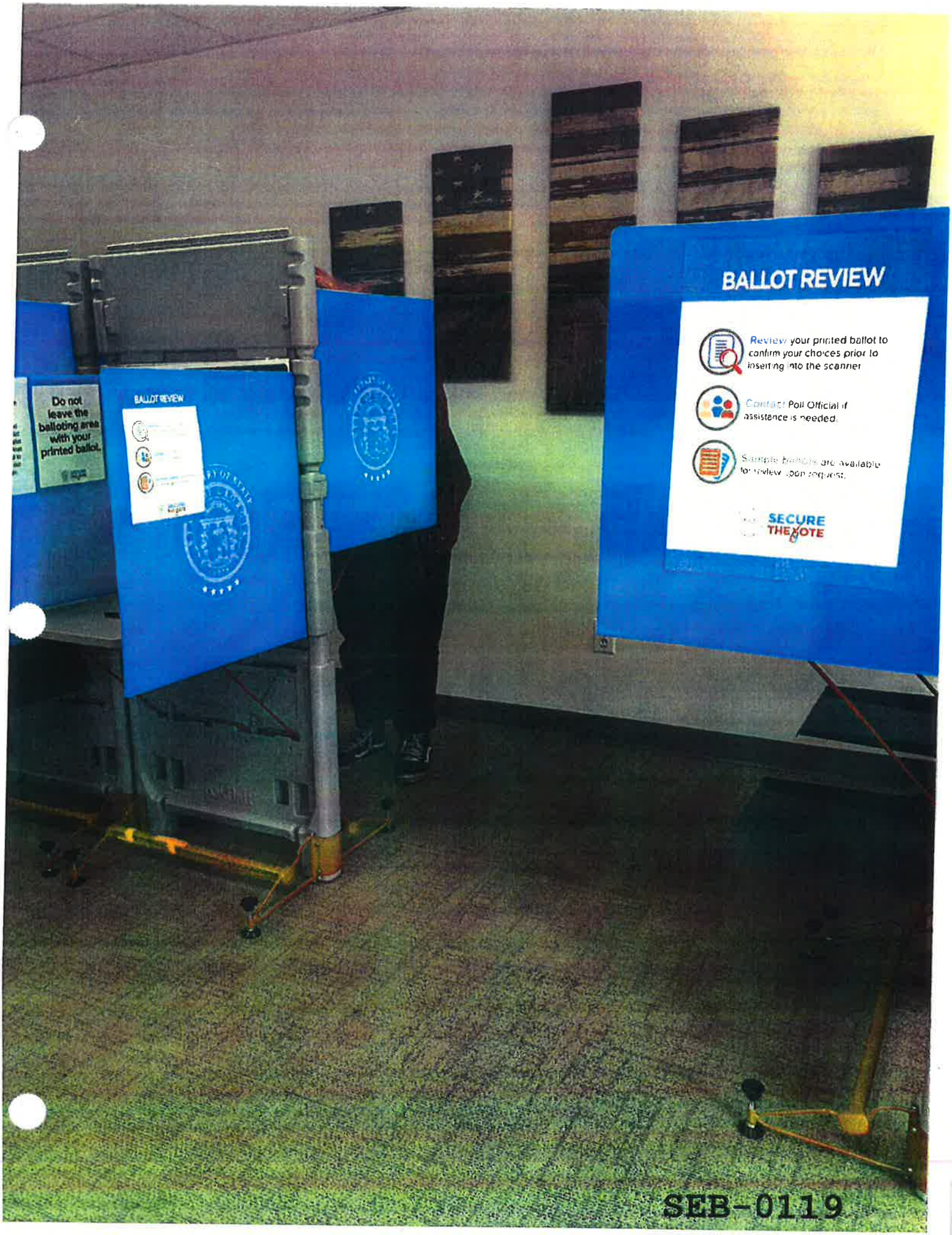
Please let me know if you have any questions.

Best,
Charlotte

Charlotte Sosebee, **Director**
Athens-Clarke County Board of Elections
155 E Washington Street***Athens, Georgia 30601
706-613-3150

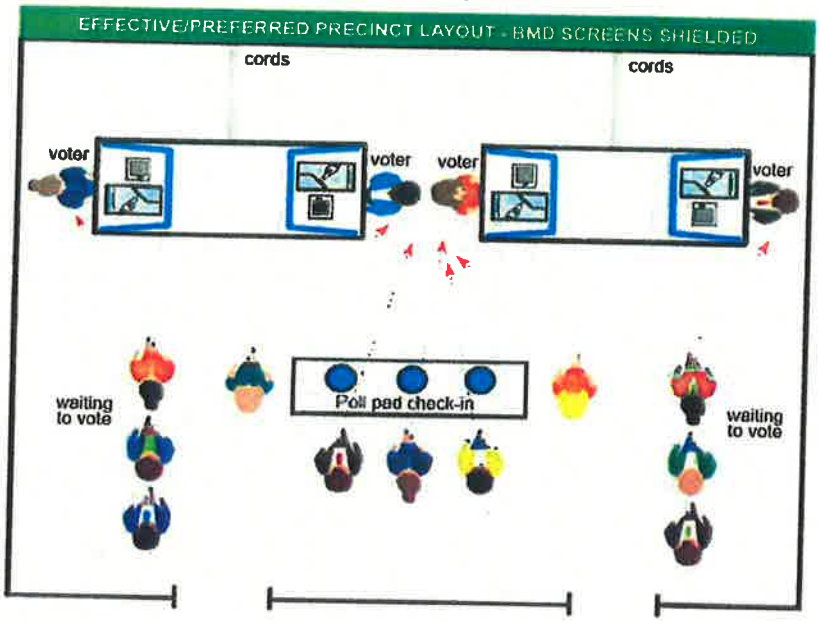
*"If you only have one **Smile** in you, give it to the people you **Love!**"*
-Maya Angelou


STATE'S
EXHIBIT
5
SEB-0118


BALLOT REVIEW
Review your printed ballot to confirm your choices prior to inserting into the scanner
Contact Poll Official if assistance is needed.
Sample ballots are available for review upon request.
SECURE THE VOTE
Do not leave the balloting area with your printed ballot.
BALLOT REVIEW
SEB-0119

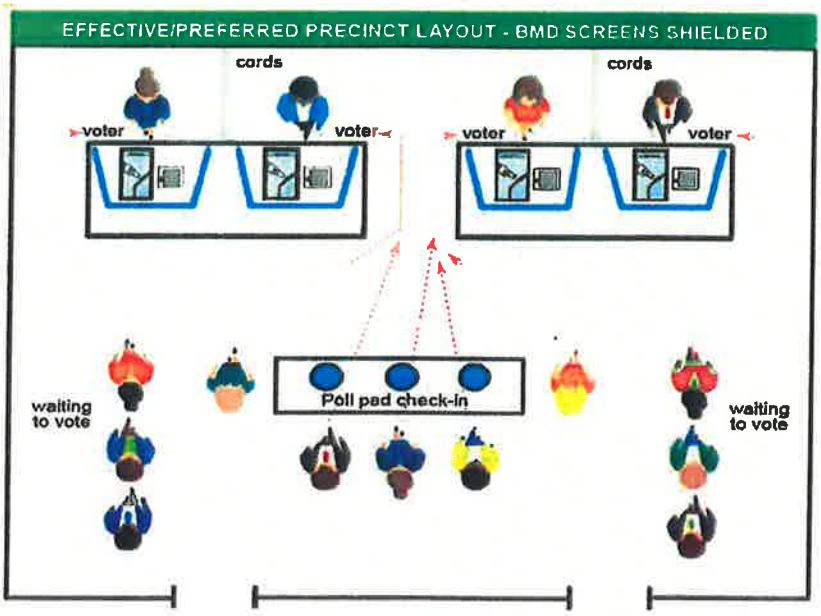
Special Training Topic
Precinct Layout – Privacy

Firefly > Training > Polling Place Information



Special Training Topic
Precinct Layout – Privacy

Firefly > Training > Polling Place Information



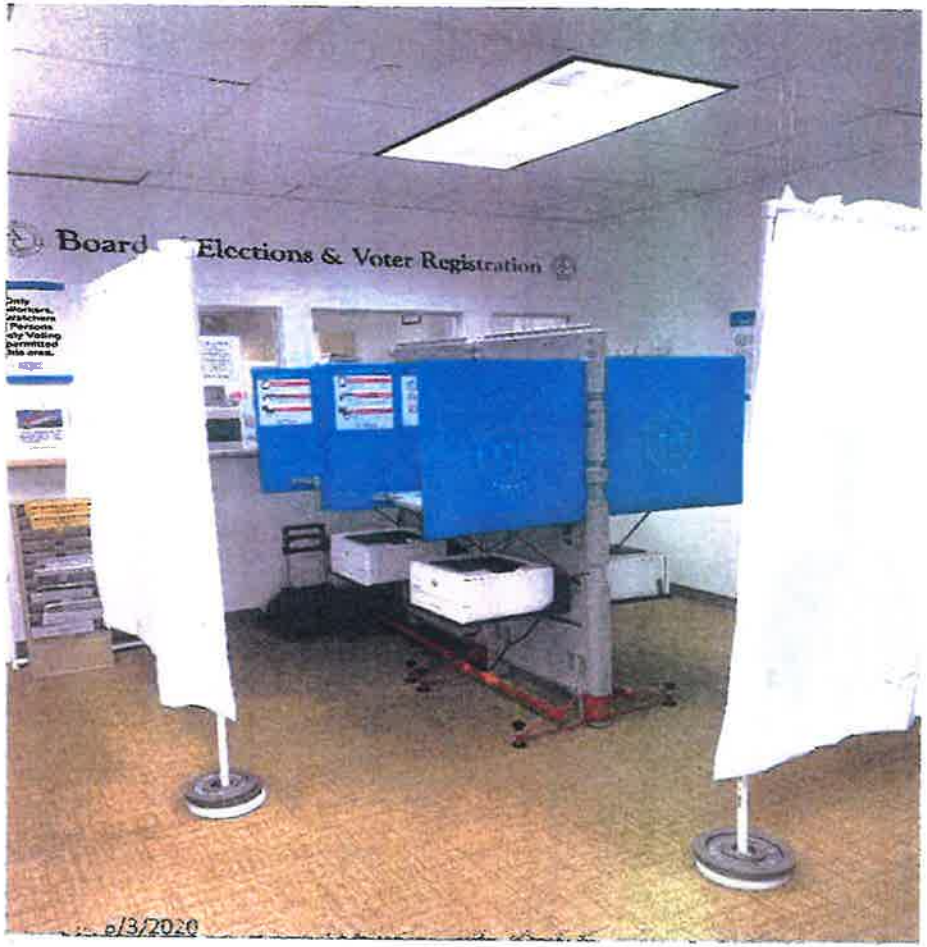
SECRECY LAYOUTS

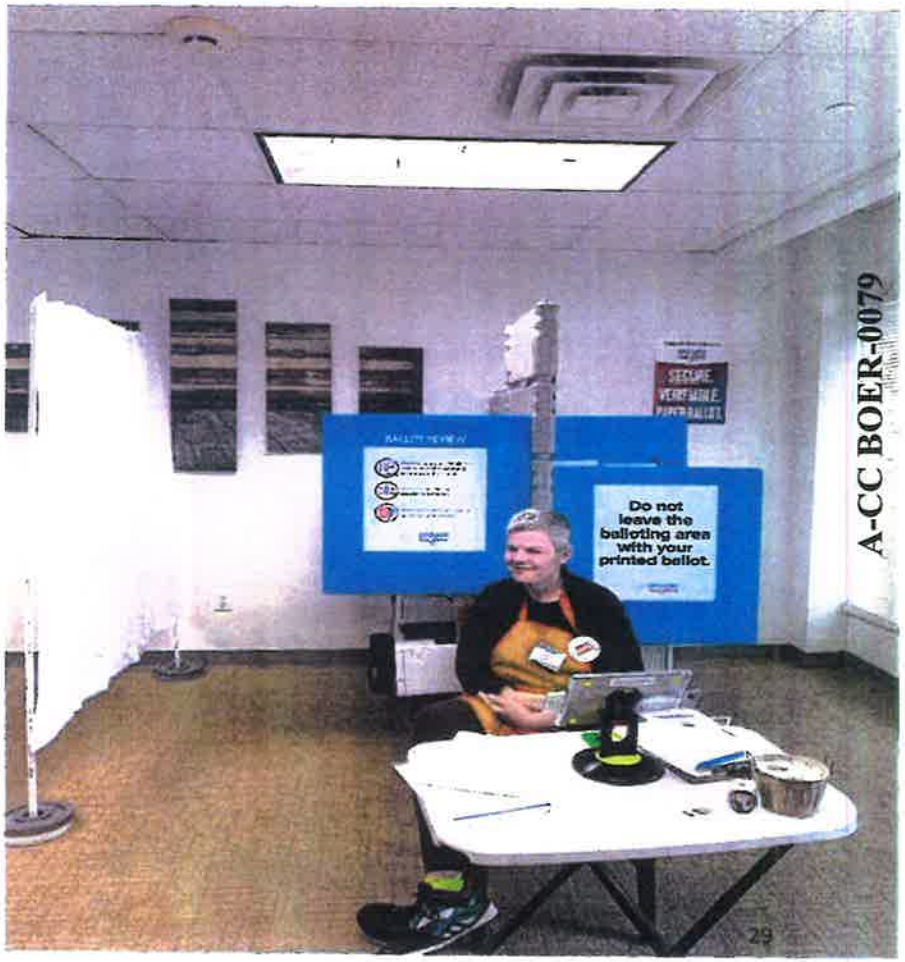
ATHENS-CLARKE COUNTY, GA

3/3/2020

A-CC BOER-0078

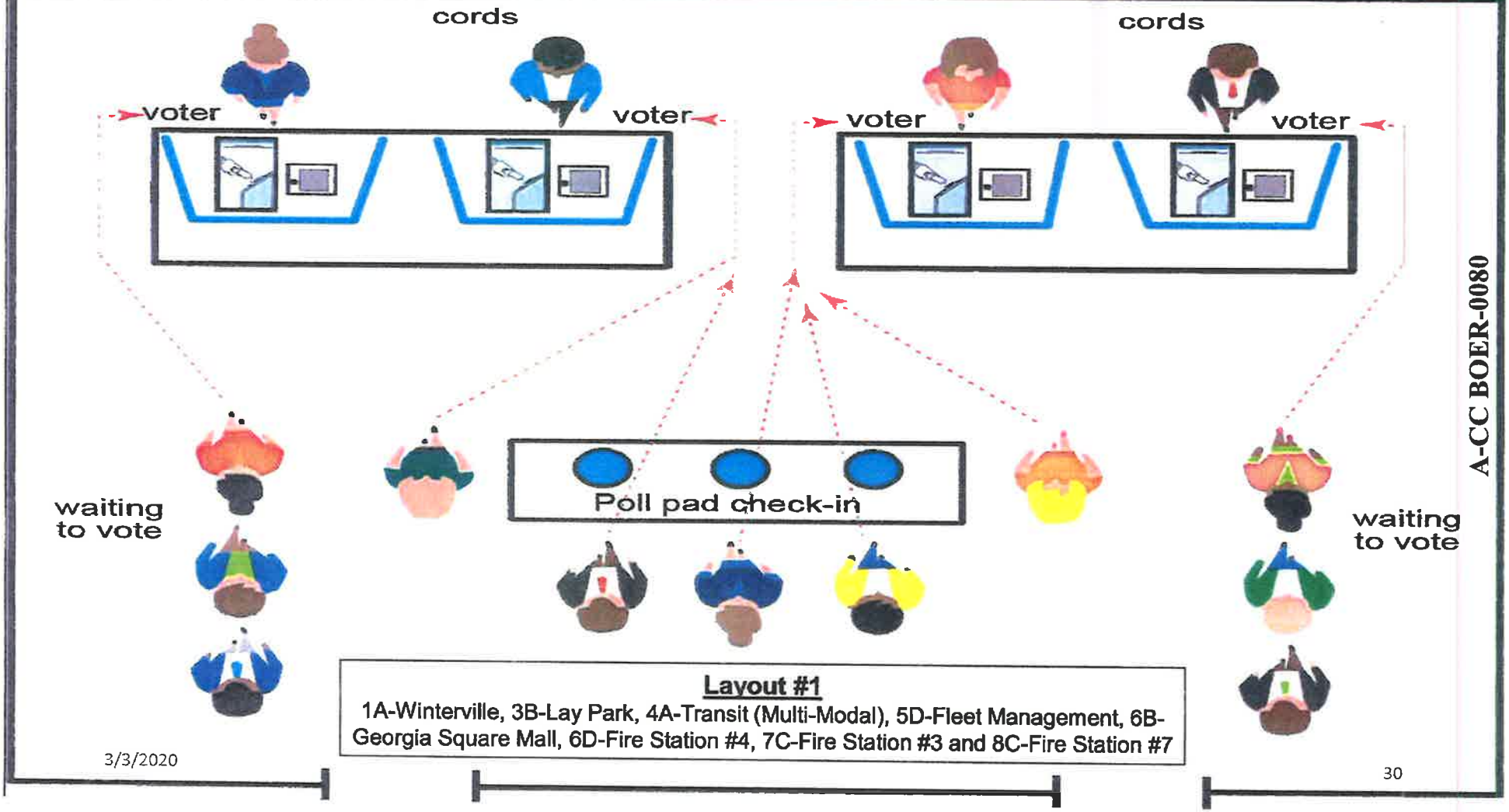
ACCGov BOARD OF ELECTIONS OFFICE LAYOUT





A-CC BOER-0079

EFFECTIVE/PREFERRED PRECINCT LAYOUT - BMD SCREENS SHIELDED

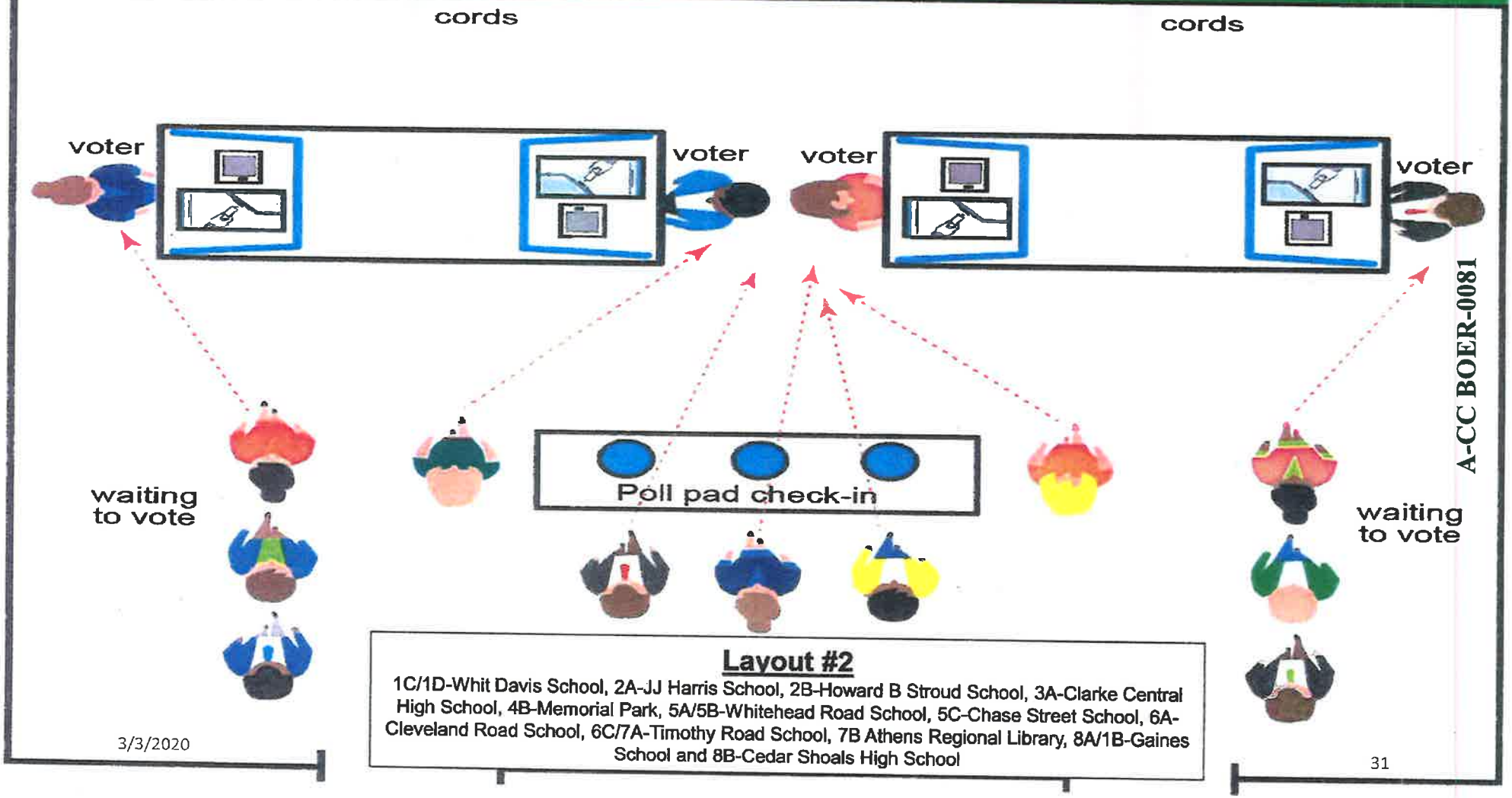


Layout #1

1A-Winterville, 3B-Lay Park, 4A-Transit (Multi-Modal), 5D-Fleet Management, 6B-Georgia Square Mall, 6D-Fire Station #4, 7C-Fire Station #3 and 8C-Fire Station #7

A-CC BOER-0080

EFFECTIVE/PREFERRED PRECINCT LAYOUT - BMD SCREENS SHIELDED



Layout #2

1C/1D-Whit Davis School, 2A-JJ Harris School, 2B-Howard B Stroud School, 3A-Clarke Central High School, 4B-Memorial Park, 5A/5B-Whitehead Road School, 5C-Chase Street School, 6A-Cleveland Road School, 6C/7A-Timothy Road School, 7B Athens Regional Library, 8A/1B-Gaines School and 8B-Cedar Shoals High School

A-CC BOER-0081

SECURE THE VOTE

Backup Procedures

Using Emergency Paper Ballots

SECURE THE VOTE

USING EMERGENCY PAPER BALLOTS

If an emergency situation makes utilizing the electronic ballot markers impossible, impracticable, or if emergency ballots are otherwise needed as determined by the election superintendent, the poll officer shall issue the voter an emergency paper ballot that is to be filled out with a pen after verifying the identity of the voter and that the person is a registered voter of the precinct. While the determination of an emergency situation is in the discretion of the election superintendent, the types of events that may be considered emergencies are power outages, malfunctions causing a sufficient number of electronic ballot markers to be unavailable for use, or waiting times longer than 30 minutes. (SEB Rule 183-1-12-.11 (2) (c) & (d))

Items Needed:

- Emergency Ballots
  - The election superintendent shall cause each polling place to have a sufficient amount of emergency paper ballots so that voting may continue uninterrupted if emergency circumstances render the electronic ballot markers or printers unusable. For any primary or general election for which a state or federal candidate is on the ballot, a sufficient amount of emergency paper ballots shall be at least 10% of the number of registered voters assigned to a polling place. (SEB Rule 183-1-12-.11 (2)(c))
  - Emergency Ballots must be secured prior to use.
- Pens
  - Dominion Voting Approved Pens
    - Sharpie Fine Point Black (part #: 30001 SKU: 071641300019).
    - Paper Mate Flair M Medium Point Black, (part #: 8430152, SKU: 041540843016).

Voting Procedures:

- The poll officer shall verify the identity of the voter and that the person is a registered voter of the precinct.
- On the Poll pad, the poll officer will select "Emergency Ballot" instead of "Touchscreen," and hit "submit" in order to finalize check-in of the voter. No voter access card is needed or created.
- The poll officer shall provide an emergency ballot to the voter that is to be filled out with a pen.
- The voter shall mark their ballot with a pen in an area that provides voter privacy.
- The voter shall scan their ballot in the scanner connected to the ballot box.
- Emergency ballots shall not be treated as provisional ballots, but instead shall be placed into the scanner in the same manner that printed ballots in the polling place are scanned.
- All unused emergency ballots shall be placed into a secure envelope and sealed such that the envelope cannot be opened without breaking such seal.

EFILED IN OFFICE
CLERK OF SUPERIOR COURT
SUMTER COUNTY, GEORGIA
20CV00077(S)
R. RUCKER SMITH
MAR 02, 2020 10:41 AM
Cortisa Barthell , Clerk
Sumter County, Georgia

IN THE SUPERIOR COURT OF SUMTER COUNTY
STATE OF GEORGIA

COALITION FOR GOOD GOVERNANCE, *et al.* *Petitioners,* v. JAMES GASTON, *et al.*, *Respondents.*	CIVIL ACTION FILE NO. 20CV00077(S)

ORDER

This matter came before the Court at an emergency hearing on February 26, 2020 on the Petitioners'[1] "Emergency Motion for Section 412 Hearing and Relief" filed on February 24, 2020 ("the Emergency Motion"). The Emergency Motion was filed contemporaneously with Petitioners' "Verified Petition for Writ of Mandamus and Complaint for Prospective Relief Under O.C.G.A. § 21-2-412 and 42 U.S.C. § 1983." The Verified Petition was amended late on the evening of February 25, 2020 to add a verification, correct a defendant's name, and substitute a plaintiff.

[1] Petitioners are the Coalition for Good Governance, a Colorado nonprofit corporation; Craig Walker, a registered voter in Sumter County who was substituted for Terence Clemons in the Amended Petition; Jeanne Dufort, a registered voter in Morgan County; and Aileen Nakamura, a registered voter in Fulton County.

The Verified Petition, as amended, includes three counts, requesting: (1) an order under O.C.G.A. § 21-2-412 requiring Respondents[2] to use hand-marked paper ballots instead of the new Dominion Ballot-Marking Devices (BMDs) to preserve ballot secrecy by the use of hand-marked paper ballots; (2) a writ of mandamus under O.C.G.A. § 9-6-20 requiring Respondents to maintain the absolute secrecy of the ballot; and (3) equitable relief under 42 U.S.C. § 1983 regarding the alleged violation of ballot secrecy. The prayer for relief also sought attorney fees from Respondents.

The Court moved expeditiously to set a hearing after consulting with counsel for both parties and held a hearing with all parties represented by counsel on February 26, 2020 at 3:00pm. Given that the hearing was set so quickly after the filing of the Amended Petition, Respondents did not file a written response in objection to the Emergency Motion but rather presented their opposition orally at the hearing. A court reporter transcribed the hearing.

Upon consideration of Petitioners' Emergency Motion and argument of counsel for Petitioners and Respondents, the Court hereby denies the Emergency Motion.

[2] Respondents are the members of the Sumter County Board of Elections in their official capacities, specifically James Gaston, Shirley Latimore, Marty McDonald, Rhonda Reddick, and Carson Walker.

SEB-0061

CONTENTIONS OF THE PARTIES

Petitioners allege that Respondents are not obeying the Georgia Constitution, which commands that "Elections by the people shall be by secret ballot," Art. II, Sec. 1, Par. 1., and O.C.G.A. § 21-2-379.22(5) which prohibits the use of ballot marking devices unless they "[permit] voting in absolute secrecy so that no person can see or know any other elector's votes." Petitioners allege that the size and brightness of the screens on the Dominion BMDs and their upright positioning, and the size of the font, makes it impossible for voters to vote in "absolute secrecy." Petitioners submitted a variety of photographs that were admitted into evidence without objection, showing visible screens of BMDs being used in voting. Petitioners further allege that it is "impossible or impracticable" to use the BMDs in conformity with Georgia law and election rules, including the (a) ballot secrecy laws and (b) O.C.G.A. § 21-2-267 and State Election Board Rule 183-1-12-.11(4) (which requires the polling place to be arranged "to allow monitoring of each voting system component by the poll officers while the polls are open" and the ballot marking devices to "be arranged in such a manner" as to "allow monitoring of the devices by the poll workers" and to maintain "the security of such units against tampering, damage, or

other improper conduct;" (c) the "number of voting stations" requirement of O.C.G.A. § 21-2-367 (b) ("at least one voting booth or enclosure for every 250 electors"); and (d) with the physical limitations of the existing polling locations, which cannot be moved in advance of the upcoming elections. As a result, Petitioners request this Court find that since it is "impossible or impracticable" for Dominion BMDs to be used in a manner that protects the secrecy of the ballot and complies with these other Georgia laws, Respondents should be ordered to conduct the election using hand-marked paper ballots, as provided in O.C.G.A. § 21-2-281 and State Election Board Rules 183-1-12-.11(2)(c) & (d).

Respondents allege that Petitioners are advocates for hand-marked paper ballots and that reconfiguring polling places fully addresses Petitioners' concerns, because it is possible to utilize the BMDs consistent with the monitoring requirements of state law while also protecting the right to a secret ballot. Respondents further raise a variety of other arguments, including (a) that mandamus is not the appropriate remedy because Petitioners request the Court direct officials how to exercise their discretion and (b) that voters do not have a constitutional right to a particular method of voting. Respondents further submitted drawings

prepared by the Secretary of State which they allege show how polling places might be configured and photographs of other methods that prevent BMD screens from being visible by persons other than the voter. These drawings and photographs were admitted into evidence without objection.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court first determines that it has jurisdiction over the Amended Petition. While there may be some question about out-of-county Petitioners, there is at least one Petitioner with standing to raise the issues in the Amended Petition. There was no dispute about venue.

The key issue for determination by the Court was whether it was "impossible or impracticable" for the BMDs to be deployed in a way that (1) protects the absolute secrecy of the ballot while (2) allowing sufficient monitoring of the BMDs in use.

Having heard the argument and considered the evidence submitted by the parties, the Court finds that Petitioners have failed to carry their burden of proving that it will be "impossible or impracticable" for Respondents to deploy the BMDs in a manner that protects the secrecy of the ballot while allowing sufficient monitoring. It is not for this Court to

devise how best to configure the BMDs. Instead, it is the Respondents' responsibility to comply with Georgia law.

CONCLUSION

Based on the foregoing analysis, the Court DENIES Petitioner's Motion for Emergency Relief.

So ORDERED this 2nd day of ~~February~~ March, 2020.

JUDGE R. RUCKER SMITH
Superior Court of Sumter County