

In the Matter Of:
GEORGIA STATE ELECTION BOARD

MEETING
April 22, 2026



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GEORGIA STATE ELECTION BOARD MEETING

Wednesday, April 22nd, 2026

3:07 p.m.

Remote Proceeding
Atlanta, Georgia 30334

Kristen Smith
Digital Reporter

APPEARANCES

CHAIR: John Fervier

VICE CHAIR: Dr. Janice Johnston

BOARD MEMBERS: James Mills, Executive Director
Sarah Ghazal, Member
Salleigh Grubbs, Member
Janelle King, Member
Mary Beth Bugea
Marilyn Marks, Coalition of Good Governance
Hope Coan, Assistant
Shaun White, Assistant/Open Records Specialist

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APPEARED VIA IN PERSON

(Proceedings recorded by digital sound recording:
transcript produced by transcriptionist.)

1 (Proceedings commenced.)

2 CHAIR FERVIER: I'm going to call to order the
3 Wednesday, April 22nd, 2026, special meeting of Georgia
4 State Election Board. We have a quorum present.
5 Members Grubbs, Member King, Member Ghazal, and Member
6 Johnston are available. I am, of course, John Fervier,
7 chairman of the State Election Board. We're also
8 joined by our Executive Director James Mills and staff.

9 We're -- as you know, we're trying to do this
10 through Zoom and through -- it should be on YouTube
11 also for the benefit of the public. We'll try to do
12 the best we can with this, given the limitations that
13 we have using Zoom of course.

14 We're going to start the meeting today by
15 having an invocation and pledge of allegiance.
16 Mr. Mills, would you do the invocation for us, please?

17 MR. MILLS: Yes, sir. I'd be glad to. Let's
18 pray. Father, we pray to you today because we -- we
19 ask your divine wisdom. We ask God that you'd guide
20 us. We ask that your blessings would be upon the state
21 of Georgia, the United States, and America. Father, we
22 pray that you would help us act in such a way that is
23 pleasing to you and pray that you would give this board
24 wisdom and discernment and to make the right decisions
25 for the citizens of the state of Georgia. Thank you,

1 in Jesus name. Amen.

2 (Amens were heard.)

3 CHAIR FERVIER: All right. If everyone will
4 stand and find the nearest flag that you might be able
5 to find, we'll will say pledge of allegiance. I'll
6 start off a pledge allegiance.

7 (Pledge of Allegiance.)

8 CHAIR FERVIER: Thank you. Now that we've
9 gotten through that, we have a fairly short agenda
10 today, although I do expect to take some time. We have
11 two petitions for rulemaking that will be heard today.
12 And then under old business, we have a discussion from
13 Member Grubbs. And we also will add something to the
14 agenda under a new business section. The executive
15 director would like to address an issue that just came
16 up recently that we'll address very shortly.

17 Public comment -- the public comment, we had
18 said in the agenda that was sent out. The public
19 comment can be submitted either through our public
20 comment at seb.ga.gov or there should be a chat
21 function available to where, you know, you can chat
22 while this is going on. But there will be no speaking
23 public comment portions for this meeting, just through
24 the -- the written public comment in the chat portion
25 of the Zoom.

1 So we will begin -- if there's nothing else
2 from the board, we'll begin with our first petition for
3 rule making. There's a petition submitted by the
4 Coalition for Good Government -- Governance,
5 specifically Jeanne Dufort, Aileen Nakamura, Marilyn
6 Marks. And it's an amendment to Rules 183-1-15-02,
7 183-1-12-.01, and 183-1-12-.11. And it will deal with
8 the definition to vote, compliance, and backup
9 balloting.

10 We have received prior to this several
11 comments online, e-mails, and text messages relating to
12 it. Also, I've -- there's a live chat on YouTube that
13 you can comment on also I was just notified of. So
14 with that, Ms. Marks, are you prepared to move forward
15 with your petition today? And we can't hear you.

16 Marilyn Marks will need to be unmuted.

17 MR. WHITE: I'm working on that.

18 CHAIR FERVIER: Okay.

19 MR. MILLS: Mr. Chairman, I apologize for
20 interrupting, but I wanted -- you wanted me to bring up
21 the discussion later on, right?

22 CHAIR FERVIER: Yes. We'll do it at the end
23 of the meeting, yes.

24 MR. MILLS: Yeah, no problem. No problem. I
25 just didn't want to miss it.

1 CHAIR FERVIER: Yeah. Ms. Marks, are you
2 prepared to move forward today?

3 MS. MARKS: Yes. But I guess we -- we would
4 note, as we had in the e-mail with you, that there may
5 be some concern about whether the meeting notice was
6 adequate. So with that reservation, we will go ahead
7 and present to you our petition.

8 And -- and I should introduce myself. I'm
9 Marilyn Marks, executive director of Coalition for Good
10 Governance. And because there have been so many
11 questions swirling around about the authority and the
12 duty of the State Election Board with respect to the
13 rule petition that we have, I've asked our long-time
14 attorney, Robert McGuire, out of the Seattle area to
15 come present that portion to you.

16 And Shaun, I won't need my slides until after
17 Mr. McGuire has finished his part of the presentation.
18 So if we want to take those down and -- so that you can
19 focus on him, that will be great. Thank you so much,
20 Rob, for being here.

21 CHAIR FERVIER: Who else who else will be
22 presenting besides Mr. McGuire?

23 MS. MARKS: It will depend on time, but I will
24 go after him. And -- and then Jeanne Dufort may have a
25 quick comment or two, as well as Ms. Nakamura, if -- if

1 we have time to do that.

2 CHAIR FERVIER: Okay. So, Shaun, if you'll
3 just unmute them, those four.

4 MR. WHITE: Yes, sir, working on it right now.

5 CHAIR FERVIER: Okay. And then as typical for
6 this board, there's a limited time for the presenters
7 to present. You've been allowed 20 minutes. It's up
8 to you to break that up as you wish with -- with
9 whoever speakers. And then the board, of course, will
10 ask questions, which is typical. And those questions
11 can be quite lengthy sometime, as the board is able to
12 bring out additional -- or questions about your
13 petition or -- or comments about your petition.

14 The board, as always, can ask anybody that
15 they want to speak to help them in making this
16 decision. So I'll leave it up to the individual board
17 members.

18 MS. MARKS: Okay. And then when we get ready
19 to start, if we could do a time check at that point so
20 that we're not -- the 20 minutes is awfully -- awfully
21 inadequate, so we want to not miss a minute, okay?

22 CHAIR FERVIER: Yeah. Shaun -- Shaun will be
23 the timer. He will let you know when there's five
24 minutes left and then at two minutes left.

25 MS. GRUBBS: I see Dr. Johnston's hand is up,

1 if you want to address that before we get started.

2 CHAIR FERVIER: Dr. Johnston, do you have a
3 question?

4 Shaun, she needs to be unmuted, please.

5 MR. WHITE: I tried unmuting her earlier. I'm
6 going to try to do it again.

7 CHAIR FERVIER: Okay.

8 MS. MARKS: Give me one second. I'm sorry.

9 Dr. Johnston, are you allowed to speak now?

10 CHAIR FERVIER: She's allowed to. The
11 question is: Can she?

12 VICE CHAIR JOHNSTON: Can you hear me?

13 CHAIR FERVIER: Yes.

14 VICE CHAIR JOHNSTON: Yes. My question for
15 Ms. Marks, if she does not feel like she was adequately
16 noticed, should we ask her if she wants to reschedule
17 this if she doesn't -- if she did not have adequate
18 notice?

19 CHAIR FERVIER: I -- I have already made that
20 request, and she said that she felt like she was
21 adequately noticed. She was concerned about members of
22 the press or other people not being adequately noticed.
23 And she stated she's prepared to present today.

24 VICE CHAIR JOHNSTON: Okay. I just wanted to
25 make sure that she was satisfied with her notice.

1 MS. MARKS: As as I said, with the -- we -- we
2 received adequate notice. I was just wanting to be
3 sure that we were reserving any rights if it
4 determined -- if it is later determined that the notice
5 that the -- that the staff sent out was inadequate for
6 the public.

7 CHAIR FERVIER: Okay. With that, any other
8 comments from the board? Any questions from the board
9 before we start?

10 MR. WHITE: One more question. I'm sorry, I
11 was unlocking everybody at the time. Okay. I'm
12 starting my timer. When -- when Ms. Marks begins her
13 speech, how -- they have 20 minutes to present,
14 correct?

15 CHAIR FERVIER: Yes. Please let them know
16 when they have five minutes left and when they have two
17 minutes left.

18 MR. WHITE: Yes, sir, will do. Thank you.

19 CHAIR FERVIER: Thank you.

20 Ms. Marks, the timer begins when you begin.

21 MS. MARKS: Okay. And I will introduce Robert
22 McGuire, who will begin our presentation. Thank you,
23 Robert.

24 MR. MCGUIRE: Yes. Can can you hear me? Am
25 I --

1 CHAIR FERVIER: Yes --

2 MR. MCGUIRE: -- coming through? Okay.

3 Chairman Fervier and members of the board, good
4 afternoon. My name is Robert McGuire. I serve as
5 counsel for Coalition for Good Governance in the
6 Curling versus Raffensperger case, which I'm sure
7 you're all familiar with. That's litigation that the
8 board has been a party to since 2017.

9 Before I turn to the substance of the
10 petition, I just want to reiterate Ms. Marks' objection
11 about notice and preserve, respectfully for the record,
12 our objection that we believe 20 minutes that has been
13 allocated to this petition is -- is inadequate and not
14 an appropriate amount of time for the board to hear and
15 diligently consider a petition of this importance.

16 The petition asks the Board to determine what
17 constitutes a vote under Georgia law and to invoke the
18 statutory backup ballot plan, given the inadequacy of
19 the existing voting system. Those determinations
20 implicate the board's core statutory duties and affect
21 every in-person voter in Georgia. A body acting in a
22 responsible quasi judicial fashion, like the board,
23 should spend hours, not minutes, studying the
24 underlying statutes, the evidentiary record, and its
25 own responsibilities.

1 And we preserve that objection for the record
2 and -- and proceed under that notation. With that
3 objection, I want to use my time this afternoon, my
4 brief time, to address a single threshold question
5 which everything else in this proceeding seems to
6 follow from. And that question is this: Does the board
7 have the statutory authority and the statutory duty to
8 adopt the two rules that CGG's petition requests?

9 First, a rule defining a vote for ballots
10 produced by ballot-marking devices. And second, a rule
11 making the impossibility or impracticability
12 determination under OCGA 21-2-281, which triggers the
13 statutory backup plan already in law at OCGA 21-2-334.
14 So our position is that the answer is yes on both
15 counts and that there is no gray area about that.

16 The authority of the board exists. The duty
17 of the board exists. Both are expressly conferred by
18 statute, and both have been confirmed by a federal
19 court in binding litigation to which the board is
20 currently a party. So let me take each rule in turn.

21 On the first rule, defining a vote, the
22 authority and the duty both appear on the face of the
23 election code. 21-2-31(1), makes it "the duty of the
24 State Election Board to promulgate rules and
25 regulations so as to obtain uniformity in the practices

1 and proceedings of superintendents, as well as the,"
2 emphasis here, "legality and purity in all primaries
3 and elections." That's a duty, not a discretionary
4 power, a duty to promulgate rules to ensure the
5 legality of elections.

6 OCGA 2-12-31(7), goes even further.
7 Specifically, it directs the board to define "what
8 constitutes a vote and what votes will be counted as a
9 vote for each voting system used in the state." Federal
10 law under HAVA, the Help America Vote Act of 2002,
11 imposes a parallel requirement. The General Assembly
12 did not leave this definition to chance. It assigned
13 the definition to the board.

14 The Georgia Supreme Court, in its recent
15 Eternal Vigilance case, expressly recognized that the
16 General Assembly gave this board authority for defining
17 standards as to what constitutes a vote and what votes
18 will be counted as a vote. So why does that matter
19 here? It matters because under the current Dominion
20 Voting System, the ballot printed at the polling place
21 contains two things, a human readable text portion and
22 a QR code.

23 The current board rule from 2020 does not
24 resolve which of those is the official vote. That
25 ambiguity is itself a legal defect, and it collides

1 directly with substantive statutory requirements.
2 Under current law, which is 21-2-2(7.1), and
3 21-2-300(a)(2), under those laws, the electronic ballot
4 marker has to produce "an elector verifiable paper
5 ballot" marked "in a format readable by the elector."

6 And effective July 1st, the new OCGA
7 21-2-379.23(d), enacted in Senate Bill 189, makes this
8 explicit. It says, the text portion of the paper
9 ballot marked and printed by the electronic ballot
10 marker indicating the elector's selection shall
11 constitute the official ballot and shall constitute the
12 official vote for purposes of vote tabulation.

13 So current law and future law both point in
14 the same direction. The human readable text is the
15 vote. The board's rule must and should say so. That
16 is not a policy judgment on which reasonable board
17 members might differ. It is the implementation of an
18 objective statutory command. And on this question, the
19 Board is not writing on a blank slate.

20 In October of 2020, in the Curling litigation
21 in which the board and its members are defendants, the
22 federal district court found at a Document number 964
23 on Pages 81 and 82, "The evidence shows that the
24 Dominion BMD system does not produce a voter verifiable
25 paper ballot or a paper ballot marked with the voter's

1 choices in a format readable by the voter because the
2 votes are tabulated solely from the unreadable QR
3 code."

4 So to underscore the practical significance of
5 that finding by the judge, the Court found as a factual
6 matter that BMD votes are tabulated solely from the QR
7 code, the one part of the ballot no voter can read.

8 That is not Coalition for Good Governance's
9 characterization. It's a judicial finding in an
10 ongoing case to which the board is a party.

11 That factual finding brings me to the second
12 rule, the impossibility or impracticability
13 determination under OCGA 21-2-281. I want to be
14 precise about the statutory architecture here because
15 it's sometimes misunderstood. 21-2-300(a)(2), which is
16 the uniform voting system law, it makes BMD voting with
17 scanner tabulation the default method for in-person
18 voting. But it has an exception written into it, which
19 is "unless otherwise authorized by law."

20 So the question is: What other law authorizes
21 a different method? The answer is OCGA 21-2-281. That
22 section provides that "in any primary or election in
23 which the use of voting equipment is impossible or
24 impracticable for the reasons set out in Code Section
25 21-2-334, the primary or election may be conducted by

1 paper ballot in the manner provided in Code Section
2 21-2-334."

3 So what does 21-2-334 say? It is the
4 statutory backup plan. It is the General Assembly's
5 answer to the question what happens when the default
6 voting equipment cannot lawfully be used. The answer
7 is hand-marked paper ballots counted in the manner that
8 the General Assembly has prescribed.

9 That backup plan is authorized by law today.
10 It is part of the election code. It is not an
11 improvisation. It is not a workaround, nor is it a
12 change in the law. It is the General Assembly's chosen
13 method to fix problems when using a voting system is
14 impossible or impracticable. There's a common
15 misconception that only county superintendents may
16 invoke the statutory backup plan.

17 That misunderstanding arises because 21-2-334
18 read alone references voting machines, which the
19 election code defines narrowly as the old lever
20 machines and it references the superintendent's local
21 duty. But 21-2-281, which is what this petition is
22 brought under, is broader than 334. 21-2-281
23 references all voting equipment, and it imports only
24 the reasons in 21-2-334, not the local authority or the
25 local actor of the superintendent.

1 This reading has been squarely confirmed by
2 the Curling Court, again, in a case in which this board
3 is a party. In Document 375, in the Curling case, at
4 page 56, the Court addressed and rejected the very
5 argument that the board made then and is sometimes said
6 to rely on, which is namely that the Board didn't have
7 the authority, that the authority belonged to the local
8 superintendents only.

9 The the Court wrote, contrary to the Board's
10 assertion, OCGA 21-2-281 is not limited to election
11 superintendents. And the board members, this board,
12 are responsible for enforcing Georgia's election laws.
13 Judge Totenberg called the board's contrary argument
14 that it did not have the duty but only the county
15 superintendents have the duty. She called that
16 meritless.

17 The Court went on to connect that authority
18 directly to this board's general enforcement power
19 under OCGA 21-2-33.1(a), which vests this board with
20 the power "to issue orders directing compliance with
21 this chapter." So these are binding judicial findings
22 from an ongoing case in which this board is a party.
23 And as a matter of preclusion and basic respect for the
24 judicial process, the board cannot credibly maintain in
25 the face of this rulemaking petition that it lacks the

1 authority Judge Totenberg has already held it
2 possesses.

3 To reiterate, the board is party to a court
4 case in which the Court has held that the board
5 possesses the authority that the petition asks you to
6 exercise. So the statutory structure is
7 straightforward. The default system under
8 21-2-300(a)(2), which is the uniform voting
9 requirement, cannot lawfully tabulate the text portion
10 of the ballot, as the federal Court has found.

11 Section 21-2-281, which CGG invokes,
12 authorizes the statutory backup plan set out in
13 21-2-334 when the default method of voting is
14 impossible or impracticable. This board, not some
15 future county superintendent, not the General Assembly,
16 is empowered and obligated to make that determination
17 of impossibility and impracticability and to direct
18 compliance.

19 Now I anticipate that some -- some of you may
20 ask or -- or wonder whether the Georgia Supreme Court's
21 decision in RNC versus Eternal Vigilance Action, Inc.,
22 that recent case by the Georgia Supreme Court, prevents
23 this rulemaking on non-delegation grounds. The short
24 answer is no. The non-delegation holding of Eternal
25 Vigilance does not reach what CGG is asking the board

1 to do. Eternal Vigilance was about whether the General
2 Assembly had supplied sufficiently objective,
3 judicially enforceable guidelines to constrain an
4 agency's discretion -- in this case, the Board.

5 Eternal Vigilance reaffirms, "Although an
6 executive branch agency cannot legislate, it is the
7 function of the executive to implement specific
8 legislation enacted." And at -- that opinion, Page 66,
9 the Court explained, the critical question is not
10 whether a statute gives an administrative agency, like
11 the board, discretion but whether the statute provides
12 sufficiently objective, judicially enforceable
13 guidelines to direct and cabin the agency's exercise of
14 that discretion.

15 The guidelines here are objective. Impossible
16 or impracticable is a concrete, judicially reviewable
17 standard. Determining that it is impossible for
18 Georgia's current Dominion BMD voting system to count
19 the text portion of voter's printed ballots, as the
20 General Assembly requires the system to do, is not --
21 to use the Court's language -- from Eternal Vigilance
22 an exercise of unbridled discretion.

23 Adopting the rules that CGG proposes does not,
24 in the Court's words, "go beyond change or contradict
25 the existing statutory scheme." On the contrary, this

1 petition implements the existing statutory scheme.
2 Further, the substantive standards that this board
3 would be applying were set by the General Assembly
4 itself. 21-2-281 and 21-2-34 supply the grounds for
5 invoking the backup plan, hand-marked paper ballots
6 counted by scanners.

7 The definition of a vote is anchored in
8 21-2-31, Subsection 7, which expressly directs the
9 board, as Eternal Vigilance recognized, to define what
10 constitutes the vote. And that definition of a vote
11 will be guided further by 21-2-379.23(d), after July
12 1st. The board granting CGG's rulemaking petition is
13 the executive implementing specific legislation, which
14 is precisely what Eternal Vigilance describes as proper
15 and permissible.

16 So to summarize, the board's authority and
17 duty to act in response to this petition are threshold
18 questions, and both of them are clearly present. The
19 authority exists and the duty exists, and there is no
20 gray area. 21-2-311 and 21-2-317 both authorize and
21 command the board to promulgate rules defining a vote
22 and ensuring legality in Georgia elections. 21-2-300,
23 21-2-281, and 21-2-334 read together authorize and
24 command the board to invoke the statutory backup plan
25 when the default voting method is impossible or

1 impracticable.

2 And third, the Curling Court, in a case in
3 which this board is a party, has already found as a
4 fact that the Dominion Voting System cannot tabulate
5 the human readable text and has already held as a
6 matter of law that this board has the authority to act
7 under 21-2-281. These holdings are binding on the
8 board.

9 And finally, Eternal Vigilance does not stand
10 in the way. What we ask is executive implementation of
11 specific legislation guided by objective, judicially
12 enforceable standards that the General Assembly itself
13 enacted. This board was created to protect voters and
14 to uphold the integrity of Georgia's elections.
15 Declining to act --

16 MR. WHITE: You have about five minutes
17 remaining.

18 MR. MCGUIRE: Thank you. And I'm about to
19 wrap up. Declining to act in the face of a known
20 judicially found legal violation is itself a failure to
21 carry out the board's mission. We respectfully ask the
22 board to proceed to the substantive consideration of
23 the petition and to give that consideration the full
24 time and deliberation that a question of this gravity
25 deserves.

1 I'll be happy to answer any questions at the
2 end of the presentation time. But next, I would like
3 to turn it over to Ms. Marks to discuss the substance
4 of the petition to the extent time allows. Thank you.
5 And it looks like she's muted --

6 CHAIR FERVIER: Ms. Marks needs to be unmuted.

7 MR. WHITE: I got it.

8 MS. MARKS: Okay. Thank you very much.

9 Shaun, if you would put up the slides, and we'll just
10 have to hit a very few of them in the -- the small time
11 we have allowed.

12 Rob, thank you so much for covering the duty
13 and authority of the board.

14 Shaun, why don't you go to Slide number 10, if
15 you don't mind, and that will show us the -- right --
16 what SB 189 is ordering. It is ordering that the text
17 portion of the ballot become the vote. And the vote,
18 that is the portion to be tabulated.

19 What the General Assembly had in mind is on
20 the next slide that most people have not seen. If
21 you'll go -- thank you. This is the new ES&S BMD
22 system where the text is literally OCR'd and tabulated.
23 This -- this machine is not EAC certified yet. It's --
24 it's certainly not approved by Georgia. And that is
25 what that -- that clause was anticipating when that was

1 written a couple of years ago.

2 Obviously, it is impossible or impracticable
3 for the counties to comply with this. So what happens
4 is, as Rob just said, the -- it -- it becomes
5 impossible and impracticable and we go to hand-marked
6 paper ballots. But the same is true today. Let's go
7 to the slide -- I'm -- why don't we go to Slide number
8 15. But the same is true today, that the -- the law
9 says that the ballots must be -- or the votes must be
10 human readable. They are not.

11 Let's keep going. Keep going on the slides,
12 if you don't mind. Keep going. Let's see. We must
13 have all right. Let's get back a bit. Sorry. Keep
14 going back. Okay. Let's see, whoa, that one right
15 there. I wish I could point to it. Two more down.
16 There you go.

17 All right. We talked about the deficiency of
18 the current rule. And the current rule says this, a
19 vote cast on the optical scanner marked by an
20 electronic ballot marker shall be the choices. A vote
21 can't be choices.

22 MR. WHITE: Two minutes left.

23 MS. MARKS: Okay. Thank you. Indicated by
24 the printed paper ballot. Obviously, this doesn't tell
25 us whether it's the QR code or the text. And

1 regardless of SB 159, there will have to be addressed,
2 the -- the deficiencies in this rule, and the -- the
3 board needs to do that. I just want to say in closing
4 that as we see hand-marked paper ballots being
5 required, regardless of SB 189, the switch to
6 hand-marked paper ballots are required by law as the
7 backup system.

8 Let's -- don't minimize the fact that the
9 counties need a lot of time for input, for education,
10 for working with their vendors, and the -- also some
11 financial help in the transition that they are going to
12 need to make. And there is money in the budget in
13 the -- the Secretary of State's budget. And we would
14 implore you to consider that in your considerations of
15 what the counties are going to need as they need to
16 move to the backup system of voting.

17 And we will be here, of course, to take
18 questions. We didn't get through nearly what we want
19 you to know and understand about our position here and
20 about the working -- the inner workings of the current
21 law -- we are not seeking to change law -- and we're
22 happy to do that. And you may want to start with --
23 Rob, with questions. Because we can hang around. I
24 don't know how long he can, but -- but we'll hang
25 around as long as you need.

1 And would like to encourage that we have
2 another session very soon in person with the entire
3 board and with your election directors, cybersecurity
4 experts, and others and vendors to exchange information
5 and to really understand what's possible, over what
6 time frame, and what is involved in doing so. And
7 we -- we cannot urge enough that that type of meeting
8 be held so that we get our petition in the -- in a very
9 satisfactory format for moving forward.

10 Because, as you know, it takes about 60 days
11 for a rule to go from start to effective date --

12 MR. WHITE: One minute.

13 MS. MARKS: -- we have much more than 60 days
14 before July 1 hits. And the counties definitely need
15 planning time. Okay. Well, thank you. And with that,
16 I guess we can take questions.

17 And Shaun, if you'll just keep those slides
18 handy. We don't need to have them up, but if you'll
19 keep them handy if we need to refer to them, that would
20 be super.

21 CHAIR FERVIER: Thank you. Thanks, Ms. Mark.
22 So the board did receive your petitions and all the
23 backup documentation. That was very helpful of course
24 in all of this with trying to understand what's going
25 on. And we also received your latest amendment to it

1 that you sent last night. And -- and so we -- we have
2 all of that in our possession to or -- had it in all of
3 our possession to consider.

4 So at this time, we'll ask for questions from
5 the board. And I saw that -- Shaun, the problem with
6 leaving the slides up like this is that I can't see the
7 other board members.

8 MR. WHITE: Okay. I'll stop sharing for now.
9 And when I need to bring it back up, I can -- I can
10 bring it up in a matter of seconds.

11 CHAIR FERVIER: Yeah, let's do that. So
12 Member Grubbs had her hand up for a question. Member
13 Grubbs, do you have -- do you want to start this off?

14 MS. GRUBBS: Yeah, sure. So I'm happy to let
15 somebody else go first, but I do have a list of
16 questions. Mr. McGuire, it's nice to meet you. I
17 assume -- I can't see you, so I assume you're still --
18 yeah, there you are. Okay. I see your little square.
19 So thank you for being here today and thank you for
20 going into all of that.

21 You know, I'm a pretty plain spoken person, so
22 I'm just going to ask you. Why do people and why have
23 people ignored what Judge Totenberg said, do you know?
24 You're muted.

25 CHAIR FERVIER: Is --

1 MR. WHITE: I got them on. I -- I got it.

2 MR. MCGUIRE: Okay. Great. Thanks. Well, I
3 guess I'm not exactly sure who -- who -- if you mean --
4 you mean officials? Who -- who do you mean has ignored
5 it?

6 MS. GRUBBS: Well, I mean, because we have
7 this issue with SB 189 with the QR code, and people
8 think that that's just the first time our voting
9 system -- it's come to their attention that we
10 shouldn't be voting with a QR code. But in fact, we've
11 been voting for a long time with, you know, a system
12 that's impossible or impracticable considering where we
13 were on House Bill 316.

14 MR. MCGUIRE: Yeah. I mean, I -- I --
15 you're -- you're asking me to speculate as to motives,
16 and it's always difficult to do that. I -- I think --

17 MS. MARKS: I should never ask an attorney
18 that question, I know.

19 MR. MCGUIRE: I think the safest thing to say,
20 especially when you think about elections, is that it's
21 one of those areas where you can't make changes without
22 people being hyper on guard about how this is going to
23 hurt or help them. And that's -- that's -- I think
24 that's what causes a lot of people to be very cautious
25 about making changes, especially when they're are

1 changes that come about through an adversarial process
2 like a court proceeding.

3 But in this particular instance, the changes
4 that -- that this petition is asking are -- are really
5 simple process changes that everyone should be behind
6 because I don't think anyone would argue that voters
7 should not be able to verify the votes that they're
8 casting. And what this rulemaking petition would do is
9 ensure that the thing that's printed out in their hand
10 that they cast into a scanner is something they can
11 understand and -- and they know that it reflects their
12 choices.

13 And so that's really something that should be
14 across the board. And it's unfortunate that there's
15 been opposition to some of the findings that -- that
16 have come out in the Georgia Curling litigation. It's
17 just it's a -- it's a very politicized environment.
18 And I think that's the only explanation for why people
19 haven't recognized this as a pretty straightforward
20 thing to do.

21 MS. GRUBBS: Okay. And then speaking of
22 Curling, I understood, based on what you said, that --
23 and per your citations in the Georgia Code that this
24 board has the obligation to determine whether the BMD
25 system is impossible or impracticable to use in

1 compliance of law. That's correct, right?

2 MR. MCGUIRE: Yes. That that's what Judge
3 Totenberg held in her -- in her ruling in Docket 375.
4 She held that -- because the -- the Board argued that
5 it wasn't their -- their province to make that
6 decision, that it belonged to the superintendents. And
7 she -- she said that that was a meritless position
8 because she read the statute that CGG here is referring
9 to, which is 21-2-281, and that -- that is broader than
10 the narrower provision which does apply just to
11 superintendents.

12 MS. GRUBBS: Okay. And then also it says
13 that -- you know, it's been said that we -- we as the
14 board have no duty to engage in any substantive
15 discussion about this petition specifically and that it
16 would be safer not to. And I think particularly
17 because of the Eternal Vigilance litigation, you know,
18 there's this fear, and it seems to be focused
19 specifically on the election board. That if we engage
20 on this petition, even, you know, in -- in discussing
21 this with people, I've said we're not voting to pass it
22 or not pass it or anything.

23 We're -- we're looking at it with a view
24 towards putting it into rulemaking procedures so that
25 the public has ample opportunity to engage on it,

1 provide commentary, and things like that. And it said
2 that we have no duty to engage on that. Could you kind
3 of go back and -- you touched on it, as far as what our
4 obligation is to engage on this petition?

5 MR. MCGUIRE: Sure. Well, as far as -- as far
6 as the overall obligation to define what a vote is, the
7 Georgia law says that the board needs to do that. And
8 so it's important that Eternal Vigilance doesn't get
9 read more broadly than it really was. It -- it struck
10 down four rules that the board adopted, but it also
11 upheld one of them.

12 And the difference between them was the one it
13 upheld, it -- it viewed as implementing an objective
14 standard that the statute required it to implement.
15 And that's that's the case with this petition. It's --
16 it's objective whether a voting system is capable,
17 literally capable, of reading text and counting it.

18 It's -- it's not -- this Dominion Voting
19 System is not capable of that. So it's literally
20 impossible for it -- for a law to be complied with.
21 And so that is the kind of standard that under Eternal
22 Vigilance of the Georgia Supreme Court, I presume,
23 would absolutely bless a rule, in which the election
24 board does what the statute requires it to do, applying
25 a standard which is very objective and can be evaluated

1 by courts.

2 The difference between the four rules that got
3 struck down in *Eternal Vigilance* and the -- the rules
4 that CGG is asking through this petition for the board
5 to adopt are really night and day. Because this
6 petition adheres very, very closely to the actual text
7 of statutes. And that's exactly what implementing the
8 statutes is all about. That's what the SEB is -- is
9 here for.

10 MS. GRUBBS: Okay. And then if the General
11 Assembly -- if -- if a special session is called and if
12 they come back in and they delay implementing the
13 provisions of 189, if they go back and they just simply
14 change the date to delay that implementation, does that
15 eliminate our responsibility to determine whether the
16 voting system complies with law or not?

17 MR. MCGUIRE: It shouldn't. Because as the
18 petition has laid out, even before July 1st when the
19 new law takes effect, you have Judge Totenberg's
20 rulings that the existing voting system doesn't comply
21 with law. And that -- that law -- those rulings did
22 not take into account this new provision that's coming
23 into effect on July 1st.

24 So even if the July 1 date gets pushed off,
25 you still have the existing problem that voters cannot

1 vote -- they're not casting a verifiable ballot because
2 they can't read a QR code. And that's what is the
3 official vote today. And so the -- the law requiring
4 the board to adopt a definition of a vote, really, you
5 know, it -- it requires correction today as -- as far
6 as letting voters cast a verifiable ballot.

7 Okay. And so this one kind of out of left
8 field. In defining what a vote is, we're not going
9 back and changing what the definition of a vote is.
10 We're just further identifying what a vote is, correct,
11 according to what is in Georgia law at this time?

12 MR. MCGUIRE: Yeah. I mean, I -- I view it as
13 a very mechanical process of saying, you know, the
14 ballot card contains certain information. And -- and
15 the -- the board is going to say which -- which of that
16 information is the vote. And it has to be the vote
17 that the voter can read to make sure that it's
18 accurate, that it actually reflects their choices. So
19 I -- I don't think that it's any more complicated than
20 that really.

21 MS. GRUBBS: Okay. So do you believe that the
22 board has discretion to defer action in anticipation of
23 a -- of a legislative action -- action? I mean, can we
24 just sit around and twiddle our thumbs and go, oh,
25 well, the legislature is going to come into session,

1 so, you know, we need to wait and see what they say?
2 Is that appropriate in this situation?

3 MR. MCGUIRE: I wouldn't -- I wouldn't think
4 it would be appropriate. And the reason why is because
5 the mere fact that a legislation -- that a legislature
6 might -- might be called into special session does not
7 give you any assurance that the law is actually going
8 to be changed in a way that makes action unnecessary.
9 And elections are happening one after another all the
10 time, and voters are currently voting on a voting
11 system that doesn't allow them to verify their ballots.

12 So waiting until potentially the legislature
13 fixes something ignores the fact that the legislature
14 has already acted and it's already spoken. And the
15 thing that it commanded is not the -- the voting system
16 in place now. It's not in compliance with that law,
17 which is active and is going to become active on July
18 1st.

19 MS. GRUBBS: Okay. And then this question I
20 have -- and I don't know whether you or Ms. Marks would
21 need to answer this question. But on Page 403 of our
22 wonderful purple book of laws, it says, Part 2,
23 precincts using paper -- using paper ballots. Under
24 21-2-430, it talks about how to -- you know, how to run
25 a poll and that kind of thing.

1 And so under -- if you look at Section 437,
2 procedure as to count and return of votes generally and
3 voided ballots, I think there have been some people
4 that say that if we use hand-marked paper ballots, then
5 according to 21-2-437 that there's an obligation to
6 hand count ballots. Is that something that you can
7 speak to, Ms. Marks?

8 MS. MARKS: I can say that -- well, in fact,
9 look -- look at the State Election Board rule on when a
10 system is impracticable or impossible to use. You've
11 got the State Election Board rule, and you all have
12 already made this legal determination that what you do
13 is go to the optical scanning system. That is an
14 EAC-certified system. And that is what we use,
15 hand-marked paper ballot with the scanners.

16 And what we can do, if we get a chance to meet
17 again to have more discussion, we can parse through all
18 of that language. But I would just remind this board
19 that you all have already looked at that, made the
20 determination, and that is in your what you are calling
21 the emergency ballot rules.

22 MS. GRUBBS: Okay. And so can Dominion -- the
23 current Dominion system that we have, can it scan and
24 tabulate full-face ballots?

25 MS. MARKS: If you don't mind, Rob, I'll take

1 that. It cannot with the current software. We use
2 5.5a. And 5.17, which is several versions later, is
3 the version that does permit the use of what's called a
4 full-face ballot. And if people don't know what that
5 is, it's the one that's a mail ballot with all the
6 choices on it, that some people call it a bubble ballot
7 that you color in the oval adjacent to the name of the
8 candidate.

9 And while the current software cannot do that,
10 5.17 and later versions certainly can. But the problem
11 with that in Georgia -- and the Secretary noted this
12 over the last couple of years, that if the legislature
13 wanted to do that, that would be about a \$60 million
14 bill. Not for the software, the software will be free
15 under the contract, but for all of the printing
16 equipment that will be required for longer ballots.

17 As well as the software installation is so
18 difficult, for the touchscreen ballots, that his
19 estimate was 90,000 labor hours in order to install
20 5.17 and then be able to read ballots that were
21 full-face ballots, again, now created by touchscreen.
22 We need no money at all in order to use hand-marked
23 paper ballots because -- and I'll come to the exception
24 of that for ballot on-demand printers. But for
25 hand-marked paper ballots, all we need to do is hand

1 out a box of Sharpies and pre-printed ballots. The
2 expense and the cybersecurity questions come in, in
3 trying to vote on the touchscreen.

4 Now, when we say it's not going to really cost
5 anything, in fact, there will be significant cost
6 savings to go to hand-marked paper ballots with the
7 current system. We also do need to remember that the
8 larger counties, probably about 17, 18, 19 counties,
9 would need to have -- and this is part of our rules
10 petition -- would need to have ballot on-demand
11 printers to manage elections at times when they have
12 many ballot styles to deal with.

13 But ballot on-demand printers, we are
14 recommending in our petition, be limited to those
15 counties with 2 or more voting centers and 20 or more
16 ballot styles. And there would need to be guidance
17 from the State Election Board and the Secretary on
18 cybersecurity controls to make sure that they don't
19 become out-of-control ballot printing factories. But
20 yes, it is going to take a conversion of software.

21 And I'll just add one last thing. We highly
22 recommend, as do all the cybersecurity experts -- and I
23 think even your county election officials recommend --
24 the security patch desperately needs to be done from
25 5.5a to a version that's 5.17 or higher. It -- there

1 is a desperate need for that security patch, whether or
2 not you're using hand-marked paper ballots.

3 The beauty of going to hand-marked paper
4 ballots is that -- that 90,000 man hours comes way
5 down, probably by over 90 percent. Because you would
6 only be needing to install on a limited number of
7 touchscreens and then all of your scanners. And the
8 scanners only take 20 minutes to update. I've given
9 you a long answer to a short question, but thank you
10 for asking.

11 MS. GRUBBS: So I wanted to ask you to -- part
12 of the original Dominion purchase in 2019 also included
13 ballot on-demand printers; is that correct?

14 MS. MARKS: Yes. Every county got at least
15 one ballot on demand printer as part of their Dominion
16 package. And some counties got multiple ballot
17 on-demand printers. For the counties that use them,
18 they primarily use them not in a polling place but back
19 in the back office, if they see they're running short
20 of some emergency ballots or mail-in ballots,
21 provisional ballots for a certain ballot style and
22 print those so that they would be available as needed.

23 But certainly, there is some experience with
24 those printers. And there is clearly no prohibition,
25 no legal prohibition, on using those printers. But I

1 do think that it does need guidance from this board.

2 Excuse me.

3 MS. GRUBBS: I'm sorry. Is there a limit on
4 the amount of emergency or backup ballots that can be
5 located at election day precincts or advanced voting
6 precincts? Is there a limit on that?

7 MS. MARKS: There's certainly not an upper
8 limit, but there is a lower limit of 10 percent of the
9 active voters. That was set by this board. We would
10 suggest that that be revisited because it's probably
11 too -- too rigid of a standard when you're thinking
12 about -- sometimes your election is really small.
13 You'll never need that much.

14 This board should revisit that. But there is
15 certainly no upper limit on how many ballots you think
16 you should have as an emergency stock.

17 MS. GRUBBS: Okay. Is there -- just in a
18 general sense, Ms. Marks, is there -- you know, we do
19 want to stick to what Georgia law is in making rules.
20 How hard have you worked to keep your rule position as
21 close to Georgia law as possible?

22 MS. MARKS: Well, we -- we really tried to
23 keep it totally within Georgia law and just
24 implementing Georgia law. Of course, every election
25 rule is going to go into more detail than the statutes

1 do. We cannot expect the legislatures to get down into
2 the nitty-gritty details as to things like you all do,
3 as to how many pixels there should be for a vote to
4 count. We can't expect that of the legislature.

5 And so certainly these rules have to be more
6 detailed. Then your rules have to be more detailed
7 than the legislature gives you. They give you the
8 guidelines, they give you the guardrails, they give you
9 the piece of paper, and it's your job to color inside
10 that piece of paper. We've tried to do that.

11 Now, the one place that -- that we've got a
12 little bit of criticism, that -- that perhaps you might
13 want to discuss -- and we can certainly amend our
14 petition -- and that is when we said -- we -- we
15 suggested that this board adopt a -- a provision that
16 said, look, we -- we know this is going to be a tough
17 transition.

18 We will -- for -- for counties that are trying
19 to operate in good faith to get through this
20 transition, we will not take enforcement action against
21 them through this transition. Now we -- we probably
22 did use a little bit of liberties there, and we've
23 gotten some criticism. And you may want to revisit
24 that before you do a final adoption of -- of a rule.

25 MS. GRUBBS: Yeah. That -- in fact, for

1 anyone listening, that had to do with Exhibit 1. It
2 says, in accordance with provisions of OCGA
3 21-2-379.23, effective until July 1, 2026, it says,
4 however, enforcement action shall not be taken by the
5 State Election Board with respect to this rule against
6 any jurisdiction making a good faith effort to plan for
7 compliance with this rule prior to October 13th, 2026.
8 And that had to do with the fact that that's when
9 advanced voting starts for the general election.

10 And so that would encompass any elections
11 between July 1st and that October date. And certainly,
12 you know, we want to comply with law, and we want
13 people to make a good faith effort. But of course, if
14 somebody just absolutely screws up on a process, we
15 don't want to throw the book at them for making a good
16 faith effort to comply with the process and the law was
17 the point.

18 MS. MARKS: Right. And that was my point in
19 doing that. And it may be more appropriate that the
20 board just set some type of policy or guidance perhaps
21 rather than adopting it as a formal -- as a formal
22 rule.

23 MS. GRUBBS: Do you think that goes back to
24 the situation with Athens-Clark County?

25 MS. MARKS: I do, yes.

1 MS. GRUBBS: Okay.

2 MS. MARKS: Yes. And in fact, that's why I
3 put that in there when this board took a very rapid
4 enforcement action against Athens-Clark County, which
5 was trying to absolutely follow the law on impossible
6 or impracticable. And -- and I think that for many
7 election directors across the state, they -- they saw
8 Athens-Clark trying to do exactly what we're asking
9 people to do. And that is follow the law, make your
10 transition.

11 They were making a very good faith effort, and
12 the previous board came down with a pretty tough
13 enforcement action. So that's why I was suggesting to
14 this board that you signal to the counties that you
15 intend to give them some grace as they go through this
16 process. And I would like for you to signal to them
17 that you will be seeking the help of the legislature to
18 make sure that any financial burden that they're
19 experiencing in the transition and training burden
20 could be supported.

21 MS. GRUBBS: Okay. Thank you, Mr. Chair.
22 That's all I have for now.

23 CHAIR FERVIER: I see that Member Ghazal has
24 her hand up. Member Ghazal.

25 MS. GHAZAL: Thank you, Mr. Chairman.

1 A couple of questions. Mr. McGuire, I'm a
2 little confused about the way you kept referring to
3 the -- the -- some of Judge Totenberg's opinions that
4 she was issuing. You kept referring to them as orders.
5 Was there any final adjudication in -- in *Curling v.*
6 *Raffensperger*?

7 Were there any TROs issued? Were there any
8 injunctions issued, any writs of mandamus? Any actual
9 affirmative obligations that came from that court case?

10 MR. MCGUIRE: There were a number of
11 injunctions issued along the way. They were appealed,
12 and it -- there were multiple phases of the case. So
13 there was initially a phase that dealt with the direct
14 recording electronic devices, which was the predecessor
15 to the ballot marking devices. And Judge Totenberg
16 ordered those enjoined.

17 And that -- that decision was not appealed.
18 It basically went into effect, -- and the -- the states
19 didn't challenge the order. It basically complied with
20 it by, you know, getting rid of the DREs and then
21 adopting BMDs. And then the case shifted to the BMDs
22 because they had similar and, in some case, worse
23 problems.

24 And so one of the documents I read, Docket
25 964, had to do with the BMDs. That wasn't part of an

1 injunction series of orders the judge issued which gave
2 injunctive relief. That was appealed to the 11th
3 Circuit. And the 11th Circuit held that, at the
4 preliminary injunction stage, those orders needed to be
5 reversed.

6 So it went back to the judge for trial. And
7 after a four-week trial, the judge ultimately made the
8 threshold decision that standing was a problem. And so
9 that's currently on appeal in the 11th Circuit.

10 MS. GHAZAL: Right. So there are no orders,
11 there is no affirmative obligation on anything. And in
12 fact, a state appeals court has ruled that our system
13 is fully lawful under state law. Is that not true?

14 MR. MCGUIRE: Well, I think it's kind of a
15 complicated question as to whether a party is bound by
16 decisions that were necessary to the ultimate outcome
17 of a case. I believe there's -- there are doctrines
18 of -- they've got Latin terms for them that -- that I
19 always confuse, but --

20 MS. GHAZAL: I'm not confused by Latin terms.
21 Thank you, Mr. -- Mr. McGuire. But my -- my point is
22 that I want to make sure that those who are listening
23 understand that under this case there is no binding
24 obligation. There is no binding ruling that our system
25 is unlawful. The case was ultimately dismissed because

1 the -- the -- at the trial level, the Court determined
2 that the plaintiffs didn't have standing here.

3 So I just want to make sure that's really
4 clear for everybody listening that while we may be
5 talking about rulings, they were not actual official
6 court rulings that have a binding precedential -- well,
7 even at the district court, there would be no
8 precedential value.

9 Ms. Marks, I want to go into some of the
10 actual text of your petition. Because in fact, under
11 H2, just shortcutting the rest of it under -- in the
12 first one, on the definition of a vote. Perhaps I'm
13 misreading it, but it certainly reads to me as if this
14 would be applicable immediately upon the -- the 20-day
15 period after -- after the rulemaking was approved,
16 if -- if we approved the rule, and then it comes into
17 force 20 -- 20 days later.

18 Even if that falls before July 1st, that this
19 would immediately apply. So in -- in fact, depending
20 on the timing, you are expecting that this rule would
21 apply to any primary runoff?

22 MS. MARKS: Well, that is why we had put those
23 words in there about -- that you would not -- you,
24 being the board, would not attempt to engage in any
25 enforcement actions if people were working toward a

1 November election. But yes, I mean this kind of goes
2 back to what we were trying to say and Rob was saying
3 is that, today, forgetting about SB 189, whether or not
4 ever SB 189 ever existed, as we have been coming to
5 this board both for rulemaking and in the courts to say
6 the current system does not comply with law.

7 Therefore, we've got a current problem. We
8 had a problem last month and the month before. The
9 system does not comply with law. Therefore, it needs
10 to be addressed by this board to get it in compliance
11 with law. And the only way to get it in compliance
12 with law is to use the hand-marked paper ballot system
13 as the backup.

14 And that relates to all of those -- those
15 various violations that we have been listing but we
16 don't -- we didn't have time in our presentation to go
17 through today. And that's ballot secrecy, the
18 inability to have a human readable vote, as Judge
19 Totenberg found. And the -- also, the fact that there
20 is no manual audit capacity under federal law, the --
21 the inability, as Judge Totenberg also found, for
22 election directors to comply with the required logic
23 and accuracy testing.

24 So there are many violations of law that have
25 been chronic and continuing that this board has the

1 duty to -- to address and to determine that the
2 ballot -- excuse me, yes, that the current system is
3 not capable of meeting the law, therefore, impossible
4 and impracticable to use.

5 MS. GHAZAL: Which assessment has been belied
6 by the Georgia Court of Appeals? Just forget -- forget
7 everybody -- everybody understands that -- I -- I
8 understand that this is your view and this is -- this
9 is your view of the -- the legal status. But the
10 Courts happen to disagree with that.

11 Thank you. I have no other questions.

12 MR. WHITE: I don't -- I -- I -- okay. I
13 think that's probably worth a further discussion,
14 perhaps next week. Because I don't think that the
15 Georgia Court of Appeals case that you're talking about
16 actually reached some of the issues. I'm positive that
17 they did not, including the -- some of the issues
18 around what constitutes a vote. But -- but you're
19 right, it's an interesting legal discussion that
20 probably merits more time.

21 And by the way, the -- the ruling that Judge
22 Totenberg made on the duty of this board for -- to --
23 to determine the -- whether or not a voting system was
24 impossible and impracticable, that was in the first
25 part of the case, as Rob said, that -- where the order

1 is effective.

2 Any other questions for us?

3 CHAIR FERVIER: Any questions of Dr. Johnston,
4 Member King?

5 VICE CHAIR JOHNSTON: Sara had something else
6 she wanted to say, but she's muted.

7 CHAIR FERVIER: Members Ghazal?

8 MS. GHAZAL: Yeah. Thank you. I -- I just
9 wanted to sort of take a 30,000-foot view here that --
10 the suggestion that this is not a legislative issue is
11 really belied by the fact that the legislature tried to
12 make a determination. In fact, the -- the House passed
13 a bill that would have postponed implementation of 189.
14 Because in the -- in the view of the House, our system
15 is still fully lawful.

16 In the view of -- of the -- the vast majority
17 of the members of the House, they voted to postpone
18 implementation of 189. And if we are ignoring their
19 determination and their assessment, I think that it
20 puts us very much in legal jeopardy. I also know that
21 the -- the governor of the state has asserted that we
22 don't have the authority to do this. So to suggest
23 that this is --

24 MS. MARKS: Well --

25 MS. GHAZAL: Please don't interrupt. To

1 suggest this --

2 MS. MARKS: I'm sorry. I apologize. I
3 thought you were finished.

4 CHAIR FERVIER: Member Ghazal, please
5 continue.

6 MS. GHAZAL: You know what, I'm just repeating
7 myself from -- from previous comments. I -- I think --
8 where I stand is very clear.

9 CHAIR FERVIER: Thank you.

10 Member King, you're muted. And if you could
11 turn on your video too, please. Thank you.

12 MS. KING: Yeah. That's -- I was planning on
13 doing that.

14 CHAIR FERVIER: Okay.

15 MS. KING: So I -- there's some areas of the
16 rule that I just kind of want to flush out a little bit
17 for myself. A cost analysis, so you stated that
18 there -- this would cost no money, but and I think I
19 heard you mention that it may with counties. What have
20 you found in your cost analysis associated with this
21 rule?

22 MS. MARKS: Okay. Certainly that any types of
23 cost analysis needs to be updated for the most current
24 things. But -- but when we think about -- in the very
25 big picture, when we think about the cost of printing

1 ballots, the commercial price for printing ballots is
2 going to be like 30 to 35 cents. And you don't need to
3 print -- one of the myths is that you have to print a
4 ballot for every active voter. That is not a correct
5 interpretation of the law.

6 But when you print the necessary number of
7 ballots through commercial a printer, it is by far the
8 cheapest method you're ever going to print ballots.
9 Printing ballots today on the ballot marking devices,
10 it's about the most expensive way you can do it. If
11 you think about all of the labor costs that go into the
12 touchscreen, programming, testing, transport, security,
13 maintenance, warranties, moving them to the -- to the
14 polling places, it becomes clear that you have invested
15 massive amounts of labor cost into each ballot.

16 When that -- the much cheaper way to do it
17 and -- and the cost analysis put forth by experts at
18 the time of HB 316 that was passed showed that
19 hand-marked paper ballots are far less expensive than
20 these -- than the touchscreen system. So it's clear --
21 and -- and certainly it would be good to go into more
22 analysis with your election directors who have their
23 budgets and can show this -- that the -- your ballot
24 cost, your ballot -- per ballot and per voter ballot
25 cost is going to be far less.

1 There will be training costs. Some counties
2 will need to obtain ballot on-demand printers. They're
3 probably running about 5,000 apiece, and they're
4 probably -- statewide would need about 150 ballot
5 on-demand printers. That will be a fairly small bill
6 for out-of-pocket cost compared to what you will save.
7 But one of the reasons that hand-marked paper ballots
8 have been -- pre-printed ballots have been popular
9 across the nation is because it is the most cost
10 effective way to vote.

11 MS. KING: I think I was also look -- wanting
12 to hear about labor and whether or not the counties
13 would have to -- like, will this -- would it increase
14 the amount of people they would have to hire or will it
15 decrease?

16 MS. MARKS: It it should generally decrease
17 it. Because if you think about -- when you and I go
18 into the polling place, we don't see all the teams of
19 people who were involved in setting up those machines
20 and testing the machines and moving the machines and
21 getting them on the truck and putting them up in the --
22 so all of that, it becomes invisible to us, right? So
23 that labor cost, to a great extent, goes away.

24 But -- but also, there should be no need for
25 any more people in -- to be hired in the polling place.

1 Maybe the first election you might want to have some
2 extra greeters, if you will, to say, you know, here's
3 where you go get your pins, it's a little different.
4 But for example, today, because of the requirement, the
5 legal requirement, for every voter to review their
6 ballot before they scan it to make sure the computer
7 printed it correctly, your rule says there has to be
8 an -- an assigned person who does nothing other than
9 recommend -- or tell the voter to do that.

10 With a hand-marked paper ballot, it's self
11 verifying. Nobody has to make sure that the ink went
12 onto the paper where you put it, the ink went there.
13 So you could -- you could have that person assist
14 voters in other ways. No need to hire more people.

15 MS. KING: Okay. Another thing I noticed, so
16 you mentioned in the rule cybersecurity.

17 CHAIR FERVIER: Member King, can you turn your
18 volume up a little bit?

19 MS. KING: Turn my volume up?

20 CHAIR FERVIER: Yeah. I mean, for some reason
21 you're coming in real low volume. I don't know if
22 anybody else has had a problem.

23 MS. KING: I don't know how do that. I
24 don't -- like, so you can hear it. I mean, I could
25 turn the volume on my own, but it will just make you

1 louder. I guess I can lean closer.

2 CHAIR FERVIER: Okay. Maybe that was it.

3 MS. KING: Or talk louder.

4 CHAIR FERVIER: I'm sorry. I just -- it was a
5 little low.

6 MS. KING: Yeah. I don't -- yeah. Okay. So
7 I can talk louder. Okay. You mentioned cybersecurity,
8 ballot accounting, and inventory controls in the rule.
9 Are you expecting this to be defined by the SEB or how
10 like -- okay. So that's something that will fall on
11 us.

12 MS. MARKS: Well, yes. And -- and you may
13 want to issue some guidance before you would have time
14 to go through the whole rulemaking process. Issuing
15 some informal guidance along with the Secretary of
16 State I think would be a smart idea for the counties.
17 A lot of the counties that I've talked don't -- talk to
18 don't realize some of the cybersecurity risk involved
19 in ballot on-demand printers.

20 And so it would be a really good idea to make
21 sure that they are grounded in that and that you guys
22 and the Secretary of State come up with some solid
23 recommendations which you would eventually want to turn
24 into rules, but give them some help on the front end.

25 MS. KING: Okay. Next one.

1 MS. MARKS: Oh, excuse me. May I offer one
2 other suggestion on that? And that is remember how in
3 2020 the state provided for Dominion technicians to be
4 involved at all of the counties, and the state paid for
5 Dominion technicians to be there. We would recommend
6 that if the counties wanted to help, that were having
7 to use valid on-demand printers, the same type of
8 technicians could be deployed to babysit the ballot
9 on-demand printer, let that be their baby for the
10 course of the first election or two.

11 MS. KING: The next question, daily ballot
12 counting, can you explain what that would look like?
13 Or is that something that we will also have to define
14 as SEB in working with the SOS?

15 MS. MARKS: The same. I think that that type
16 of detailed rule needs to probably start with guidance
17 after you've talked to the election directors. But
18 what we were trying to say is a ballot accounting, not
19 ballot -- not vote counting at all but accounting for
20 all of your blank ballots. And you will find thousands
21 of jurisdictions across the nation that do this every
22 day of elections.

23 They know how to -- every morning, their poll
24 workers account for all the ballots they have on hand,
25 at the end of the day how many they used, how many they

1 have left. And people think about all these ballots
2 flying around, like, uncontrolled. That's not the way
3 it is.

4 They are -- they come to the -- to the poll
5 workers in shrink wrapped, pre-numbered packs, easy to
6 account for. So you're only accounting for what's been
7 opened. And it's easy to do your inventory every day.

8 You think about today when we have all the
9 blank ballot stock in all of the printer trays
10 throughout all the polling places, that's not being
11 accounted for as it should be. And that is blank
12 ballot stock where people can generate ballots if we're
13 not careful.

14 MS. KING: And you do want to count the
15 ballots that were used. So does that mean we have to
16 pull them out of the scanner if we're using -- well, I
17 mean, we're going to use [inaudible 01:09:45] with this
18 thing.

19 MS. MARKS: I wouldn't be pulling them out --
20 I wouldn't be pulling them out of the scanner, well,
21 every night. And this is the kind of good discussion
22 you're going to want to get into with your election
23 directors. But what we would recommend is every day
24 during early voting, even today, not just -- not just
25 if we go to hand-marked paper ballots.

1 But that every day, those election -- early
2 voting locations, that the ballots are secured and
3 brought back to a fireproof vault at -- at the election
4 center. And that when they are, at that point, there
5 is ballot accounting before they leave. In other
6 words, how many ballots do we have? Let's be sure the
7 number that leaves here is the number that makes it to
8 the central fireproof vault.

9 MS. KING: Okay. Last question for now. Now
10 the -- the instructions to the SEB, that part does
11 concern me a bit because I don't know how we would
12 define honestly trying. Some may say, well, I sent a
13 couple of e-mails, I was trying. Others may say, well,
14 I pick up the phone and call, you know.

15 So I -- I do think that that kind of puts us
16 in a position where we could be -- again, another
17 lawsuit if -- if the county says, well, I was honestly
18 trying. And now we have to defend what that means.
19 That's something that's more -- to me, that's a
20 personal thing, and I -- I don't necessarily like that
21 portion of the rule.

22 But -- but thank you. Thank you for answering
23 my questions. And I may have some later.

24 MS. MARKS: And -- well, thank you, Member
25 King. And we're certainly open to a friendly amendment

1 on that, to strike that language, if you would like to
2 do that, before -- before adopting it into rulemaking.
3 And we would just recommend that perhaps you go do
4 informal, nonbinding guidance with a little more
5 explanation in it to the -- to the county saying, look,
6 we know it's a tough transition, we want to help you,
7 we're not going to be unreasonable in -- in trying to
8 enforce this big change.

9 MS. KING: Got it. All right. Thank you.

10 CHAIR FERVIER: Member Ghazal.

11 MS. GHAZAL: I'm sorry, I said I was done.
12 And of course I'm not. So I do have some very serious
13 concerns about accessible voting for disabled voters.
14 Right now we have accessible machines that are set up,
15 and the votes are indistinguishable because they're --
16 they use the same ballots.

17 We do not have, currently, the -- the
18 technology. And we don't have access to funding to --
19 to implement anything like this that would -- that
20 would make it much harder to distinguish a ballot that
21 was cast by a disabled voter on accessible machines.
22 Given enough time, given the -- the funding, it would
23 be possible to reprogram one machine and -- and the --
24 a printer to print a full-face ballot to make it far
25 more difficult to distinguish a vote cast on a BMD as

1 an accessible method of voting for somebody who wants
2 to -- to vote independently.

3 MS. MARKS: Right.

4 MS. GHAZAL: But under your rules, any voter
5 who wanted to cast a ballot in person but had to use an
6 accessible machine would instantly be identifiable
7 through any -- any sort of digital imaging or through a
8 review of the ballots by hand. Because of course, we
9 all know ballots are now public records. How -- what
10 is your solution for not violating the ADA?

11 MS. MARKS: Right. Okay. So I'm glad you
12 brought this up. It is one of the -- we were going to
13 try to get into just this in the whole privacy issue.
14 But of course, there was no time to do it in the
15 presentation time. And certainly what we recommended
16 as part of this -- our proposal is that 5.5a be
17 superseded by a rapid deployment of 5.17 or above or --
18 or later.

19 And that would, as you pointed out, be able to
20 permit what look like hand-marked paper pallets to be
21 used from the touchscreens. That would not take too
22 long or much money to implement because you're only
23 dealing with, you know, what, maybe 3,000 of the -- of
24 those machines. But we have got exactly the problem
25 that you were talking about, not just for people who

1 require the use of the touchscreens for accessibility.

2 We have that problem for every voter right now
3 because 5.5a has a flawed algorithm. And we mentioned
4 it the other day, Member Ghazal, in the -- in -- in the
5 board meeting. And that is we have traceable ballots
6 right now. And the Secretary has admitted it.
7 Counties have admitted it.

8 And it is because the BMD software is the --
9 the random number assignment algorithm is flawed. And
10 the newer versions take care of that. It is one more
11 reason that it is compelling for this board to go ahead
12 and move to hand-marked paper ballots so that not
13 everybody's votes will be identifiable. It's not
14 everyone, but it's easier in early voting.

15 And that very quickly, the equipment that you
16 are talking about, is one of the easiest things to do
17 in all the things we are asking be done. It is
18 absolutely one of the easiest things to do to change
19 out those printers. Because these are going to just be
20 off-the-shelf printers. Change out those printers and
21 update the software for those units. But thank you for
22 raising that.

23 MS. GHAZAL: Can you point me to the statutory
24 provision that gives the State Election Board the
25 authority to determine what software is used?

1 Basically, you're -- you're telling us -- you're asking
2 us to order the Secretary of State to change their
3 software. Where is that authority?

4 MS. MARKS: Okay. That authority is in
5 enforcing the law. You do have the authority to direct
6 compliance with law through a cease and desist order or
7 many other ways. And right now, that software violates
8 HAVA because it -- it does not allow a private vote.
9 It violates the Georgia Constitution that requires
10 secret ballots.

11 It violates about four or five different
12 statutes in Georgia law requiring absolute secrecy,
13 including of the BMD machines. That -- that software
14 he is using or that he installed is violating the law.
15 And I believe that this board absolutely has the duty
16 to force -- to -- to require compliance with the ballot
17 privacy laws, the ballot secrecy laws.

18 So I know this is not anything this board has
19 done before. But it certainly has the duty to make
20 sure that ballot secrecy laws are being complied with.

21 MS. GHAZAL: So aside from the dicta and
22 the -- and Judge Totenberg's opinions, can you point me
23 to any judicial determination that our system is in
24 violation of HAVA or ballot secrecy laws?

25 MS. MARKS: Well, of course since there has

1 not been a DOJ adjudication, they've not sued. And
2 they are the only parties who can sue. No, certainly
3 not. But just because it hasn't been adjudicated
4 certainly does not mean that it is legal.

5 In fact, there have been numerous meetings of
6 this board, as well as county boards, where it has been
7 acknowledged and admitted. We can't provide ballot
8 secrecy. We can't do it because of the touchscreens.
9 So that's a pretty good admission.

10 As well as we have numerous e-mails from
11 counties. And I believe they've quoted -- it's been a
12 while since I've looked at them. But they quoted the
13 Secretary of State in saying, look, you can't be
14 delivering ballot images as -- as you used to do
15 because they are identifiable.

16 I mean, we have county after county who have
17 written us saying we can't give you ballot images
18 because we can identify who voted those ballots. So,
19 you know, it doesn't really matter to -- it shouldn't
20 matter to this board whether or not a court has ordered
21 it. When you know it's against the law, it is your
22 duty to order compliance with law, not just wait for a
23 court to do it. You don't need to do it if the court's
24 already done it.

25 MS. GHAZAL: Well, certainly, Georgia Courts

1 have plenty of jurisdiction over -- over the Georgia
2 law and Georgia Constitution. But -- but for some
3 reason [inaudible 01:19:12] communicate that.

4 MS. MARKS: As does the board.

5 CHAIR FERVIER: That makes me a little
6 uncomfortable to think that we have to enforce law that
7 hasn't been ruled to be illegal, you know.

8 MS. MARKS: Well, if the Court's --

9 CHAIR FERVIER: I -- I understand your
10 position, Marilyn. I just -- you know, if a Court
11 hadn't said it's illegal, why would we be able to say
12 that?

13 MS. MARKS: Well, because -- because it is
14 your primary responsibility before it goes to a court.
15 If -- if we were going to rely on the -- the Court as
16 the first line of defense, there would be no need for
17 the board to have the directive from the General
18 Assembly saying you must -- it is your duty to insist
19 on compliance with law. We wouldn't need you guys.

20 We just go to the Court for everything, right?
21 They wouldn't have need to -- the -- the General
22 Assembly wouldn't need to tell you for you to do it
23 if -- if your -- if -- if your view is, well, until the
24 Court says it's wrong, it's not wrong.

25 CHAIR FERVIER: Well, I should have --

1 MS. MARKS: I think your duty is pretty clear.

2 MR. MCGUIRE: Now can I --

3 MS. MARKS: Yes, please, Robert, go ahead.

4 CHAIR FERVIER: [inaudible 01:20:24].

5 MR. MCGUIRE: I'm sorry. I just want -- I
6 just wanted to just clarify one point. I mean, you --
7 a couple of things, respectfully. Judge Totenberg's
8 opinion did rule on the legality of -- of these things.
9 And it -- it -- I know -- I know it was described as
10 dicta, but it actually was not -- well, you'd call it
11 dicta typically. It was -- her rulings in -- the
12 documents I cited are rulings that were essential to
13 the holdings that she reached.

14 And Member Ghazal is definitely correct that
15 the Curling case is currently on appeal because there
16 was a standing issue that the 11th Circuit has to
17 resolve. But the merits findings that underlay the
18 Court's rulings prior to the standing issue being
19 decided are -- are binding law of the case as between
20 the parties while the case is still alive, which it is
21 because it's on appeal.

22 And so, you know, Judge Totenberg did rule
23 that the current system violates the law. And -- and
24 so that's -- that's why we're able to point to those
25 decisions to say that this petition is a way to fix

1 that.

2 CHAIR FERVIER: All right. Member Grubbs?

3 MS. GRUBBS: Yeah. I guess I'm just a little
4 bit confused because every time we have an SEB meeting,
5 we enforce the law when we make findings from -- when
6 there are complaints made and we refer someone to the
7 AG or to the local DA. I want to be sure that we're
8 not selectively enforcing the law. I mean, how can we
9 enforce the law when it comes to people who are voting
10 illegally or people who are wearing inappropriate
11 attire that went to vote and they're wearing candidate
12 things?

13 Or if it's a candidate who is out there, you
14 know, at a polling place hanging around, and we say the
15 candidate violated the law, I don't want to selectively
16 enforce the law. It's either we enforce the law or we
17 don't. And that concerns me very much because
18 everybody's afraid of a lawsuit. Well, you know, how
19 about a lawsuit coming down the -- the pipe saying that
20 we are selectively enforcing the law?

21 MS. MARKS: Or not enforcing the law.

22 CHAIR FERVIER: Are you finished, Member
23 Grubbs?

24 MS. GRUBBS: Yeah. I mean, I guess it's kind
25 of a rhetorical question, but I don't -- I don't think

1 we can pick and choose what -- I mean, the law is the
2 law, is it not? And as far as -- as far as, you know,
3 Senate Bill 214 coming out of the House, to your point,
4 Member Ghazal, I mean that did not pass through on
5 signing day. That did not become law.

6 And, you know, just like you were saying about
7 the -- the case with, you know, Curling and what --
8 what actions there were or were not, I -- you know, at
9 present, we are faced with SB 189 and the date. And in
10 my view, I don't see how we can prolong taking action
11 as a board in this -- this great crevasse we find
12 ourselves in of, you know, we know that 189 is a law.
13 As it sits today, it'll go into effect July 1st.

14 The legislature may or may not come back into
15 session. I personally don't think -- I mean, they had
16 40 days to deal with this. And they've had since 2024
17 to deal with this after SB 189 was passed. And, you
18 know, my -- my question is to Member Ghazal's point
19 about funding, how much -- how much money did the
20 Secretary of State, Ms. Marks, request from the
21 legislature to cure this issue?

22 MS. MARKS: To cure this issue, he actually
23 told them he didn't want it funded. He told them in
24 2025 that they -- that -- that he thought this was \$60
25 million, it should not be spent, and that instead they

1 should move that money to Hurricane Helene recovery.
2 And of course, he didn't ask for it to be spent this
3 year.

4 And, you know, as we really look at what it
5 would have required, it would have required a whole
6 to -- to meet SB 189, it would have required an
7 entirely new voting system, which would have been more
8 than 60 million that -- that he estimated. So yes,
9 we've got a long-term problem.

10 And moving the dates of SB 189 -- and this is
11 the important thing that so many members of the public
12 and press don't understand, moving the date of SB 189
13 really does almost nothing. It does very little for
14 anyone. Because we have, as Rob pointed out again,
15 ongoing chronic violations of law that this board is
16 obliged to confront and deal with and find solutions
17 for.

18 MS. GRUBBS: Mr. McGuire, does -- does the
19 inaction or failure on behalf of the legislature to --
20 to "fix this issue," does that absolve us from our
21 responsibility and rulemaking?

22 MR. MCGUIRE: No. The -- the board has a duty
23 to ensure compliance with -- with law as it is
24 currently. And so the -- the legislature's failure to
25 change the law in any way doesn't change the board's

1 duty.

2 MS. GRUBBS: Thank you.

3 CHAIR FERVIER: Any other questions from board
4 members? Before we get into --

5 VICE CHAIR JOHNSTON: Yes. Yes.

6 CHAIR FERVIER: Dr. Johnston?

7 VICE CHAIR JOHNSTON: Yes.

8 CHAIR FERVIER: Okay. Please.

9 VICE CHAIR JOHNSTON: Ms. Marks, what -- can
10 you hear me?

11 MS. MARKS: Yes, I can.

12 VICE CHAIR JOHNSTON: Okay. Thanks. Thank
13 you. Is -- is the -- what is the estimated time to
14 implement this change in becoming compliant with SB
15 189?

16 MS. MARKS: Well, I think to become compliant
17 with SB 189 it's probably -- probably three years. But
18 I would just guess. I've not -- I do not know how long
19 it will be before -- before EAC approval is given or if
20 it's even been applied for, for the new ES&S system.
21 And I understand that they and Hart Verity are the only
22 two manufacturers that could comply with SP 189.

23 And I would think that there needs to be a lot
24 of homework done on whether those systems are
25 appropriate. We don't like ballot marking devices at

1 all, whether or not they read text or QR codes. But by
2 the -- from the time that you would start out looking
3 at a certified system by ES&S or Hart Verity to the --
4 to the time that you would absolutely implement, two to
5 three years, I guess.

6 VICE CHAIR JOHNSTON: So that's an
7 implementation of ES&S and --

8 MS. MARKS: Or Hart -- or Hart Verity.

9 VICE CHAIR JOHNSTON: And that's -- that's
10 basically another electronic voting system.

11 MS. MARKS: Another -- yes, another BMD
12 touchscreen voting system. And again, we -- I think
13 we've been clear from -- for the last seven years, we
14 do not think those are appropriate. The cybersecurity
15 experts say that is not an appropriate way to vote,
16 except for those people who need -- need that for
17 accessibility reasons.

18 So we -- we would be, you know, of course,
19 opposing that, if it comes up in the legislature again
20 that that's the system that they want to choose. But
21 I'm -- I was just trying to answer your question on how
22 long would it take to actually do an implementation of
23 what is specifically required in SB 189? Okay.

24 VICE CHAIR JOHNSTON: Okay. What -- how long
25 would it take to transition and implement voting with

1 hand-marked paper ballots?

2 MS. MARKS: Of course that's why I think your
3 election directors from across the state need to be in
4 conversation with you all. And I, again, urge that.
5 But what we've been told by some small counties is,
6 hey, you know, I can do it in time for the May primary
7 if you tell me to. I don't have that many ballot
8 styles. We're used to it, not a big problem.

9 Your bigger counties are of course going to
10 say, we're going to need time to buy ballot marking --
11 excuse me, not ballot marking, ballot on-demand system.
12 We're going to need time for training. And they may
13 say that it will require them some months. The only,
14 you know -- the -- the only information that we have,
15 let's say, under oath, would have been back in 2020
16 when Fulton County in our court case was asked this
17 very question by Judge Totenberg.

18 And I believe this was in September, before
19 the November election, they -- they said, we can do it
20 for election day, not a huge problem, we can get it
21 done. And then, Judge, if you order us, we will do it
22 for early voting. But it's going to -- I'm not how
23 clear how -- how long it will take us to do that for
24 early voting.

25 And this would have been with about a month

1 before their early voting started. They did express
2 some concern about whether they could do it within a
3 month. And I think that would have been a huge
4 challenge for -- for Fulton. It's going to vary by
5 county.

6 And one of the things that we were hoping to
7 discuss with you is that you would encourage your
8 smaller counties to go ahead, start now. They have the
9 right and the duty to go ahead and make the
10 determination on their own that their systems are not
11 compliant with law and to start right away, even as
12 early as election day on May 19th and certainly on the
13 runoffs. Let them -- or suggest, urge them to go ahead
14 and get compliant with law.

15 And then work with your large counties to --
16 work with your large counties to figure out a good
17 implementation plan. And if you run into a county that
18 is having particularly, for some reason, extremely
19 difficult problems with some voting centers, they can
20 always apply for a waiver. As all rules in the state,
21 whether it's Department of Transportation or election
22 rules, there are provisions that waivers can be granted
23 if there is an extreme hardship.

24 VICE CHAIR JOHNSTON: What how long would
25 training -- how long would you foresee -- I know you've

1 thought about this a lot. How long would training take
2 for the transition to hand-marked paper ballots?

3 MS. MARKS: You know, I can't imagine needing
4 more than a half a day's worth of training. Remember
5 that when they did a much more complex, much more
6 difficult conversion in the spring of 2020, right
7 before the presidential primary of 2020, they had to
8 get rid of the Diebold equipment and bring in all this
9 new multi-component equipment they'd never seen before,
10 never had any training on. And I think we learned that
11 there was maybe nine hours worth of training at most
12 for that -- for that entirely new system.

13 In this case, many of your workers' jobs are
14 not going to change at all, that -- that probably the
15 only really -- easy enough to hand out a box of
16 Sharpies, some Sharpies to people. And the scanners
17 are exactly the same, they will work exactly the same,
18 exactly the same scanners. A lot of people are
19 confused by that. Poll workers won't know a difference
20 there. In fact, as we said, the poll worker who's
21 there standing at the equipment to remind people to
22 check how you vote, he doesn't have to be there
23 anymore.

24 The only person whose job is going to change
25 very much is the person who today is handing out the

1 smart card that has your -- your ballot style on it is
2 now having to hand out the correct ballot style, to
3 make sure that if you're in the Maple Street Precinct
4 that your ballot says Maple Street and that you be sure
5 the ballot says Maple Street. Just being sure that the
6 right ballot is given. And those people who are
7 working on the ballot on-demand printers would
8 certainly make -- need to make sure that it was
9 operating properly and the right -- right ballot was
10 being printed.

11 It's -- this is being done all over the United
12 States in thousands of polling places every day. We
13 don't have to learn from scratch. There are many
14 election directors across the United States willing to
15 come in and share their best practices for making sure
16 the ballots are issued correctly. So I can't imagine
17 over a few hours being needed.

18 But again, we would encourage the state to
19 support that and for you all to recommend the state use
20 discretionary funds or ask the Secretary for some of
21 those funds in order to make sure that the training
22 is -- is solid and the people are confident. But
23 there's so many resources to help counties convert.

24 And I would just remind you all of -- in 2017,
25 when the State Election Board of Virginia in September,

1 early September, heard a cybersecurity report, realized
2 they shouldn't be using touchscreen machines. And at
3 that very meeting, without warning, told the counties,
4 you must use hand-marked paper ballots. 17
5 jurisdictions had to go out and start from scratch, buy
6 hand-marked paper ballot equipment that they didn't
7 have, and start from scratch and run a statewide
8 election electing the governor in 2017. And they
9 pulled it off without a hitch.

10 VICE CHAIR JOHNSTON: How would the -- how
11 would you say the public would need to be educated by
12 the transition to hand-marked paper ballots?

13 MS. MARKS: Well, what I hear from the
14 election directors who have had to conduct elections
15 with emergency paper ballots, you know, if -- if --
16 today, this is exactly the same process we have if
17 voters walk into the polling place or the polling
18 manager opens it up and the touchscreens aren't working
19 for some reason. They turn, pull out their emergency
20 ballots, hand out the ballots, hand out a Sharpie. And
21 no voter ever needs any real training is what they tell
22 us.

23 You know, you hand them a Sharpie and tell
24 them to go vote, and people instinctively know that
25 they're supposed to color in the oval. And there are

1 ballot instructions that say, only fill in one oval
2 for -- per contest. And one of the myths that needs to
3 be busted in this session that I keep suggesting you
4 all have is that -- that voters will mismark their
5 ballots, and we'll have all sorts of adjudication we
6 have to do.

7 No, the machines are well programmed so that
8 if a voter marks -- over votes their ballot, marks more
9 than one voter candidate in a contest, the scanner --
10 while the voter is standing in front of it, the scanner
11 will eject it. A message will come up on the scanner
12 that says, you've over voted the race for US Senate.
13 And -- and the voter goes back, gets a new ballot,
14 and -- and changes the error they made.

15 Also, if they make an ambiguous or a light
16 mark -- usually won't happen with a black Sharpie, but
17 if they make a light mark or mark by mistake the -- the
18 machine can't quite read, it will also eject that
19 ballot and will give them a message saying, on County
20 Commissioner 4, your --your vote was ambiguous, do it
21 again. And so it doesn't really take much voter
22 training at all.

23 We've never heard any election director say,
24 oh, my voters had problems with emergency ballots when
25 we handed them out.

1 CHAIR FERVIER: Well, actually, just today, I
2 heard an election director talk about the large number
3 of voters that have issues with hand-marked paper
4 ballots -- and he's in a reasonably -- reasonably large
5 county here in Georgia -- and talked about the issues
6 that they had with the hand-marked paper ballots
7 that -- that was a comment made just today, so...

8 MS. MARKS: And -- and was that a -- was there
9 a large polling place that went to hand-marked paper
10 ballots, or was he talking about mail ballots?

11 CHAIR FERVIER: I don't know that for sure, so
12 I'm not going to tell you. But I know he -- he was
13 adamant that they had issues with him, so...

14 MS. MARKS: Right. Well, we hear that a lot.
15 And then when we nail it down to has there actually
16 been a big polling place where anybody had any
17 problems. We've not been able to find it. But
18 Mr. Chairman, what a lot of people, when they talk
19 about that, are thinking about the mail ballots that
20 people vote at home where there is not a scanner that
21 ejects it back to them and said, you over voted this or
22 your mark was light.

23 And a lot of people do some silly things kind
24 of on purpose with their mail ballots at home. They'll
25 pick up a glitter pen and mark their ballot with a

1 glitter pen. Well, you kind of expect you might have a
2 problem with that scanner. So yes, there have been
3 adjudication issues.

4 But I think one of the best statistics -- it's
5 not all that recent, but one of the best statistics we
6 see on that is some of us are old enough to remember
7 2008, the Minnesota US Senate race between Norm Coleman
8 and Al Franken when -- it was a very, very narrow race.
9 They had to do a hand recount. And of over 3 million
10 ballots, there were only 14 that there -- were
11 questioned in terms of what was the voter intent.

12 So if you only have 14 ballots out of 3-plus
13 million in a hand-marked paper ballot election, you
14 know, we don't think that that rises to the level of,
15 you know, huge problems. But we are not aware of any
16 big problems taking place anywhere in the country, and
17 certainly not in Georgia, on hand-marked paper ballots
18 cast in the scanners.

19 CHAIR FERVIER: Yeah. I -- I want to go back
20 to -- I'm sorry, Dr. Jan. I wanted to talk about one
21 or two things. I know that you had mentioned earlier
22 about the printers that came out with the Dominion
23 machines. And you said --

24 MS. MARKS: Oh, they ballot on-demand
25 printers, yeah. Uh-huh.

1 CHAIR FERVIER: They're not ballot on-demand
2 printers. They're ballot printers, but they're not
3 ballot on-demand printers. And they're about 7 or 8
4 years old, I don't think they'd be sufficient for --
5 you know, this -- this, if you were to use them
6 immediately. I -- I don't believe so. And also, those
7 things, we had a quote today on those, about \$7,000 for
8 a ballot on-demand printer.

9 VICE CHAIR JOHNSTON: But Chairman Fervier,
10 I -- I got a quote of \$3,000 for a high-volume,
11 state-of-the-art ballot on-demand printer.

12 CHAIR FERVIER: But didn't -- didn't -- I
13 mean, our -- the gentleman that responded that day said
14 that that company said that they were not able to do
15 that this year.

16 VICE CHAIR JOHNSTON: Well, I just talked to
17 that company two days ago, and they were eager to --
18 eager to talk more.

19 CHAIR FERVIER: I mean, we were at the same
20 meeting, so...

21 MS. MARKS: Mr. Chairman, could -- could I try
22 to answer that from -- I believe that while some
23 people -- some people use ballot on-demand as a brand
24 name. And some people had tried to brand to -- to kind
25 of brand name that. But what we're talking about is --

1 I -- I sometimes call it on-site ballot printing. And
2 those ballot printers were, in fact, designed for --
3 for that.

4 They came along with a mobile ballot box
5 software, which was Dominion's software at the time to
6 do this. But I believe that KNOWiNK has a very viable
7 solution. They also produce your poll books, and it
8 works with poll book data to -- to print a ballot on --
9 ballot on-site printer. And I'm not suggesting that --
10 that all the counties go use their old ones. Only
11 about 17, 18, 19 counties are even going to need them.

12 And I would think, like Dr. Johnston is
13 talking about, you probably want to go get new ones.
14 There are at least five manufacturers. And the last
15 time we checked, we were hearing that there was about a
16 six-day turnaround for -- for the equipment. So I
17 don't think that procurement should be a big problem
18 here, given that there are -- they don't have to be
19 certified.

20 But I do believe it would be incumbent on this
21 board to work with the Secretary in making sure that
22 you've narrowed the specs a little bit. Not everybody
23 is [inaudible 01:42:15].

24 CHAIR FERVIER: There's -- there's always a
25 problem when you're dealing with the government.

1 MS. MARKS: Well, okay, but at a county --

2 CHAIR FERVIER: [inaudible 01:42:20].

3 MS. MARKS: -- right, at a county level.

4 CHAIR FERVIER: Okay.

5 VICE CHAIR JOHNSTON: Ms. Marks, can --
6 could -- could we or the state anticipate and expect
7 that the Secretary of State would provide the
8 procedures and forms and training necessary to
9 transition to hand-marked paper ballots --

10 MS. MARKS: Well --

11 VICE CHAIR JOHNSTON: -- by this November?

12 MS. MARKS: Well, I would certainly hope so.
13 And I -- I would expect that you would have members of
14 the -- of the legislature who would -- would urge him
15 to do -- to do just that. And -- and I would hope that
16 there could be a cooperative relationship between you
17 all and the Secretary to do that. But if you ran into
18 problems, certainly this board has the ability to reach
19 out to the many expert consultants that there are
20 who've done this for decades, who would be able to help
21 you in two or three days do all that you needed to do
22 for probably very reasonable fees and you could get
23 that done.

24 I mean, you could do it by the end of next
25 week if people were willing. But I'm sure that there

1 is that level of expertise out there given the
2 thousands of jurisdictions that do this today.

3 VICE CHAIR JOHNSTON: Well, thank you for your
4 vote of confidence, but the State Election Board does
5 not conduct elections.

6 MS. MARKS: I -- I understand, but you all are
7 responsible for promulgating rules and procedures. And
8 that could -- if -- if you found that the Secretary was
9 not able to -- to help in the way that you wanted him
10 to, you've certainly got the ability to make some
11 rules, procedures, recommendations, guidance.

12 VICE CHAIR JOHNSTON: Right. But the board
13 does not conduct elections. Is a -- is a
14 machine-marked ballot legal and HAVA compliant?

15 MS. MARKS: So it depends on what
16 machine-marked ballot. But the ones that produce a QR
17 code certainly are not because as it -- that produce a
18 QR code for purposes of having it tabulated. That is
19 not -- because HAVA tells us that the vote must be a
20 vote, that the voter can verify and change if it is
21 incorrect.

22 It is awfully hard, whether you can read it or
23 not, to change a vote if it is wrong, if it's
24 programmed wrong, as Northampton, Pennsylvania learned
25 in 2023 or 2024. I've forgotten what year it was,

1 actually -- 2023. You know, in a judge's race or a
2 judge's retention, yes was programmed as no, no was
3 programmed as yes. And it wasn't a hack. It was just
4 a mistake.

5 The -- the voters, when they realized that
6 they couldn't vote their choice on the screen, there
7 was nothing that could be done. So that -- that ballot
8 wasn't changeable. It will depend on the machine
9 and -- but -- but the HAVA -- the -- the HAVA
10 requirements that we are asking you all to look at are
11 the human readable vote, the requirement to be marked
12 in private.

13 And depending on which touchscreen, the one I
14 use here in Charlotte is a ES&S machine. I don't get
15 to vote in private. The person next to me watches how
16 I vote, so -- and the same problem in Georgia. There
17 has to be a ability to have manual recount of the vote.

18 So depending on what your machine is marking,
19 in ours does not. The QR code is not manual. It
20 can't -- cannot be manually recounted. So we've got a
21 number of problems under HAVA, privacy, voter
22 verification.

23 VICE CHAIR JOHNSTON: Right. I'm really --
24 I'm really moving toward the question of putting on a
25 forensic hat and asking, does a machine-marked ballot

1 meet the necessary forensic standard to be an auditable
2 paper document?

3 MS. MARKS: We do not believe -- we -- we are
4 confident it does not. And, you know, it's a bad idea.
5 Whether or not -- any particular law you are looking
6 at, any ballot-marking device is not going to be
7 secure. And I think that Professor Appel, at the last
8 meeting, made that pretty clear that hand-marked paper
9 ballots are the only secure method of creating a -- a
10 ballot, a trustworthy ballot.

11 If a machine marks it, it is going to be
12 untrustworthy in the general -- yes, you can do it in a
13 laboratory and fine. But if you're out there in the
14 general polling places with all of the things that can
15 happen to a computer, we cannot know that it's a
16 trustworthy ballot if it is being -- if the votes'
17 being recorded by a machine.

18 VICE CHAIR JOHNSTON: So so it would not be
19 satisfactory to move from BMD-marked QR codes to
20 BMD-marked ovals?

21 MS. MARKS: Correct. Correct. It was not
22 going to be secure. We're going to have the same
23 problem with the hackability. It's not going to be as
24 hackable if we upgrade -- if we upgrade the -- the
25 software. But we've still got the problem with it

1 being hackable and voters not verifying.

2 You know, some people are going to have, what,
3 45 races, 40, 45 races on their ballot in the next
4 week. And to expect that people are going to have
5 memorized what they put on the screen with -- and --
6 and check it, it's just not going to happen, no matter
7 how much we train them and beg them to.

8 CHAIR FERVIER: Let -- let me interrupt for
9 just a second. Ms. Lee, Gail, [phonetic], would you
10 like to turn off your video? All right.

11 VICE CHAIR JOHNSTON: Another question. I
12 hear this all the time that --

13 CHAIR FERVIER: Dr. Johnston?

14 VICE CHAIR JOHNSTON: Yes.

15 CHAIR FERVIER: Would you unmute Gail Lee's
16 phone real quick?

17 VICE CHAIR JOHNSTON: Me unmute it?

18 CHAIR FERVIER: No, no. Shaun. Gail --

19 MR. WHITE: Did you say did you say Gail?

20 CHAIR FERVIER: Yeah, Gail's phone.

21 MR. WHITE: I've unmute it. She has to click
22 it on her side.

23 CHAIR FERVIER: Gail, your -- if you can hear
24 me, your video is showing you going on a nice walk.
25 And so you might just want to turn it off the video and

1 just leave the audio on. I -- I can't hear you because
2 you're muted, but you just may want to turn the audio
3 off so we don't get to see things we don't need to see.
4 Thank you. That's great. Thank you.

5 VICE CHAIR JOHNSTON: All right.

6 CHAIR FERVIER: Sorry. Sorry, Dr. Johnston,
7 that was --

8 VICE CHAIR JOHNSTON: Okay. Just a couple
9 more questions. I -- I hear all the time, you know,
10 the -- "the problem about the QR code." And -- and then
11 a response is, what problem. So my question is: Is
12 having a pleasant experience by voting on a
13 ballot-marking device the same as concluding that the
14 voting method is legal?

15 MS. MARKS: Certainly -- certainly not.
16 Obviously, we want the voting experience for everyone
17 to be a pleasant, happy experience. But of course, we
18 don't expect the average voters to understand the
19 cybersecurity risk of what they are doing. And, you
20 know, I -- we see this a lot from the Secretary of
21 State saying, oh, the voters are so happy with it.

22 But, you know, the voters are not
23 cybersecurity experts. And they don't have to deal
24 with what this board will have to deal with in terms of
25 election challenges that come from having an

1 untrustworthy, unauditable ballot. So at times, you
2 know, the people who are charged with the
3 responsibility, like this board, like the General
4 Assembly, like the Secretary of State are going to have
5 to make those decisions with a deeper understanding of
6 what it takes to have a trustworthy ballot and a
7 verifiable and transparent election.

8 MS. MARKS: And is Beth Young [phonetic] on
9 the call?

10 CHAIR FERVIER: Beth --

11 MS. YOUNG: I'm here.

12 CHAIR FERVIER: Yes. Okay.

13 MS. MARKS: Ms. Young, might I ask the
14 question and -- I hate it. It's now like a pop quiz,
15 huh? And perhaps we should request an official
16 opinion. Will -- can the QR code -- if 189 goes into
17 effect on July 1st, can the QR code be on the ballot?
18 Can it just be present on the ballot?

19 MS. YOUNG: SB 189 talks about it not being
20 able to be used for tabulation. It does not have an
21 expressed prohibition for it to appear on the ballot.
22 So long as it's not used in tabulation, that would be
23 compliant with 189.

24 MS. GRUBBS: So the voters would have no idea
25 whether that was the vote or not?

1 MS. YOUNG: Well, the -- if -- if the
2 tabulated vote is -- is based off of the text that they
3 can read, that would be compliant with 189. In mere
4 existence, if it's not used in tabulation, that would
5 not be a violation.

6 VICE CHAIR JOHNSTON: Can it be used as
7 unofficial tabulation? I've heard this idea floated
8 recently.

9 MS. YOUNG: Like, for a quick result or a
10 rapid result type thing?

11 VICE CHAIR JOHNSTON: I'm -- I'm not sure. It
12 sounded like a workaround to me.

13 MS. YOUNG: I think all I can say about that
14 right now is that, you know, SB 189 speaks about
15 tabulation and official results. So to comply with
16 189, the QR code should not be used for tabulating
17 or -- or calculating official results. It's -- it is
18 silent as to any other uses like that.

19 VICE CHAIR JOHNSTON: So it would be like
20 decoration on the -- it -- it would not be used. It
21 would be sort of decoration on the ballot? Would it
22 be -- would tabulating tapes be produced by this ballot
23 that doesn't use it for tabulation? Would the
24 tabulation tapes from the scanner tabulators be
25 produced?

1 MS. YOUNG: I don't think tabulator tapes
2 generate QR codes. I believe it's just the ballots
3 themselves.

4 VICE CHAIR JOHNSTON: They -- they generate
5 tabulation, though.

6 MS. YOUNG: You're asking me about operational
7 details that are kind of outside my purview.

8 VICE CHAIR JOHNSTON: Okay. All right. And
9 Mr. McGuire, are you still on?

10 MR. MCGUIRE: Yes.

11 VICE CHAIR JOHNSTON: It's a bit uncomfortable
12 knowing that we're still in litigation about this, but
13 is -- could this petition adversely affect either party
14 since there is still current litigation?

15 MR. MCGUIRE: Well, off the top of my head,
16 this would be a new -- well, it's a change of law,
17 right? If you adopt a new rule, you're obviously
18 adding some implementation of existing statute. And
19 this is a long case, so the law has changed over the --
20 over the life of it, over the life of the Curling case.
21 It's been seven years and counting. I think maybe
22 eight years now. Maybe it's longer, nine years.

23 And so we've had a lot of law changes. And
24 every time the law does change -- you know, without --
25 without revealing client confidences, we have to get

1 together and figure out what the impact of the law
2 changes on our position in the case. Because courts --
3 when courts rule, they rule based on the law as it is
4 now, unless they're looking at some historical thing.

5 And the Curling case has always been a case
6 that's looking forward, trying to get forward-looking
7 relief. And so if the law changes, you know, then
8 obviously that can change the kind of relief that's
9 required. So cases do become moot when the thing that
10 they're about goes away.

11 And so if -- you know, I -- I don't want to
12 speculate on what would happen based -- because I don't
13 know what you're going to do. But if you change the
14 law in a way that eliminates the concerns about voting
15 that are present in that case, then that will impact
16 the case if it's not decided before that happens.

17 VICE CHAIR JOHNSTON: Thank you. And
18 Ms. Marks, I -- I have a concern about the -- the
19 petition for definition of a vote with the phrase on
20 both H -- H1 and 2 that says, enforcement action shall
21 not be taken by the State Election Board. The one of
22 the -- the prime -- primary duties of the State
23 Election Board is to enforce election law.

24 And I find this troubling and counter to what
25 our very duty is. And I -- I could not -- I could

1 just -- I could not support a rule with -- this, to me,
2 sounds like it's legislating actually and removing the
3 authority of the State Election Board. So --

4 MS. MARKS: So I would like to address that.
5 And before I do, I just want to go back to what
6 Mr. McGuire said when he said when you change the law.
7 He was talking about you Georgia folks, not you, you
8 the State Election Board. He was talking about the
9 General Assembly, just to be clear. A lot of people
10 think that we're asking you guys to change the law. We
11 are not asking you to change the law.

12 So on that -- that provision that, you're
13 right, is in both paragraphs, as I was trying to
14 mention before, we're happy to have a friendly
15 amendment and strike that. It -- it probably, on -- on
16 reflection, should not have been in there. We're happy
17 to strike that if -- if you would like. And we would
18 just urge, though, that this board send a strong
19 message to the counties.

20 We're going to work with you. We are going to
21 be reasonable. We do not want to try to punish you as
22 you are going through a tough transition. And that
23 was -- maybe you can, as I mentioned before, perhaps
24 write a letter, a letter of guidance, that would give
25 them your -- your assurance that you're going to --

1 you're -- you're not going to -- that -- that you're
2 not going to be taking -- you know, treating them in an
3 unduly harsh way.

4 VICE CHAIR JOHNSTON: Thank you. And in the
5 Rule 183.1-12-.11, conducting elections, I -- I saw
6 that you altered the rule throughout to change
7 superintendent to election director, which I know
8 that's the current election speak these days. But
9 election director is nowhere in OCGA, although I spent
10 a couple of hours today speaking to a bunch of young
11 adults that are -- designate themselves as election
12 directors or that's their title. But it -- it's not
13 in -- in our Chapter 21 --

14 MS. MARKS: Right.

15 VICE CHAIR JOHNSTON: -- Election code.

16 MS. MARKS: And I -- I would say -- that's a
17 good point. And I would say the same thing is true of
18 the word emergency. You know, that is -- what I was
19 addressing in that particular rule was the emergency
20 balloting. And we don't find emergency in the code
21 either.

22 But I -- your point is well taken. What I was
23 attempting to do, Dr. Johnston, is that emergency
24 ballot rule that you all have worked with for years,
25 it's -- it -- it has been kind of focused on the

1 unforeseen. You know, I walk into the polling place
2 and there's a water leak and the -- and the
3 touchscreens aren't working, or there's been a fire or
4 whatever.

5 What we were trying to do is to get away from
6 the requirement that that poll manager had to get the
7 board on the phone before he or she can do anything.
8 We were trying to -- to just say, let's be realistic,
9 let's -- let's get the -- the supervisor, election
10 director. Change the word in whatever way you -- you
11 want to. But the idea was don't require the poll
12 manager to go get a whole board's permission to say, I
13 got to do something, I got an emergency.

14 VICE CHAIR JOHNSTON: Right. Supervisor is
15 probably more accurate, although many of the
16 supervisors in our 159 counties have titled themselves
17 as election directors, which I'm -- I'm fine with.
18 It's just that it's not in the code.

19 MS. MARKS: That's an easy fix for us to make
20 if we can figure out what -- if we can figure out
21 what -- what to put in there instead.

22 CHAIR FERVIER: Member Ghazal, I think your
23 hand was up first.

24 MS. GHAZAL: Yes, thank you. Just a couple of
25 points. As -- as Ms. Marks correctly pointed out, we

1 can't expect voters to be forensic specialists. But
2 also, we are not specialists in conducting elections.
3 And again, I find ourselves in -- in a position of
4 making recommendations about procedures and
5 implementation from a position of not having any
6 experience doing that.

7 I want to go back to the conversation about
8 what happened in Virginia and -- and certain
9 jurisdictions in Virginia had about two months to
10 change over their election systems. The total number
11 of voters in those decisions were about 190,000
12 altogether. I have spoken with some of the election
13 supervisors or the election directors from Virginia who
14 undertook those changes. And we were eliding over an
15 enormous number of the complications and complexities
16 in those decisions.

17 I've spoken with Edgardo Cortes, who is the --
18 who was the state election director at the time who
19 made those decisions. It was not an easy change. It
20 was not a -- a smooth transition. It was -- it was
21 quite problematic. I'm not saying that it was not
22 done, but I'm saying that -- that -- to say that it
23 was -- to suggest that this would be easy, quick, and
24 simple is oversimplifying and in fact deeply
25 misleading.

1 And the fact that our election directors have
2 been telling us repeatedly how challenging this is, I
3 want to make sure we are giving them the deference that
4 they deserve. None of them have given themselves
5 titles. These are titles that they have been given and
6 have been signified by the superintendents.

7 And again, state law gives the authority to
8 determine whether or not to use the backup system to
9 the superintendents. If we are trying to change that
10 and say that the election directors or election
11 supervisors or whatever you want to call them have that
12 authority, again, we're going beyond the scope of what
13 statute allows us to do.

14 MS. MARKS: Of course the attempt was to --
15 and, you know, if -- if you all want to feel like you
16 have to leave it for emergency -- and we were trying to
17 address emergency situations, unforeseen circumstances,
18 a fire, the machines don't work, whatever. We were
19 trying to be realistic about that and make a few other
20 simple changes there. If it's important to you all to
21 leave it, that they've got to call the board for
22 something like that, you know, or maybe you could say
23 the board's designee, that's not a huge sticking point
24 with us.

25 We're -- we're much more focused on making

1 sure that the -- there are procedures to be able to
2 hand out paper ballots in the polling place. And
3 certainly, if there's a problem for a poll manager, to
4 be able to get early resolution. But we're happy to
5 take amendments on something like that. That's --
6 that's got to be an easy problem to solve.

7 And Member Ghazal, I -- I certainly was not
8 trying to imply that it's a piece of cake to do this.
9 In fact, I thought I've said all along in this
10 conversation that it's going to take some of the larger
11 counties a while. There needs to be meetings where
12 vendors are there, election boards, election directors
13 are there, pole managers are there exchanging
14 information. And let's get started with it soon so
15 that they can make -- they can have the most support
16 and planning time possible to -- to make this change.

17 I think we keep forgetting that this July 1
18 date is kind of meaningless with it -- with respect to
19 this board's duties. This board has got the duty to
20 deal with this here and now, just as we've been coming
21 to you guys for -- for a long time now saying, we're
22 not complying with law with the ballot-marking devices.
23 It's important that you honor people's rights to a
24 secret ballot.

25 It's important that you honor all of these

1 other rights that were put into HB 316. And simply
2 saying, well, we'll have to wait and see what SB 189
3 does is -- is really not the point. This needs to be
4 done now to try to protect the very contentious --
5 we're in a super, super contentious election year. And
6 if -- if the voters ever deserved a time to be able to
7 know that they are casting a trustworthy ballot that
8 wasn't going to be challenged, it's now.

9 And if your counties are really having
10 difficulty seeing their way through to change to
11 hand-marked paper ballots -- and I think it will only
12 be a few of them who say they can't do it in a timely
13 basis -- then work with them on giving them waivers.
14 But I just don't believe that with the proper support
15 and patience, that it is impossible.

16 If it is impossible, they begin to have a
17 harder and harder question to answer why aren't you
18 complying with current law. You know, they are
19 responsible for complying with current law. And right
20 now, I think what they're telling you is we can't do
21 it. But we got to find a way that they -- they get
22 there.

23 CHAIR FERVIER: Member Grubbs?

24 MS. GRUBBS: Yeah. Just a couple of quick
25 things. To the point earlier about requested data, I

1 actually have in my hands an e-mail that was sent to
2 the Secretary of State requesting a file described with
3 voter name, county residence address, precinct, and
4 combo for all voters who cast a ballot in the November
5 2024 general election. The response was, "We cannot
6 provide the requested data point of check-in time
7 because it would compromise the right to ballot secrecy
8 under Georgia law."

9 So that reinforces what Ms. Mark said, just
10 making that point. Ms. Marks, I noticed in the budget
11 that was passed for the Secretary of State, there's \$15
12 million that was given as part of a grant program or
13 something that was non-specified funding. Is -- is
14 there any reason that you know of or do you have any
15 knowledge of why that couldn't be used to assist
16 counties in going to the system?

17 MS. MARKS: I certainly don't know what it
18 was. I haven't heard anything about a grant program,
19 other than what that one line item is in the -- in the
20 budget. But I know that this board can't just reach
21 into the Secretary's pocket and take the money.

22 But -- but I would hope that you could go to
23 the General Assembly and ask them to -- to encourage
24 Secretary Raffensperger to use that money. And I
25 believe it is appropriated for the year we are in --

1 MS. GRUBBS: Correct.

2 MS. MARKS: -- that would be in June the 30th
3 of this year, that could appropriate that money for the
4 grants needed for -- the grants needed for ballot
5 on-demand equipment. I don't know how much discretion
6 there is.

7 And I'm just going to offer this as in not
8 knowing how much discretion there is. But what we were
9 recommending when we were looking at legislation was
10 have a buyback program for your counties that say,
11 look, we've made you buy all this expensive warranty
12 maintenance, let us buy some of those back from you.
13 If you will go ahead and get started on getting in
14 compliance with the law now, we'll buy back some of
15 that extra paper you have.

16 I wish that there were discretion to be able
17 to do those kinds of things. If there is, I would
18 encourage you all to encourage the lawmakers to -- to
19 ask --

20 MS. GRUBBS: Make that request?

21 MS. MARKS: To do that. Uh-huh.

22 MS. GRUBBS: Okay. Two more questions. One
23 is that it's been noted that Coalition for Good
24 Governance -- and you're the executive director -- that
25 you don't reside in the state of Georgia. What's your

1 motivation in Georgia?

2 MS. MARKS: Okay. That's -- that's
3 interesting. Okay. We do have a lot of members in
4 Georgia who are voters, and we represent their
5 interest. Yes, I don't live in Georgia anymore. I
6 used to. I had my career there. I hope to again. But
7 right now it's not in the cards for family reasons.
8 But -- but I hope to again.

9 Anyway, of course we've worked hard in Georgia
10 since 2016 in trying to protect voters' rights. And
11 the motivation in Georgia is in part because Georgia
12 has the most complex and actually the most challenged
13 and the most under-questioned because it's the least
14 secure voting system in the US. And that is why you
15 see not just Coalition for Good Governance but many
16 other experts offering their time. And I say other
17 experts, not that I consider myself an expert, I -- no,
18 I'm not.

19 MS. GRUBBS: But like Professor Appel and
20 people like Professor Appel.

21 MS. MARKS: Professor Appel, yes, and -- and
22 others who -- who will absolutely always answer the
23 call, as -- as does Dr. Stark, for Georgia. Because
24 Georgia has the farthest to go to -- to catch up with
25 the other states in election security, as well as no

1 one would doubt that Georgia is a target state this
2 year. It is a purple state.

3 It is -- the -- the US Senate race is going to
4 be extremely competitive here. Other races are going
5 to be competitive. And therefore, with all the
6 attention and with an entire state operating a system
7 that is not in legal compliance, Georgia is begging for
8 problems. Therefore, I'm here --

9 MS. GRUBBS: Well, let me -- let me ask you
10 one other question.

11 MS. MARKS: Yeah.

12 MS. GRUBBS: And this is -- you know, I'm a
13 rip the Band-Aid off kind of person, so I just ask the
14 questions. Mr. Chairman, you don't have to laugh at
15 that.

16 CHAIR FERVIER: I'm going to. I'm going to.

17 MS. GRUBBS: You know, you have your attorney,
18 thankfully, Mr. McGuire, here to help present and
19 answer questions today. And since the Curling case was
20 brought up, is there any reason that you would have to
21 be involved in this and to present real petitions that
22 are of a monetary motivational reason?

23 MS. MARKS: I wish. Absolutely not. If -- if
24 anything, you know, if -- if we were looking to -- to
25 win the case at all cost and -- you know, I don't even

1 get a salary for what I do. This work is negative cash
2 flow for me. But, you know, we -- we definitely have
3 asked for our attorney's fees for the portion -- the
4 first portion of the case that we won. And we would
5 hope to win the case and recover attorney's fees.

6 But the work that we're doing today is -- is
7 work saying, hey, change this and get it the way we
8 wanted to, even without a court order. And --

9 MS. GRUBBS: When you say we wanted to, is
10 that because you have a motivation or because that's
11 because you -- that's what you feel is in the best
12 interest of Georgia?

13 MS. MARKS: That's what we're trying to say is
14 we feel this is in the best interest of Georgia. We
15 certainly didn't enter this court case to -- to enrich
16 ourselves. There is no ability to do that. But
17 this -- this petition outside of the court case is an
18 attempt to do in a faster, you know, manner than what
19 we could get done in the court case.

20 MS. GRUBBS: And you have -- and you have your
21 two co-petitioners on the call today, correct?

22 MS. MARKS: Correct. Correct. And they are
23 not Plaintiffs in -- in the -- in the CGG Curling case.

24 MS. GRUBBS: Okay.

25 MS. MARKS: Yes. And I appreciate them being

1 co-petitioners here. They are members of CGG. But no,
2 there is absolutely nothing but financial cost involved
3 in doing this. But it's a calling to do it.

4 MS. GRUBBS: I understand that. That's all I
5 have, Mr. Chairman.

6 CHAIR FERVIER: Any further questions from the
7 board on this issue?

8 Before the board begins a discussion, the
9 chair would entertain a motion for a quick five-minute
10 break. We've been at this for a little over two hours
11 now.

12 VICE CHAIR JOHNSTON: Second.

13 CHAIR FERVIER: We have a motion and a second
14 from Dr. Johnston. All those in favor signify by
15 saying aye.

16 MS. GRUBBS: Aye.

17 CHAIR FERVIER: Any opposition? No
18 opposition. So moved. We'll take about a five-minute
19 break. We'll return at, say, 5:25 or so. Thank you.

20 (A recess was taken.)

21 CHAIR FERVIER: This board is back in session
22 at this point. Before the board chair change any
23 motions, are there comments to be made by members of
24 the board on a petition that was heard? No comments
25 from anyone?

1 MS. GRUBBS: Mr. Chairman?

2 CHAIR FERVIER: Yes.

3 MS. GRUBBS: Because there are a lot of
4 details and things like that, I don't know if we're --
5 we're going to take an up or down vote or that kind of
6 thing. But I'd like to ask Ms. Marks if she is
7 willing, if members still have questions or there need
8 to be any changes to the petition, that we schedule
9 another meeting and perhaps work through some of those
10 issues.

11 CHAIR FERVIER: The board -- the board today
12 needs to either vote to initiate rulemaking procedures,
13 not initiate rulemaking procedures, or we can delay the
14 vote if changes are to be made to the -- we can
15 continue the petition and allow changes to be made.

16 So I can't hear you. Please unmute,
17 Ms. Marks.

18 MS. MARKS: Okay. Thank you. Certainly,
19 Ms. Grubbs, we're -- we're happy to sit down and work
20 through in the meantime between now and a meeting,
21 presumably early next week. Because you are on such a
22 tight deadline to meet your June 3rd meeting, if you
23 were to try to adopt a will at that point.

24 We're happy to sit down and take the input
25 from you guys or anyone else to try to come up with

1 amended language that is precisely on point. Because
2 given -- given how tight a schedule it is, we don't
3 want to have any false starts. So, you know -- you
4 know, if -- if you want to try to continue it for that
5 purpose, we'd be happy.

6 CHAIR FERVIER: Well, at this point -- at this
7 point, you would need to withdraw your petition for
8 amendments, or the board has to vote up or down on it
9 today. So we can continue it, but you have to withdraw
10 from today's vote.

11 MS. GRUBBS: Well, can we hear from -- from
12 the other members to see what their -- what their
13 thoughts are on things as worded, or are there things
14 they would like to see amended?

15 CHAIR FERVIER: Well, there's -- there's
16 substantial changes that are being recommended, I
17 think, removal of a lot of language in there which --
18 which constitutes pretty some substantial changes.
19 Now, we've done this before with other petitions where
20 there's -- you know, it's not just one or two words in
21 on sentence. It's a lot here.

22 Well, we've allowed them to withdraw it for --
23 in fact, I think we did it with yours, Member Grubbs.
24 And allowed changes to be made and then brought back
25 before us, you know, with a revised petition. So...

1 MS. MARKS: May I -- may I suggest -- I'm --
2 I'm trying to understand procedurally why that might
3 be. May I suggest that we don't actually withdraw it,
4 but instead -- because -- because I don't believe that
5 it is required -- as I recall the -- the provisions of
6 the rule, I don't think you're required to -- to make
7 this decision at this meeting. You're just required to
8 make the decision within 30 days of our submission of
9 the petition. I don't think there's one that's -- a
10 rule that says you must make it at the next meeting.
11 So --

12 CHAIR FERVIER: The 30-day requirement is once
13 we initiate rulemaking procedures.

14 MS. MARKS: There's that 30 day requirement as
15 well. But -- but you all, as I understand the rule,
16 from the time you get a petition, which would have been
17 April the 8th, that you have 30 days to act on that
18 petition. And that 30 days hasn't run out. Then there
19 is in fact, as you say, a 30-day clock that starts when
20 you initiate rulemaking.

21 And so if I don't have to withdraw the
22 petition, I would prefer procedurally not to do that so
23 that I don't have to formally resubmit. But that --
24 if -- if it's the pleasure of the board for you all to
25 work with us on this and get some other input, I would

1 prefer not to withdraw it, but that you all would
2 choose to work with us on that and then take it up for
3 a vote in a very near term meeting.

4 CHAIR FERVIER: Let me get a ruling from Beth
5 Young. Beth, are you still on?

6 MS. YOUNG: Yes, I'm -- I'm here.

7 CHAIR FERVIER: Could -- could you advise -- I
8 mean, does -- is Board required to take action on this
9 petition today or can we continue it to another
10 meeting?

11 MS. YOUNG: So 50-13-19 just requires that the
12 board act within 30 days of -- of when the petition was
13 filed. And I'm not sure what the filing date is of --
14 of the petition. But assuming that there's still time
15 within that 30-day window, that would comply with
16 50-13-19. That's 50-13-9, sorry.

17 CHAIR FERVIER: Well, I have a technical
18 question, Marilyn. Because you submitted revisions
19 last night to the original petition. So is the -- do
20 we go by the initial date of April 8th, or do we go by
21 yesterday's date when the revised petition was given to
22 us?

23 MS. MARKS: Yes. Regardless, we're well
24 within the 30-day --

25 CHAIR FERVIER: Yeah, I understand. I

1 understand. I'm just clarifying. I'm just clarifying
2 some stuff.

3 Beth, do you --

4 MS. YOUNG: So, you know, if -- if Ms. Marks
5 wanted to -- to have the board construe the petition
6 as -- as a new petition, the -- a new petition
7 submitted yesterday, that -- as long as there's no
8 objection from either party, that would be fine.
9 Usually that 30-day limitation is -- is more something
10 that respondents are -- that the proponents are -- are
11 insisting on. So since Ms. Marks, I think, seems to --
12 to have some flexibility with that, you could treat it
13 as a -- as a new petition and -- and restart that clock
14 if -- if everybody agrees to do it that way.

15 MS. MARKS: Sorry. We would prefer not to
16 restart the clock but -- but consider it to be an April
17 8th filed petition. Again, you all have such a tight
18 deadline before your -- you know, you've got a July 1st
19 deadline you're trying to work with, a June 30th --
20 excuse me, the June 3rd meeting date. And so if we
21 have this meeting next week, it's not going to really
22 matter.

23 But I would like to -- to use the April 8th
24 date as the initial day because we can't ever tell
25 what's going to happen down the road here. But I -- I

1 think if we have a substantive meeting next week where
2 you can take a vote, then the problem is solved.

3 CHAIR FERVIER: Thank you. The chair will
4 entertain a motion or any comments from the board at
5 this point.

6 MS. KING: To speak to what Sally mentioned
7 earlier as to what -- what my thoughts are regarding
8 this, I do -- I would like to have it more detailed.
9 My concern with this rule is that I can't explain a lot
10 of the nuances of the rule. So if someone was to ask
11 me about it, I can't defend it fully.

12 Because I -- a lot of it has to be flushed out
13 between the SEB to give it -- you know, to kind of
14 explain the controls, to explain the daily -- the
15 ballot counting, and to explain how it works. And so
16 to be clear, I don't mind being on the record with
17 this, I do not disagree that -- with Ms. Marks that the
18 Board has the authority. I -- I don't -- that's not my
19 hang up.

20 I do think that we have more authority than
21 what we are perceived to have. And so I'm okay with
22 that. However, what I don't want to do is present
23 something that will be challenged in the courts that we
24 can't fully explain or defend, and now we're stalled.
25 So we're now heading into the election and we are at a

1 standstill.

2 So I would like to present a -- I would like
3 the board to present a rule that has a lot of what
4 Ms. Marks has, but it also -- it explains a lot of the
5 areas where the SEB would have to define. And so that
6 way I could feel fully committed to being able to back
7 it, stand up -- stand -- stand behind it, and not be
8 concerned so much of the -- with the lawsuits that may
9 come because we can -- we can back it up, we can defend
10 it. So that's my only concern is that I would like a
11 rule that's a little bit more defined in the areas of
12 how this will be rolled out.

13 Because what I'm thinking will make -- what
14 could possibly happen is even if we have a session, we
15 don't know if they're going to do anything, if it's
16 going to change anything. So now we're sitting in a
17 position where we've lost time. We don't have anything
18 to present to a judge who would then have to, you know,
19 decide.

20 So I do think that the board as a -- that we
21 can come to some type of resolution and guidance for
22 the counties that can also serve as guidance for a
23 judge, if we find ourselves in that position as well.
24 So this is not a, no, I don't like the rule. It's a I
25 want to define it a little bit more before I can

1 approve it.

2 MS. MARKS: Okay. Well, we're certainly happy
3 to sit down and -- and work with you all on that. As
4 well as I would suggest you'd want to get some input
5 from your election supervisors, superintendent,
6 directors, all of the above and -- in terms of some of
7 the practical things. And if you find that some of
8 them may be a little bit hard to write into rule right
9 now until you get more information, you've always got
10 the opportunity to, for the time being, issue guidance,
11 informal, nonbinding guidance, and then turn it into a
12 rule as things develop a little bit more.

13 MS. KING: Yeah. I agree with that. Thank
14 you.

15 CHAIR FERVIER: Any other comments from board
16 members?

17 VICE CHAIR JOHNSTON: I -- I agree with Member
18 King that, one, I've already expressed a concern about
19 the definition of a vote, but I also don't want to put
20 the cart before the horse. And I'd like some -- some
21 exploration and communication with some legislators to
22 better understand what their plan is. I'm -- I'm fully
23 in support and favorable of moving to hand-marked paper
24 ballots, like, yesterday.

25 But that's -- that's a personal opinion.

1 That's not what the current Georgia code states. And
2 until July 1st, the -- following the code as is, is
3 what we need to do. And we -- we are not in a position
4 to legislate, which I consider part -- some of this a
5 legislating sort of act.

6 MS. GRUBBS: Which part, Dr. Johnston, do you
7 consider to be legislating?

8 VICE CHAIR JOHNSTON: The -- the part about
9 not -- the --

10 MS. GRUBBS: The enforcement?

11 VICE CHAIR JOHNSTON: The enforcement. So in
12 the definition of the vote and the changes in
13 conducting elections, the legislature, as we've said
14 many times before, needs to -- they have work to do,
15 and -- and they need to be clear in what they intend to
16 legislate, which I would hope would be hand-marked
17 paper ballots. But we -- we have -- we need to wait
18 and -- and see if that occurs with a special called
19 session.

20 If it doesn't, then we will -- we will proceed
21 with whatever measures, be it emergency measures or
22 whatever is necessary. But we -- we will also need
23 legal counsel because I suspect whatever is done will
24 end up in the court system.

25 MS. GRUBBS: I guess I'm -- I'm confused

1 because we don't know what the legislature is going to
2 do. I mean, they just came out of session, and -- and
3 any additional changes to law was not done. And so we
4 are left to deal with the situation the way that it is.

5 And I don't -- I personally don't feel like
6 the -- rule proposal is legislating anything. I
7 believe it's -- it's making rules. I mean, there's all
8 kinds of boards that operate across the state of
9 Georgia that -- that make rules, and it doesn't mean
10 that they're legislating anything. We're not -- I -- I
11 would need to see more definition of how -- how making
12 rules is legislating. Is it the --

13 CHAIR FERVIER: Well, I think the Supreme
14 Court clarified that a little bit for us last year on
15 some of the rules that we made. And that's about as
16 clear as definition as we're going to get these days,
17 so...

18 MS. GRUBBS: Well, again, it's -- it's like --
19 will somebody to open this book and tell me which laws
20 we're going to enforce and which laws we're not?

21 VICE CHAIR JOHNSTON: What -- what the
22 legislature needs to do is to be -- to be specific and
23 say, either they're moving to hand-marked paper ballots
24 or -- or they're not. But the -- the way that -- the
25 way that their proposed legislation, which none of

1 which passed during the session, did contortions and --
2 and backflips to not actually commit to the move to
3 hand-marked paper ballots. Yet here today, we've been
4 talking for two hours about hand-marked paper ballots
5 and --

6 MS. GRUBBS: Because that's already in the
7 code as far as a backup balloting plan. They
8 already -- the legislature already did that when they
9 described the backup balloting procedures. That's
10 where I'm confused.

11 When we have a system that is not compliant
12 with law and when, you know, we have SB 189 -- and
13 to -- to Ms. Young's point, when it comes to, you know,
14 whether the codes are on there or whether they --
15 whether they aren't, you know, we already have a system
16 that is impossible or impracticable. So we go to the
17 backup balloting procedures.

18 We're not trying to legislate, you know, we're
19 going to have hand-marked with paper ballots from now
20 until the end of time. But as of July 1st, it's -- the
21 system is additionally not going to be compliant with
22 law.

23 CHAIR FERVIER: Well, here's here's my
24 problem. As I said, we -- I, too -- I -- I've made
25 this clear on multiple points, I don't -- I don't think

1 this board ought to get in front of the legislature. I
2 don't think we ought to legislate our -- our -- we
3 should make rules that are consistent with current law,
4 you know And -- and the people's house spoke on this
5 issue, and they passed 214 overwhelmingly, a bipartisan
6 bill that passed overwhelmingly.

7 The senate failed to take it up, they did, for
8 various reasons. But, you know, the senate might have
9 passed it too if it had been allowed to be voted on.
10 But the House -- the House voted on it, the House spoke
11 on it, and the legislature deserves a right to get this
12 correct, to get it done. And I just -- I feel like
13 that, you know, we shouldn't step in front of them at
14 this point. There's a -- more chance --

15 MS. GRUBBS: So what your --

16 CHAIR FERVIER: There's a more than a
17 reasonable chance that they'll have a special session
18 to do this. And if they don't, then we can resolve
19 whatever issues at that point. But --

20 MS. GRUBBS: So you're saying it's okay for us
21 to not comply with law as the law stands today?

22 CHAIR FERVIER: That's not what I said. What
23 I -- what I said is that I think this has been a
24 legislative issue all along. They created this
25 problem. They haven't resolved this problem, and they

1 deserve a right to resolve the problem before we do.

2 VICE CHAIR JOHNSTON: Well -- and I -- I must
3 say, Chairman Fervier, 214 was a terrible bill, and I
4 could not support that. And so even though you say
5 they presented it and the house passed it, it -- it did
6 not solve the basic problem or -- or meet the goal to
7 actually remove the QR code. It was some sort of
8 jumping through magical hoops upside -- upside down and
9 sideways to pretend -- to pretend like they were not
10 using the QR code and actually use an optical character
11 tabulation that is not EAC certified.

12 So that was not a solution and not
13 satisfactory. And I'm so glad the senate did not vote
14 for that. I am very grateful.

15 CHAIR FERVIER: Well, I -- I wasn't opining on
16 whether it was a great or a bad bill or ineffective or
17 whatever. I'm just saying that the -- the legislature
18 spoke -- or at least the people's house spoke on it
19 once. And my opinion is they needed -- they need --
20 they deserve the right to fix this. Whatever the fix
21 is, they deserve the right to do it before we do.

22 MS. GRUBBS: But they're -- here's the thing,
23 though, I'm not trying to legislate or anything. All
24 I'm saying is what is in this book is the law as we sit
25 right now. It doesn't matter what the legislature did

1 or did not do. We have an obligation to comply with
2 the law, and we have the obligation to write rules that
3 are in accordance with the law.

4 And I'm not hearing-- I mean, you know, I -- I
5 agree with Dr. Johnston, as it -- as a side note, I'm
6 so thankful that the senate did not take up 214. And I
7 would -- I would be remiss if I also didn't say that
8 there were quite a few representatives who reached out
9 to me that were glad that it did not pass and that it
10 did not resolve the issue.

11 So I don't really think we need to get into an
12 argument over the House versus the senate. We have
13 lawmakers that work very hard at their jobs and in
14 doing all the things, but that doesn't absolve us of
15 our responsibility.

16 CHAIR FERVIER: Well, I think that's where we
17 disagree because I think it's their responsibility to
18 fix this issue.

19 MS. GRUBBS: So they're going to write the
20 rules on how to conduct elections?

21 CHAIR FERVIER: They're going to create laws
22 that -- that aren't in conflict, and they're going to
23 create laws that -- you know.

24 MS. GRUBBS: Okay.

25 VICE CHAIR JOHNSTON: Well, I would -- I would

1 propose, just like speaking to the election directors
2 earlier today, that we as a board should anticipate
3 that SB 189 will stand, and we should get to work
4 ourselves and not rely on petitions necessarily from
5 outside, although I -- I like -- I like things in
6 Ms. Mark's petition very, very much.

7 But the board has some work to do, perhaps, to
8 anticipate July 1st. And I think -- I think we should
9 get down to work on -- on that in anticipation of that.
10 So I -- I mean, I would propose a rule working group,
11 you know, with the state election board members to
12 address this.

13 MS. KING: I would not be opposed to that.

14 MS. GRUBBS: I agree with that.

15 CHAIR FERVIER: Member Ghazal, do you have any
16 comments to make on that?

17 MS. GHAZAL: I am always prepared to make sure
18 that the counties have the support and guidance they
19 need to comply with the law.

20 CHAIR FERVIER: Yeah. And Dr. Johnston, I've
21 told you before that I'm full agreement that the
22 counties need to be prepared one way or the other for
23 this. So any further comments?

24 MS. GRUBBS: So I guess you're waiting for a
25 motion? Let me hypothetically state a motion. And

1 then if -- if I'm wording it correctly, then we can go
2 off of that.

3 I would make a motion that state election
4 board members work with Ms. Marks in her petition as a
5 working group -- I'm happy to assist where I can -- and
6 that this petition be heard after getting together and
7 making refinements to the petition, using the date of
8 April the 8th as the petition date, and that we get
9 together next week in another meeting to vote on the
10 rule petition. Does that sound feasible?

11 CHAIR FERVIER: Well, I think that you can
12 make the amendment that -- or make the motion that we
13 put together a group to work with Ms. Marks on this. I
14 would like to discuss -- look at the dates for the
15 meeting. I -- I am -- I'll let you know later my
16 availability. I don't want to do that in -- in the
17 public, so...

18 MS. GRUBBS: Okay.

19 VICE CHAIR JOHNSTON: My question is, Sally,
20 this -- this petition will -- will change by having two
21 sentences removed from it and perhaps some of the
22 individual wording in direct or -- in the rule
23 conducting elections. Is that enough of a change that
24 it should be submitted again as a petition?

25 CHAIR FERVIER: Well, I think Member King had

1 also asked about some further stuff being added to it,
2 some further explanation. So there's -- it seems like
3 there's a lot to be added -- removed and added to this.

4 MS. KING: Yeah. I would just like to explain
5 where it says, like, cybersecurity controls, valid
6 accounting, things of that nature, stuff that can be
7 questioned. I would like to have some -- it doesn't
8 have to be a full, you know, explanation, but just a
9 little bit of a summary of what that means so that it
10 can't be challenged by -- you know, for having a lack
11 of understanding.

12 VICE CHAIR JOHNSTON: Ms. Marks?

13 MS. MARKS: Yes. I didn't know whether I
14 should speak or not. Certainly, Member King, we can --
15 I can get to work on that tonight or tomorrow morning.
16 And then it would be great to -- if I could give you a
17 call, and maybe you could give me some of the scope of
18 things that you're thinking about so that I don't
19 miss any of them.

20 Because you're right, we don't have a lot of
21 time for iterations of this, given your June 3rd
22 meeting is going to be a really, you know, hard date
23 for you to have -- to be able to make a firm decision
24 if you initiate in rulemaking. It's -- it's pretty
25 much going to have to be decided for initiation of

1 rulemaking by Thursday or so of next week --

2 CHAIR FERVIER: May 3rd.

3 MS. MARKS: -- [inaudible 02:40:15] the
4 meeting.

5 CHAIR FERVIER: May 3rd.

6 MS. MARKS: May 3rd would be the -- the day --
7 well, that would be the date that you have to deliver
8 it to the -- to the --

9 CHAIR FERVIER: No. That's -- that's the date
10 that we have to initiate rulemaking in order here for
11 the June 3rd meeting.

12 MS. MARKS: See, I'm -- I'm sorry, I thought
13 it was a 30-day delivery period from -- from the date
14 you delivered it to ledge council to your meeting date.

15 CHAIR FERVIER: No. My understand -- my
16 understanding is that you have to -- you have 30 days
17 after you initiate rulemaking procedures.

18 MS. MARKS: Okay. Could we ask Ms. Young just
19 to make sure about that so that we don't -- I mean, I'd
20 love to have more time. That would be great. But I
21 just didn't want to miss -- last time we did this, it
22 took your staff a little bit of time to put together
23 all the formalities and walk it over to leg council.

24 Ms. Young, do you know the question I'm
25 asking?

1 CHAIR FERVIER: Let's initiate the rulemaking
2 procedures --

3 MS. YOUNG: So I'm a little confused about
4 exactly what the timing that you're talking about is.
5 Legislative council, that -- that 30-day window starts
6 from when the board proposes a rule. So that -- that
7 30 days hasn't begun to run yet.

8 MS. MARKS: Right. And that's --

9 MS. YOUNG: Because there's -- there's not
10 a -- a rule that's been voted on by the board. So it
11 would be proposed by the board.

12 MS. MARKS: Right. I think what we were
13 trying to do, Ms. Young, is to back up from -- they
14 have a June 3rd date right now on the calendar that
15 would perhaps be the date that they would adopt this as
16 a -- as a rule. Therefore, backing up from that.

17 What is the date that it has to get to leg
18 council in order to have what said -- and I thought it
19 was 30 days --

20 MS. YOUNG: So you're right, that -- and that
21 would be 30 days before a final vote. So if there were
22 to be a final vote on the 3rd, you would back calculate
23 it -- and let's see, 30 days after September -- so it's
24 a 31-day month, so you would have to by May 2nd. Am I
25 doing that right? It would have to get that to

1 legislative council.

2 MS. MARKS: And I was just thinking, you know,
3 if you try to do it that same day, your staff is going
4 to have to be really ready.

5 MS. YOUNG: No, I'm sorry. Actually, I think
6 you'd have it until May 4th. I got it. I was doing it
7 backwards. I would -- yes, so I would always
8 encourage, you know, you-all to not cut things quite so
9 closely. If you're going to do that that way, I'd say
10 calendar for, you know, 31 days maybe.

11 But -- but 30 days is the minimum for notice
12 to the public and for legislative council. There are
13 public comment provisions that apply as well. 50-13-4
14 is the applicable code section that you'll need to --
15 to watch out for in that regard.

16 MS. MARKS: So it -- it kind of seems like it
17 really needs to happen next week. And if it were to be
18 Friday, that's going to be cutting it close, unless --
19 unless we should --

20 MS. YOUNG: Right. And --

21 MS. MARKS: -- help them over the weekend.

22 MS. YOUNG: -- I would encourage everybody to
23 look at the 50-13-4 because there's -- the requirements
24 are pretty strict in terms of having to have the exact
25 language of the rule and a synopsis of that rule. So I

1 would encourage everybody to take a look at that, if --
2 if the rule -- if the board is going to propose a rule
3 to look at that in -- in connection with drafting that.

4 MS. KING: In my -- from -- from my
5 perspective, the questions I have is based on the way
6 the rule is written as is. But if it changes and some
7 of these things are pulled out, then I won't need --
8 you know, there will be no need to -- for
9 clarification, too. So I don't want to create extra
10 work. And I -- I guess my point is that I just want to
11 make sure that I fully understand how this is going to
12 roll out and that it's clear in the rule that is
13 submitted for final approval.

14 MS. MARKS: Okay. May I call you tomorrow for
15 you to maybe go over some of the details of that with
16 me so I'm real clear on what to do?

17 MS. KING: Yes.

18 MS. MARKS: Thank you.

19 MS. KING: I know my schedule is a little wild
20 tomorrow, but we'll -- we'll see how to make it work.

21 MS. MARKS: Okay. I'll give it a try.

22 CHAIR FERVIER: So what's your motion, Member
23 Grubbs?

24 MS. GRUBBS: Okay. So my motion would be
25 pending clarification with the working group, which I'm

1 happy to be part of. Definitely Ms. Marks and Ms King
2 and Member Johnston, Ms. Ghazal, do you want to be part
3 of those conversations?

4 MS. GHAZAL: That becomes an official meeting.

5 MS. GRUBBS: I'm sorry?

6 CHAIR FERVIER: You have to be -- you have to
7 be careful --

8 MS. GHAZAL: More than -- more than two
9 members becomes an official meeting --

10 MS. GRUBBS: Right.

11 MS. GHAZAL: -- with notice and comment.

12 CHAIR FERVIER: You have to be careful about
13 that.

14 MS. GRUBBS: Right. That's why I'm -- so you
15 and Ms. King and Ms. Marks?

16 MS. KING: I was thinking I would like to -- I
17 don't know if -- I don't know if -- if we are going to
18 just resubmit this -- this rule or if the SEB is going
19 to take some of it and create a rule. Like, I'm
20 trying -- I still am a little unclear on that. So it
21 sounds like -- I don't know, Dr. Johnston, correct me
22 if I'm wrong, but it sounds like you wish to have a
23 working group that's a SEB group that's internal versus
24 putting together a group that is -- like Marilyn Mark's
25 group.

1 And I -- I guess I'm a little confused.
2 What -- what type of group are we talking about? One
3 that's the outside where we're just working with CGG,
4 or are we doing this internally?

5 VICE CHAIR JOHNSTON: Well, my thought was a
6 rule working group that would address all of -- all of
7 the aspects of a SB 189 and its implementation. I
8 mean, Ms. Marks has -- has zeroed in on definition of a
9 vote and conducting elections, but perhaps there are
10 more areas that need to be addressed and -- but I would
11 want to elicit the input from legal and other -- other
12 voices for possible rules if we're -- if we're indeed
13 moving to implementation of SB 189.

14 MS. GRUBBS: But we're -- we're just
15 addressing this petition, though.

16 VICE CHAIR JOHNSTON: Right. This is -- if
17 this is just addressing the petition, then perhaps
18 Ms. Grubbs and Ms. King can just address this petition.

19 MS. GRUBBS: Okay.

20 MS. KING: Would this petition be overruled if
21 we present another petition that has the details in
22 implementing 189?

23 MS. GRUBBS: Marilyn?

24 MS. MARKS: Thank you. Member King, I think
25 what we can do is keep the CGG petition general enough

1 and still appropriate and workable so that if you want
2 to come along behind a week or two or three later with
3 much more specifics, that they won't be in conflict. I
4 think we can --

5 MS. KING: The whole purpose of this petition,
6 if we're going to --

7 MS. MARKS: To -- to get the big picture --
8 essential stuff going. And again, we're trying to make
9 sure that the counties get as much notice as possible
10 of any changes they need to make. And every day that
11 ticks by is a precious day for them. So therefore, I'm
12 urging that you all get all of the -- the bare bones,
13 the essential that's needed so that they know which way
14 they're headed.

15 Do that, you know, as soon as possible.
16 Let's -- let's get something nailed down next week so
17 that you can vote it on -- vote on it on June the 3rd.
18 If there are more details like, okay, how do you -- how
19 do you reconcile the -- the ballot scan number with the
20 number of ballots in the ballot box or -- you know,
21 details like that, they can probably wait a week or two
22 beyond that. They can wait a bit beyond that.

23 Because your election boards need to know the
24 direction they're heading. They need to know that
25 they're going to be able to -- or need to get ballot

1 on-demand printer procurement, that sort of thing,
2 before they need to worry about how to put the ballots
3 in the folder to count them at the end of the night. I
4 think --

5 MS. KING: So that's where I disagree. I -- I
6 think we need to -- the -- I don't want to convolute
7 it. I don't -- I don't -- I'm not really a fan of
8 passing two separate petitions that essentially directs
9 the counties to do the same thing. I -- I feel like we
10 can come -- I -- I would like to support one petition
11 that outlines how the counties will implement 189 in
12 one -- one petition.

13 MS. MARKS: Okay.

14 MS. KING: That way they are not confused. So
15 I -- I don't -- I don't necessarily agree with passing
16 a petition just to kind of, like, say, we passed a
17 petition, and then there's no definition and there's
18 nothing in it that actually guides the counties towards
19 what they should be doing. I think -- I feel that
20 will --

21 MS. MARKS: Okay. About this --

22 MS. KING: I feel like that will do exactly
23 what you're trying to prevent, which is stalling and
24 kind of dragging it on.

25 MS. MARKS: Right. Okay. Let me try this.

1 So of course we could go on with details for ten weeks
2 in terms of -- if we just kept digging and digging.
3 How about we do this, we get to work quickly -- I'll
4 get to work first thing in the morning. Get to work
5 quickly, cover as much territory as we think is
6 reasonable in the available time.

7 You all have a meeting next week to consider
8 initiating rulemaking on as absolutely far as we can
9 get, between now and your meeting time, and see where
10 we are at that point. And given the -- the urgency
11 of -- of the time involved to try to meet your June 3rd
12 meeting date, it's so critical.

13 And your -- your election directors and boards
14 clearly need to know where you're headed here. So
15 let's get as much as we can accomplish. And then if
16 you still see some holes, maybe you can follow on in
17 the next several days behind that.

18 MS. KING: That's why --

19 But I don't know that we'll ever get to a
20 point of saying, okay, we're now 100 percent complete
21 with everything we need to know. Let's get as far as
22 we can next week.

23 MS. KING: That's -- I -- I don't feel
24 comfortable presenting a portion of a rule to the
25 counties. I --

1 MS. MARKS: Okay. All right.

2 MS. KING: -- need to be clear -- because we
3 keep saying that they need clear direction. And that's
4 what they need is clear direction. July 1st is the --
5 is the drop dead date, right? So as of right now,
6 we -- there's nothing that they can do -- I mean, they
7 can start training and, you know, having conversations.
8 But as of right now, the law is still in place.

9 So rushing -- rushing to just get something
10 done that is half of what the counties need is -- it
11 feels really ineffective to me.

12 MS. MARKS: Okay.

13 MS. KING: I would most -- I would most --
14 or -- or I would rather support putting together a
15 committee that will put together an actual rule
16 petition that can be implemented immediately that has
17 clear direction, clear instructions. I am not a fan of
18 supporting two separate petitions. I think that's --

19 MS. MARKS: Okay.

20 MS. KING: -- going to create confusion.

21 MS. MARKS: Well -- but given the time
22 constraints, what we will do is we will think of every
23 possible thing --

24 MS. KING: But it -- and it doesn't have -- I
25 don't want it --

1 MS. MARKS: -- and we'll have it done next
2 week. We'll have it next week.

3 MS. KING: It doesn't have to come from --
4 from CGG. Like, it can come from the board. It's
5 just -- I'm -- I'm just being clear that where -- where
6 I will come in is when there is a petition that has all
7 the teeth in it, that can stand on its own two feet,
8 and actually provides guidance fully for the counties
9 and doesn't create confusion. So that -- that's all.

10 MS. MARKS: Well, Ms. -- Ms. Grubbs has said
11 she's been willing -- she can work on it. If -- if you
12 can work on that with me next week, I'll -- I'll have
13 as much complete to you over the weekend as -- as
14 possible, Ms. Grubbs.

15 CHAIR FERVIER: I don't -- I don't think that
16 satisfies what Dr. Johnston wants, though, which is
17 some other input from legal and the counties and -- and
18 all that too. I mean, I -- I just find this almost
19 impossible to be done next week with --

20 MS. MARKS: Well, okay.

21 CHAIR FERVIER: -- what everybody wants with
22 all of this. And -- and if we're making that kind of
23 change is -- basically, it's a new rule to begin with.
24 It's not this existing rule. You know, you can't add
25 four other -- ten other things to it and call it the

1 same rule anymore. It's a new rule.

2 MS. MARKS: Well, okay, maybe we --

3 CHAIR FERVIER: I think that -- I think
4 there's some agreement among the majority of this board
5 to create something that helps with 189. It's just
6 maybe not what -- it fixes the 189 problem I said.
7 That seems to be what I'm hearing from the majority of
8 these members. But that's not what's here today most
9 likely, so...

10 MS. MARKS: May I clarify that our rule has
11 almost nothing to do with implementing 189. As I was
12 asked before, how long it will take to implement 189,
13 that's probably a three-year process. And there's not
14 money for it. 189 cannot be implemented, period.

15 CHAIR FERVIER: Well, we understand it. We --
16 we -- I understand that. I understand that. It's --

17 MS. MARKS: But we keep saying that that's
18 what --

19 CHAIR FERVIER: It's fixing -- it's fixing the
20 issue with 189. It's fixing the issue.

21 MS. MARKS: Okay. Okay. But let's remember
22 that it's not just 189. We've got an issue today. If
23 there was election conducted tomorrow, the election
24 that's going to be conducted on May 19 is at risk for
25 candidates and -- and voters challenging it and saying,

1 you didn't obey any of these laws, forget SB 189.

2 That's why this needs to be done urgently.

3 CHAIR FERVIER: I think -- I think the board
4 understands that. I think the board --

5 MS. MARKS: All right.

6 CHAIR FERVIER: So let's -- so Member King,
7 if -- if I'm reading you right, you would like to start
8 kind of fresh and develop something that touches all
9 the basis you're concerned about. Dr. Jan, I'm kind of
10 reading that from you too that you want to see
11 something that's more comprehensive, that doesn't get
12 us in trouble and meets the needs of getting us to a
13 ballot on-demand or a hand-marked ballot type
14 situation.

15 Member Grubbs, I think that you want to go
16 with what's here.

17 MS. GRUBBS: Well, what I want to do is I want
18 to work collaboratively with Ms. Marks to make the
19 changes to the petition. Because we are in a time
20 crunch and the ball is, you know, continually being
21 kicked down the road. And I would like to work with
22 her petition to come back next week in another meeting
23 to see if it passes mustard.

24 And I hear what Ms. King and Dr. Johnston are
25 saying. But we have a petition as presented, and if

1 there are things that can be changed in that -- that
2 petition then I think we should give that serious
3 consideration and thought. And then if it can't be
4 worked through and there's more things that need to be
5 added, then Ms. Marks can withdraw her petition.

6 But I -- you know, where I was going with my
7 motion was to say, you know, Ms. King and Dr. Johnston
8 get with Ms. Marks on the petition, see what needs to
9 be changed, and bring it for a vote next week. And
10 then if there's a -- if there are separate rules that
11 need to be done by the board, then we can do that. Or
12 if Ms. Mark's petition doesn't cut the mustard with
13 them, then we can vote and, you know, meet again next
14 week and have a five-minute meeting and vote it down
15 and move on.

16 CHAIR FERVIER: Yeah. We've never had a
17 five-minute meeting. And that will never occur, so...

18 MS. KING: And then, Mr. Chair, real quick, I
19 think what's happening is -- I remember 2024 when we
20 pushed rules and it was great an effort. It was
21 actually rules we needed. We're seeing now that we
22 should have had some of those rules. I mean, there was
23 issues that, you know, have come up where those rules
24 being in place would have prevented things. So
25 everything was good.

1 However, we -- we do have to consider whether
2 or not what we're doing is positioning us for a lawsuit
3 that would then stall us. That's my biggest concern is
4 that I don't want to be so afraid of the timing that we
5 rush and put something in place that then puts us in a
6 position where we can't move at all because
7 everything's tied up in the courts.

8 And now we are -- we're -- we're hoping the
9 legislature come through. But if they don't, then the
10 judge is then going to push something through, and now
11 it's more -- it's just more chaos. I believe that
12 patience is not necessarily -- it doesn't mean that you
13 have to, you know, fall behind or be -- or
14 procrastinate.

15 But I don't -- I'm not -- I don't like feeling
16 rushed into just, like, whipping something together
17 just so we can pass it and then go from there and then
18 start defining after the fact. To me, that's just --
19 that's not how I like to operate. I would prefer for,
20 like, us to come up with a committee that can put
21 together a actual petition and that we can vote on.

22 And if it's not ready by, you know, June 3rd,
23 we have until July 1st that this is implemented. So we
24 still have some -- a little bit of wiggle room in
25 there, and at least we have something that is -- or

1 even if it comes -- even if it comes a little after
2 July 1st. The fact is I would rather present something
3 that can stay on its own two feet, that can defeat --
4 that can that won't be defeated in court, as well as it
5 provides the guidance necessary for our counties and
6 that they are not confused.

7 That's -- that's what's on my mind right now.
8 I don't -- I -- I don't feel comfortable passing two
9 petitions. And I don't feel comfortable, you know,
10 whipping together this petition where it's now -- not a
11 different petition, it's just a little more defined,
12 and we just pass it, but we're still at square one.

13 CHAIR FERVIER: I can -- I -- I could not
14 agree with you more. Any comments from the board?
15 This is the board comment portion. Any comments from
16 the board?

17 MS. MARKS: I'd like to hear from Ms. Ghazal.

18 CHAIR FERVIER: Ms. Ghazal?

19 MS. GHAZAL: I have nothing to add at this
20 time.

21 CHAIR FERVIER: Okay. Thank you.

22 MS. KING: So would there need be a motion
23 to -- to create the committee or --

24 CHAIR FERVIER: We -- we have a motion from
25 Member Grubbs first.

1 MS. KING: Okay.

2 CHAIR FERVIER: So we need to --

3 MS. GRUBBS: My motion was to -- to work
4 together on this to see if it's workable and to have a
5 meeting next week to give an up or down vote on the
6 petition.

7 CHAIR FERVIER: Is there a second for that
8 motion? Hearing no second, the chair will enter
9 another motion.

10 MS. KING: Oh, wait. I think, Sara, were
11 you --

12 CHAIR FERVIER: Member Ghazal?

13 MS. KING: -- trying to --

14 CHAIR FERVIER: Member Ghazal?

15 MS. GHAZAL: I'll second that. I'll second --
16 I'll second Ms. Grubbs' motion.

17 CHAIR FERVIER: The motion -- we have a motion
18 and second to meet with Ms. Grubbs -- no, I'm sorry,
19 with Ms. Marks and try to work out a alternative to her
20 petition and meet next week to vote on it. Any further
21 discussion?

22 All those in favor signify by saying aye?
23 (Ayes were heard.)

24 CHAIR FERVIER: The chair will exercise his
25 vote -- right to vote, and will vote nay. Motion

1 carries 3 to 2.

2 MS. KING: Are we ready for another?

3 CHAIR FERVIER: You voted yes, right,
4 Dr. Johnston?

5 VICE CHAIR JOHNSTON: Yes.

6 CHAIR FERVIER: Okay. All right. Motion
7 carries 3 to 2. The board will work on a meeting date
8 that will -- not right now because the chair will
9 inform you of his issues --

10 MS. GRUBBS: Options.

11 CHAIR FERVIER: Yeah. Anything further on
12 this petition?

13 All right. One thing I would say, Ms. Marks,
14 you had made a comment at beginning with your attorney
15 that this board did not take time to properly consider
16 things. And you presented for 20 minutes. We've been
17 at this for three hours now.

18 So I think that there was plenty of discussion
19 about your petition. So I expect you to withdraw those
20 remarks that this board did not properly consider --

21 MS. MARKS: It was only 3 hours, though, no --
22 no way.

23 CHAIR FERVIER: Yeah. That -- I think that's
24 sufficient time. The next item on the agenda --

25 MS. MARKS: No, thank you. Seriously, thank

1 you very much for the deliberations. We greatly
2 appreciate it.

3 CHAIR FERVIER: The next item on the agenda --
4 if I can find my agenda -- is a petition submitted by
5 Dr. Johnston to adopt a rule for the number of list of
6 voters pursuant to Rule 183-1-12-.02 definitions and
7 183-1-12-.11(2)(a), conducting elections.
8 Dr. Johnston?

9 VICE CHAIR JOHNSTON: Yes. Thank you very
10 much. This rule is presented last week, which you all
11 heard. And the slight -- the only revision to it was
12 to remove Ms. -- Member Ghazal's suggestion, the last
13 part of the phrase of a definition of numbered list of
14 voters that refers to (audio interruption).

15 So the wording, very quickly, is that numbered
16 list of voters as definition is placed into the State
17 Election Board rules. And it reads as numbered list of
18 voters means one or more sheets of uniformed size
19 containing consecutively numbered blank spaces for the
20 insertion of voters' names at the time of and in the
21 order of receiving their ballots.

22 Likewise, in Rule 183.11.211(2)(a), the rule
23 is amended to say the voters name shall be recorded in
24 ink and entered on the appropriate numbered list of
25 voters. Numbered list of voters means one or more

1 sheets of uniformed size containing consecutively
2 numbered blank spaces for the insertion of voters'
3 names at the time of and in the order of receiving
4 their ballots.

5 Member Ghazal had several questions concerning
6 this petition. As you know, the -- the purpose is just
7 to enforce current statute. And as you remember,
8 last -- last week that I had a presented a slide that
9 showed that a numbered list of voters is cited 15 times
10 in Chapter 21. It provides for an -- a paper auditable
11 election document that is -- that is very important and
12 preserved and retained by the clerk of the Court and
13 the superintendent.

14 It also establishes consistency with HAVA.
15 Although HAVA doesn't specifically mention poll books,
16 HAVA does emphasize the need for auditable paper
17 documents in elections. So the questions that were
18 raised were -- to cut to the chase -- is: Is there an
19 issue with secret ballot? And the answer is no,
20 there's no issue with secret ballot and the numbered
21 list of voters.

22 It is no secret who voted. And in fact, it's
23 important to know that only registered voters have
24 participated in the election. There is no identifying
25 information on the paper ballot that links the voter to

1 the ballot.

2 Paper ballots are mixed and jumbled in the
3 ballot box, so it would be -- it would be impossible to
4 definitively identify the ballot to the voter. The
5 importance of the numbered list of voters is evidenced
6 by these 15 citings in Georgia Code as important and a
7 vital election document.

8 The other question is: Is there an issue with
9 voter privacy? The answer is no, there is no
10 connection with the paper ballot and the privacy of the
11 voter once the ballot is placed in the ballot box.

12 There was a question concerning VoteSafe, a
13 program that is provided for those that are in -- that
14 have protective custody and have applied for this
15 program. Would there be a problem for voters in
16 VoteSafe? The answer is no, there are about 100 voters
17 statewide with this status. Their names are not
18 secret. But when voter rolls are provided, their
19 address is not provided. The numbered list of voters
20 does not include an address.

21 There was a question about small counties.
22 Member Ghazal is concerned about the voters secret
23 ballot in small counties or low turnout elections.
24 This concern preclude -- this concern does not preclude
25 the legal compliance with keeping the numbered list of

1 voters. It cannot prevent following the law by keeping
2 a numbered list of voters. It's the paper backup, it's
3 the audit record, it's the original document.

4 Consider the example of Dixville Notch that
5 has six voters. I'm sure one might make an assumption
6 of how each of those six voters voted because of the
7 small numbers. Yet they hold elections every year and
8 are usually the first to report in the country. The
9 topic of knowing how voters vote should be addressed
10 with current technology such as artificial
11 intelligence, data mining, et cetera, but not by
12 removing the real time, at the voting location, papered
13 numbered list of voters.

14 Then the question was raised -- or the topic
15 of cybersecurity issues. Let's -- in discussion of
16 Dominion, Liberty voting system. I contacted Dominion
17 Voting System liaison two days ago. And I was
18 reassured that there's no identification, name, date,
19 or time on the ballot image or the audit mark image or
20 the cast vote record. The order is shuffled. The
21 precinct scanners, ICPs, do not capture name of the
22 voter or the date or the time on the audit mark images.

23 Comments regarding DVS order have no bearing
24 on this petition that directs compliance with the
25 papered numbered list of voters. In fact, every

1 concern bolsters the need and strengthens the argument
2 for keeping a paper numbered list of voters. Example,
3 what if there's a poll pad malfunction, a loss of data
4 from an outside vendor, alteration of data from an
5 outside person or hacker?

6 Marks and Gazhal's question regarding
7 manipulating the machine, that is images in cast vote
8 order -- cast vote record order to connect a voter to a
9 vote, is not sufficient to violate Georgia statute and
10 not keep a numbered list of voters. I've seen no
11 evidence that confirms this is occurring.

12 If there is an issue in fact, then the
13 Dominion defect should be corrected by the Secretary of
14 State immediately. But that is still no excuse for
15 noncompliance with current Georgia law to keep a
16 numbered list of voters. If Member Ghazal and
17 Ms. Marks are concerned, then they should address this
18 issue with the General Assembly, Dominion Voting
19 System, or Liberty Voting System, KNOWiNK, the
20 Secretary of State, the Attorney General, the governor,
21 and the DOJ.

22 If a voter has been linked to a vote in this
23 manner, then that person, entity, or agency should be
24 reported, investigated, and prosecuted. Voter privacy
25 is applicable to everyone, the public, Secretary of

1 State, an outside vendor, or an election official. If
2 there is an issue with Dominion Voting Systems and
3 voter privacy related to ballot images, then Dominion
4 Voting System or Liberty Voting System has a defective
5 product and should remove it.

6 The Secretary of State has stated ballot
7 images are not reliable as a record of a ballot that
8 has been cast. The ballot image has no date, time --
9 date or time stamp. If there is a date, time stamp
10 linking a particular ballot to a particular voter, then
11 Dominion is in violation of the law and should
12 immediately change the system.

13 The Secretary of State's response in the past
14 has stated that the identity, theoretically, could be
15 determined in unusual situations. But this is true for
16 any election by any method, whether it would be
17 hand-marked paper ballots and watching voters that come
18 into a polling place early on a Monday, Tuesday, or
19 Wednesday.

20 Furthermore, if the Secretary of State states
21 they can figure out how a voter voted, but practically
22 speaking, this is not a concern that -- then
23 practically speaking, this is not a concern that should
24 deny following the law. In today's technical --
25 technology environment, there's a greater probability

1 that someone knows how a voter voted than the
2 contortions described by reverse engineering of
3 Ms. Marks and others.

4 So the Secretary has -- in addition, the
5 Secretary of State has taken ballot images from the
6 counties and sent to enhanced voting and renamed them
7 to a different naming convention to hide or camouflage
8 the cast vote record. This should provide ample
9 protection and concealment of perhaps, theoretically,
10 attaching a ballot to a particular voter.

11 And furthermore, the Secretary of State has
12 repeatedly and publicly stated that ballot images do
13 not necessarily equate to a vote. And we know that
14 vote history is not a reliable data source for
15 determining if a voter has actually even voted. We
16 must refer to the paper voter list, the papered
17 numbered list of voters, and the paper ballot.

18 Now, there's the question of no KNOWiNK,
19 KNOWiNK is a vendor of electronic poll books. And
20 they're -- they're not involved with ballot printing,
21 ballot scanning, or ballot imaging. The electronic
22 poll book definition does not describe -- is not --
23 does not describe or include mention of the numbered
24 list of voters.

25 Although KNOWiNK can create an electronic

1 numbered list of voters, but it apparently does not
2 produce or provide this to poll managers or other
3 election officials on -- on a daily basis. It is not
4 acceptable to deliver our election and election
5 documents to an outside vendor and not an election
6 official that has taken an oath. Simply put, it is the
7 law to keep a numbered list of voters.

8 The absolute necessity for a contemporaneously
9 real time captured numbered list of voters is to
10 reconcile the unique number of voters to the number of
11 ballots cast. We must refer to the paper voter list,
12 the papered numbered list of voters, and the paper
13 ballot. Questions or comments, please.

14 CHAIR FERVIER: Thank you, Dr. Johnston. Are
15 there any questions from the -- from the -- well, we
16 have one from Member Grubbs. Thank you for staying
17 within your 20 minutes, Dr. Johnston.

18 Member Grubbs, do you have a question?

19 MS. GRUBBS: I was just going to point out
20 that actually in Code Section 436, you know, it is one
21 of the duties to have a numbered list of voters. And
22 so I'm kind of confused as to why -- why is this
23 necessary. I'm not saying I disagree with it. But is
24 it just because it's not being done?

25 VICE CHAIR JOHNSTON: It's just because it's

1 not being done. So in my discussion last week in -- in
2 the presenting of this, I asked myself the same
3 question. It's in the code. And indeed it is, so it's
4 certainly not changing the law. So it -- it certainly
5 meets mustard with the new Supreme Court criteria for
6 acceptable rulemaking, but it's not being kept. It's
7 not being -- not being done.

8 We -- we have our electronic poll books which
9 are efficient. And they can produce reports, which is
10 nice and convenient. But we -- we lack the paper
11 backup. Just like the -- the judicial ruling that the
12 counties must have a paper voters' list, electors'
13 list, indeed we must have a paper backup for the
14 electronic poll book.

15 It's not unusual that there are poll book --
16 electronic poll book issues or syncing issues. We --
17 we may not even know that data is lost or files might
18 be lost or jumbled or -- and that paper backup is part
19 of -- of what we want to be able to rely on in case the
20 electronic system does not function correctly.

21 MS. GRUBBS: Yeah. Because it says -- it --
22 it talks about the voter certificates as well. The
23 electors list, the voter certificates, and the numbered
24 list of voters and the stubs of all ballots used
25 together with all unused ballots, all spoiled and

1 canceled ballots, so on and so forth, shall be placed
2 in separate packages, containers, or envelopes, and
3 sealed before the ballot box is opened.

4 So I mean, I certainly have no -- no problem
5 with it. I just -- just wondering if we're being
6 redundant. Not that redundancy is a bad thing all the
7 time. But you answered my question, it's just not
8 being done.

9 VICE CHAIR JOHNSTON: That's correct.

10 MS. GRUBBS: So that would fall under
11 enforcing the law, right?

12 VICE CHAIR JOHNSTON: It -- it would be.

13 MS. GRUBBS: So we're going to be okay to
14 enforce the law and we're not going to get sued over
15 that?

16 VICE CHAIR JOHNSTON: Well, you know, they --
17 so they say, you can sue over a ham sandwich.

18 CHAIR FERVIER: Let's -- let's move forward.
19 It's getting late. Any further questions from the
20 board? The Chair will entertain a motion on
21 Dr. Johnston's petition.

22 MS. GRUBBS: Mr. Chair, I would just like to
23 confirm with Member Ghazal whether these -- her
24 questions from the other day. Did these answer your
25 questions to your satisfaction?

1 MS. GHAZAL: It did. You know, I -- I don't
2 want anyone to think that I was strongly objecting.
3 They were just some clarification questions that I had.
4 Because I agree that redundancies are really critical
5 to make sure that -- that everything is traceable. And
6 that's the -- literally the design of our -- our system
7 is to have lots of built-in redundancies.

8 MS. GRUBBS: So you're satisfied with -- with
9 Dr. Johnston's explanations?

10 MS. GHAZAL: I am.

11 MS. GRUBBS: Okay. Cool. Mr. Chair, I'll
12 make a motion that we approve this rule petition.

13 CHAIR FERVIER: You would make a motion to
14 initiate rulemaking procedures.

15 MS. GRUBBS: Okay. I'll do that.

16 CHAIR FERVIER: We have a motion to initiate
17 rulemaking procedures. Is there a second?

18 MS. KING: Second.

19 CHAIR FERVIER: We have a motion and a second.
20 Any discussion? Dr Johnston, I would hope that you
21 would not vote on this since it's your petition.

22 We have a motion. Any second? To initiate
23 rulemaking procedures, all those in favor signify by
24 saying aye.

25 (Ayes were heard)

1 CHAIR FERVIER: The chair will also vote aye.
2 There is no opposition, so the motion to initiate
3 rulemaking procedures is passed by unanimous vote.

4 Who says this board can't be unanimous? The
5 next item on the agenda -- thank you, Dr. Johnston.

6 VICE CHAIR JOHNSTON: Thank you, sir.

7 MS. GRUBBS: Hopefully, the AJC is still on so
8 that they can put that in their story.

9 CHAIR FERVIER: Okay. The next item on the
10 agenda is old business, election night. I believe,
11 Member Grubbs, this is your edition?

12 MS. GRUBBS: Yeah. I honestly don't recall
13 specifically putting it on for this meeting. But we do
14 have the primary coming up, and I've reached out
15 concerning election night observation at the -- the
16 main tabulation center for the state. And I've not
17 heard any response. I would like to find out if you
18 have.

19 But I would like to reiterate that I think
20 it's important to have oversight. It would be
21 considered a tabulation center, and there need to be
22 observers there. And I would like to be sure that we
23 have access to that.

24 CHAIR FERVIER: I -- I have not heard any -- I
25 haven't received any response to your request, so...

1 MS. KING: Mr. Chair, can we put a -- could we
2 contact them and ask them to give us a response and
3 give them a deadline? Because I mean, we -- I mean,
4 are they're just going to not respond on -- into the
5 primary? And the -- the answer is just going to be
6 what? It's floating out there. I think we should ask
7 them to give us a response by a certain time period.

8 CHAIR FERVIER: I will ask them for a
9 response, yes, I will. All right. Any further
10 questions on that?

11 MR. MILLS: Mr. Chairman, I had a question.

12 CHAIR FERVIER: Yes, sir.

13 MR. MILLS: Again, I don't think any of us
14 have been in that room except for you. And so my
15 question is: Are -- do the votes come in from the
16 counties to the state into that room and then they're
17 tabulated out? Tell us about it.

18 CHAIR FERVIER: I -- I really don't know,
19 Mr. Executive Director. My visit there was a very
20 short one, and I spent almost the entire thing just
21 meeting people. And it happened at the very beginning
22 of my tenure on this board, and so I didn't get into
23 all the specifics of how it all works. I -- I was more
24 interested in just meeting people that I need to meet,
25 so...

1 MR. MILLS: Are there computers all around?
2 Are there people manning the computers? I mean,
3 what --

4 CHAIR FERVIER: Yeah. There's computers and
5 there's big screens. And, you know, I -- so I -- I
6 didn't get into specifics of how it works. So I'm...

7 MR. MILLS: Well, as -- as a state election
8 board, I would think it would be very important for --
9 I mean, you have a statewide candidate who, based on
10 what you said last meeting, is kind of in charge of the
11 invitations. That -- that would be Brad Raffensperger,
12 I guess.

13 He is in a -- in a primary race. I would
14 think other people who are in that primary race, at a
15 bare minimum, should be in that same room.

16 CHAIR FERVIER: Yeah. I mean, I can't --
17 listen, I don't -- I don't have any control over
18 anything. I'm -- I'm willing to ask the questions and
19 see if we can get a response from them, so...

20 MR. MILLS: Do you think -- do you not think
21 other candidates should be in that room so everybody
22 can walk out of that room and say everything was done
23 right, everything was proper?

24 CHAIR FERVIER: Well, I mean, I -- I
25 understand you all want me to comment. I really would

1 like to know exactly the reasoning behind it first
2 before I say anything about it. So I -- I don't -- I
3 don't have enough information right now to -- yeah, I
4 really want to get some more information on it. So
5 I'll -- I will do my best to try and get an answer for
6 everybody as quickly as possible.

7 MR. MILLS: Well, I mean, how much more
8 information do we need? We know that Secretary Brad
9 Raffensperger is in that room, that he's the one that
10 invites people. And we know that the State Election
11 Board is being denied an invitation and being told to
12 go out to the county elections. We know that. That's
13 in writing.

14 So I mean, the -- I see the State Election
15 Board as kind of the highest level of poll watchers in
16 the entire state. And the State Election Board of all
17 people should be allowed to come into that room because
18 everybody wants everything done fair and right. And
19 that should only work to everybody's advantage, right?

20 CHAIR FERVIER: I -- yeah, I'm not -- I'm not
21 disagreeing with you. Like I said, I don't -- I don't
22 know the total reasoning behind it, so I just need to
23 understand that. I mean, I -- I don't even know what
24 the history of all that is.

25 Like I said, I was there for one night in a

1 very short time period meeting some people. And, you
2 know, I wasn't there to do any poll watching. I wasn't
3 there to do any -- any of that stuff really. But
4 I'll -- I will try and get an answer for the board.

5 MR. MILLS: So are you in agreement that the
6 board should -- should be there?

7 CHAIR FERVIER: Well, I'm not in agreement
8 with anything yet until I understand the facts behind
9 it.

10 MR. MILLS: Are you in opposition to the
11 board?

12 CHAIR FERVIER: I'm not -- I'm not in
13 opposition to the board. No, I'm not. I'm just saying
14 I -- I just want to understand the reasoning behind it
15 before I speak out on it, so...

16 MS. KING: I think, Mr. Chair, if you
17 presented it to them that this would provide and create
18 more trust, you know -- we are -- we're all going to
19 accept the results because, I mean, it's just --
20 obviously, we have to -- you know, you go through
21 lawsuits and things of that nature if you don't.
22 However, I think we all see, too, that our current
23 Secretary of State will also be overseeing the results
24 that are coming in for his own primary.

25 So that does create a level of concern for

1 some people that there aren't any checks and balances
2 on it, if it's only him and his friends in there or his
3 staff in there and -- and he's overseeing his own
4 election. I -- I know that there's, you know, people
5 that see other things as conflicts and not that as a
6 conflict. But I mean, if we're not going to say that's
7 a conflict of interest and everyone's going along with
8 it, then I do think that having -- that's why I support
9 it. I should -- you know, I'll give you that. Why I
10 support having someone.

11 It doesn't have to be me. And I know it can't
12 be three members, but just having someone there that's
13 also in that room to just provide a little bit more of
14 comfort to voters. There are some that -- people that
15 do have concerns about him overseeing his own election.

16 CHAIR FERVIER: I'll be happy to make that
17 case.

18 MR. WHITE: And I hope you don't mind me
19 interrupting for a second, sorry. I just want to let
20 you guys know that Sara will be back on here in a
21 minute. She just lost connection.

22 CHAIR FERVIER: Okay. All right. I'll be
23 happy to make that case, so...

24 MS. KING: Thank you.

25 CHAIR FERVIER: All right. The -- the next

1 item on the agenda is the executive director has a --
2 something he'd like to discuss with the board.

3 MR. MILLS: Yes.

4 CHAIR FERVIER: And the executive director and
5 I have discussed this -- was it yesterday, James, or
6 the day before?

7 MR. MILLS: I think yesterday, yes, sir.

8 CHAIR FERVIER: Yesterday, yeah. Yeah. And I
9 am -- I am in full support of his -- this proposition
10 or -- so...

11 MR. MILLS: And Mr. Chairman, I appreciate
12 that discussion. I appreciate the introduction here
13 today. I'll be quick. The -- the only reason I'm
14 talking to you about this at this time is this does --
15 this is a -- this has a high price tag decision to it.
16 And I just want the board to be made aware of it
17 because you-all had passed some stipulations several
18 meetings back, and I want to be in compliance with
19 that.

20 We have an opportunity to purchase what's
21 called a JustFOIA, an open records program. The -- the
22 cost of the program is roughly \$14,386. Right now you
23 all know how important open records are. The whole
24 agency -- the entire office has looked at this, watched
25 the presentation.

1 I've gone through it with our open records,
2 Officer Shaun. And he and I roughly calculate that
3 using this program is going to -- it's going to save
4 approximately anywhere 7 to 10 hours a week on his time
5 in doing open records. Based on those calculations,
6 when I play that out through the whole course of this
7 year, this winds up costing the agency really about
8 \$10,000 in what we're saving in man hours and
9 production.

10 But there are lots of open records that takes
11 up a lot of space. This program will give us a cloud
12 to put all that stuff in. They also will provide
13 monthly webinars. They also will train people in our
14 office how to work this program. We've studied it
15 pretty hard.

16 Other government agencies use this. It is
17 a -- it does most of the redactions for you, which is
18 tremendously time saving in open records. And Shaun,
19 is there anything you wanted to add to that?

20 MR. WHITE: Yeah. Like we talked about
21 yesterday, it really helps out with the redactions.
22 Jesse [phonetic] and I, one time we were looking over a
23 document to see if it needed redactions. And one of
24 the copies of the paper, the e-mail was so small we
25 almost missed it. But the redaction process with

1 JustFOIA, it'll -- it will find the redactions for you.

2 It'll also -- it will also reduce the amount
3 of traffic we get on open records because i will keep
4 past records available to the public if they want to
5 search those as well. It will ll send a response. So
6 that will help us out with the three-day window in
7 responding to the -- the requesters in a timely manner.

8 One of my favorite features is it's going to
9 greatly help out with the -- the review and search
10 process. My computer sometimes shuts down when I'm
11 trying to search for too many documents or -- or
12 something that has -- takes up a lot of my inbox or it
13 takes a long time for it to refresh or for all the
14 files to come up.

15 So that's -- that's one of my favorites
16 because I've constantly had to shut down Microsoft
17 Outlook, reopen it, or even start from purview. And
18 even if I go through purview, I had to reopen that up
19 through Microsoft Outlook. And this will help mitigate
20 a lot of that process.

21 And then also with the delivery, like James
22 was just saying, it was going to offer us a Dropbox.
23 So if we have a large amount of files, we don't have to
24 send four, five, six, seven, or eight e-mails. We can
25 just put them in the Dropbox and it will be one -- one

1 fell swoop and be over. That's all I have.

2 MR. MILLS: Mr. Chairman and board members,
3 that -- that's it. I'll keep it short.

4 CHAIR FERVIER: Yeah. I think that we've --
5 you know, the executive director has the right to do
6 whatever he needs is necessary. He did -- I think this
7 board did vote that we -- he had to prove or the board
8 had to be notified of anything over -- I believe the
9 limit was \$10,000. And so he has decided to -- you
10 know, to let us know about this.

11 Is there any -- any discussion, any questions
12 from the board on this? Then we'll just consider it
13 approved, and you can move forward.

14 MR. MILLS: Thank you. Thank you very much.
15 And Shaun, thank you as well. This -- this will really
16 help him, and it will free him up to help us on other
17 things.

18 CHAIR FERVIER: Good. Any further questions
19 for the board? If not, then the chair would entertain
20 a motion to adjourn.

21 MS. GRUBBS: Motion to adjourn.

22 CHAIR FERVIER: Is there a second?

23 VICE CHAIR JOHNSTON: Second.

24 CHAIR FERVIER: All that's in favor signify by
25 saying aye.

1 (Ayes were heard.)

2 CHAIR FERVIER: All right. Motion carries
3 unanimately. Thank you for attending today. We
4 appreciate it. And this meeting is adjourned. Thank
5 you.

6 (Proceedings concluded.)

7 (End of audio recording.)

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