

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RHONDA J. MARTIN, ET AL.,)	
)	
PLAINTIFFS,)	
)	
VS.)	DOCKET NUMBER
)	1:18-CV-4776-LMM
BRIAN KEMP, ET AL.,)	
)	ATLANTA, GEORGIA
DEFENDANTS.)	OCTOBER 23, 2018
)	
)	
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LEIGH MARTIN MAY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:	BRUCE BROWN ATLANTA, GEORGIA 30306
	JOHN POWERS WASHINGTON, DC 20005
FOR DEFENDANT KEMP:	RUSSELL WILLARD & CRISTINA CORREIA ATTORNEY GENERAL'S OFFICE ATLANTA, GEORGIA 30334

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

*MECHANICAL STENOGRAPHY OF PROCEEDINGS
AND COMPUTER-AIDED TRANSCRIPT PRODUCED BY*

OFFICIAL COURT REPORTER:	MONTRELL VANN, RPR, RMR, RDR, CRR 2160 UNITED STATES COURTHOUSE 75 TED TURNER DRIVE, SOUTHWEST ATLANTA, GEORGIA 30303 (404)215-1549
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APPEARANCES CONTINUED

FOR DEFENDANT GWINNETT COUNTY: BRYAN TYSON & FRANK STRICKLAND
STRICKLAND, BROCKINGTON, LEWIS
ATLANTA, GEORGIA 30309

1 (IN ATLANTA, FULTON COUNTY, GEORGIA, OCTOBER 23, 2018, IN
2 OPEN COURT.

3 THE COURT: OKAY. Y'ALL CAN ALL BE SEATED. OKAY.
4 WE ARE HERE THIS AFTERNOON IN TWO CASES, 18-CV-4776, RHONDA
5 MARTIN, ET AL. VS. BRIAN KEMP, ET AL.; AND 18-CV-4789, GEORGIA
6 MUSLIM VOTER PROJECT, ET AL. VS. BRIAN KEMP, ET AL.

7 AND IF COUNSEL WOULD INTRODUCE THEMSELVES FOR THE RECORD,
8 PLEASE.

9 MR. YOUNG: MY NAME IS SEAN YOUNG, AND WITH ME AT
10 COUNSEL'S TABLE IS SOPHIA LYNN (PHONETIC) LAKIN, AND WE ARE
11 COUNSEL FOR THE PLAINTIFFS IN GEORGIA MUSLIM VOTER PROJECT V.
12 KEMP.

13 THE COURT: OKAY. THANK YOU.

14 MR. BROWN: BRUCE BROWN, YOUR HONOR, FOR THE
15 PLAINTIFFS IN THE MARTIN CASE, AND WITH ME IS JEFF POWERS AND
16 MY CLIENT, MARILYN MARKS.

17 THE COURT: OKAY. THANK YOU.

18 MR. WILLARD: GOOD AFTERNOON, YOUR HONOR. RUSS
19 WILLARD WITH THE STATE ATTORNEY GENERAL'S OFFICE HERE ON BEHALF
20 OF SECRETARY KEMP AND STATE ELECTION BOARD. WITH ME IS CRIS
21 CORREIA FROM OUR OFFICE ALSO REPRESENTING THE STATE DEFENDANTS.

22 THE COURT: OKAY. THANK YOU.

23 MR. TYSON: GOOD AFTERNOON, YOUR HONOR. BRYAN TYSON
24 ON BEHALF OF THE GWINNETT COUNTY BOARD OF VOTER REGISTRATIONS
25 AND ELECTIONS, AND THEN THE INDIVIDUAL MEMBERS IN THE MARTIN

1 CASE AS WELL, AND WITH ME IS FRANK STRICKLAND AND BILL LINKOUS,
2 THE COUNTY ATTORNEY.

3 THE COURT: OKAY. GREAT. WELL, THANK YOU ALL. WHAT
4 I'M GOING TO DO FIRST IS TO GIVE YOU SOME INTRODUCTORY REMARKS
5 AND GIVE YOU JUST SOME OF MY GENERAL THOUGHTS AFTER READING THE
6 VOLUMINOUS PLEADINGS AND DOCUMENTS AND SUCH THAT HAVE BEEN
7 FILED IN THE CASE. AND WHAT I'M TRYING TO DO WITH THIS IS JUST
8 TO GIVE YOU, LIKE I SAID, MY INITIAL THOUGHTS, BECAUSE THAT MAY
9 DIRECT YOU IN TERMS OF YOUR ARGUMENT HERE TODAY. AND IT'S NOT
10 NECESSARILY GOING TO BE CONCLUSIVE OF WHERE I GO ON THIS, BUT
11 THIS IS KIND OF WHAT I'M THINKING AFTER I'VE READ EVERYTHING.
12 AND I WILL TELL YOU, TOO, THAT I HAVE READ EVERYTHING IN A LOT
13 OF DETAIL. THE EXCEPTION TO THAT WOULD BE SOME OF THE STUFF
14 THAT MR. BROWN FILED TODAY AND LATE LAST NIGHT. I HAVEN'T HAD
15 A CHANCE TO GO THROUGH ALL OF THAT IN A LOT OF DETAIL. AND
16 THAT'S REALLY ONE OF THE FIRST ITEMS THAT I WANT TO TALK ABOUT
17 NOW, IS THAT THERE ARE TWO SEPARATE CASES. THEY DO HAVE
18 CERTAINLY OVERLAPPING FACTS AND LEGAL CONCEPTS, BUT THEY ARE IN
19 SOME RESPECTS A LITTLE BIT DIFFERENT FROM EACH OTHER.

20 WHAT I'M LIKELY TO CONCENTRATE ON IN TERMS OF MY ORDER
21 THAT'S GOING TO COME OUT OF THIS HEARING IS THE ISSUE ABOUT THE
22 REJECTION OF THE ABSENTEE BALLOTS BECAUSE OF THE SIGNATURE
23 MISMATCH ISSUE AND LOOKING AT THAT SPECIFICALLY. I DON'T KNOW
24 AT THIS POINT IN TIME IF THE BRIEFING AND THE OPPORTUNITY FOR
25 THE DEFENDANTS TO RESPOND IS SUFFICIENT ON SOME OF THE OTHER

1 ISSUES, ESPECIALLY SINCE WITH THE PRELIMINARY INJUNCTION THAT
2 THE MARTIN PLAINTIFFS HAVE FILED BEING KIND OF EVOLVING AND NEW
3 INFORMATION BEING PROVIDED, WHAT I'M LIKELY TO CONCENTRATE THE
4 ORDER ON IS THE PROCEDURAL DUE PROCESS CLAIMS BECAUSE I DO
5 THINK THOSE ARE THE CLEAREST AND POTENTIALLY, AT LEAST AT MY
6 INITIAL THOUGHT, THE STRONGEST FOR THE PLAINTIFFS, AND LOOKING
7 AT THAT IN TERMS OF THE SIGNATURE MISMATCH ISSUE ON BOTH THE
8 APPLICATION TO GET A BALLOT AND THE BALLOT ITSELF. AND WHAT
9 I'M ALSO THINKING ABOUT IN TERMS OF RELIEF, THAT AT LEAST TO ME
10 IS THE STRONGEST THAT THE PLAINTIFF HAS PUT FORTH, WHICH IS NOT
11 THE SAME AS SAYING THIS IS WHAT I'M GOING TO DO, BUT THE
12 STRONGEST WAY TO ME IN LOOKING AT IT IS TYING THIS TO THE
13 GEORGIA STATUTE THAT IS THE 21-2-230, WHICH IS THE STATUTE THAT
14 ALREADY ALLOWS AN APPEALS PROCESS IF THERE IS AN ELIGIBILITY
15 REJECTION TO AN ABSENTEE BALLOT. SO SOME OF THE PROPOSALS ARE
16 BROADER THAN THAT THAT WILL MAYBE POSSIBLY HAVE ME CREATE
17 COMMISSIONS AND NEW WAYS TO EVALUATE REJECTED APPLICATIONS OR
18 BALLOTS. THAT'S LESS PERSUASIVE TO ME AT THIS JUNCTURE. AND
19 THE RELIEF THAT SEEMS THE MOST REASONABLE, AT LEAST KIND OF AT
20 THE OUTSET, IS THAT THAT'S ALREADY BEEN ESTABLISHED BY THE
21 GEORGIA LEGISLATURE AND ALREADY IS BEING UTILIZED BY THE
22 DIFFERENT COUNTIES IN DEALING WITH THAT.

23 SO CERTAINLY IF YOU WANT TO USE YOUR TIME TO KIND OF
24 ATTACK THE BROAD RELIEF THAT'S BEING ASKED, THAT'S UP TO YOU,
25 BUT THE RELIEF THAT IS MORE I THINK TO ME REASONABLE AT THIS

1 POINT IS THIS MORE NARROW RELIEF. BUT THAT DOESN'T MEAN YOU
2 HAVE TO LIMIT YOUR ARGUMENT TO THAT. THAT'S JUST KIND OF WHAT
3 I'M LOOKING AT RIGHT NOW. THE ISSUE ABOUT PUTTING STRICT TIME
4 LIMITS IN ALL OF THIS ALSO CONCERNS ME POTENTIALLY BECAUSE I
5 REALLY DON'T KNOW IF THERE'S TIME TO GET THIS ALL DONE AND THAT
6 THERE IS ANY EVIDENCE IN THE RECORD THAT THESE COUNTY OFFICIALS
7 ARE NOT DOING A GOOD JOB IN TERMS OF TURNING THIS OVER QUICKLY
8 AND PROMPTLY. AND I DON'T SEE ANY EVIDENCE THERE'S A PROBLEM
9 WITH THAT. AND SOME OF THE DIFFICULTIES IN GETTING THIS ALL
10 DONE BEFORE THE ELECTION REALLY DO FALL ON THE PLAINTIFFS
11 BECAUSE THIS HAS JUST BEEN FILED. SO WE HAVE WHAT WE HAVE.
12 BUT I DO HAVE SOME CONCERNS ABOUT INCLUDING STRICT TIME LIMITS
13 THAT MIGHT NOT BE WORKABLE WHEN I DON'T HAVE ANY EVIDENCE THAT
14 WHAT IS GOING ON HAS BEEN DELAYED IN ANY FASHION.

15 WHAT I'LL ALSO MENTION AS WELL IS THAT, AT LEAST INITIALLY
16 TO ME, THE ISSUE OF THE SIGNATURE MISMATCH IS DIFFERENT TO ME
17 THAN SOME OF THE OTHER PROBLEMS THAT HAVE BEEN REPORTED ABOUT
18 THE ABSENTEE BALLOTS. AND THIS IS THE REASON WHY, IS THAT IF
19 SOMEONE HAS PUT AN INCORRECT BIRTH DATE ON THE APPLICATION OR
20 SOMEONE FAILED TO SIGN THE APPLICATION AT ALL, THERE IS A
21 SYSTEM IN PLACE WHEREBY THAT PERSON IS PROVIDED NOTICE OF THAT
22 AND AN OPPORTUNITY TO CORRECT THAT. AND I THINK THAT IN TERMS
23 OF ISSUES LIKE THAT, THAT DOES SEEM LIKE IT MIGHT BE
24 REASONABLE. THE SIGNATURE MISMATCH TO ME SEEMS A LITTLE
25 DIFFERENT, AND THE REASON WHY IS I DON'T, AT LEAST INITIALLY,

1 FEEL THAT THERE IS THE SAME ABILITY TO POTENTIALLY CORRECT THAT
2 PROBLEM. AND THE REASON WHY IS THAT IF YOU'RE TRYING TO MATCH
3 A SIGNATURE TO YOUR VOTER CARD ON FILE, I KNOW I DID MINE
4 PROBABLY WHEN I WAS 18. I HAVE NO IDEA WHAT MY SIGNATURE
5 LOOKED LIKE. AND SOME PEOPLE HAVE MEDICAL ISSUES. THEY'RE A
6 LOT OLDER. IT'S DIFFERENT FOR THEM TO CORRECT THE PROBLEM WITH
7 THE METHOD THAT IS IN PLACE RIGHT NOW BECAUSE THEY CAN TRY TO
8 DO THIS TEN DIFFERENT TIMES AND IT BE THE CORRECT PERSON AND
9 NOT BE ABLE TO KIND OF RE-MAKE THE SIGNATURE THAT THEY HAVE ON
10 THEIR CARD. SO THAT TO ME IS DIFFERENT THAN SOME OF THE OTHER
11 PROBLEMS THAT HAVE BEEN CITED AS REASONS TO REJECT BALLOTS.

12 THE ISSUE OF A CLASS ACTION AND PROCEEDING IN THAT WAY,
13 THAT'S NOT REALLY SOMETHING I THINK IS NECESSARY TO DEAL WITH
14 AT THIS JUNCTURE. I DO AT LEAST INITIALLY THINK THAT IF AN
15 INJUNCTION IS APPROPRIATE, I DON'T SEE ANY REASON -- AND I'D
16 LIKE THE DEFENDANT TO ADDRESS THIS IF THERE IS A REASON -- WHY
17 NOT ENJOINING THE SECRETARY OF STATE'S OFFICE WOULD NOT BE
18 SUFFICIENT IN TERMS OF A WAY OF DOING THIS AND WHY I WOULD HAVE
19 TO ENJOIN EACH COUNTY INDIVIDUALLY. BUT, AGAIN, THAT'S JUST AN
20 ISSUE THAT I HAVE OPEN.

21 AND JUST FOR KIND OF EVERYONE HERE, A LOT OF WHAT'S GOING
22 TO TAKE PLACE TODAY WILL PROBABLY SEEM VERY TECHNICAL AND MAYBE
23 AT TIMES NOT VERY INTERESTING, AND THE REASON WHY IS THAT I'VE
24 RECEIVED A STACK OF DOCUMENTS THAT I'VE ALREADY READ ABOUT THE
25 ISSUES IN THE CASE. AND WHAT TODAY IS MORE ABOUT, AT LEAST FOR

1 ME, IS THAT I HAVE TO MAKE A DECISION AND WRITE A WRITTEN ORDER
2 EXPLAINING ALL OF THIS. AND I'VE CALLED THE PARTIES HERE TO
3 PRESENT THEIR CASE, BUT ALSO TO ANSWER MY QUESTIONS AND MAKE
4 SURE THAT I UNDERSTAND AND THAT WHAT I WRITE IS ACCURATE. SO
5 TO DO THAT I'M GOING TO BE A LOT LESS INTERESTED IN HEARING
6 KIND OF RHETORIC ABOUT THE POLITICS OF SOME OF THIS AND MUCH
7 MORE INTERESTED IN LOOKING AT THE LAW AND THE RULES THAT I HAVE
8 TO APPLY TO COME UP WITH THE BEST DECISION. SO SOMETIMES WE'RE
9 GOING TO BE IN THE WEEDS ON THESE CASES AND THESE LEGAL
10 STANDARDS, AND THAT'S BECAUSE THAT'S WHAT'S ULTIMATELY GOING TO
11 BE IMPORTANT TO MAKE SURE THAT WHAT I DO IS CORRECT. AND ALSO
12 WE'RE HERE ON IN ONE CASE A TEMPORARY RESTRAINING ORDER AND
13 ANOTHER CASE A PRELIMINARY INJUNCTION. AND THAT IS A VERY
14 UNUSUAL POSTURE TO BE IN IN COURT BECAUSE IT'S RIGHT WHEN THE
15 CASE HAS BEEN FILED, THERE HASN'T BEEN A LOT OF TIME FOR THE
16 PARTIES TO ADDRESS THE ISSUE, IT'S COMING UP ON AN EMERGENCY
17 BASIS. AND BECAUSE OF THAT, THE STANDARDS ARE DIFFERENT FOR
18 GRANTING AN INJUNCTION THAN YOU MAY APPRECIATE. SO NOT ONLY
19 DOES THE PLAINTIFF HAVE TO SHOW ME THAT THEY HAVE A VALID
20 CLAIM, THEY HAVE TO SHOW A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON
21 THE MERITS, AND THAT'S A VERY HIGH STANDARD. AND THEY ALSO
22 HAVE TO SHOW OTHER POLICY RELATED ISSUES TO ESTABLISH AN
23 INJUNCTION OTHER THAN JUST SHOWING THAT THEIR CLAIM IS
24 SUCCESSFUL. SO IT'S A HIGH BURDEN TO OVERCOME. AND ALSO I
25 KNOW THAT THE DEFENDANTS HAVE REQUESTED CONTINUANCES AND

1 ADDITIONAL TIME TO RESPOND. AND I APOLOGIZE FOR NOT BEING ABLE
2 TO GIVE YOU MUCH MORE OF THAT. WE JUST ARE MOVING VERY QUICKLY
3 ON THIS.

4 BUT, LIKE I SAID, I DON'T KNOW THAT SOME OF THE ISSUES
5 THAT WERE RAISED LATER IN THAT MARTIN CASE, WHICH WAS THE
6 SECOND MOTION THAT WAS FILED, I'M NOT NECESSARILY GOING TO
7 REQUIRE YOU TO BE UP TO SPEED ON WHAT WAS FILED TODAY IN THAT.
8 AND IF FOR SOME REASON IT BECOMES IMPORTANT IN MY DECISION TO
9 GET INTO SOME OF THOSE ISSUES, I WILL GIVE YOU AN OPPORTUNITY
10 TO BE HEARD ON THOSE AND TO FILE A WRITTEN SUBMISSION ON THAT.

11 SO ALL OF THAT IS A LOT OF PREAMBLE, BUT I THOUGHT IT
12 WOULD BE HELPFUL FOR YOU TO HAVE SOME KIND OF IDEA OF WHAT
13 MIGHT BE AT PLAY HERE. I'VE GIVEN BOTH SIDES AN HOUR. I DON'T
14 KNOW IF Y'ALL SEEN HOW THE TIMERS WORK. THE TIMER ON THE RIGHT
15 IS FOR THE PLAINTIFFS AND THE LEFT IS THE DEFENDANTS'. IF THE
16 PLAINTIFFS DON'T USE ALL THEIR TIME INITIALLY, THEN WHATEVER'S
17 LEFT ON THAT TIMER, THEY CAN HAVE IN REBUTTAL, BUT YOU DON'T
18 HAVE TO RESERVE A SPECIFIC AMOUNT OF TIME. SO I THINK THAT
19 IS -- OH, I ALSO DID WANT TO SAY THAT CERTAINLY THE ISSUES OF
20 STANDING ARE IMPORTANT. THE LACHES ISSUE THAT HAS BEEN RAISED
21 IS ALSO IMPORTANT. AND LACHES JUST MEANS -- I DON'T KNOW IF
22 IT'S LATIN OR FRENCH OR WHERE IT COMES FROM -- BUT IT JUST
23 MEANS YOU WAITED TOO LONG TO DO SOMETHING ABOUT THIS, SO YOU
24 SHOULDN'T BE ALLOWED TO DO IT. THAT'S WHAT LACHES IS. SO
25 THOSE ARE GOING TO BE IMPORTANT ISSUES TO COVER AS WELL. SO,

1 WITH THAT, I WILL TURN IT OVER TO THE PLAINTIFFS. AND I
2 APOLOGIZE IN ADVANCE BECAUSE I WILL PROBABLY ASK A LOT OF
3 QUESTIONS ON BOTH SIDES, SO THANK YOU.

4 MR. YOUNG: GOOD AFTERNOON, YOUR HONOR. MY NAME IS
5 SEAN YOUNG AND I REPRESENT THE PLAINTIFFS IN THE GEORGIA MUSLIM
6 VOTER PROJECT V. KEMP CASE. GIVEN THE JUDGE'S INTRODUCTORY AND
7 PRELIMINARY REMARKS, I WILL TRY MY BEST TO HOME (VERBATIM) IN
8 ON I THINK THE JUDGE IS MORE -- MOST CONCERNED ABOUT. FIRST,
9 I'LL JUST JUMP RIGHT INTO STANDING. AS WE'VE OUTLINED IN OUR
10 REPLY BRIEF THAT WE FILED LAST NIGHT, THE STANDARD FOR
11 ORGANIZATIONAL STANDING IN VOTER RIGHTS CASES SIMPLY REQUIRES
12 THAT THE ORGANIZATIONS DIVERTED THEIR RESOURCES FROM EXISTING
13 ACTIVITIES TOWARDS -- TOWARDS NEW PROJECTS TO REACT TO THE
14 CHALLENGED LAW. WE HAVE AMPLY MET THAT STANDARD IN THE CASE,
15 IN THIS CASE BASED ON THE DECLARATIONS THAT WE INITIALLY
16 SUBMITTED.

17 I WOULD ALSO REMIND THE COURT THAT THIS IS A T.R.O.
18 POSTURE AND THAT THE CASE THAT WE RELY ON, WHICH IS COMMON
19 CAUSE V. BILLUPS, THAT WAS AFTER A TRIAL. BUT EVEN WITH THE
20 STANDARD OF STANDING AFTER TRIAL, WE MEET THE SAME LEVEL OF
21 SPECIFICITY THAT THOSE PLAINTIFFS IN COMMON CAUSE MET AT TRIAL.
22 AND IF THIS COURT WERE TO BELIEVE THAT OUR DECLARATIONS WEREN'T
23 SPECIFIC ENOUGH, WE DID ATTACH SUPPLEMENTAL DECLARATIONS TO OUR
24 REPLY BRIEF LAST NIGHT THAT PROVIDE A LITTLE BIT MORE DETAIL
25 ABOUT WHY THESE ORGANIZATIONS -- WHAT EXACTLY THEY DIVERTED

1 THEIR RESOURCES FROM AND WHAT EXACTLY THEY DIVERTED THEIR
2 RESOURCES TO. AND SO WE BELIEVE THAT STANDING HAS BEEN AMPLY
3 MET IN THIS CASE.

4 THE COURT: NOW, IN THE DEFENDANTS' STANDING ARGUMENT
5 THEY ADDRESS THE ISSUE ABOUT WHETHER OR NOT THE HARM THAT'S
6 ALLEGED BY THE ORGANIZATIONS IN YOUR CASE, WHETHER OR NOT
7 THAT'S REDRESSABLE BY THE RELIEF AND WHERE YOU'RE GOING WITH
8 WHAT YOU'RE REQUESTING. AND I JUST WANT TO MAKE SURE THAT YOU
9 ADDRESS THAT ARGUMENT THAT THEY'VE RAISED AS WELL.

10 MR. YOUNG: YES. THE HARM, IF IT IS REDRESSED TODAY,
11 THESE ORGANIZATIONS WILL NO LONGER HAVE TO DIVERT THEIR
12 RESOURCES FROM EXISTING ACTIVITIES TOWARDS SCRAMBLING TO TELL
13 VOTERS AND WARNING THEM ABOUT SIGNATURE MISMATCHES OR HOW THEY
14 MIGHT CURE IT AT THE LAST MINUTE. THEY WON'T HAVE TO DIVERT
15 THOSE RESOURCES ANYMORE. AND THAT HAS BEEN SUFFICIENT TO
16 ESTABLISH STANDING.

17 THE COURT: DOES IT MATTER THAT THEY STILL WILL HAVE
18 TO DEVOTE RESOURCES TO, IF PERHAPS I ORDER AN INJUNCTION THAT
19 DOES PROVIDE SOME SORT OF APPEALS PROCESS, THAT IT COULD BE
20 THAT THE SAME AMOUNT OF RESOURCES ARE UTILIZED TO INFORM PEOPLE
21 ABOUT THE RELIEF THAT COULD BE ORDERED HERE?

22 MR. YOUNG: NO, YOUR HONOR, BECAUSE IF AN ORDER'S
23 ENTERED TODAY -- LET ME BACK UP A BIT. SO A LOT OF THE
24 RESOURCES THAT'S BEING DIVERTED, THE VOLUME OF RESOURCES THAT
25 ARE BEING DIVERTED ARE TO ENSURE THAT NO ONE IS

1 DISENFRANCHISED, THAT THEY RECEIVE THEIR REJECTION NOTICE TOO
2 LATE AND THEY CAN'T CURE. IF THE ORDER IS ENTERED, THAT THREAT
3 IS REMOVED AND THE ORGANIZATIONS NO LONGER NEED TO MAKE THAT
4 SUCH A HIGH PRIORITY. AND SO OF COURSE THERE WILL BE SOME DE
5 MINIMIS, HEY, WE WON THE ORDER, YOU DON'T NEED TO WORRY SO MUCH
6 ABOUT THIS ANYMORE. AND THEN THE ORGANIZATIONS CAN ACTUALLY
7 FOCUS ON OTHER HIGHER PRIORITY ASSIGNMENTS. AND --

8 THE COURT: AND I JUST WANTED TO MAKE SURE THAT
9 ASSOCIATIONAL STANDING IS SOMETHING THAT IS ALLUDED TO, BUT IT
10 DOESN'T APPEAR THAT YOU'RE PROCEEDING ON THAT BASIS; IS THAT
11 CORRECT?

12 MR. YOUNG: THAT'S CORRECT.

13 THE COURT: OKAY.

14 MR. YOUNG: AND THAT ACTUALLY KIND OF SPILLS OVER
15 INTO THE LACHES ARGUMENT. I THINK, JUST STEPPING BACK AGAIN
16 FOR A MOMENT, THE PLAINTIFF ORGANIZATIONS DON'T JUST SIT WITH
17 THE GEORGIA ELECTION CODE AND FLIP THROUGH EVERY PAGE AND TRY
18 TO FIND EVERY POSSIBLE PROBLEM THAT THERE IS AND THEN DEVOTE
19 THEIR LIMITED RESOURCES TOWARDS FOCUSING ON THOSE PROBLEMS.
20 THEY HAVE LIMITED RESOURCES. THEY HAVE TO DECIDE WHAT ARE THE
21 HIGHEST PRIORITIES. AND THEY OFTEN DON'T DIVERT RESOURCES
22 UNLESS THEY ARE MADE AWARE OF THE MAGNITUDE OF A PARTICULAR
23 PROBLEM. SO HERE, YOU KNOW, WE HAVE AN OCTOBER 12TH NEWS
24 ARTICLE. AND DEFENDANTS MAY CAST SOME DOUBT ABOUT THE ARTICLE
25 ITSELF, BUT THESE ORGANIZATIONS DON'T HAVE A LOT OF TIME AND

1 THEY GOT TO SCRAMBLE BASED ON WHAT THEY'RE LEARNING. WHEN THIS
2 ARTICLE BLEW UP AND SUGGESTED THAT GWINNETT WAS REJECTING
3 ABSENTEE BALLOTS AT A HIGHER RATE, THEY SPRANG INTO ACTION.
4 WITHIN THREE BUSINESS DAYS THEY FILED THIS LAWSUIT AND THEN A
5 T.R.O. THE DAY AFTER. THERE -- THE PLAINTIFFS HAVE BEEN EVERY
6 BIT AS DILIGENT AS THEY COULD BE IN THIS CASE, AND SO LACHES
7 DOESN'T REALLY APPLY IN THIS CASE.

8 THE COURT: IS THERE ANY EVIDENCE THAT WHAT'S GOING
9 ON NOW IS ANY DIFFERENT THAN WHAT HAS OCCURRED IN PAST
10 ELECTIONS IN TERMS OF REJECTIONS OF ABSENTEE BALLOTS, OR IS
11 THERE ANY INFORMATION ABOUT WHETHER OR NOT THIS IS A NEW
12 PROBLEM OR IF THIS IS SOMETHING THAT HAS EXISTED AT THE SAME
13 RATE OR AT THE SAME LEVEL IN PRIOR ELECTIONS?

14 MR. YOUNG: I DON'T HAVE THAT DATA, YOUR HONOR. I
15 DON'T KNOW IF THE RATES HAVE BEEN HIGHER OR LOWER THAN THIS
16 LOCATION. BUT FROM OUR CLIENT'S POINT OF VIEW, THEY ALL --
17 ESPECIALLY RIGHT NOW AT THIS STAGE OF THE ELECTIONS, THEY DON'T
18 HAVE A LOT OF TIME TO PARSE OUT IN THAT AMOUNT OF DETAIL
19 WHETHER THIS IS HIGHER THAN 2016 OR 2014 OR LOWER. THEY'RE
20 JUST REACTING TO THE NEWS. AND AS YOUR HONOR IS WELL AWARE,
21 THERE'S NEWS REPORTS EVERY DAY OF THINGS THAT ARE GOING ON.
22 AND THEY ARE SCRAMBLING. AND THAT IS WHY THEY DIDN'T FILE THIS
23 LAWSUIT EARLIER.

24 IF I MAY TURN TO NEXT FOR -- BRIEF FOR THE PRELIMINARY
25 INJUNCTION FACTORS THAT YOUR HONOR HAS EMPHASIZED THIS MORNING.

1 THE PLAINTIFFS HAVE ESTABLISHED A SUBSTANTIAL LIKELIHOOD OF
2 SUCCESS. AS YOUR HONOR INDICATED, THE PROCEDURAL DUE PROCESS
3 CLAIM IS ONE OF THE STRONGEST CLAIMS.

4 JUST VERY BRIEFLY, DEFENDANTS DON'T DISPUTE THE WEIGHT OF
5 THE FIRST MATHEWS FACTOR, THE IMPORTANCE OF THE PRIVATE
6 INTEREST AT STAKE. AND HERE I WOULD EMPHASIZE THAT FOR
7 VOTERS -- THEY DON'T DISPUTE THAT FOR VOTERS WHO RECEIVE THEIR
8 REJECTION NOTICES TOO LATE, THEY HAVE NO OPPORTUNITY TO CURE IF
9 THEY GET THAT NOTICE ON OR AFTER ELECTION DAY. THE SECOND
10 MATHEWS FACTOR, THEY DON'T REALLY DISPUTE THE RISK OF ERROR
11 INHERENT IN THIS PROCESS. YOUR HONOR ALREADY WENT THROUGH
12 THOSE FACTORS THIS MORNING. I DON'T NEED TO REPEAT THEM HERE.
13 AND, LASTLY, IN TERMS OF THE BURDEN ON ELECTION OFFICIALS,
14 AGAIN, THERE IS AN EXISTING PROCEDURE, WHICH YOUR HONOR IS
15 AWARE OF IN 230(G), AND THE COURSE IS -- THE COURTS ROUTINELY
16 HOLD THAT WHAT WHEN THERE'S AN EXISTING PROCEDURE AND YOU'RE
17 JUST EXTENDING IT, THAT IS NOT A BURDEN THAT IS SUFFICIENT TO
18 DEFEAT A PROCEDURAL DUE PROCESS CLAIM.

19 THE COURT: NOW, ONE THING I AM UNCLEAR ON IS ARE YOU
20 JUST ASKING FOR GOING FORWARD IF THERE ARE APPLICATIONS OR
21 BALLOTS THAT HAVE A SIGNATURE MISMATCH, THAT THEY BE PROVIDED
22 THIS APPEALS PROCESS, OR ARE YOU ASKING EVERYONE TO GO BACK AND
23 PROVIDE THIS APPEALS PROCESS TO THOSE THAT HAVE BEEN PREVIOUSLY
24 REJECTED ON THIS BASIS AND GIVE THEM A CERTAIN AMOUNT OF TIME
25 TO CURE THEIRS?

1 MR. YOUNG: AT A MINIMUM WE ARE ASKING FOR THE FIRST
2 TYPE OF RELIEF YOU'VE DESCRIBED, BUT IN TERMS OF
3 ADMINISTRABILITY (VERBATIM), WE WOULD BE ASKING THAT EVERYONE
4 WHOSE BALLOTS HAS BEEN REJECTED BE GIVEN THIS OPPORTUNITY. AND
5 LET ME DETAIL A LITTLE BIT ABOUT THE EXISTING PROCEDURES THAT I
6 THINK MIGHT SHED SOME LIGHT --

7 THE COURT: AND AS PART OF THAT AND MAYBE AFTER THAT,
8 ALSO MAKE SURE THAT YOU'RE CLEAR ON EXACTLY WHAT YOU WANT IN
9 TERMS OF TIME LIMITS BECAUSE THE CURRENT RULES TALK ABOUT
10 PROMPTLY. AND I KNOW THAT YOU ARE AT LEAST APPEARING THAT YOU
11 WANT TO GRAPH KIND OF ON THIS PROCESS SOME TIME LIMITS. SO AT
12 THE POINTS WHERE YOU ARE ASKING A CHANGE TO INCLUDE A SPECIFIC
13 TIME, IF YOU CAN HIGHLIGHT THAT BECAUSE THAT WOULD BE HELPFUL.

14 MR. YOUNG: SURE. AND I'LL GET TO THAT AFTER I JUST
15 TALK REAL BRIEFLY.

16 THE COURT: THAT'S FINE.

17 MR. YOUNG: ONE THING I WANT TO POINT YOUR HONOR TO
18 IS A GEORGIA REGULATION. I THINK THIS MAY HELP RESOLVE SOME OF
19 THE, WHAT DO WE DO WITH THOSE WHO HAVE ALREADY CAST BALLOTS.
20 IT'S 183-1-14-.09. I APOLOGIZE, YOUR HONOR. I CAN GIVE YOU A
21 COPY RIGHT NOW --

22 THE COURT: THAT'S FINE.

23 MR. YOUNG: OKAY.

24 THE COURT: I'VE GOT A LOT OF STATUTES UP HERE, BUT I
25 DON'T FOR SOME REASON HAVE THAT ONE.

1 MR. YOUNG: IT'S -- I AM NOT -- IT MAY HAVE BEEN
2 CITED. FRANKLY I'M NOT SURE IF IT WAS CITED IN THE BRIEFS.

3 THE COURT: THAT'S FINE.

4 MR. YOUNG: I APOLOGIZE. IT SAYS THAT, QUOTE, IF
5 THE BOARD OF REGISTRARS OR ABSENTEE BALLOT CLERK REJECTS OR
6 OTHERWISE FAILS TO CERTIFY AN ABSENTEE BALLOT, THE ELECTION --
7 THE ELECTOR SHOULD BE PROVIDED THE OPPORTUNITY TO VOTE IN AN
8 ELECTION.

9 AND SO FOR THE PEOPLE WHOSE BALLOTS HAVE BEEN REJECTED SO
10 FAR, THEY DO HAVE AN OPPORTUNITY TO VOTE IN PERSON TO CURE
11 THAT. AND IF THEY DO, THE PROBLEM IS RESOLVED. BUT FOR THOSE
12 WHO DON'T, THEY NEED TO BE GIVEN SOME KIND OF PROCESS AT LEAST
13 THREE DAYS AFTER ELECTION DAY TO RESOLVE THAT ISSUE. FOR
14 EXAMPLE, VOTERS WHO HAVE CAST AN ABSENTEE BALLOT BECAUSE THEY
15 CAN'T VOTE IN PERSON BECAUSE OF AGE OR TRANSPORTATION OR
16 DISABILITY, THEY SHOULD BE GIVEN THE OPPORTUNITY TO CURE THAT
17 SITUATION, AT LEAST UNTIL THREE DAYS AFTER ELECTION DAY. SO WE
18 ARE ASKING THAT THOSE VOTERS BE COVERED AS WELL.

19 AS FOR YOUR HONOR'S POINT ABOUT THE -- OUR REQUEST FOR ONE
20 DAY SO THAT WE GET SOME CLARITY ON THE PROMPTLY PART OF THE
21 STATUTE, WE ARE ASKING FOR A LITTLE BIT OF CLARITY THAT BECAUSE
22 WE'VE SEEN SOME VARIATION IN HOW LONG ELECTION OFFICIALS TAKE.
23 UNDER CHRIS HARVEY'S DECLARATION, HE SAID HE'S CALLED A LOT OF
24 CLERKS. THEY SOMETIMES TAKE ONE DAY, THEY SOMETIMES DO IT THE
25 SAME DAY. IN GWINNETT COUNTY THEY SAY THEY TAKE UP TO THREE

1 DAYS. AND GIVEN THAT THE ELECTION IS DOWN TO THE WIRE, WE JUST
2 WANT TO CABIN A LITTLE BIT OF THAT RESPONSIBILITY -- OF THAT
3 TIME BY WHICH SOME -- THE ELECTION OFFICIALS CAN REJECT THAT
4 BALLOT. HAVING SAID THAT, BECAUSE WE'RE ASKING FOR VOTERS TO
5 HAVE AN OPPORTUNITY UP TO THREE DAYS AFTER ELECTION DAY OR
6 THREE DAYS AFTER THEY RECEIVE THE REJECTION, WHICHEVER IS
7 LATER, WE ACKNOWLEDGE THAT THAT CAN PROVIDE THAT LAYER OF
8 PROTECTION FOR THE VOTER SO THAT IF ELECTIONS OFFICIALS TAKE
9 TOO LONG TO SEND THE REJECTION, THERE WILL ALWAYS BE A
10 THREE-DAY BUFFER BY WHICH A VOTER CAN CURE IT.

11 THE SECOND FACTOR IS IRREPARABLE HARM. AND I JUST WANT TO
12 REALLY BRIEFLY EMPHASIZE THIS BECAUSE DEFENDANTS SAY A LOT
13 ABOUT HOW, OH, PLAINTIFFS DON'T IDENTIFY A SINGLE VOTER WHO HAS
14 VOTED ABSENTEE AND CAN'T CURE IN PERSON. WE ARE GETTING DOWN
15 TO THE WIRE HERE, AND THE RISK INCREASES WITH EACH PASSING DAY
16 THAT A VOTER -- THAT AN ABSENTEE VOTER WILL NOT RECEIVE A
17 REJECTION UNTIL IT'S TOO LATE. AND LET ME JUST EMPHASIZE THAT
18 POINT. IN ALL OF THE BRIEFS THAT WE SUBMITTED, DEFENDANTS DO
19 NOT DISPUTE, BECAUSE THEY CAN'T, THAT WHEN AN ABSENTEE VOTER
20 RECEIVES A REJECTION NOTICE AFTER ELECTION DAY, IT IS TOO LATE
21 FOR THEM TO CURE. THE SECRETARY CONCEDES THAT POINT ON PAGE 29
22 OF THEIR BRIEF. AND FOR THAT POPULATION, GIVEN THE UNCERTAINTY
23 OF MAIL, GIVEN THE UNCERTAINTY OF HOW LONG IT TAKES FOR
24 ELECTIONS OFFICIALS TO PROCESS THE BALLOT --

25 THE COURT: BUT ISN'T THAT AN INHERENT PART OF

1 ABSENTEE VOTING? BECAUSE WHAT I'M STRUGGLING WITH A LITTLE BIT
2 IS THAT IF YOU CHOOSE TO VOTE BY ABSENTEE VOTING, IT'S
3 DIFFERENT. IT'S GOT RULES. IT'S GOT RISKS TO IT, TOO, THAT IF
4 YOU DON'T DO IT RIGHT, IT MAY BE A PROBLEM. AND THERE IS KIND
5 OF TWO WAYS THAT THERE ARE CONSTITUTIONAL PROBLEMS AND DUE
6 PROCESS CONCERNS, BUT SOME OF THIS JUST SEEMS TO BE GENERAL
7 PROBLEMS WITH THE CONCEPT OF ABSENTEE VOTING BECAUSE IT'S
8 ALWAYS BEEN A PROBLEM THAT IF YOU DO IT WRONG, YOU MAY NOT GET
9 A CHANCE TO CORRECT IT. SO SOME OF WHAT YOU'RE SAYING JUST
10 SEEMS TO BE INHERENTLY ABSENTEE VOTING THAT DOESN'T SEEM TO BE
11 SOMETHING UNIQUELY CONSTITUTIONAL. SO LIKE WHAT YOU JUST SAID,
12 IF YOU MESS UP AND YOU SEND YOUR THING IN RIGHT AT THE END OF
13 THE TIME PERIOD, YOU MESS IT UP SOMEHOW, THAT'S A RISK THAT YOU
14 TAKE, BUT I DON'T KNOW THAT THAT IS A CONSTITUTIONAL VIOLATION.
15 IT'S JUST A CREATURE OF ABSENTEE VOTING.

16 MR. YOUNG: I WOULD DISPUTE THE PREMISE A LITTLE BIT.
17 THESE AREN'T VOTERS WHO HAVE MESSED UP. THEY'VE ACTUALLY DONE
18 EVERYTHING RIGHT. THE GEORGIA LAW ALLOWS THEM TO CAST ABSENTEE
19 BALLOTS SO LONG AS THEY'RE RECEIVED BY ELECTION DAY. THAT'S
20 THE DEADLINE. SO THOSE VOTERS VOTE DURING THAT DEADLINE, THEY
21 FILL IN THE BLANKS, THEY SIGN THEIR OATH, THEY HAVE --
22 INCIDENTALLY I WOULD SAY THAT NOTHING ON THE ABSENTEE BALLOT
23 SAYS THAT THEIR SIGNATURES WILL BE COMPARED. BUT EVEN PUTTING
24 THAT ASIDE, THEY SIGN THEIR OATH THE WAY THEY KNOW HOW, AND
25 THEN, THROUGH NO FAULT OF THE VOTER, A NON-EXPERT HANDWRITING

1 ANALYST DECIDES THAT THEIR SIGNATURES DOESN'T MATCH. AND THE
2 VOTER HASN'T DONE ANYTHING WRONG. AND WE JUST ARE CREATING A
3 BACK-END SAFETY NET JUST FOR THOSE VOTERS TO MAKE SURE THEY
4 EVEN HAVE THE OPPORTUNITY TO HAVE THEIR BALLOT COUNTED.

5 THE COURT: ARE THERE ANY EXAMPLES THAT YOU'RE AWARE
6 OF -- I NOTED THAT THERE IS CERTAINLY THE POTENTIAL FOR THE
7 PEOPLE LOOKING THROUGH THESE SIGNATURES TO MAKE A MISTAKE IN
8 TERMS OF -- I CAN SAY WHY A SIGNATURE MAY BE DIFFERENT, AND
9 THAT'S A SEPARATE ISSUE, BUT DO YOU HAVE ANY EVIDENCE THAT THEY
10 HAVE, AT LEAST IN YOUR SIDE'S OPINION, INCORRECTLY STATED THAT
11 A SIGNATURE WAS WRONG WHEN IT APPEARED THAT IT WASN'T?

12 MR. YOUNG: YES, WE DO. EXHIBIT G I BELIEVE OF OUR
13 REPLY BRIEF THAT WE SUBMITTED LAST NIGHT, WE DID COME INTO
14 CONTACT WITH A VOTER WHO SWEARS THAT SHE MAILED IN HER ABSENTEE
15 BALLOT ON OCTOBER 5TH, SHE GOT A REJECTION NOTICE DATED
16 OCTOBER 12TH, AND NOW SHE'S GOING TO ATTEMPT TO VOTE IN PERSON,
17 WHICH REQUIRES A 25-MINUTE DRIVE. SHE SWEARS THAT SHE WAS THE
18 SAME PERSON WHO CAST THE BALLOT AND WHO SIGNED IT AND YET HER
19 SIGNATURE WAS REJECTED. SO THOSE ARE THE VOTERS THAT WE'RE
20 MOST CONCERNED ABOUT, ESPECIALLY AS WE GET DOWN TO THE WIRE.

21 THE COURT: OKAY. AND I KNOW THAT THE DEFENDANTS
22 HAVE PROVIDED AT LEAST COPIES OF THE TWO SIGNATURES FOR THE
23 BALLOTS I BELIEVE THAT WERE REJECTED BECAUSE OF THE SIGNATURE.
24 WHEN LOOKING THROUGH THOSE DID YOU HAVE ANY CONCERN THAT THAT
25 DECISION WAS IMPROPER JUST BASED PURELY ON THE SIGNATURE

1 THEMSELVES?

2 MR. YOUNG: THAT'S A TOUGH QUESTION FOR ME TO ANSWER.
3 AND I'M NOT TRYING TO BE CUTE WHEN I SAY THIS BECAUSE I'M NOT A
4 HANDWRITING EXPERT. I DON'T -- I DON'T KNOW. LOOK, I'LL
5 CERTAINLY CONCEDE THERE MIGHT BE SOME EXAMPLES AND THEN
6 EVERYONE IN THIS ROOM MIGHT AGREE, OH, THAT'S NOT A MATCH, BUT
7 THAT'S NOT GOOD ENOUGH. THAT RISK OF ERROR IS STILL TOO GREAT.
8 AND WE'RE JUST ASKING FOR THE VOTER -- AN OPPORTUNITY FOR THE
9 VOTER TO JUST EXPLAIN THE DISCREPANCY OR OTHERWISE PROVE THAT
10 THEY ARE WHO THEY SAY THEY ARE. WE'RE NOT ASKING THAT THESE
11 BALLOTS GET AUTOMATICALLY COUNTED. AND THE INHERENT RISK IN
12 THIS CASE IS JUST TOO GREAT FOR US NOT TO HAVE THE MINIMAL DUE
13 PROCESS PROTECTIONS THAT WE NEED TO PROTECT THESE VOTERS. AND
14 THE RISK OF IRREPARABLE HARM HERE IS GREAT. I JUST WANT TO
15 VERY QUICKLY -- YOU KNOW, THERE'S 14 DAYS UNTIL ELECTION DAY,
16 RIGHT. BASED ON GWINNETT'S REPRESENTATIONS OF HOW LONG THEY
17 TAKE TO PROCESS ABSENTEE BALLOTS, YOU KNOW, IF SOMEONE MAILES IN
18 THEIR ABSENTEE BALLOT, TAKES ABOUT ONE TO THREE DAYS FIRST
19 CLASS MAIL FOR THEM TO RECEIVE IT, THEN THEY HAVE TO PROCESS
20 IT, POTENTIALLY INVOLVING FIVE ELECTION OFFICIALS. WE DON'T
21 KNOW HOW LONG THAT TAKES. THEN GWINNETT HAS UP TO THREE DAYS
22 TO SEND THE REJECTION, AND THEN ONE TO THREE DAYS MORE FOR THE
23 REJECTION NOTICE TO ARRIVE. SO, AT BEST, WE'RE TALKING ABOUT A
24 FIVE- TO NINE-DAY WINDOW. THERE'S ONLY 14 DAYS LEFT TO
25 ELECTION DAY. EVERY DAY THAT PASSES, THE RISK IS SUBSTANTIALLY

1 INCREASED THAT A VOTER WILL NOT RECEIVE A REJECTION NOTICE
2 UNTIL IT'S TOO LATE. AND THAT IS WHY THE BALANCE OF EQUITIES
3 TILT SO STRONGLY IN PLAINTIFFS' FAVOR. WE'RE DEALING WITH A
4 PERMANENT DISENFRANCHISEMENT OF AN INCREASING POOL OF VOTERS,
5 MANY OF WHOM VOTE THROUGH THE WEEKEND LEADING UP TO ELECTION
6 DAY. WE ACTUALLY -- JUST REAL BRIEFLY THIS MORNING WE DID COME
7 UP WITH SOME NUMBERS OF HOW MANY VOTERS CAST BALLOTS FROM
8 THURSDAY THROUGH ELECTION DAY IN 2014, AND IT'S IN THE HUNDREDS
9 OF THOUSANDS OUT OF ABOUT A MILLION BALLOTS THAT WERE CAST.
10 AND WE DO HAVE SOMEONE HERE TO TESTIFY ABOUT HOW THEY GOT THOSE
11 NUMBERS, IF YOUR HONOR DESIRES.

12 THE COURT: I DON'T THINK THAT'S GOING TO BE
13 DETERMINATIVE, SO THAT'S --

14 MR. YOUNG: YEAH, THAT'S WHAT -- THAT'S WHAT I
15 FIGURED. THE BOTTOM LINE IS THERE'S GOING TO BE A LOT OF
16 VOTERS. AND WE NEED TO MITIGATE THAT RISK TO ENSURE THERE'S A
17 BACK-END SAFETY NET. AND THAT IS ALSO WHY THE PUBLIC INTEREST
18 ALSO TILTS SO STRONGLY IN PLAINTIFFS' FAVOR.

19 THE COURT: NOW, I KNOW I'VE BEEN ASKING QUESTIONS
20 AND MOVING YOU AROUND FROM YOUR ARGUMENT, BUT I DO WANT TO MAKE
21 SURE THAT, IN TERMS OF PROCEDURAL DUE PROCESS ARGUMENT, THAT
22 YOU AND THE DEFENDANTS HAVE KIND OF A DIFFERENT TAKE ON SOME OF
23 THE PRECEDENT INVOLVED IN THIS IDEA -- AND I DON'T THINK I
24 WROTE THE WORDS DOWN EXACTLY, SO I'M GOING TO SAY THEM PROBABLY
25 INACCURATELY, BUT THEY TALK ABOUT WHEN YOU'RE EVALUATING THESE

1 STATUTES -- AND I KNOW IT'S A FACIAL ATTACK, SO WE JUST LOOK AT
2 THE STATUTE -- BUT THIS IDEA OF IS THERE A CONSTITUTIONALLY
3 VALID WAY OF APPLYING THIS STATUTE SEEMS TO BE SOMETHING THAT
4 Y'ALL KIND OF ANALYZE IN A DIFFERENT WAY. SO IF YOU CAN
5 RESPOND TO THE ARGUMENTS THAT THEY'VE PUT ON THAT BECAUSE I
6 THOUGHT THAT WAS AN IMPORTANT PART OF THEIR ARGUMENT.

7 MR. YOUNG: THAT -- AGAIN, I MIGHT DISPUTE THE
8 PREMISE OF THAT QUESTION.

9 THE COURT: NO. AND I WANT YOU TO.

10 MR. YOUNG: OH, OKAY.

11 THE COURT: I WANT YOU TO ADDRESS THAT CONCEPT.

12 MR. YOUNG: RIGHT. THE ELEVENTH CIRCUIT SET OUT IN
13 J.R. V. HANSEN THE PROPER WAY TO CONDUCT FACIAL DUE PROCESS
14 CHALLENGES TO A PROCEDURAL DUE PROCESS VIOLATION. AND IT KIND
15 OF INVOLVES, YOU KNOW, TWO STEPS. FIRST, YOU LOOK AT THE
16 STATUTE AS WRITTEN TO DETERMINE WHETHER THE PROCEDURE PROVIDED
17 COMPORTS WITH DUE PROCESS. AND, SECOND, YOU DON'T RELY ON THE
18 DEFENDANTS' EXPLANATION FOR HOW IT OPERATES IN PRACTICE.
19 THAT'S STRAIGHT FROM ELEVENTH CIRCUIT LAW. AND IF YOU APPLY
20 THAT TEST HERE, PLAINTIFFS HAVE ESTABLISHED A SUCCESSFUL CLAIM.
21 YOU LOOK AT THE STATUTE AS WRITTEN. THE STATUTE DOESN'T HAVE A
22 TIME LIMIT OF WHEN REJECTIONS SHOULD BE SENT. BUT EVEN IF IT
23 DOES, THERE'S NO OPPORTUNITY FOR THE VOTER TO CONTEST THE
24 DECISION. AND WE DON'T RELY ON THE DEFENDANTS' DESCRIPTION OF
25 HOW IT OPERATES IN PRACTICE, HOW AND WHEN COUNTIES SEND

1 REJECTION NOTICES OR HOW FAST THEY DO IT. THE ELEVENTH CIRCUIT
2 SAYS WE DON'T LOOK AT THAT. AND SO THAT IS THE ANSWER TO
3 DEFENDANTS' ARGUMENT. AND WHAT IS UNDISPUTED, AT A MINIMUM,
4 YOU KNOW, WHETHER WE GO WITH FACIAL OR AS APPLIED, WHAT IS
5 UNDISPUTED FOR PURPOSES OF THIS T.R.O. IS THAT THERE IS A POOL
6 OF VOTERS THAT DEFENDANTS CANNOT DISPUTE THAT WILL BE
7 PERMANENTLY DISENFRANCHISED WHEN THEY GET THEIR REJECTION
8 NOTICES TOO LATE, AND WE'RE JUST ASKING FOR A BACK-END SAFETY
9 NET FOR THOSE PEOPLE.

10 THE COURT: WELL, AT LEAST MY READING OF IT WAS THAT
11 THEY DO SEEM TO DISPUTE THAT BECAUSE MY READING OF IT IS THAT
12 THEY SAY, OKAY, YES, THERE WILL BE SOME PEOPLE THAT ARE -- I
13 THINK THEY GO THROUGH THIS "IF SCENARIO" KIND OF AND SAY THAT
14 REALLY THIS ISN'T AN ACTUAL PROBLEM BECAUSE YOU'RE PROVIDED
15 NOTICE, YOU HAVE THE ABILITY TO FIX THE PROBLEM, YOU HAVE THE
16 ABILITY AT ANY TIME TO KIND OF REMOVE YOURSELF FROM THE
17 ABSENTEE PROCESS AND GO VOTE, EARLY VOTING, VOTE IN PERSON,
18 YOU'VE GOT THIS THING. AND, YES, YOU MAY HAVE, IF YOU GO DOWN
19 ALL THESE IF'S, THERE MAY BE THE POSSIBILITY OF ONE PERSON, FOR
20 VARIOUS REASONS, CAN'T CORRECT THEIR SIGNATURE, CAN'T EARLY
21 VOTE, CAN'T FIX IT, CAN'T DO THAT, BUT ENGAGING IN THAT KIND
22 OF THE LIKELIHOOD THAT HAPPENING IS SO REMOTE AS TO NOT
23 ACTUALLY BE A SITUATION THAT WILL HAPPEN. AND SO I THINK THEY
24 DO DISPUTE THAT PIECE OF WHAT YOU'RE ARGUING.

25 MR. YOUNG: YEAH, AND I'LL JUST MAKE -- HAVE TWO

1 RESPONSES. I DON'T WANT TO BELABOR THIS POINT, BUT DEFENDANTS
2 KIND OF PROFFER AN ANALYSIS OF HERE'S A HYPOTHETICAL. THAT'S
3 JUST NOT HOW THE ELEVENTH CIRCUIT HAS CONDUCTED FACIAL DUE
4 PROCESS -- PROCEDURAL DUE PROCESS CHALLENGES. AND IT'S NOT
5 EVEN HOW THEY'VE CONDUCTED DUE PROCESS CHALLENGES, FOR EXAMPLE,
6 IN GRAYDEN WHERE IT'S NOT CLEAR WHETHER IT'S FACIAL OR AS
7 APPLIED. THEY DON'T SEE THERE'S A HYPOTHETICAL PERSON WHO
8 SHOULD BE DEPRIVED OF THEIR RIGHT. AND BECAUSE THAT'S -- THAT
9 COULD HAPPEN, THEN THERE'S NO DUE PROCESS CHALLENGES, NOR DO
10 THEY SAY, MORE TO DEFENDANTS' POINT, THERE'S A HYPOTHETICAL
11 PERSON WHO SHOULDN'T BE DEPRIVED OF THAT RIGHT AND BECAUSE THEY
12 PLACED A PHONE CALL -- BECAUSE THEY CAN PLACE A PHONE CALL TO
13 SOMEONE'S BUDDY THEY KNOW, THEY CAN GET OUT OF BEING
14 INSTITUTIONALIZED OR THEY CAN GET OUT OF BEING EVICTED OR THEY
15 CAN GET OUT OF BEING ARRESTED FOR TRESPASS BECAUSE THEIR BUDDY
16 IS THE POLICE OFFICER WHO ARRESTED THEM AND THEY GOT OUT OF IT.
17 YOU KNOW, YOU CAN PLAY THAT GAME WITH ALL OF THESE DUE PROCESS
18 CHALLENGES, AND THAT'S JUST NOT THE ANALYSIS THAT THE COURTS GO
19 THROUGH. YOU LOOK AT THE STATUTE AS WRITTEN. YOU LOOK TO SEE
20 WHETHER THERE ARE PROCEDURES, AND YOU DRAW YOUR CONCLUSION FROM
21 THAT.

22 AND THE SECOND KIND OF ALTERNATIVE ARGUMENT IS IF THIS
23 COURT IS INCLINED -- YOU KNOW, WE NEED NOT HASH OUT IN DETAIL
24 WHETHER THIS IS FACIAL OR AS APPLIED AT THIS STAGE BECAUSE IT
25 IS CLEAR THAT FOR VOTERS WHO RECEIVE REJECTION NOTICES TOO

1 LATE, THEY ARE DEPRIVED ABSOLUTELY OF PROCEDURAL DUE PROCESS.
2 AT A MINIMUM THEY DESERVE A REMEDY. AND I KNOW YOU SAID I
3 MIGHT HAVE AN ARGUMENT. I'M ONLY HERE TO ANSWER YOUR HONOR'S
4 QUESTIONS, SO I DON'T HAVE ANY ARGUMENT. I'LL JUST PRESERVE
5 THE REST OF MY TIME FOR REBUTTAL.

6 THE COURT: OKAY.

7 MR. YOUNG: THANK YOU.

8 THE COURT: AND YOU'LL PROBABLY KNOW FROM THE
9 QUESTIONS I ASKED THEM WHAT YOU MAY WANT TO COVER, SO THAT'S
10 FINE. THANK YOU.

11 MR. YOUNG: MM-HUM.

12 THE COURT: AND IT WAS AN HOUR PER SIDE, NOT PER
13 PARTY, SO...

14 MR. BROWN: YES.

15 THE COURT: OKAY. THANK YOU.

16 MR. BROWN: YOUR HONOR, MY NAME IS BRUCE BROWN, AND I
17 REPRESENT THE MARTIN PLAINTIFFS IN THE MARTIN CASE. I'M HAPPY
18 TO HAVE WITH ME CO-COUNSEL, MR. JOHN POWERS, A LAWYER WITH THE
19 VOTING RIGHTS PROJECT OF THE LAWYERS COMMITTEE FOR CIVIL RIGHTS
20 UNDER THE LAW. AND MR. POWERS IS GOING TO START US OFF
21 DISCUSSING STANDING AND SOME OTHER INTRODUCTORY ISSUES, AND
22 THEN I'LL FOLLOW HIM, BUT WE'LL BE WITHIN OUR TIME.

23 THE COURT: OKAY. THAT'S FINE. AND IF Y'ALL HAVE
24 ANYTHING TO ADD TO ANY OF THE QUESTIONS I ASKED MR. YOUNG, I'M
25 NOT NECESSARILY GOING TO ASK THEM AGAIN, BUT YOU'RE WELCOME TO

1 CHIME IN ON ANY OF THAT, TOO, THAT YOU WOULD LIKE.

2 MR. BROWN: THANK YOU, YOUR HONOR.

3 MR. POWERS: GOOD MORNING, YOUR HONOR.

4 THE COURT: GOOD MORNING.

5 MR. POWERS: JOHN POWERS REPRESENTING THE MARTIN
6 PLAINTIFFS. MR. YOUNG ALREADY COVERED ORGANIZATIONAL STANDING
7 IN SOME DETAIL. I'D LIKE TO ADD A COUPLE OF POINTS TO WHAT HE
8 SAID AND FOCUS A LITTLE ON OUR ORGANIZATIONAL PLAINTIFF, THE
9 GEORGIA COALITION FOR THE PEOPLE'S AGENDA.

10 THE COURT: AND ONE QUESTION I HAD, AND I DON'T KNOW
11 THE WAY YOU SPLIT IT UP WHO'S THE RIGHT PERSON TO ASK, BUT
12 THERE WERE SOME OVERLAPS OF CLAIMS. I SAW THAT IN YOUR BRIEF
13 THERE WAS SOME STATEMENT THAT COULD BE PERCEIVED AS A
14 PROCEDURAL DUE PROCESS CLAIM, BUT IT WASN'T CLEAR THAT, AT
15 LEAST TO ME, THAT Y'ALL WERE MAKING A PROCEDURAL DUE PROCESS
16 CLAIM. AND I HAVE SOME CONCERNS OF KIND OF, LIKE, MIXING AND
17 MATCHING THE PLAINTIFFS AND CLAIMS FROM THE DIFFERENT CASES TO
18 GET WHERE YOU NEED TO GO. SO KIND OF MAKE SURE THAT YOU TIE
19 THAT TOGETHER FOR ME IN TERMS OF THE CLAIMS AND THE PEOPLE THAT
20 ARE IN THE SEPARATE CASES BECAUSE AT LEAST AT THIS POINT WE'RE
21 HAVING A JOINT HEARING, BUT THE CASES THEMSELVES ARE NOT
22 CONSOLIDATED, AT LEAST AT THIS POINT IN TIME.

23 MR. POWERS: YES. AND MY COLLEAGUE, MR. BROWN, WILL
24 GO INTO IT IN MORE DETAIL, BUT JUST SORT OF AT THE HIGHEST
25 50,000-FOOT LEVEL, THE MARTIN PLAINTIFFS ARE BRINGING CLAIMS

1 UNDER THE BURDEN ON THE FUNDAMENTAL RIGHT TO VOTE AND ALSO
2 UNDER EQUAL PROTECTION.

3 THE COURT: SO YOU'RE NOT MAKING A PROCEDURAL DUE
4 PROCESS CLAIM; CORRECT?

5 MR. POWERS: CORRECT.

6 THE COURT: OKAY.

7 MR. POWERS: I KNOW YOUR HONOR HAS NOT HAD TIME TO
8 READ THE HEARING BRIEF FILED BY THE MARTIN PLAINTIFFS EARLY
9 THIS MORNING. I WANTED TO FLAG WITH RESPECT TO ORGANIZATIONAL
10 STANDING. WE IDENTIFY A NUMBER OF CASES IN THE ELEVENTH
11 CIRCUIT THAT MIGHT BE USEFUL TO YOUR HONOR, IN PARTICULAR THE
12 BROWNING -- FLORIDA STATE CONFERENCE OF THE N.A.A.C.P. VS.
13 BROWNING, ARCIA (PHONETIC), OF COURSE YOUR HONOR'S PROBABLY
14 FAMILIAR WITH THE GEORGIA BILLUPS PHOTO I.D. CASE. THERE'S
15 ALSO THE GREATER BIRMINGHAM MINISTRIES CASE IN THE NORTHERN
16 DISTRICT OF ALABAMA, AS WELL AS THE V.C. TEXAS PHOTO I.D. CASE
17 PROVIDES A SUBSTANTIAL BODY OF CASE LAW SUPPORTING ALL OF THE
18 ORGANIZATIONAL PLAINTIFFS, ORGANIZATIONAL STANDING CLAIMS HERE,
19 INCLUDING THE GEORGIA COALITION FOR THE PEOPLE'S AGENDA.

20 FOCUSING ON THE GEORGIA COALITION FOR A SECOND, I WANT TO
21 FLAG THE PEWS TO THE POLLS PROGRAM THAT THE GEORGIA COALITION
22 IS ORGANIZING AND RUNNING BECAUSE IT SORT OF CRYSTALLIZES THE
23 PROBLEMS THAT ARE IN THE PROCESS OF OCCURRING IN GEORGIA AND
24 HOW THE THREAT OF IMMINENT AND FUTURE HARM IS LIKELY TO WORK
25 OUT. THE GEORGIA COALITION WORKS IN PREDOMINANTLY MINORITY

1 COMMUNITIES IN THE ATLANTA METRO AREA AND ORGANIZES AN
2 IN-PERSON SOULS TO THE POLLS PROGRAM, AS WELL AS AN ABSENTEE
3 BALLOT PEWS TO THE POLLS PROGRAM. AND THE WAY THAT WORKS IS
4 THE GEORGIA COALITION WORKS WITH A BUNCH OF CHURCHES, THEIR
5 SOCIAL JUSTICE CONTACTS, AND WITH CHURCH LEADERSHIP TO IDENTIFY
6 A SPECIFIC DATE ON WHICH ALL OF THE CHURCHES' CONGREGANTS WHO
7 ARE INTERESTED IN PARTICIPATING IN THE PEWS TO THE POLLS
8 PROGRAM WILL SUBMIT THEIR ABSENTEE BALLOTS IN LARGE MAIL BINS
9 THAT ARE PUT NEXT TO THE PEWS AT THE CHURCH ON THE SPECIFIED
10 DATE. THIS -- FOR THIS NOVEMBER GENERAL ELECTION THE PEWS TO
11 THE POLLS DATE IN -- FOR MOST OF THE CHURCHES THAT THE GEORGIA
12 COALITION WORKS WITH WAS THIS PAST SUNDAY, OCTOBER 21ST. SO,
13 ACCORDING TO THE -- AS MR. YOUNG ALLUDED TO, THOSE ABSENTEE
14 BALLOTS ARE GOING TO BE DELIVERED TO THE BOARD OF ELECTIONS
15 WITHIN THE NEXT ONE TO THREE DAYS WITH SOME ADDITIONAL TIME FOR
16 PROCESSING AND GETTING NOTICE BACK TO THE VOTERS. HELEN BUTLER
17 SIGNED A DECLARATION BASED ON HER EXPERIENCE WORKING
18 EXTENSIVELY WITH THE PEWS TO THE PROGRAM -- POLLS PROGRAM FOR
19 MANY YEARS, MANY VOTERS WON'T RECEIVE NOTICE THAT THEIR
20 ABSENTEE BALLOT WAS REJECTED UNTIL THE FOLLOWING WEEK, THE WEEK
21 OF OCTOBER 29TH, SPILLING INTO THE BEGINNING OF NOVEMBER. SO
22 THAT IS -- THAT IS GOING TO PROVIDE VOTERS WHOSE ABSENTEE
23 BALLOTS WERE REJECTED WITH VERY LITTLE TIME TO VOTE BY OTHER
24 MEANS.

25 THE COURT: IS THIS A NEW PROGRAM OR HAS THAT BEEN

1 AROUND FOR THE OTHER ELECTIONS AS WELL?

2 MR. POWERS: THIS PROGRAM HAS BEEN AROUND FOR PAST
3 ELECTIONS. IN THIS ELECTION THERE ARE MORE THAN 3,500 PERSONS
4 PARTICIPATING IN PEWS TO THE POLLS PROGRAMS JUST AT CHURCHES
5 THAT THE GEORGIA COALITION WORKS WITH. AND AS THE MARTIN
6 PLAINTIFFS HAVE A BURDEN, YOUR HONOR ASKED A QUESTION ABOUT,
7 YOU KNOW, WHAT IS -- YOU KNOW, WHAT ARE THE ABSENTEE NUMBERS
8 LIKE IN THIS ELECTION VERSUS PAST ELECTIONS. AND WE HAVE
9 BRIEFED THIS ISSUE AND POINTED OUT THAT BECAUSE OF CONCERNS
10 AMONG --

11 THE COURT: ACTUALLY MY QUESTION WAS MORE WAS ARE THE
12 REJECTION RATES AND THE PROBLEMS WITH THE REJECTIONS, IS THAT A
13 SIMILAR SITUATION AS WHAT HAS BEEN OCCURRING HERE? BECAUSE ONE
14 OF THE ISSUES THAT THE DEFENDANT BRINGS UP IS THAT THIS STATUTE
15 HAS BEEN ON THE BOOKS FOR 15 YEARS JUST LIKE THIS AND THIS IS
16 THE FIRST THAT ANYBODY'S SAID ANYTHING ABOUT IT. AND I KNOW
17 Y'ALL'S POSITION IS, WELL, THINGS HAVE CHANGED, THERE'S
18 DIFFERENT THINGS GOING ON, BUT I JUST WASN'T SURE IF, LIKE THIS
19 PEWS TO THE POLLS PROGRAM, IF THEY DID HAVE PROBLEMS WITH A LOT
20 OF ABSENTEE REJECTIONS IN THE PAST OR IS THIS A NEW THING OR
21 KIND OF WHAT'S GOING ON WITH THAT?

22 MR. POWERS: THE -- YEAH, THERE'S A COUPLE OF
23 DIFFERENT ANSWERS TO THAT QUESTION. I THINK THE FIRST PLACE TO
24 START IS THAT THE PEWS TO THE POLLS PROGRAM, AND MS. BUTLER
25 ATTESTS TO THIS IN HER DECLARATION, HAS SUFFERED SPECIFICALLY

1 IN GWINNETT COUNTY BECAUSE OF THE SIGNIFICANT AMOUNT OF MEDIA
2 COVERAGE AND ATTENTION DEVOTED TO THE SUBJECT IN THE MINORITY
3 COMMUNITY IN PARTICULAR. THERE'S A SUBSTANTIAL CONCERN
4 EXPRESSED BY VOTERS TO MS. BUTLER DIRECTLY. AND WE HAVE
5 DECLARATIONS FROM OUR PLAINTIFFS, INCLUDING JASMINE CLARK, WHO
6 SAID THE SAME THING, THAT THEY DON'T FEEL COMFORTABLE VOTING BY
7 ABSENTEE BECAUSE THEY WORRY THAT THEIR ABSENTEE BALLOT IS GOING
8 TO BE REJECTED, THEY'RE GOING TO HAVE TO GO THROUGH A WHOLE
9 RIGAMAROLE, AND IF THEY'RE TRAVELING OR BUSY DURING ELECTION
10 DAY, THAT MIGHT IMPEDE THEIR ABILITY FOR THEIR VOTE TO COUNT.

11 SO, FOR EXAMPLE, IN THIS PARTICULAR ELECTION ONLY TWO OF
12 THE MORE THAN 3,500 VOTE REGISTRATION -- EXCUSE ME -- ABSENTEE
13 BALLOT APPLICATIONS SUBMITTED BY PEOPLE IN THE PEWS TO THE
14 POLLS PROGRAM ARE FROM GWINNETT COUNTY. SO THERE'S A SPECIFIC
15 HARM IN THIS ELECTION THAT MAKES IT -- THE SITUATION
16 PARTICULARLY EXIGENT. AND I THINK WE'VE POINTED OUT IN OUR
17 HEARING BRIEF AS WELL AT LEAST A COUPLE OF DIFFERENT SITUATIONS
18 WHERE YOU HAVE LONG-STANDING ELECTION LAWS THAT ARE ON THE
19 BOOKS AND HAVE BEEN ON THE BOOKS FOR QUITE A PERIOD OF TIME,
20 BUT NEW CIRCUMSTANCES, NONETHELESS, REQUIRE EMERGENCY
21 INJUNCTIVE RELIEF RIGHT ON THE EVE OF AN ELECTION. ONE EXAMPLE
22 WOULD BE LAST YEAR IN THE GEORGIA STATE CONFERENCE OF THE
23 N.A.A.C.P. VS. GEORGIA CASE, JUDGE BATTEN ENJOINED THE STATE OF
24 GEORGIA --

25 THE COURT: AND I UNDERSTAND ALL THAT. I'M JUST

1 FOCUSING ON THIS PIECE ABOUT THAT THIS IS NEW BECAUSE I KNOW
2 THAT THE DEFENDANTS SAY NOTHING IS NEW HERE. BUT IT DOESN'T
3 SEEM LIKE ANYONE HAS A LOT OF INFORMATION ABOUT WHAT WAS BEING
4 REJECTED IN 2014, 2012, 2010 TO KNOW IF THIS WAS -- AND I DON'T
5 KNOW THAT THIS IS NECESSARILY DETERMINATIVE, BUT IT DOESN'T
6 SEEM THAT ANYONE HAS ANY INFORMATION ABOUT HOW ABSENTEE BALLOTS
7 WERE BEING REJECTED IN PAST ELECTIONS.

8 MR. POWERS: UNDERSTOOD, YOUR HONOR.

9 THE COURT: AND THAT'S WHAT I JUST WANTED TO MAKE
10 SURE, THAT YOU DIDN'T HAVE THAT INFORMATION AS WELL.

11 MR. POWERS: MY -- I DON'T HAVE THAT INFORMATION
12 RIGHT AT MY FINGERTIPS. MY UNDERSTANDING IS THAT THE NUMBER OF
13 ABSENTEE BALLOT CASTS THEMSELVES HAS INCREASED SIGNIFICANTLY
14 SEVERAL TIMES FROM THE 2014 ELECTION DUE TO CONCERNS ABOUT THE
15 INTEGRITY OR RELIABILITY OF THE D.R.E. VOTING MACHINES WHICH
16 HAS BEEN WIDELY REPORTED IN THE MEDIA AND IS THE SUBJECT OF
17 OTHER LITIGATION. AND DUE TO THE CONCERN ABOUT THE SAFETY AND
18 INTEGRITY OF THE D.R.E. MACHINES, MANY COMMUNITY MEMBERS IN
19 GEORGIA, INCLUDING MS. BUTLER AND THOSE IN THE MINORITY
20 COMMUNITY, HAVE BEEN SUGGESTING ABSENTEE BALLOTS AS AN
21 ALTERNATIVE FOR VOTERS WHO WERE CONCERNED ABOUT THEIR BALLOT
22 BEING ADJUSTED OR SOMEHOW NOT COUNTED. AND --

23 THE COURT: AND I UNDERSTAND THAT. SO YOU CAN GET
24 BACK TO THE REST OF YOUR ARGUMENT. I WAS JUST ASKING ON THAT
25 ONE PIECE.

1 MR. POWERS: YEAH.

2 THE COURT: THANK YOU.

3 MR. POWERS: AND I WANT TO TOUCH BRIEFLY ON
4 INDIVIDUAL STANDING, SEEING AS THE GEORGIA MUSLIM VOTER PROJECT
5 PLAINTIFFS DON'T HAVE ANY INDIVIDUALS, THE MARTIN PLAINTIFFS
6 HAVE FIVE INDIVIDUAL PLAINTIFFS, SEVERAL OF WHOM ARE INDIVIDUAL
7 VOTERS, INCLUDING ONE OF WHOM WHO IS A GWINNETT COUNTY VOTER.
8 AND THE POINT I WANT TO MAKE HERE IS THAT TO HAVE STANDING,
9 IT'S NOT NECESSARY FOR THE VOTERS' ABSENTEE BALLOT TO HAVE
10 ALREADY BEEN REJECTED. ALL THAT'S NECESSARY IS THAT THERE BE A
11 THREAT OF -- A SIGNIFICANT RISK OF IMMINENT HARM. AND THE
12 PLACE TO LOOK ON THIS IS, FOR EXAMPLE, SOME OF THE VOTER I.D.
13 CASES LIKE THE BILLUPS CASE OR V.C. IN THE FIFTH CIRCUIT WHERE
14 VOTERS THERE MIGHT NOT HAVE I.D., THEY HAVEN'T BEEN
15 DISENFRANCHISED BECAUSE OF THAT YET, BUT THE PROSPECT THAT THEY
16 MIGHT BE IN THE FUTURE, THAT THREAT ALONE IS SUFFICIENT.
17 SIMILAR IN REDISTRICTING CASES TO VOTERS WHO RESIDE IN A
18 DISTRICT AND MIGHT NOT -- THEY DON'T NEED TO HAVE VOTED IN A
19 BOARD OF COMMISSIONERS, BOARD OF EDUCATION ELECTION IN THE
20 PAST, WHAT MATTERS IS THEY COULD BE VOTING IN A FUTURE ELECTION
21 WHERE THEIR RIGHT TO VOTE COULD BE HARMED.

22 ALSO, WITH RESPECT TO CANDIDATE STANDING, WE -- MARTIN
23 PLAINTIFFS INCLUDE TWO CANDIDATES, AND WANTED TO FLAG A COUPLE
24 OF CASES FOR THE COURT'S ATTENTION WHICH I REFERRED TO IN OUR
25 HEARING BRIEF, INCLUDING THE FLORIDA LEAGUE OF WOMEN VOTERS VS.

1 DETZNER. IN THESE -- IN THE -- EXCUSE ME. IN THE FLORIDA
2 DEMOCRATIC PARTY VS. DETZNER IN WHICH CANDIDATES MAY HAVE
3 STANDING ON BEHALF OF THEIR SUPPORTERS, PARTICULARLY WHEN
4 THE -- THEIR COMPANY STRATEGY IS IMPACTED AND THEY ARE PUT AT A
5 DISADVANTAGE THROUGH DEFENDANT'S ACTIONS. AND, IN PARTICULAR,
6 PLAINTIFFS CLARK AND DUVAL HAVE HAD TO TURN OUT THEIR
7 SUPPORTERS USING ALTERNATIVE MEANS. AND PLAINTIFF CLARK IN
8 PARTICULAR REFUSES TO -- OR IS CONCERNED ABOUT ASKING HER
9 VOTERS TO CAST ABSENTEE BALLOTS EVEN THOUGH IN SOME CASES THAT
10 PUTS HER SUPPORTERS THROUGH ADDITIONAL BURDENS.

11 FINALLY, BEFORE I TURN IT OVER TO MY COLLEAGUE, MR. BROWN,
12 I WANTED TO FLAG AN ISSUE RELATED TO THE SCOPE OF RELIEF THAT
13 YOUR HONOR MAY BE CONSIDERING AND IN PARTICULAR CITE TO A
14 COUPLE OF NUMBERS. BECAUSE IF YOU'RE LOOKING AT WHICH CLASSES
15 OF VOTERS MIGHT BE ABLE TO RECEIVE ANY RELIEF THAT YOU MAY
16 ORDER, THE DETAILS WILL MATTER SIGNIFICANTLY. AND A REFERENCE
17 THAT YOUR HONOR MAY WANT TO LOOK AT IS DR. MCDONALD'S
18 DECLARATION WHERE HE BREAKS OUT THE REJECTED ABSENTEE BALLOTS
19 BY EACH OF THE INDIVIDUAL CATEGORIES. AS OF SATURDAY,
20 OCTOBER 20TH, THERE HAD BEEN 136 ABSENTEE BALLOTS REJECTED ON
21 THE BASIS OF A SIGNATURE MISMATCH. AND THAT'S OUT OF A TOTAL
22 OF 1,785 STATEWIDE.

23 THE COURT: WELL, AND I UNDERSTAND THE NUMBER
24 DISCREPANCY. WHAT YOU MAY WANT TO ADDRESS, IF YOU WANT TO
25 FOCUS ON THESE OTHER ISSUES, IS THAT AT LEAST IN TERMS OF, FOR

1 EXAMPLE, I THINK YOU SAY THAT A LARGE NUMBER ARE REJECTED
2 BECAUSE THE PERSON DOESN'T PUT THEIR BIRTH DATE ON THERE OR
3 PUTS TODAY'S DATE INSTEAD OF THEIR BIRTH DATE. AND CERTAINLY
4 THAT'S A REASON THAT SOME OF THE APPLICATIONS ARE BEING
5 REJECTED, AND IT IS IN SOME RESPECTS A TECHNICALITY, BUT IN
6 SOME RESPECTS IT ALSO IS PART OF, I THINK WHAT THE STATE SAYS,
7 IS THERE A VOTER FRAUD PIECE OF THIS. BUT TO ME THERE MAY
8 ALREADY BE ADEQUATE PROCEDURAL DUE PROCESS IN PLACE FOR THOSE
9 PEOPLE BECAUSE AT LEAST THERE COULD BE THE ARGUMENT THAT IF
10 YOU'RE TOLD, OH, YOU PUT TODAY'S DATE, YOU DIDN'T PUT YOUR
11 BIRTH DATE ON THAT, THEN THAT'S AN EASY THING THAT SOMEONE WILL
12 JUST GET A NEW APPLICATION AND PUT THEIR BIRTH DATE ON IT. AND
13 I DON'T KNOW WHY THAT REQUIRES ANYTHING TO BE CONSTITUTIONALLY
14 REMEDIED IF THAT'S THE PROBLEM. AND THAT'S THE PIECE THAT, FOR
15 THE BROADER RELIEF THAT YOU WERE SEEKING, I'M HAVING MORE
16 DIFFICULTY WITH, NOT THE NUMBERS, BUT THE DIFFERENCE IN WHAT
17 THAT IS.

18 MR. POWERS: RIGHT, RIGHT. UNDERSTOOD. AND THE --
19 FROM THE MARTIN PLAINTIFFS' PERSPECTIVE, THE PROBLEM THAT WE
20 SEE -- AND, I THINK, AGAIN, YOU KNOW, REFERRING BACK TO THE
21 PEWS TO THE POLLS EXAMPLE IS A GOOD IDEA. YOU KNOW, WE HAVE --
22 SAY, A VOTER PUTS IN HIS OR HER ABSENTEE BALLOT, YOU KNOW, IN
23 THE MAIL BIN AT HIS OR HER CHURCH ON OCTOBER 21ST, THAT SUNDAY,
24 AND HAS PLANS TO TRAVEL THE WEEK OF ELECTION DAY FOR WORK OR
25 VACATION OR FOR WHATEVER REASON. IT'S QUITE POSSIBLE THAT THE

1 VOTER IS NOT GOING TO RECEIVE NOTICE OF THE ABSENTEE BALLOT
2 REJECTION UNTIL TOO LATE FOR --

3 THE COURT: BUT WOULDN'T THAT BE THE SAME WITH THE
4 HEARING THAT YOU'RE REQUESTING BECAUSE IF THERE'S A REJECTION
5 ON THAT BASIS, WHAT IT APPEARS Y'ALL ARE ASKING FOR IS A
6 HEARING TO ADDRESS THAT, OR I GUESS PART OF IT IS YOU'RE JUST
7 SAYING THAT THEY SHOULD ACCEPT THOSE DESPITE THEIR BEING WRONG.
8 BECAUSE I CAN SEE THAT BEING THE SAME SITUATION, WELL, YEAH,
9 YOU'RE OUT OF TOWN, YOUR BALLOT IS DEFECTIVE IN SOME WAY UNDER
10 THE STATUTE. WELL, A LOT OF THE DUE PROCESS THAT'S BEING
11 REQUESTED IS THIS HEARING AND THE RIGHT TO BE HEARD ON IT. AND
12 THAT'S STILL GOING TO BE A PROBLEM IF YOU'RE OUT OF TOWN.

13 MR. POWERS: ABSOLUTELY WHICH IS WHY THE MARTIN
14 PLAINTIFFS TOOK THE POSITION THAT EXPEDITED NOTICE PROCEDURES
15 FOR FOLKS WHOSE ABSENTEE BALLOTS ARE REJECTED ON ANY BASIS,
16 BUT, YOU KNOW, INCLUDING ON BIRTH YEAR ARE ESPECIALLY
17 IMPORTANT. YOU KNOW, FOR EXAMPLE --

18 THE COURT: BUT I DIDN'T SEE ANYTHING THAT SHOWED ME
19 THAT IT WASN'T EXPEDITED. I MEAN, AT LEAST IN THIS -- I AGREE
20 THAT IT'S IMPORTANT THAT THIS BE DONE PROMPTLY, BUT I DIDN'T
21 SEE ANYWHERE THAT THESE WEREN'T BEING DONE PROMPTLY. IT
22 APPEARED THAT ALREADY THE STATUTE SAYS THAT THESE REJECTIONS
23 SHOULD BE -- THE NOTICE SHOULD BE PROVIDED PROMPTLY. AND I
24 DON'T SEE ANYTHING THAT THEY'RE NOT BEING DONE PROMPTLY. IN
25 TERMS OF ORDERING THAT THEY BE DONE ON A WHOLESALE BASIS

1 DIFFERENT THAN WHAT'S IN THE STATUTE, I DON'T UNDERSTAND THE
2 CONSTITUTIONAL BASIS FOR MY REWRITING A STATUTE THAT SAYS
3 PROMPTLY TO SAY ONE-DAY OR THREE-DAY IN THESE OTHER
4 CIRCUMSTANCES OTHER THAN IT WOULD BE MORE KIND OF LIKELY TO
5 HAVE THE VOTE COUNTED. BUT THE WHOLE CONSTITUTIONAL ANALYSIS
6 TO KIND OF WRAP THAT INTO THERE SEEMS TO BE MISSING FOR THAT
7 PIECE.

8 MR. POWERS: I THINK MY COLLEAGUE IS GOING TO BE
9 TOUCHING ON THIS SUBJECT IN MORE DETAIL --

10 THE COURT: OKAY.

11 MR. POWERS: -- I THINK.

12 THE COURT: THAT'S FINE.

13 MR. POWERS: THE --

14 THE COURT: I THINK HE'S BRINGING THE HOOK. AND
15 THAT'S FINE. I DIDN'T REALIZE WHAT Y'ALL'S AREAS WERE, SO
16 THAT'S NO PROBLEM.

17 MR. BROWN: IT'S HARD TO SEPARATE, AND I APPRECIATE
18 THAT ANALYSIS. AND THE STANDING ARGUMENT IS EXHAUSTIVELY
19 PRESENTED IN OUR HEARING BRIEF JUST IN CASE THEY DO RAISE
20 STANDING. THEY MAY NOT. BUT WE -- WE -- I DID TRY TO
21 ANTICIPATE IT. YOUR HONOR, I'M GOING TO TRY TO PERSUADE YOU IN
22 SEVERAL MINUTES THAT THE MARTIN CASE IS BIGGER, STRONGER AND
23 EASIER TO IMPLEMENT. AS STRONG AS THE CASE IS FOR THE GEORGIA
24 MUSLIMS, AND WE TOTALLY AGREE WITH THEIR POSITION AND WITH
25 THEIR CLAIM AND WITH THEIR RELIEF, THE MARTIN CASE IS BASED,

1 THOUGH, ON A DIFFERENT AND MORE ALL-ENCOMPASSING WRONG THAT HAS
2 BEEN COMMITTED BY THE STATE DEFENDANTS, AND THAT IS ILLUSTRATED
3 BY THE INCREDIBLE DISPARITY BETWEEN THE DIFFERENT JURISDICTIONS
4 IN THEIR REJECTION RATE. WE DO RAISE A FUNDAMENTAL RIGHT TO
5 VOTE CLAIM AND EQUAL PROTECTION CLAIM AS THE STANDARD SORT OF
6 CLAIMS THAT ARE RAISED GIVEN THESE FACTS. BUT IF THE FACTS
7 ARE, YOUR HONOR, THAT IF YOU ARE A CITIZEN IN GWINNETT COUNTY,
8 YOU ARE FIVE TIMES MORE LIKELY TO HAVE YOUR ABSENTEE BALLOT
9 REJECTED THAN IF YOU LIVE ANYWHERE ELSE IN THE STATE -- AND
10 IT'S NOT JUST GWINNETT COUNTY. IF YOU'RE IN ABOUT EIGHT OTHER
11 COUNTIES YOU'RE ABOUT THREE TIMES MORE LIKELY. AND THEN IN
12 FULLY 78 COUNTIES WHO HAVE PROCESSED THOUSANDS OF VOTES,
13 THERE'S ZERO CHANCE OF GETTING REJECTED, ZERO. AND IN ANOTHER
14 COUPLE OF DOZEN THERE'S A TINY CHANCE OF GETTING REJECTED.
15 THESE RATES, THE COUNTY-BY-COUNTY DISPARITY ARE FREAKISH. THEY
16 CANNOT BE EXPLAINED BY ANY LAWFUL AND UNIFORM AND NON-ARBITRARY
17 ENFORCEMENT OF THE LAW. THAT IS EXACTLY WHAT DUE PROCESS IS
18 DESIGNED TO PREVENT.

19 THE COURT: AND, MR. BROWN, ONE THING THAT I THINK IS
20 A PROBLEM WITH YOUR POSITION, NOT NECESSARILY LEGALLY A
21 PROBLEM, BUT WE HAVE A LITTLE BIT OF A TIME PROBLEM PERHAPS
22 WITH YOUR CASE IN THAT WE JUST GOT THE MOTION I BELIEVE ON
23 FRIDAY. YOU FILED A NEW MOTION TODAY. A LOT OF YOUR EVIDENCE
24 AND INFORMATION IS -- I THINK THERE'S EXPERT AFFIDAVIT, A LOT
25 MORE INVOLVED. AND THERE'S A LOT OF MORE OPEN QUESTIONS, FOR

1 EXAMPLE, JUST BECAUSE GWINNETT IS REJECTING MORE AND MAYBE
2 FULTON IS REJECTING ZERO, DOES IT MEAN THAT JUST FULTON'S NOT
3 LOOKING AT THEM, OR DOES IT MEAN -- THERE'S A LOT OF QUESTIONS
4 THAT ARE THERE. AND I HAVE SOME SERIOUS CONCERNS ABOUT, 'A',
5 BEING ABLE TO HEAR FROM THE DEFENDANTS IN A TIMELY FASHION AND
6 BEING PREPARED, AND THEN IMPLEMENTING THE SOLUTION YOU SUGGEST
7 GIVEN THE TIGHT WINDOW. SO SOME OF IT IS LESS MERITORIOUS AND
8 MORE I DON'T KNOW IF IT'S DOABLE WHERE WE ARE.

9 MR. BROWN: YOUR HONOR, I BELIEVE I CAN ADDRESS THAT.

10 THE COURT: OKAY. PLEASE DO.

11 MR. BROWN: THIS IS THE KIND OF ELECTION
12 CAME (VERBATIM) THAT IS ALWAYS GOING TO BE TIME SENSITIVE
13 BECAUSE YOU'RE NOT GOING TO KNOW THAT THERE'S ANYTHING
14 CAPRICIOUS GOING ON UNTIL RIGHT BEFORE THE ELECTION. AND, YOUR
15 HONOR, IF THE STATE DEFENDANTS ESCAPE THESE DUE PROCESS CLAIMS,
16 THEN THIS SORT OF CONDUCT IS GOING TO CONTINUE BECAUSE YOU
17 CAN'T CATCH IT. THE RESULTS FROM GWINNETT AND FROM THE OTHER
18 COUNTIES STARTED TRICKLING IN JUST AT THE BEGINNING OF OCTOBER.
19 BY OCTOBER 8TH, GWINNETT HAD ONLY REJECTED 250 APPLICATIONS.
20 THAT WEEK, WITHIN A WEEK WE FILED A VERY LONG AND
21 WELL-RESEARCHED COMPLAINT. IF WE HAD ACTED ANY EARLIER, THEY
22 WOULD HAVE MOVED TO DISMISS BECAUSE IT'S NOT RIPE, YOUR HONOR.
23 WE HIT IT EXACTLY THE SOFT SPOT. AS SOON AS THE CONSTITUTIONAL
24 INFRACTION BECAME APPARENT, WE FILED SUIT. IF THAT'S NOT QUICK
25 ENOUGH, THEN THE STATE IS GOING TO BE ABLE TO MESS UP THESE

1 ELECTIONS IN WHATEVER WAY THEY ARE, EITHER INTENTIONALLY OR
2 UNINTENTIONALLY, EVERY SINGLE ELECTION THEY CAN ESCAPE BECAUSE
3 WHAT THEY'LL DO IS THE SAME THING. YOU -- YOU -- THEY -- IT'S
4 NOT LIKE THE PLAINTIFFS WERE THE ONLY PEOPLE WHO KNEW THAT
5 GWINNETT WAS REJECTING THESE BALLOTS AT A HIDEOUSLY HIGH RATE
6 COMPARED TO FULTON. THEY'RE CHARGED WITH THAT KNOWLEDGE.
7 THAT'S NOT OUR JOB. THAT IS THE DEFENDANTS' JOB TO KNOW THOSE
8 THINGS. AND IT'S ALSO THE DEFENDANTS' JOB --

9 THE COURT: WELL, AND I'M NOT CRITICIZING YOU IN
10 TERMS OF WHEN YOU FILED IT. I'M JUST WONDERING IF, I MEAN,
11 JUST IN TERMS OF PRACTICALITY --

12 MR. BROWN: SURE.

13 THE COURT: AND ALSO I DO UNDERSTAND THAT THIS HAS
14 SERIOUS IMPLICATIONS AND WE DO HAVE THE ONE LAWSUIT AND THAT'S
15 ONE ISSUE AND YOURS OF COURSE IS BROADER. AND I DON'T SAY THIS
16 IN A LIGHT WAY, BUT I DON'T THINK THAT YOU'RE ACCURATE IN
17 SAYING THAT THEN THIS WOULD CONTINUE ON TO DIFFERENT ELECTIONS
18 BECAUSE EVEN IF WE DON'T HAVE TIME TO GET THIS ALL SORTED
19 THROUGH ON A PRELIMINARY INJUNCTION, WHICH IS A VERY
20 EXTRAORDINARY WAY TO TACKLE SOME OF THESE, THAT DOESN'T MEAN
21 THE CASE GOES AWAY. SO THESE ISSUES ARE NOT JUST THROWN TO THE
22 WAYSIDE.

23 MR. BROWN: THAT'S A FAIR COMMENT. BUT NEXT TIME IT
24 MAY BE SOMETHING ELSE, YOUR HONOR. IT MAY BE SOME OTHER
25 INADVERTENCE OR INCOMPETENCE OR IT MAY BE WORSE. AND IT WILL

1 HAPPEN -- IT WILL BE TIMED OR IT WILL JUST HAPPEN RIGHT BEFORE
2 AN ELECTION, AND THOUSANDS OF PEOPLE WILL BE DISENFRANCHISED.
3 I'M NOT SAYING THAT THE TIME -- WE HAVE MORE TIME THAN WE DO.
4 WE DON'T. WHAT I'M SAYING IS THE NATURE OF THIS CONSTITUTIONAL
5 VIOLATION IS SOMETHING THAT CAN ONLY BE ADDRESSED IN A POSTURE
6 THAT PUTS TIME PRESSURES ON THE COURT AND ON THE PARTIES.

7 THERE'S NO WAY AROUND IT. AND THE OTHER THING IS THAT THE --

8 THE COURT: WELL, AND ONE THING I WILL TELL YOU TO
9 THINK ABOUT IS THAT IF IN TERMS OF THE ORDER THAT I MAY GET OUT
10 TODAY OR TOMORROW, IF I'M NOT ABLE TO ADDRESS ALL OF YOUR
11 ISSUES JUST BECAUSE OF THE RECORD AND THE NEWNESS OF ALL OF
12 THAT, WOULD THERE BE -- CERTAINLY THERE'S THE POSSIBILITY OF
13 ADDITIONAL OPPORTUNITY TO ALLOW THE DEFENDANTS TO RESPOND TO
14 THIS AND TO TAKE UP THE PIECES THAT ARE DEALT WITH IN THIS
15 FIRST ROUND OF AN ORDER PERHAPS. AND ANOTHER THING YOU COULD
16 THINK ABOUT AS PART OF THAT IS IF THERE IS SOME ABILITY LIKE
17 THE VOTER I.D. STATUTE WHERE WE ARE WORKING ON A TIME SCHEDULE,
18 BUT PROVISIONAL BALLOTS OR KEEPING OF THESE TO DEAL WITH,
19 AGAIN, WE DON'T HAVE A LOT OF TIME, BUT THERE ARE WAYS THAT
20 THIS CAN BE DEALT WITH. BECAUSE I'M JUST CONCERNED THAT YOUR
21 RECORD -- I MEAN, I DON'T THINK I COULD MAKE A DECISION ON YOUR
22 SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION ON THE RECORD WE
23 HAVE AND MY GIVING THE DEFENDANTS A FAIR OPPORTUNITY IN TERMS
24 OF AN ORDER I'M GOING TO GET OUT TODAY OR TOMORROW. BUT I DO
25 HAVE SOME WILLINGNESS AND A HIGH LIKELIHOOD OF ALSO INSTRUCTING

1 THE DEFENDANTS TO RESPOND TO THESE ISSUES AND ADDRESSING THEM
2 IN A WRITTEN ORDER OR HAVING A SECOND HEARING IF I THINK THAT
3 THAT IS HELPFUL. SO THERE ARE WAYS THAT WE CAN DEAL WITH THIS,
4 BUT I'M JUST SAYING FOR PURPOSES OF THE ORDER THAT I GET OUT
5 TODAY OR TOMORROW, I DON'T THINK THAT ADDRESSING A MOTION YOU
6 FILED TODAY IS REALLY PRACTICAL.

7 MR. BROWN: YOUR HONOR, A COUPLE OF THINGS ON WHAT WE
8 FILED TO PUT THAT IN CONTEXT, THE RELIEF THAT WE'RE SEEKING
9 TODAY IS THE SAME RELIEF WE SOUGHT IN OUR COMPLAINT WHICH WE
10 ACTUALLY FILED BEFORE THE GEORGIA MUSLIM VOTER PROJECT CASE.
11 AND WE HAVEN'T CHANGED OUR -- WE HAVEN'T CHANGED OUR CLAIMS.
12 WE ALSO HAVEN'T CHANGED THE BASIS FOR OUR CLAIMS. WE HAVEN'T
13 CHANGED THE SCOPE. THE ONLY THING THAT WE'VE DONE IN OUR
14 AMENDED CLAIM FOR RELIEF IS ACTUALLY SHRINK IT. THAT'S ALL
15 WE'VE DONE.

16 THE COURT: AND I UNDERSTAND THAT. I JUST GOT YOUR
17 MOTION ON FRIDAY, AND I HAVEN'T GOTTEN A RESPONSE FROM THE
18 DEFENDANTS --

19 MR. BROWN: RIGHT.

20 THE COURT: -- SO ISSUING AN ORDER ON THAT TODAY OR
21 TOMORROW DOES NOT SEEM FEASIBLE TO ME AT THIS POINT.

22 MR. BROWN: I UNDERSTAND, YOUR HONOR. I WANT TO
23 ADDRESS A COUPLE OF THINGS THAT MIGHT BE DIFFERENT FOR THIS.

24 THE COURT: OKAY.

25 MR. BROWN: THE ONE CLAIM WE HAVE, WHICH IS -- IT'S

1 NOT FACT-BOUND AT ALL -- AND THAT IS THE YEAR OF BIRTH PROBLEM.
2 IT'S ACTUALLY -- IT'S A PROBLEM THAT DWARFS THE SIGNATURE
3 MISMATCH PROBLEM IN TERMS OF THE NUMBER OF PEOPLE WHO ARE
4 GETTING REJECTED BY IT. THE SIGNATURE MISMATCH CONCERNS EIGHT
5 PEOPLE IN GWINNETT, ABOUT 130 IN STATEWIDE. OUR CLAIM INVOLVES
6 HUNDREDS OF PEOPLE. SO IT'S MUCH -- IT IS BIGGER AND IT
7 AFFECTS A LOT OF PEOPLE, BUT IT'S VERY EASY. THERE IS NO
8 PURPOSE FOR HAVING THE YEAR OF BIRTH ON THE OATH. PEOPLE MAKE
9 THE MISTAKE ALL THE TIME. BECAUSE WHEN I SIGN MY NAME, I GIVE
10 THE DATE I'M SIGNING IT. THAT'S WHAT PEOPLE DO. BUT THERE'S
11 NO REASON FOR HAVING THE YEAR OF BIRTH THERE. BUT BECAUSE OF
12 THAT, GWINNETT, AND ALMOST GWINNETT ALONE, HAS REJECTED OVER
13 200 PEOPLE WHO ARE DISENFRANCHISED, WHO ARE JUST
14 DISENFRANCHISED. YOU HAVE TO GET PUT IN JAIL AS A FELON TO GET
15 DISFRANCHISED. BUT THESE PEOPLE, BECAUSE THEY PUT THE WRONG
16 DATE, ARE DISENFRANCHISED. THEY MIGHT GET A LETTER. WE DON'T
17 KNOW. WE'VE ASKED THEM TO PRODUCE IN A OPEN RECORDS ACT THE
18 LETTERS THAT THEY'RE SENDING TO PEOPLE WHO HAD THE DATE OF
19 BIRTH MISTAKE. HAVEN'T GOTTEN IT. THEY DIDN'T GIVE US ANY.
20 SO I DON'T THINK THERE ARE ANY.

21 SO ONE OF THE THINGS TO THINK ABOUT IS THAT'S A FACIAL --
22 THAT'S -- IT'S SORT OF A FACIAL CHALLENGE IN THE SENSE THAT
23 THIS -- IT'S, LIKE, DUH, WHY WOULD THEY EVER HAVE THIS. IT HAS
24 TO BE UNCONSTITUTIONAL TO DISENFRANCHISE PEOPLE BECAUSE OF
25 THAT. THAT'S NOT A HARD THING FOR THEM TO RESPOND TO. THE

1 OTHER THING IS THAT IT -- ONE THING THAT WOULD BE HELPFUL FOR
2 THE DEFENDANTS TO ADDRESS IN ANY RESPONSE IS WHY IS IT -- WHY
3 IS THIS HAPPENING, WHY ISN'T THIS UNCONSTITUTIONALLY CAPRICIOUS
4 ON ITS FACE TO HAVE SUCH A FREAKISH DISPARITY BETWEEN COUNTIES.
5 THE SECRETARY OF STATE IS STATUTORILY OBLIGATED TO PROVIDE FOR
6 A UNIFORM APPLICATION OF THE LAWS. WE HAVE THE SAME LAWS IN
7 EVERY SINGLE COUNTY, AND WE GET FREAKISHLY DIFFERENT RESULTS.
8 THAT HAS TO BE A DUE PROCESS VIOLATION. UNLESS -- I CAN'T
9 THINK OF WHAT THE RESPONSE IS.

10 IN ADDITION, THERE'S FREAKISH DISPARITIES BETWEEN ETHNIC
11 GROUPS. THIS IS -- I'M NOT SAYING ANYTHING NEW. THIS IS WHAT
12 WE PUT IN THE COMPLAINT. AND WE PUT THAT IN THE COMPLAINT
13 RIGHT AFTER THIS PROBLEM AROSE. SO IF THE COURT -- WITH ALL
14 RESPECT, I UNDERSTAND THE PRESSURES THAT THESE LAWSUITS PUT ON
15 THE COURT IN THE PRACTICAL APPLICATION. I REALLY DO. AND I
16 DON'T MEAN TO SUGGEST THAT THE COURT IS NOT DOING EVERYTHING IT
17 CAN --

18 THE COURT: NO. I'M JUST SAYING YOU FILED YOUR
19 MOTION ON FRIDAY, AND I DON'T HAVE A RESPONSE FROM THE
20 DEFENDANTS YET, SO...

21 MR. BROWN: WELL, I THOUGHT WE WOULD GET ONE BY THE
22 TIME THAT YOU SET FOR THE OTHER PLAINTIFFS, BUT WE DIDN'T GET
23 ONE. BUT I --

24 THE COURT: MY UNDERSTANDING AT LEAST, OR AT LEAST MY
25 THINKING WHAT I'M GOING TO HEAR FROM THE DEFENDANTS, AND I WANT

1 TO MAKE SURE YOU ADDRESS IT ON THE DATE OF BIRTH, IS THAT I
2 ASSUME THAT IT'S GOING TO BE ARGUED THAT THAT'S PART OF THEIR
3 VOTER FRAUD KIND OF PART OF IT, THAT IT'S ANOTHER IDENTIFYING
4 PIECE OF INFORMATION THAT THEY'RE REQUIRING ON THE BALLOT AND
5 THAT IT'S NOT THAT THERE'S ABSOLUTELY NO PURPOSE TO IT. AND I
6 THINK THAT PART OF WHAT YOU'RE ASKING ME TO DO IS TO BASICALLY
7 TAKE THAT OFF THE ABSENTEE BALLOT OR TAKE THE FORCE OF IT OFF
8 THE ABSENTEE BALLOT. AND IF WE HAVE THE STATE SAYING, WELL,
9 THERE'S A PURPOSE FOR THAT, I DON'T KNOW THAT HAVING
10 REQUIREMENTS LIKE THE OATH AND YOUR BIRTHDAY AND THE DATE,
11 THAT, YES, THERE ARE PEOPLE THAT ARE MESSING THIS UP, BUT THERE
12 IS AN ABILITY TO CURE IT. SO I'M HAVING PROBLEMS WITH AS A
13 JUDICIAL PERSON JUST LEGISLATIVE REMAKING THE ABSENTEE BALLOT
14 TO TAKE THINGS OFF THAT ARE CAUSING PEOPLE PROBLEMS.

15 MR. BROWN: YOUR HONOR, WE HAVE CASE AFTER CASE IN
16 OUR HEARING BRIEF ADDRESSING THIS ISSUE, NOT THIS PARTICULAR
17 FACTUAL ISSUE, BUT WHERE COURTS HAVE OVER AND AGAIN STRUCK DOWN
18 ABSENTEE BALLOT -- UNCONSTITUTIONAL FEATURES OF AN ABSENTEE
19 BALLOT REGIME. SO IT'S NOT THE CASE THAT ABSENTEE BALLOT IS
20 SOME SORT OF PRIVILEGE AND YOU'VE GOT TO DO -- IT HAS TO BE
21 APPLIED UNIFORMLY. CASE AFTER CASE SAY THAT. IN PARTICULAR
22 HERE, YOUR HONOR, WHAT WE HAVE HERE IS THE STATE -- YOU'RE
23 FAMILIAR WITH -- YOU MAY BE FAMILIAR WITH THE CASE BEFORE JUDGE
24 TOTENBERG IN WHICH THE CHALLENGE WAS TO THE ELECTRONIC
25 MACHINES. IN RESPONSE TO THE LAWSUIT SAYING THAT THOSE

1 ELECTRONIC MACHINES ARE NOT SAFE, AND JUDGE TOTENBERG AGREED,
2 THE STATE DEFENDANT'S RESPONSE WAS, YOU CAN ALL VOTE ABSENTEE.
3 YOU CAN ALL GO VOTE ABSENTEE. THEN EVERYBODY GOES TO VOTE
4 ABSENTEE, AND THEY'RE SAYING, WELL, ABSENTEE BALLOT ISN'T
5 REALLY A PRIVILEGE. IT'S NOT GIVING THEM A CONSTITUTIONAL
6 RIGHT TO VOTE ABSENTEE. AND THESE REJECTION RATES ARE
7 FREAKISH. AND SO I DON'T THINK THEY CAN -- I DON'T THINK THEY
8 CAN DO BOTH. THE -- THERE IS A LOT OF LAW ON THE ABSENTEE.
9 AND I -- ON THE RIGHT TO CURE ON THE LITTLE DATE, THERE'S NO
10 REASON FOR THE DATE, YOUR HONOR. THEY DIDN'T EVEN REQUIRE IT
11 BEFORE 2017. IT'S JUST SOMETHING ELSE -- I DON'T KNOW IF THEY
12 DID IT ON PURPOSE, BUT IT'S SOMETHING ELSE TO TRIP PEOPLE UP.
13 A THIRD OF THE PEOPLE WHO ARE REJECTED, YOUR HONOR, ARE
14 DISABLED OR ELDERLY. AND SENDING THEM BACK A CARD IN THE MAIL
15 THAT SAYS, YOU GOT TO APPLY AGAIN TO VOTE BECAUSE YOU LEFT OUT
16 A DATE IS AN INFRINGEMENT, AN UNCONSTITUTIONAL INFRINGEMENT ON
17 THE RIGHT TO VOTE. ALL OF THESE CASES, YOUR HONOR, THEY SAY
18 OVER AND OVER AGAIN, AND WE RECITE THEM IN OUR BRIEF AND
19 THEY'RE ALWAYS IN THE FRONT OF THE COMPLAINT, SAYS THAT THE
20 RIGHT TO VOTE IS PRECIOUS. IT'S PRECIOUS. YET, IT SEEMS LIKE
21 IT'D JUST BE DISCARDED BECAUSE OF INCOMPETENCE OR INADVERTENCE
22 OR WORSE. IF IT'S PRECIOUS, WE NEED TO TREAT IT AS PRECIOUS.
23 AND WE'RE NOT TREATING IT AS PRECIOUS IF THESE ELDERLY PEOPLE
24 AND OLD PEOPLE AND DISABLED PEOPLE AND PEOPLE PRIMARILY IN
25 GWINNETT -- AND THE MOST AND THE HIGHEST PERCENTAGE IS

1 ASIAN-AMERICANS -- ARE GETTING DISENFRANCHISED BECAUSE OF
2 STUPID LITTLE THINGS LIKE THIS. AND IT NEEDS TO STOP
3 IMMEDIATELY. THANK YOU, YOUR HONOR.

4 THE COURT: OKAY. THANK YOU, MR. BROWN.

5 AND WHO WANTS TO GO FORWARD ON BEHALF OF THE STATE?

6 MR. TYSON: THANK YOU, YOUR HONOR. I'M BRYAN TYSON.
7 I'M GOING TO START OUT. I'M REPRESENTING THE BOARD OF
8 REGISTRATIONS AND ELECTIONS FOR GWINNETT COUNTY. I'M GOING TO
9 COVER THE STANDING PIECE AND SOME OF THE UNIQUE ISSUES RELATED
10 TO GWINNETT COUNTY. MR. WILLARD FOR THE STATE IS THEN GOING TO
11 COVER THE ISSUES RELATED TO LACHES AND THE PUBLIC INTEREST
12 PRONGS OF THE INJUNCTIVE RELIEF, AND THEN MS. CORREIA FROM THE
13 STATE WILL BE COVERING THE LIKELIHOOD OF SUCCESS ON THE MERITS
14 AND THE CONSTITUTIONAL CLAIMS.

15 THE COURT: OKAY. AND IF I ASK QUESTIONS IN THE
16 WRONG AREA, JUST LET ME KNOW, AND I'LL SAVE THEM.

17 MR. TYSON: I CERTAINLY WILL, YES.

18 THE COURT: OKAY. THANK YOU.

19 MR. TYSON: AND, YOUR HONOR, GWINNETT IS IN A UNIQUE
20 POSITION OBVIOUSLY. WE DON'T HAVE A PREFERENCE ON THE
21 CONSTITUTIONALITY OR POSITION OF THE CONSTITUTIONALITY OF THE
22 STATUTE. AS WE NOTED, WE ARE FOLLOWING STATE LAW AS IT STANDS
23 RIGHT NOW. AND I WANTED TO GIVE YOUR HONOR AN UPDATE ON A
24 COUPLE OF THINGS JUST ON WHAT GWINNETT HAS BEEN DOING AND WHERE
25 WE STAND -- I KNOW THE NUMBERS ARE CHANGING CONSTANTLY -- AND

1 UPDATE MS. LEDFORD'S DECLARATION. GWINNETT YESTERDAY OPENED
2 EIGHT ADDITIONAL SATELLITE VOTING SITES FOR IN-PERSON VOTING.
3 WE'RE GOING TO -- GWINNETT WILL BE OFFERING A TOTAL 1,230 HOURS
4 OF EARLY -- IN-PERSON OR EARLY VOTING FOR VOTERS IN GWINNETT
5 COUNTY. STATE LAW REQUIRES 168 HOURS, SO GWINNETT IS TRYING TO
6 GO ABOVE AND BEYOND TO ENSURE THAT WE HAVE -- ALL VOTERS HAVE
7 THE OPPORTUNITY IN GWINNETT COUNTY TO VOTE. SO FAR GWINNETT
8 COUNTY HAS PROCESSED 26,459 APPLICATIONS. WE'VE RECEIVED 8,218
9 BALLOTS BACK FROM VOTERS. AND THE REJECTION RATE NOW, THE
10 NUMBER OF REJECTIONS IS 568. THAT BRINGS THE REJECTION RATE
11 THAT WE'VE HEARD SO MUCH ABOUT DOWN BELOW SEVEN PERCENT DOWN TO
12 6.9 PERCENT. AND THEN I KNOW MR. BROWN HAS CITED THIS IDEA
13 THAT THIS IS VASTLY DISPROPORTIONATE IN GWINNETT COUNTY.
14 ULTIMATELY WE DON'T KNOW. AS MR. HARVEY AND MS. LEDFORD BOTH
15 SAID, OTHER -- NOT ALL COUNTIES TRACK REJECTIONS IN THE
16 SECRETARY OF STATE SYSTEM, SO WE DON'T KNOW WHAT THE REJECTION
17 RATES MAY BE IN OTHER COUNTIES. BUT AS MR. BROWN ALSO NOTED IN
18 HIS BRIEF ON THE PRELIMINARY INJUNCTION, THAT GWINNETT'S
19 REJECTION RATE, ACCORDING TO HIS NUMBERS FOR THE 2018 PRIMARY,
20 WAS EIGHT PERCENT, ALMOST EXACTLY WHERE WE'RE TRACKING RIGHT
21 NOW. SO, AGAIN, WE'RE NOT IN A SCENARIO WHERE WE'VE CHANGED A
22 PROCESS OR DONE SOMETHING DIFFERENT. WE'RE FOLLOWING THE
23 EXISTING STATUTE AND MOVING ALONG THROUGH THAT PROCESS.

24 THE COURT: DO PEOPLE RECEIVE LETTERS IF THEIR
25 BALLOTS ARE REJECTED FOR THE DATE OF BIRTH PROBLEM? ARE THEY

1 TOLD THAT AND PROVIDED THE INSTRUCTION SIMILAR TO THE MISMATCH
2 OF THE SIGNATURES?

3 MR. TYSON: YES, YOUR HONOR, THEY ARE. SO ANYONE WHO
4 IS REJECTED EITHER AT THE APPLICATION STAGE OR AT THE BALLOT
5 STAGE RECEIVES A LETTER FROM THE BOARD OF ELECTIONS THAT
6 SPECIFIES WHAT'S HAPPENED AND THEN PROVIDES THEM WITH A NEW
7 BALLOT APPLICATION, TELLS THEM ABOUT THE OPPORTUNITIES TO VOTE
8 IN PERSON EARLY OR TO VOTE ON ELECTION DAY, TO ASSURE PEOPLE
9 THAT THEY HAVE THAT OPPORTUNITY. SO GWINNETT IS PROVIDING THAT
10 NOTICE TO VOTERS IN ALL THOSE SCENARIOS. WE ALSO HAVE, OF THE
11 NINE BALLOT REJECTIONS THAT WE ATTACHED TO DIRECTOR LEDFORD'S
12 AFFIDAVIT, YOU CAN SEE FOR THE SIGNATURE MISMATCHES THAT IT
13 DIDN'T TAKE A HANDWRITING EXPERT TO SEE THAT THOSE ARE
14 DIFFERENT PEOPLE ON THOSE BALLOTS. AND, AGAIN, THE VOTER THAT
15 THE -- THAT MR. YOUNG'S CLIENTS PRODUCED THE DECLARATION LAST
16 NIGHT WAS A VOTER REJECTED, NOT BY GWINNETT COUNTY FOR A
17 SIGNATURE MISMATCH, BUT BY WALTON COUNTY FOR A SIGNATURE
18 MISMATCH. SO I DON'T -- SO I STILL DON'T SEE THAT WE'VE HAD
19 ANYONE WHO WAS REJECTED BY GWINNETT COUNTY, AN ALLEGEDLY
20 IMPROPER SIGNATURE MATCH. SO --

21 THE COURT: NOW, AND THIS MAY NOT BE SOMETHING YOU'RE
22 FAMILIAR WITH, SO IT'S FINE IF YOU'RE NOT. BUT I KNOW ONE OF
23 THE PIECES OF RELIEF THAT'S BEING ASKED BY THE PLAINTIFFS IS
24 FOR THE SAME APPEALS PROCESS THAT IS UTILIZED FOR ELIGIBILITY
25 DECLARATIONS TO BE USED FOR THAT. AND, AGAIN, MAYBE SOMEONE

1 ELSE IS THE BEST PERSON TO ASK, BUT SINCE YOU'RE FROM GWINNETT
2 COUNTY, I'LL ASK YOU. WHAT WOULD YOU PERCEIVE TO BE THE
3 DIFFICULTIES IN USING THAT SAME PROCESS IF IN FACT WE WERE TO
4 USE IT FOR THE SIGNATURE MISMATCH ISSUES? BECAUSE, AGAIN, I'VE
5 SEEN THE SIGNATURES YOU'VE PROVIDED ME. I CAN SEE FOR MYSELF
6 WHETHER OR NOT THEY ARE DIFFERENT, BUT I CAN'T TELL WHY THEY'RE
7 DIFFERENT AND IS IT SOMEONE BROKE THEIR ARM, THEY JUST FOR
8 VANITY PURPOSES CHANGE THEIR SIGNATURE? I DON'T KNOW THAT
9 THAT'S NOT THE SAME PERSON. SO WHAT WOULD BE THE DIFFICULTIES
10 AND THE CHALLENGES FROM YOUR PERSPECTIVE IF WE WERE TO REQUIRE
11 SOME SORT OF EXTRINSIC EVIDENCE OR ABILITY FOR SOMEONE TO SAY,
12 OH, YEAH, THAT'S THE REASON MY SIGNATURE IS DIFFERENT, THIS IS
13 ME?

14 MR. TYSON: SO I'LL LET MS. CORREIA ADDRESS THAT
15 ISSUE --

16 THE COURT: OKAY.

17 MR. TYSON: -- DIRECTLY. AS FAR AS GWINNETT COUNTY,
18 JUST IN TERMS OF OUR MAJOR CONCERN AT THIS POINT, IS THAT THE
19 PROCESS THAT HAS BEEN UNDER WAY FOR MORE THAN 30 DAYS NOW FOR
20 ABSENTEE BALLOTS, THAT CHANGING THE PROCESS SIGNIFICANTLY AT
21 THIS POINT COULD LEAD TO DISPARATE TREATMENT OF VOTERS AS A
22 FIRST INSTANCE, BUT ALSO WE HAVE VOTERS WHO HAVE RECEIVED THOSE
23 REJECTION NOTICES AND THEN HAVE GONE BACK AND CORRECTED
24 WHATEVER THE ISSUE WAS OR HAVE VOTED IN PERSON. AND IF WE'RE
25 NOW GOING TO HAVE TO TRY TO SORT THROUGH WHERE THOSE PEOPLE

1 ARE, IT'S NOT LIKE WE HAVE A STACK OF REJECTIONS ON THE SHELF
2 WE CAN PULL OFF AND JUST REPROCESS. THESE PEOPLE HAVE BEEN --
3 HAVE RECEIVED NOTICE, HAVE IN SOME CASES GONE BACK AND VOTED
4 AND THROUGH ANOTHER MEANS. AND SO OUR PRIMARY CONCERN IS NOT
5 SO MUCH ABOUT THE FASHION OF THE REMEDY -- AND I'LL LET MS. --
6 LIKE I SAID, MS. CORREIA SPEAK TO THAT --

7 THE COURT: THAT'S FINE. AND I'LL DO THAT. JUST
8 DIDN'T KNOW IF THERE'S SOME PRACTICAL ISSUES THAT YOU HAD.

9 MR. TYSON: RIGHT. OUR PRIMARY CONCERN WITH THE
10 REMEDIES THAT HAVE BEEN PROPOSED SO FAR WERE FROM THE MARTIN
11 PLAINTIFF REMEDIES. WE HAVE -- FOR OUR IN-PERSON VOTING, JUST
12 FROM A PRACTICAL PERSPECTIVE, WE ONLY HAVE ONE BALLOT BOX FOR
13 PROVISIONAL BALLOTS AT EACH PRECINCT LOCATION. AND THE MARTIN
14 PLAINTIFFS WERE ASKING FOR, FOR EXAMPLE, TAKING ABSENTEE
15 BALLOTS TO A PRECINCT AS OPPOSED TO THE CENTRAL OFFICE. TO GO
16 BACK AND REPROCESS WHEN OUR ELECTION OFFICIALS ARE KIND OF
17 STRETCHED TO THE LIMIT RIGHT NOW, THAT'S REALLY WHERE OUR
18 CONCERN IS, THAT ANYTHING AT THIS POINT THAT IS GOING TO UPSET
19 THE CURRENT FLOW OF EVERYBODY WORKING AS HARD AS THEY CAN TO
20 MAKE SURE THIS ELECTION IS SUCCESSFUL, THAT'S OUR PRIMARY
21 CONCERN. SO A POST ELECTION REMEDY WE ARE LESS CONCERNED
22 ABOUT, BUT THAT'S OUR MAIN THING, IS NOT MESSING UP THE SYSTEM
23 THAT WE HAVE RIGHT NOW THAT'S OPERATIONAL.

24 SO LET ME TALK A LITTLE BIT ABOUT THE ISSUE OF STANDING.
25 OBVIOUSLY IT'S CRITICALLY IMPORTANT. AND AS TO THE GEORGIA

1 MUSLIM VOTER PROJECT PLAINTIFFS, WITH THE NEW DECLARATIONS THAT
2 HAVE BEEN SUBMITTED LAST NIGHT, I THINK THE PLAINTIFFS HAVE
3 LARGELY ADDRESSED THE ISSUE OF DO -- HAVE THEY ALLEGED AN
4 INJURY IN FACT. THEY'VE AT LEAST ALLEGED AN INJURY THAT
5 THEY'RE GOING TO BE DIVERTING RESOURCES AS TO SPECIFIC
6 ACTIVITIES. THE CONCERN AT THIS POINT IS THERE STILL ARE THE
7 ELEMENTS OF TRACEABILITY AND REDRESSABILITY THAT HAVE TO BE
8 ADDRESSED IN TERMS OF DO THESE INDIVIDUALS -- THESE
9 ORGANIZATIONS ACTUALLY HAVE STANDING TO BRING THESE. AND AS
10 FAR AS TRACEABILITY GOES, THE STATUTE IN QUESTION ONLY PUTS
11 DUTIES ON THE COUNTIES. IT DOESN'T PLACE ANY DUTIES ON
12 SECRETARY KEMP. AND SO THERE'S NO REAL ALLEGATION I SEE FROM A
13 STANDING PERSPECTIVE WHERE SECRETARY KEMP IS GOING TO HAVE BEEN
14 RESPONSIBLE FOR THE ACTIONS THAT HAVE TAKEN PLACE UP TO THIS
15 POINT. BUT EVEN IF YOU COULD TRACE SOMETHING BACK TO THE
16 COUNTY, FOR EXAMPLE, THE REJECTIONS THAT GWINNETT COUNTY HAS
17 BEEN ENGAGED IN -- WE TALKED EARLIER ABOUT THE ISSUE OF
18 REDRESSABILITY AND BEING ABLE TO SAY, CAN THE -- THE COURT'S
19 INJUNCTION OR RELIEF, WHATEVER YOU'RE FASHIONING, ADDRESS THE
20 MAJOR PROBLEM, THE HARM THAT THE PLAINTIFFS ARE ALLEGING. AND
21 IN THIS CASE THEY'RE ALLEGING A DIVERSION OF RESOURCES RELATED
22 TO EDUCATION. AND YOU ASKED THE QUESTION EARLIER ABOUT IF YOU
23 HAVE TO CONTINUE TO EDUCATE PEOPLE ABOUT A WHOLLY NEW PROCESS,
24 HAS IT TRULY -- HAS THE HARM TRULY BEEN ADDRESSED. AND WE
25 WOULD SUBMIT THAT IT HAS NOT BEEN ADDRESSED AT THAT POINT AND

1 THAT ULTIMATELY THE DIVERSION OF RESOURCES THAT THE PLAINTIFFS
2 SAY THAT THEY HAVE WOULD NOT BE REDRESSED BY A FAVORABLE RULING
3 FROM THE COURT BECAUSE THEY WOULD STILL HAVE TO ENGAGE IN THESE
4 SAME KINDS OF ACTIVITIES.

5 IN ADDITION, IF WE'RE GOING TO BE -- WE'RE IN A SCENARIO
6 FROM A TRACEABILITY STANDPOINT WHERE A LOT OF THE DIVERSION OF
7 RESOURCES THAT PLAINTIFFS HAVE ENGAGED IN IS SPECULATIVE. THEY
8 READ A NEWS ARTICLE ON OCTOBER THE 12TH, AS THEY SAY IN THEIR
9 DECLARATIONS, OF WHY THEY BELIEVE THIS IS THE TIME TO CHANGE
10 THINGS. AS WE SUBMITTED IN OUR DECLARATIONS IN OUR BRIEF, THIS
11 IS A LAW THAT'S BEEN ON THE BOOKS FOR 15 YEARS AT LEAST,
12 PROBABLY A WHOLE LOT LONGER THAN THAT. THIS IS A PROCESS THAT
13 GWINNETT COUNTY HAS FOLLOWED CONSISTENTLY FOR AS LONG AS ANYONE
14 CAN REMEMBER. AND THE FACT THAT IT'S NEW TO THE PLAINTIFFS
15 DOES NOT IN AND OF ITSELF CREATE AN INJURY THAT'S TRACEABLE TO
16 CONDUCT -- TO NEW CONDUCT OF THE DEFENDANTS IN THIS CASE, AT
17 LEAST FOR PURPOSES OF A TEMPORARY RESTRAINING ORDER.

18 I'D JUST POINT YOUR HONOR TO THE CLAPPER CASE THAT WE
19 CITED, THAT THE IDEA THAT MAKING A -- AN EXPENDITURE BASED ON
20 A -- AN IDEA THAT SOMETHING IS GOING TO BE A PROBLEM FOR YOU,
21 THE SUPREME COURT HAS SAID THAT'S AN ISSUE OF TRACEABILITY IF
22 YOU CAN'T TRACE BACK THE DEFENDANTS' CONDUCT TO THE HARM THAT
23 YOU'RE ALLEGING. AND WE BELIEVE THE PLAINTIFFS IN THE GEORGIA
24 MUSLIM VOTER PROJECT CASE STILL HAVE THAT ISSUE.

25 IN ADDITION, MS. GOITIA'S DECLARATION THAT WAS SUBMITTED

1 LAST NIGHT, OBVIOUSLY SHE'S NOT A PARTY TO THIS CASE. AS I
2 MENTIONED, SHE IS IN A DIFFERENT COUNTY THAN GWINNETT COUNTY.
3 AND SHE HAS THE REMEDIES THAT GWINNETT OFFERS AVAILABLE TO HER.
4 SHE CAN UPDATE -- BEFORE THE VOTER REGISTRATION DEADLINE YOU'RE
5 ABLE TO UPDATE YOUR VOTER REGISTRATION INFORMATION IF YOUR
6 SIGNATURE HAS CHANGED. AND IN SOME CASES WHERE THERE IS AN
7 ISSUE WITH A VOTER REGISTRATION RECORD, THE GWINNETT COUNTY
8 BOARD OFFICE WILL SEND A NEW VOTER REGISTRATION FORM AND A NEW
9 APPLICATION WITH THE LETTER TO SAY, HERE, IF YOU NEED TO
10 PROVIDE AN UPDATE TO YOUR VOTER REGISTRATION INFORMATION, YOU
11 CAN GO AHEAD AND DO THAT. THAT WINDOW'S OBVIOUSLY CLOSED NOW
12 THAT VOTER REGISTRATION APPLICATIONS ARE NO LONGER BEING
13 ACCEPTED AFTER OCTOBER 9TH. THE KEY ISSUE I THINK WITH
14 MS. GOITIA'S DECLARATION IS NONE OF THE DEFENDANTS THAT ARE
15 HERE HAVE ANYTHING TO DO WITH WHAT HAPPENED TO HER. SHE HAS --
16 MAY HAVE SOME ACTION AGAINST WALTON COUNTY, BUT IT'S NOT AS TO
17 GWINNETT COUNTY OR TO ANY OF THE STATE DEFENDANTS THAT ARE
18 INVOLVED IN THIS CASE.

19 AND, FINALLY, ON THE MARTIN PLAINTIFFS, WE HAVE ISSUES
20 THERE AS FAR AS THERE'S ONLY TWO INDIVIDUALS FROM GWINNETT, AS
21 FAR AS WE CAN SEE. ONLY ONE IS PLANNING TO ENGAGE IN THE
22 ABSENTEE BALLOT PROCESS. I APOLOGIZE. I HAVE NOT REVIEWED THE
23 ISSUES ON CANDIDATE STANDING THAT MR. BROWN CITED, SO I'M NOT
24 AWARE OF THE ABILITY THERE. BUT ULTIMATELY FOR THE INDIVIDUAL
25 PLAINTIFFS, EVEN MS. BOWERS, THE -- AS WE PUT IN MS. LEDFORD'S

1 DECLARATION, WHO'S THE ONE VOTER IN GWINNETT COUNTY WHO SAID
2 THAT SHE IS GOING TO BE VOTING BY ABSENTEE BALLOT, HAS NOT YET
3 APPLIED FOR AN ABSENTEE BALLOT. SO WE'RE IN A SCENARIO WHERE
4 NONE OF THE INDIVIDUAL PLAINTIFFS HAVE CONTACTED GWINNETT
5 COUNTY ABOUT GETTING AN ABSENTEE BALLOT OR BEGINNING THAT
6 PROCESS. AND THEN THE OTHER COUNTIES THAT THEY'RE ALLEGING
7 THERE ARE PROBLEMS IN FULTON COUNTY AND IN MORGAN COUNTY,
8 THOSE -- THOSE COUNTIES ARE NOT HERE. AND SO, AGAIN, TO YOUR
9 HONOR'S QUESTION EARLIER ABOUT ENJOINING THE SECRETARY VERSUS
10 ENJOINING ALL THE COUNTIES, THERE IS A SERIOUS ISSUE IN THIS
11 CASE OF DETERMINING -- IF THE COUNTY BOARDS OF ELECTIONS ARE
12 THE ONES SOLELY RESPONSIBLE FOR THE REVIEW OF THESE DOCUMENTS,
13 AND YOU ENTER AN INJUNCTION AS TO THE PARTIES IN THIS CASE,
14 THAT ONLY BINDS ONE COUNTY BOARD OF ELECTIONS AND NOT THE OTHER
15 158 COUNTIES. AND WE WOULD HAVE A SERIOUS CONCERN ABOUT THE
16 OVERALL DISPARATE TREATMENT OF VOTERS IF THERE'S GOING TO BE
17 ONE PROCESS IN GWINNETT COUNTY AND A DIFFERENT PROCESS IN THE
18 REMAINDER OF THE STATE.

19 THE COURT: IN TERMS OF AN INJUNCTION THAT'S DIRECTED
20 AT THE SECRETARY OF STATE IN HIS OFFICIAL CAPACITY IN TERMS OF
21 ELECTIONS, I ASSUME THAT GWINNETT COUNTY BOARD OF ELECTIONS, IF
22 THE SECRETARY OF STATE TELLS THEM TO DO SOMETHING WITH RESPECT
23 TO ELECTIONS THAT'S REQUIRED THAT THE COUNTY DOES, THEN IT IN
24 FACT FOLLOWS THOSE INSTRUCTIONS; IS THAT CORRECT?

25 MR. TYSON: ALMOST, YOUR HONOR. GWINNETT COUNTY IS

1 RESPONSIBLE UNDER THE STATUTE FOR FOLLOWING THE STATUTE AS IT'S
2 WRITTEN. AND ALTHOUGH THE SECRETARY OF STATE CAN GIVE
3 GUIDANCE -- AND, MR. WILLARD AND MS. CORREIA CAN ADDRESS THAT
4 POINT -- IT IS STILL ON THE COUNTIES. AND WHILE GWINNETT
5 COUNTY WILL CERTAINLY FOLLOW WHATEVER DIRECTION WE'RE GIVEN, WE
6 WANT EVERYBODY TO BE ABLE TO VOTE, AND WE'LL FOLLOW WHATEVER
7 INSTRUCTIONS WE ARE GIVEN. THERE MAY BE COUNTIES WHERE THE
8 COUNTY ATTORNEY ADVISES THE COUNTY ELECTIONS OFFICIALS TO
9 FOLLOW THE STATUTE INSTEAD OF GUIDANCE FROM THE SECRETARY OF
10 STATE BECAUSE IT'S NOT BINDING. SO I'LL ALLOW THE ATTORNEY
11 GENERAL'S OFFICE TO ADDRESS THAT POINT IN MORE DETAIL. BUT AS
12 FAR AS GWINNETT, WE WOULD CERTAINLY FOLLOW WHATEVER DIRECTION
13 WE WERE GIVEN BY THE COURT OR BY THE SECRETARY.

14 YOU ASKED A QUESTION EARLIER, YOUR HONOR, BRIEFLY ABOUT
15 THE CLASS ACTION ISSUE, AND THAT KIND OF ALSO IS RELATED TO
16 THIS. WE DON'T THINK THAT THERE'S ANY NEED TO CERTIFY A CLASS.
17 WE AGREE ON THAT AND DON'T THINK THAT GWINNETT WOULD BE A
18 PROPER CLASS REPRESENTATIVE. WE ALSO DO NOT BELIEVE THAT
19 GWINNETT COUNTY SHOULD BE RESPONSIBLE IF THE PLAINTIFFS SEEK
20 THEIR ATTORNEY'S FEES IN THIS ACTION. WE WERE APPARENTLY THE
21 ONLY COUNTY SUED BECAUSE WE WERE IN THE NEWS, BUT THE -- AS
22 WE'VE SEEN IN THE DISCUSSION, THE STATUTE, WE'RE FOLLOWING A
23 STATE STATUTE THAT HAS GIVEN US DIRECTION ABOUT WHAT TO DO. SO
24 WE DON'T THINK WE'RE A PROPER CLASS REPRESENTATIVE. AND THE
25 PLAINTIFFS HAVE NOT MADE ANY ALLEGATION THAT WE'RE NOT

1 FOLLOWING THE STATE STATUTE AT THIS POINT. OUR PRIMARY
2 CONCERN, AGAIN, IS WE'RE 11 DAYS FROM THE END OF THE ABSENTEE
3 BALLOTING PERIOD THAT IS 45 DAYS LONG. AND IF WE NOW BEGIN A
4 PROCESS WHERE WE'RE GOING TO HAVE TO HAVE AN ADDITIONAL RELIEF
5 PUT IN PLACE, IT'S GOING TO PUT AN EXTREME BURDEN ON ALREADY
6 OVERWORKED ELECTION OFFICIALS WHO ARE WORKING AS HARD AS THEY
7 CAN TO GET THIS ELECTION DONE CORRECTLY.

8 I KNOW THAT THERE'S BEEN DISCUSSION ABOUT KIND OF THE
9 MINOR NATURE OF THE MARTIN CLAIMS, PLAINTIFFS' RELIEF THAT
10 THEY'RE SEEKING. THE PRIMARY THING WE'D SAY THERE IS WHILE
11 THE -- THE -- IN THEORY THE RELIEF IS MINOR AND WITH A
12 REASONABLE IMPLEMENTATION SCHEDULE IT PROBABLY IS EXTREMELY
13 MINOR, AT THIS POINT IN AN ELECTION ANY CHANGE IN A PROCESS
14 THAT AFFECTS WHAT'S CURRENTLY HAPPENING IS VERY MAJOR FOR
15 ELECTIONS OFFICIALS. WE'VE ALREADY TRAINED THE POLL WORKERS.
16 THE PREPARATION FOR ALL THE PRECINCTS HAS ALREADY OCCURRED. TO
17 THEN TRY TO CHANGE PROCESSES AT THIS POINT COULD LEAD TO
18 SIGNIFICANT VOTER CONFUSION AND DISRUPTION IN THE PROCESS. AND
19 THAT'S NOT SOMETHING WE WANT TO SEE. WE KNOW THE COURT DOESN'T
20 WANT TO SEE THAT EITHER. WE WANT TO MAKE SURE THAT THIS
21 ELECTION CAN GO FORWARD. AND THAT'S WHY WE WOULD REQUEST THAT
22 THE COURT DENY THE PRELIMINARY INJUNCTION PLAINTIFFS ARE
23 SEEKING. THE ELECTION IS UNDER WAY. WE CAN LEAVE THE RULES IN
24 PLACE AND THEN PROCEED WITH WHAT WE HAVE. BUT IF THE COURT
25 GIVES US DIRECTION, WE'LL OF COURSE FOLLOW THE DIRECTION THAT

1 WE'RE GIVEN BY THE COURT. AND, WITH THAT, I'LL HAND THINGS
2 OVER TO MR. WILLARD TO DISCUSS THE PUBLIC INTEREST ISSUES AND
3 THEN THE INTEREST RELATED TO LACHES.

4 THE COURT: OKAY. THANK YOU VERY MUCH.

5 MR. TYSON: THANK YOU, YOUR HONOR.

6 THE COURT: THE GROUP THAT GOES SECOND GETS LESS
7 QUESTIONS BECAUSE YOU'VE ALREADY HEARD MY QUESTIONS. SO IT'S
8 NOT THAT I HAVE LESS QUESTIONS, IT'S JUST THAT YOU'VE ALREADY
9 HEARD THEM, SO...

10 MR. WILLARD: WELL, YOUR HONOR, YOU KNOW, I WILL SAY
11 AS A YOUNG CHILD I DID COMPETITIVE SWIMMING. AND YOU ALWAYS
12 PUT THE WEAKEST SWIMMER IN THE MIDDLE OF THE RELAY. THAT'S HOW
13 I VIEW MYSELF IN THIS SITUATION. YOUR HONOR, SEPTEMBER 18TH,
14 2018, ABSENTEE VOTING BEGAN IN THE STATE OF GEORGIA.
15 OCTOBER 9TH, 2018, REGISTRATION CLOSED. OCTOBER 15TH, 2018,
16 ADVANCED IN-PERSON OR EARLY IN-PERSON ABSENTEE VOTING BEGAN.
17 IT WAS ONLY AFTER ALL THAT HAD OCCURRED WHEN PLAINTIFFS ELECTED
18 TO BEGIN FILING THESE SUITS ASKING FOR A CHANGE IN A PROCESS
19 THAT HAS BEEN IN PLACE FOR TWO DECADES, IN SUBSTANTIALLY
20 SIMILAR FORM WITH APPARENTLY SUBSTANTIALLY SIMILAR APPLICATION.
21 THEY ARE CHOOSING NOW. AND WE CAN ARGUE WHERE ON THE DOOMSDAY
22 CLOCK THIS IS, WHETHER WE'RE AT 11:57 OR WHETHER WE'RE AT
23 11:59 AND 30 SECONDS ON THE DOOMSDAY CLOCK, BUT WE ARE WELL
24 ALONG IN THE PROCESS FOR THIS ELECTORAL CYCLE. AND TO CAUSE A
25 CHANGE AT THIS POINT, A RADICAL CHANGE IN THE ABSENTEE PROCESS

1 THAT HAS BEEN THE RESULT OF MONTHS OF TRAINING TO GET TO THIS
2 POINT, YOU HAVE MANDATORY STATE TRAINING FOR THE SUPERVISORY
3 PERSONNEL IN THE COUNTY, THEN YOU HAVE COUNTY LEVEL TRAINING TO
4 TRAIN EVERYONE DOWN TO THE POLL WORKERS ON WHAT THE PROCESSES
5 ARE THAT ARE GOING TO GOVERN THIS ELECTION CYCLE. IT IS TOO
6 LATE FOR PLAINTIFFS TO COME IN NOW AND ASK THIS COURT TO
7 FUNDAMENTALLY ALTER THAT PROCESS.

8 THE COURT: WHY WOULD THE PROCESS BE FUNDAMENTALLY
9 ALTERED IF THE EXISTING APPELLATE PROCESS THAT IS ALREADY IN
10 PLACE FOR THE DISQUALIFICATION OF VOTERS IN THE ABSENTEE
11 PROCESS IS APPLIED TO THE REJECTION BECAUSE OF THE SIGNATURE
12 MISMATCH?

13 MR. WILLARD: MS. CORREIA AND I WERE PASSING NOTES
14 WHEN YOU HAD FIRST RAISED THE 230(G) APPEAL PROCESS. I THINK
15 SHE'S GOING TO ADDRESS IT IN GREATER DETAIL.

16 THE COURT: OKAY. REMIND ME WHAT YOUR AREA IS.

17 MR. WILLARD: I'M GOING TO BE ADDRESSING LACHES AND
18 THE HARM TO THE STATE DEFENDANTS AND THE 158 OTHER COUNTIES OUT
19 THERE IF THE PLAINTIFFS' REQUESTED RELIEF IS GRANTED IN THIS
20 CASE.

21 THE COURT: OKAY. GOT IT. THANK YOU.

22 MR. WILLARD: WHILE THE RIGHT TO VOTE IS CRITICALLY
23 IMPORTANT AND NO ONE FOR THE STATE DEFENDANTS IS ARGUING
24 AGAINST THAT POINT, IT IS EQUALLY AND ALSO CRITICALLY IMPORTANT
25 THAT WE MAINTAIN THE INTEGRITY OF THE ELECTION PROCESS. ALONG

1 THOSE LINES, LACHES HAS TWO ELEMENTS THAT COURTS ARE TO LOOK
2 AT. THE FIRST IS WHETHER THERE HAS BEEN A LACK OF DILIGENCE ON
3 THE PART OF THE PLAINTIFFS. AND, SECOND, IS THE PREJUDICE TO
4 THE NON-MOVING PARTY. THE PLAINTIFFS, AS I MENTIONED, ARE
5 CHALLENGING A STATUTE THAT HAS BEEN ON THE BOOKS FOR TWO
6 DECADES IN GEORGIA. THERE HAS NOT BEEN A CHALLENGE IN THE PAST
7 TO IT. IT IS ONLY AT THIS POINT, GIVEN A NEW STORY -- AND I'M
8 NOT GOING TO CALL INTO QUESTION THE PLAINTIFFS' MOTIVES FOR
9 BRINGING THIS CASE. IT MAY BE THAT A LIGHT BULB WENT OVER
10 THEIR HEAD WHEN THEY SAW THE MEDIA REPORTS, AND SAID, HEY,
11 LET'S -- LET'S GO FILE SUIT NOW THAT WE HAVE GOTTEN PUBLIC
12 INTEREST IN THIS ISSUE AND WE THINK WE MAY HAVE A VIABLE CLAIM
13 GOING FORWARD. BUT THEY ARE SEEKING AN EMERGENCY MOTION TO
14 AFFECT A VOTING PERIOD THAT IS OVER TWO-THIRDS COMPLETED.
15 THEY'RE NOT ONLY ASKING FOR PERSPECTIVE RELIEF, BUT EVERY ONE
16 OF THE PLAINTIFFS IS ASKING US TO GO BACK OR ASKING THE
17 COUNTY -- BOTH THE COUNTY THAT'S HERE, AS WELL AS ALL THE
18 UNREPRESENTED COUNTIES HERE, TO GO BACK AND ALTER WHAT THEY
19 HAVE DONE OR AT LEAST REDO EVERYTHING THAT THEY'VE DONE DURING
20 THE FIRST TWO-THIRDS OF THE VOTING PROCESS.

21 THE LAWYERS FOR THE PLAINTIFFS, THE ORGANIZATIONAL
22 PLAINTIFFS HAVE BEEN FREQUENT LITIGATORS AGAINST THE STATE OVER
23 THE LAST TWO ELECTION CYCLES. THEY ARE FAMILIAR WITH THE
24 PARAMETERS OF GEORGIA ELECTION LAW. MR. YOUNG SAID IT WAS
25 ABOUT PRIORITIZING THE ARGUMENTS THAT THEY WERE GOING TO MAKE

1 AND THE FOCUS OF THEIR ATTENTION. WELL, THAT'S FINE AND I HAVE
2 NO SAY IN HOW THE ORGANIZATIONAL PLAINTIFFS APPORTION THEIR
3 RESOURCES. BUT AS THE U.S. SUPREME COURT AND CIRCUIT COURTS
4 AROUND THE COUNTRY HAVE SAID, WHEN YOU'RE TALKING ABOUT THE
5 ELECTORAL PROCESS, THERE MAY VERY WELL BE SITUATIONS WHERE YOU
6 HAVE PROCESSES OR PRACTICES IN PLACE THAT MAY BE
7 CONSTITUTIONALLY INFIRMED, BUT THE COURTS ARE GOING TO DECLINE
8 TO INTERVENE BECAUSE OF THE PUBLIC'S RIGHT AND THE STATE'S
9 RIGHT TO HAVE A ELECTION PROCESS THAT MAINTAINS THE INTEGRITY
10 THAT THE PEOPLE'S REPRESENTATIVES HAVE BUILT INTO THE PROCESS.

11 THE COURT: WHY IS HAVING AN APPEALS PROCESS NOT
12 MAINTAINING THE INTEGRITY OF THE ELECTION PROCESS?

13 MR. WILLARD: YOUR HONOR, LIKE I SAID --

14 THE COURT: OKAY. YOU'RE JUST SAYING THAT THERE'S
15 NOT GOING TO BE ANY INTEGRITY, SO --

16 MR. WILLARD: WELL, IN TERMS OF -- THAT'S NOT -- I
17 UNDERSTAND THAT YOU'RE FOCUSED ON, AS THE PLAINTIFFS CONCEDE,
18 NINE ELECTORS OR PUTATIVE ELECTORS IN GWINNETT COUNTY, THAT IS,
19 IN TERMS OF THE SIGNATURE MISMATCH. BUT AS THE MARTIN
20 PLAINTIFFS CAME UP HERE AND ARE ARGUING BEFORE THE COURT, THAT
21 IS NOT THE EXTENT OF THE REMEDY THAT THEY'RE SEEKING. THEY'RE
22 WANTING TO CHALLENGE THE BIRTH DATE OR ANY OF THE OMITTING
23 INFORMATION THAT GOES TO DETERMINING WHETHER THE PERSON WHO HAS
24 SUBMITTED THAT ABSENTEE BALLOT IS IN FACT THE PERSON WHO IS THE
25 REGISTERED VOTER.

1 THE COURT: OKAY. WELL, AS I SAID AT THE OUTSET AND
2 I WAS DISCUSSING WITH MR. BROWN, YOU CAN CERTAINLY USE YOUR
3 TIME TO ADDRESS THAT. I'M MUCH MORE LIKELY TO GIVE THE STATE
4 DEFENDANTS AN OPPORTUNITY TO BRIEF THAT ISSUE FULLY AND NOT
5 DECIDE THAT IN TERMS OF THE ORDER I'M GOING TO BE ISSUING. SO
6 THE ORDER I'M REALLY FOCUSED ON TODAY IS LESS THIS OVERARCHING
7 SCHEME AND MORE THIS MORE NARROW LOOK AT THINGS.

8 MR. WILLARD: I APPRECIATE THAT, YOUR HONOR, AND I
9 THANK YOU FOR THAT REPEATED GUIDANCE. I DO HAVE A QUESTION,
10 YOUR HONOR. I DON'T WANT TO INFRINGE ON MS. CORREIA'S TIME.
11 IS THERE IN FACT A TIMER THAT I AM SUPPOSED TO BE LOOKING AT?

12 THE COURT: YES, IT'S THAT ONE TO THE LEFT.

13 MR. WILLARD: OH, OKAY.

14 THE COURT: THERE YOU GO.

15 MR. WILLARD: THANK YOU.

16 THE COURT: IT'S OLD-FASHIONED. IT'S AN ACTUAL CLOCK
17 TIMER, SO...

18 MR. WILLARD: NO PROBLEM. THANK YOU. IN TERMS OF
19 THEY ACTUALLY HAVE TO ESTABLISH THAT THEY HAVE NOT BEEN
20 DILATORY IN BRINGING THIS ACTION --

21 THE COURT: AND THEIR ARGUMENT ON THAT IS THAT THEY
22 HAD NO IDEA THAT THIS WAS GOING ON. SO THE SECOND THEY HAD AN
23 IDEA THAT THIS WAS HAPPENING, THEN THEY IMMEDIATELY WENT AHEAD
24 AND MOVED FORWARD WITH THEIR CASE. SO WHAT IS THE REQUIREMENT
25 UNDER THE LAW THAT -- THEIR ARGUMENT AT LEAST IS THAT AS AN

1 ORGANIZATION THEY'RE NOT GOING TO BE KIND OF SEARCHING THE LAW
2 LOOKING FOR POTENTIAL PROBLEMS, AND THAT IN TERMS OF LACHES,
3 THE SECOND THEY LEARNED ABOUT THIS, THEY FILED SUIT, AND THAT'S
4 ENOUGH TO GET THEM BY?

5 MR. WILLARD: YOUR HONOR, NOT TO BE FLIPPANT, BUT I
6 WOULD SAY IN TERMS OF THE NUMBER OF CASES THAT MY SECTION HAS
7 LITIGATED AGAINST THE ORGANIZATIONAL PLAINTIFFS OVER THE PAST
8 TWO ELECTION CYCLES, IF THEY ARE INDEED NOT LOOKING FOR
9 POTENTIAL PROBLEMS IN GEORGIA ELECTION CODE, THEN THEY --

10 THE COURT: I GUESS THE QUESTION IS, IS THERE A
11 REQUIREMENT THAT THEY DO SO?

12 MR. WILLARD: WELL, I THINK THAT WHEN THEY ARE
13 FAMILIAR WITH THE PROCESS, THEY HAVE GONE, IN MY OPINION, WITH
14 A FINE-TOOTH COMB BASED ON THE NUMBER OF CASES THAT WE HAVE
15 LITIGATED AGAINST THEM OVER THE LAST TWO ELECTION CYCLES,
16 IDENTIFYING POTENTIAL INFIRMITIES IN GEORGIA'S ELECTION CODE.
17 IN THIS INSTANCE YOU HAVE A PROCESS THAT HAS BEEN IN PLACE.
18 2014 --

19 THE COURT: AND IN SPEAKING ABOUT THE MUSLIM VOTER
20 PROJECT AND --

21 MR. WILLARD: ACTUALLY IT'S LAWYER'S COMMITTEE AND
22 THE GEORGIA COALITION, YOUR HONOR.

23 THE COURT: OKAY.

24 MR. WILLARD: AND A.C.L.U. HAS ALSO LITIGATED AGAINST
25 US, ESPECIALLY THIS ELECTION CYCLE.

1 THE COURT: BUT I DON'T LOOK AT THE LAWYERS. I LOOK
2 AT THE PARTIES.

3 MR. WILLARD: I UNDERSTAND.

4 THE COURT: OKAY. BUT YOUR ARGUMENT THAT THESE
5 PARTIES HAVE BEEN EXTENSIVELY INVOLVED IN VOTER LITIGATION, IS
6 THAT ALSO DIRECTED AT THE GEORGIA MUSLIM VOTER PROJECT AND THE
7 ASIAN-AMERICANS ADVANCING JUSTICE? AND THE REASON I ASK THAT
8 IS BECAUSE I REMEMBER ONE OF YOUR AFFIDAVITS SAYING THAT ONE OF
9 THE DEFENDANTS FILED THAT NO ONE HAD EVER HEARD OF THESE
10 ORGANIZATIONS BEFORE.

11 MR. WILLARD: I THINK THAT WAS THE GWINNETT COUNTY
12 SUPERINTENDENT.

13 THE COURT: OKAY. SO THESE GROUPS HAVE BEEN INVOLVED
14 IN THIS LITIGATION?

15 MR. WILLARD: IF I COULD HAVE ONE SECOND, YOUR HONOR?

16 THE COURT: CERTAINLY.

17 MR. WILLARD: FOR THE ORGANIZATIONAL PLAINTIFFS AT
18 ISSUE, AT LEAST IN THE G.M.V.P. CASE, YOUR HONOR, WE'RE -- WE
19 CONCEDE THAT THOSE ORGANIZATIONAL PLAINTIFFS HAVE NOT LITIGATED
20 AGAINST THE STATE.

21 THE COURT: OKAY. I THOUGHT SO. THAT MAKES SENSE.

22 MR. WILLARD: IN TERMS OF THE SECOND PRONG OR THE
23 LACHES --

24 THE COURT: GOING BACK TO MY QUESTION, IS THERE A
25 REQUIREMENT FOR THEM TO BE -- BECAUSE THEY'RE SAYING THAT THE

1 LACHES ONLY KICKS IN WHEN THEY HEARD THAT THERE WAS A PROBLEM
2 AND THAT THERE'S NO REQUIREMENT FOR THEM TO KIND OF GO THROUGH
3 THIS AND HAVE KNOWN THAT THIS WAS GOING ON, THAT'S THEIR
4 RESPONSE TO WHAT YOU'VE RAISED. AND I DIDN'T KNOW IF YOU
5 WANTED TO ADDRESS THAT.

6 MR. WILLARD: WELL, YOUR HONOR, I THINK -- AND THE
7 COURTS, ESPECIALLY THE APPELLATE COURTS, HAVE BLENDED THE
8 ANALYSIS OF WHETHER THEY ARE GOING TO DECLINE TO ORDER
9 EMERGENCY RELIEF BASED ON EITHER A LACHES ANALYSIS OR SORT OF
10 ALMOST A COMITY ARGUMENT WHERE THEY'RE GOING TO REFRAIN FROM
11 INTERJECTING THE COURT INTO A PROCESS THAT IS ALREADY WELL
12 UNDER WAY. BUT YOU HAVE A SITUATION WHERE COURTS HAVE LOOKED
13 AT THE FACT THAT WHERE YOU HAVE A STATUTORY SCHEME THAT HAS
14 BEEN IN PLACE THAT IS CONTINUING AND HASN'T BEEN SIGNIFICANTLY
15 ALTERED IN TERMS OF EITHER ITS PARAMETERS OR ITS APPLICATIONS,
16 THAT THE COURT IS NOT GOING -- THE COURT IS GOING TO ATTRIBUTE
17 THAT MUCH LIKE ANY SORT OF STATUTORY FRAMEWORK, EVERY -- THAT
18 KNOWLEDGE IS IMPUTED IN TERMS OF HOW IT'S BEEN APPLIED IN THE
19 PAST AND WHAT ITS PARAMETERS ARE IN TERMS OF --

20 THE COURT: IT WOULD SEEM THAT THAT ARGUMENT WOULD BE
21 THAT AS LONG AS A STATUTE IS VERY OLD, YOU CAN'T CHALLENGE THE
22 CONSTITUTIONALLY OF IT IF IT HAS TO DO WITH VOTING.

23 MR. WILLARD: EXCEPT THAT IN THIS CASE, YOUR HONOR,
24 AND I BELIEVE THAT WE HAVE IDENTIFIED FROM MR. HARVEY'S
25 AFFIDAVIT THAT SIGNATURE MISMATCH HAS BEEN UTILIZED IN THE PAST

1 TO REJECT ABSENTEE BALLOTS.

2 THE COURT: BUT WHAT I'M SAYING IS ISN'T YOUR
3 ARGUMENT THAT IF SOMETHING IS REALLY OLD AND BEEN HAPPENING FOR
4 A LONG TIME, NO ONE CAN CHALLENGE IT EVEN IF IT'S
5 UNCONSTITUTIONAL?

6 MR. WILLARD: YOUR HONOR, LIKE I SAID, I -- YOU'RE
7 TALKING ABOUT -- I'M SAYING THAT THE APPELLATE COURTS HAVE
8 BLENDED THE ARGUMENT IN TERMS OF WHAT THEY'RE GOING TO LOOK AT.
9 WHETHER THEY EMPLOY A LACHES TYPE ANALYSIS OR IT'S SIMPLY
10 TALKING ABOUT COMITY, THEY ARE LOOKING AT IT AND SAYING THE
11 FRAMEWORK HAS BEEN IN PLACE, THE APPLICATION HAS BEEN
12 CONSISTENT THROUGH THE ELECTION CYCLES AND, THEREFOR, AT LEAST
13 WHEN YOU'RE TALKING ABOUT SOMETHING THAT IS LITERALLY TWO WEEKS
14 OUT FROM THE ELECTION, THE COURTS ARE GOING TO DECLINE TO
15 INTERVENE AT THIS POINT AND ALTER A PROCESS THAT IS ALREADY
16 TAKING PLACE.

17 THE COURT: BUT THAT SOUNDS LIKE -- LACHES, THE WAY I
18 UNDERSTAND IT, YOU'RE SAYING THAT FOR A TEMPORARY RESTRAINING
19 ORDER OR PRELIMINARY INJUNCTION THERE COULDN'T BE LACHES
20 BECAUSE OF THE COMBINATION OF AN OLD STATUTE WITH AN IMPENDING
21 ELECTION. BUT LET'S SAY THAT I DENY THE TEMPORARY RESTRAINING
22 ORDER AND THE CASE KEEPS GOING FORWARD, I FEEL CERTAIN THAT YOU
23 WOULD STILL ARGUE LACHES, AND THEN WE WOULDN'T EVEN HAVE THE
24 ELECTION THAT WE WERE STARING IN THE FACE. I DIDN'T THINK
25 LACHES WAS SUCH A SITUATIONALLY DEPENDENT CONSTITUTIONAL

1 DEFENSE.

2 MR. WILLARD: CORRECT, YOUR HONOR. AND, LIKE I SAID,
3 I'M TRYING TO FOCUS MY ARGUMENTS TODAY ON JUST THE EMERGENCY
4 RELIEF IN TERMS OF WHY THIS COURT SHOULD FOREGO ORDERING RELIEF
5 TODAY. BUT IT IS PART OF THE LACHES ARGUMENT THAT THEN BLENDS
6 INTO WHETHER THEY HAVE FAILED TO ESTABLISH THE FOURTH PRONG FOR
7 EMERGENCY RELIEF, THE PUBLIC POLICY IN TERMS OF WHAT SHOULD BE
8 GOING FORWARD, WHETHER IT'S IN THE PUBLIC INTEREST TO ORDER THE
9 RELIEF, AS WELL AS THE COURT'S DESIRE NOT TO INTERFERE WITH A
10 PROCESS THAT IS ALREADY IN PLACE THAT THE STATE'S
11 REPRESENTATIVES HAVE DETERMINED THE PARAMETERS FOR EACH
12 INDIVIDUAL STATE AS TO WHAT ARE GOING TO BE THE SAFEGUARDS IN
13 PLACE TO PROTECT THE INTEGRITY OF THE ELECTORAL PROCESS.

14 IT IS WITHOUT QUESTION THAT THE STATE HAS AN INTEREST IN
15 VERIFYING THE IDENTITY OF VOTERS, WHETHER IT IS IN-PERSON
16 VOTING BY REQUIRING THEY SUBMIT THE PHOTO I.D., OR AN ABSENTEE
17 VOTING WHERE THE STATE HAS MADE THE POLICY DETERMINATION THAT
18 IT REALLY BOILS DOWN TO TWO FACTORS. YOU'RE GOING TO PUT THE
19 YEAR OF BIRTH, WHICH IS CLEARLY DESIGNATED ON THE FORM, ON THAT
20 BLANK, AS PLACING THE YEAR OF BIRTH, AND THEN THE SIGNATURE OF
21 THE VOTER. AND THE SIGNATURE OF THE VOTER NEEDS TO MATCH THE
22 REGISTRATION CARD TO DETERMINE THAT THE IDENTITY OF THE PERSON
23 SUBMITTING THAT BALLOT IS IN FACT THE PERSON WHO REGISTERED AS
24 A VOTER. WE HAVE HAD A NUMBER OF CASES OVER THE LAST SEVERAL
25 ELECTION CYCLES WHERE YOU HAVE AN INDIVIDUAL WHO HAS VOTED AN

1 ABSENTEE BALLOT --

2 THE COURT: EXCUSE ME. IS THERE A RECORDING PLAYING?
3 OR I GUESS SOMEONE'S ON THE PHONE OUTSIDE THE DOOR. I DON'T
4 KNOW. I CAN JUST HEAR SOMETHING.

5 COURT SECURITY OFFICER: I THINK THEY'RE RECORDING.

6 THE COURT: YEAH, IS SOMEONE PLAYING SOMETHING?

7 COURTROOM DEPUTY CLERK: IT'S CONNECTED TO OUR SOUND
8 SYSTEM.

9 MR. BROWN: IT SOUNDS LIKE JUDGE BATTEN.

10 THE COURT: WELL, THAT'S FINE. I JUST HEARD
11 SOMETHING, AND I DIDN'T KNOW WHERE IT WAS COMING FROM. IT MUST
12 BE SOMETHING IN OUR MICROPHONE SYSTEM. I GUESS WE'VE BEEN
13 HACKED BY SOMEBODY AND THEY'RE MAKING ARGUMENTS THAT WE CAN'T
14 HEAR, SO, OKAY. I'M SORRY TO INTERRUPT YOU. I JUST COULD HEAR
15 SOMETHING, AND DIDN'T KNOW WHERE IT WAS COMING FROM.

16 MR. WILLARD: NO. AND, YOUR HONOR, I HEARD THE SAME
17 THING, BUT I APPRECIATE THAT.

18 THE COURT: IT'S FINE. WE'LL IGNORE IT.

19 MR. WILLARD: THE BALANCE THAT THE STATE HAS STRUCK
20 IS THAT IT WILL AUTHORIZE ABSENTEE BALLOTS PROVIDED THAT YOU
21 MEET THOSE RELATIVELY DE MINIMIS REQUIREMENTS, AND, THAT IS,
22 YOU PROVIDE THE YEAR OF BIRTH SO THAT WE CAN VERIFY THAT YOU
23 HAVE AT LEAST BASIC INFORMATION ESTABLISHING THAT YOU KNOW THIS
24 INDIVIDUAL OR YOU ARE THIS INDIVIDUAL, AND THEN THE SIGNATURE
25 MATCHING ON THE ABSENTEE BALLOT CARD --

1 THE COURT: WE'LL IGNORE IT.

2 MR. WILLARD: I'M SORRY, YOUR HONOR.

3 THE COURT: OUR I.T. GUY IS FLYING AROUND. HE MAY
4 CORRECT IT, SO...

5 MR. WILLARD: THANK YOU. AND YOUR HONOR HAS ALLUDED
6 TO THE PROBLEM, OR WHAT THE COURT HAS IDENTIFIED AS A POTENTIAL
7 PROBLEM, IN TERMS OF SOMEONE WHOSE SIGNATURE HAS CHANGED OR
8 SOMEONE WHO HAS CHANGED IN TERMS OF PHYSICAL APPEARANCE OR YOU
9 EVEN MENTIONED THEY JUST WANT TO CHANGE WHAT THEIR SIGNATURE
10 IS. AND THERE ARE MECHANISMS IN PLACE FOR INDIVIDUALS WHO ARE
11 AFFECTED BY THAT TO UPDATE THEIR REGISTRATION. IF -- IT'S NOT
12 DIFFERENT THAN IF MY MOTHER HAS BEEN LIVING IN THE SAME HOME
13 FOR 40 YEARS AND SHE MOVES TO A RETIREMENT VILLA OR SHE IS
14 FORCED TO MOVE INTO AN ASSISTED CARE HOME. SHE'S GOING TO
15 UPDATE HER REGISTRATION INFORMATION TO REFLECT THAT HER ADDRESS
16 HAS CHANGED SO THAT SHE CAN BE UPDATED WITH PRECINCT
17 INFORMATION SO THAT SHE CAN VOTE WHO THE INDIVIDUALS WHO ARE
18 GOING TO BE AFFECTING HER AT THAT POINT, AS OPPOSED TO THOSE
19 WHO WERE AFFECTING HER AT HER OLD ADDRESS. IT IS NO DIFFERENT
20 IF YOU HAVE SOMEONE WHO HAS A POTENTIAL INFIRMITY THAT HAS
21 AFFECTED THEIR ABILITY TO SIGN THEIR SIGNATURE. I KNOW THAT
22 BOTH MY PARENTS AND MY IN-LAWS ARE GETTING INTO ADVANCED AGE.
23 I KNOW FOR A FACT THAT MY FATHER-IN-LAW, HIS SIGNATURE FROM
24 WHEN I FIRST MET MY WIFE IS RADICALLY DIFFERENT THAN IT IS NOW,
25 BUT THERE IS A MECHANISM IN PLACE WHERE HE CAN UPDATE HIS

1 REGISTRATION --

2 THE COURT: BUT THE PROBLEM I HAVE WITH THAT TO SOME
3 EXTENT IS A TIMING ISSUE. AND, AGAIN, WE'RE TALKING ABOUT THE
4 RIGHT TO VOTE, SO IT'S A VERY IMPORTANT ISSUE. AND SOMEONE
5 APPLIES TO GET AN ABSENTEE BALLOT -- I HAVE TO SAY, AND I DON'T
6 WANT TO ADD TOO MUCH OF MYSELF INTO THAT BECAUSE THAT'S NOT
7 APPROPRIATE, BUT THE IDEA THAT SOMEONE WOULD BE CHECKING MY
8 18-YEAR-OLD SIGNATURE DIDN'T REALLY CROSS MY MIND AND I ASSUME
9 IT WOULDN'T CROSS THE MIND OF A LOT OF PEOPLE THAT CHOOSE TO
10 VOTE IN AN ABSENTEE BALLOT. AND THEY GET THE REJECTION OF
11 THEIR VOTE, THEY CAN'T VOTE IN PERSON AND THERE'S NO WAY TO FIX
12 THE PROBLEM AND PROVE THAT IT'S THEM. I DON'T HAVE ANY PROBLEM
13 WITH THE SIGNATURE REQUIREMENT AS A WAY TO MAKE SURE THERE'S NO
14 VOTER FRAUD. THAT MAKES SENSE TO ME. BUT WHEN YOU HAVE A
15 PERSON THAT IS THAT PERSON AND THEY'RE FACING A SITUATION OF
16 THEIR VOTE NOT COUNTING AND NOT BEING ABLE TO FIX THE PROBLEM,
17 THE LACK OF A PROCEDURE IN PLACE FOR THAT TIMING PROBLEM
18 CONCERNS ME BECAUSE IT'S TOO LATE THEN TO GO BACK AND CHANGE
19 THE SIGNATURE CARD. SO WHY IS THAT NOT A PROBLEM?

20 MR. WILLARD: WELL, AND I BELIEVE MS. CORREIA WILL
21 ADDRESS THIS IN GREATER DETAIL, BUT I WILL SAY THAT TO THE
22 EXTENT THAT THE COURTS HAVE IDENTIFIED, SUCH AS THE FLORIDA
23 CASE, WHERE THERE WAS A PROBLEM WITH THE ABSENTEE BALLOT, THE
24 FLORIDA CASE REALLY TURNED ON THE FACT THAT YOU WERE TREATING
25 DISPARATELY SIGNATURE MISMATCH FROM AN OMITTED SIGNATURE. AND

1 THE COURT THERE WAS CONCERNED THAT YOU REALLY HAD A PROCESS IN
2 PLACE, A PRE-ELECTION PROCESS IN PLACE IN WHICH THE SIGNATURE
3 WAS OMITTED, AS OPPOSED TO IF THERE WAS A SIGNATURE MISMATCH,
4 IT WAS A POST ELECTION NO REMEDY. YOU WERE NOTIFIED POST
5 ELECTION AND HAD NO REMEDY TO CURE. HERE, EVERYBODY UNIFORMLY
6 IS NOTIFIED IF THERE IS A PROBLEM WITH THEIR SUBMITTED ABSENTEE
7 BALLOT. AND THERE ARE PROCESSES IN PLACE THAT THEY CAN CURE,
8 WHETHER IT'S RESUBMISSION OF AN ABSENTEE BALLOT OR UTILIZING
9 DAY-OF-ELECTION OR ADVANCE IN-PERSON VOTING --

10 THE COURT: HOW CAN A PERSON THAT IS HOME-BOUND
11 CORRECT THE PROBLEM?

12 MR. WILLARD: YOUR HONOR, I WILL SAY THAT I HAVE BEEN
13 AWARE IN THE PAST OF ELECTION SUPERINTENDENTS WHO WILL MAKE
14 EFFORTS IN -- ESPECIALLY IN AREAS OF THE STATE TO ENSURE THAT
15 HOME-BOUND INDIVIDUALS ARE ABLE TO DO IT. IF SOMEONE IS SO
16 PHYSICALLY DISABLED THAT THEY CANNOT EXECUTE A MARK, THERE ARE
17 PROVISIONS IN PLACE TO ALLOW FOR THE ASSISTANCE OF SOMEONE ELSE
18 TO COMPLETE THAT BALLOT FOR THEM AND SIGN AN OATH AS ASSISTING.

19 THE COURT: I'M NOT TALKING ABOUT THEM -- I'M NOT
20 TALKING ABOUT A PERSON THAT CAN'T WRITE AT ALL. I'M TALKING
21 ABOUT A PERSON WHO IS NOT ABLE TO VOTE IN PERSON, THAT PIECE
22 RIGHT THERE, THE PERSON THAT'S NOT ABLE TO VOTE IN PERSON AND
23 WHO HAS JUST FOUND OUT ABOUT THE SIGNATURE CARD TOO LATE TO
24 SUPPLY A NEW ONE. AND YOU MENTIONED THIS ISSUE THAT SOME
25 PRECINCTS DO PROVIDE ASSISTANCE IN THAT SITUATION, BUT IN A

1 FACIAL ATTACK ON A STATUTE, IT'S MY UNDERSTANDING THAT THAT'S
2 NOT WHAT I DO. I DON'T LOOK AND SEE, WELL, IN SOME PLACES THEY
3 HANDLE IT THIS WAY. SO, AGAIN, IT'S A SMALL PIECE HERE, BUT
4 IT'S THAT PERSON THAT YOUR ARGUMENT HASN'T SEEMINGLY ADDRESSED.

5 MR. WILLARD: YOUR HONOR, I UNDERSTAND, BUT FOR THE
6 EMERGENCY PURPOSES TODAY, YOU HAVE TO TAKE INTO ACCOUNT THE
7 FACT THAT THE SYSTEM IS ALREADY IN PLACE, IS ALREADY OPERATING,
8 AND THAT INDIVIDUAL IS A HYPOTHETICAL PERSON AT THIS POINT, BUT
9 THERE ARE PROCESSES THAT THE GENERAL ASSEMBLY HAS PUT IN PLACE
10 THAT THEY CAN VOTE WHETHER IT'S ASSISTANCE, WHETHER IT IS
11 ADVANCE IN-PERSON, OR WHETHER IT IS DAY-OF-ELECTION VOTING, OR
12 IT'S RESUBMISSION OF THEIR ABSENTEE BALLOT WITH MORE CARE PAID
13 TO THEIR SIGNATURE, THOSE PROCESSES ARE ADEQUATE. AND
14 MS. CORREIA WILL ADDRESS THE DUE PROCESS CONCERNS THERE. BUT I
15 BELIEVE THAT THE STATE'S POSITION IS GOING TO BE THAT THOSE
16 PROCESSES, WE'VE MADE THE POLICY DETERMINATION THAT BY
17 EXTENDING YOU THE RIGHT TO VOTE BY ABSENTEE BALLOT, THOSE ARE
18 THE PROCESSES THAT ARE GOING TO BE IN PLACE FOR THIS ELECTION
19 CYCLE AND THERE ARE ADEQUATE SAFEGUARDS BUILT IN TO ENSURE THAT
20 NO ONE IS DEPRIVED OF THEIR RIGHT TO VOTE BECAUSE OF SOME
21 POTENTIAL OR ALLEGED INFIRMITY IN TERMS OF THEIR ABILITY TO
22 EXECUTE A SIGNATURE THAT WILL MATCH THE REGISTRATION CARD.

23 AS THE MARTIN PLAINTIFFS POINT OUT, YOU'RE TALKING ABOUT
24 NINE INDIVIDUALS IN GWINNETT COUNTY THAT IS THEIR PROBLEM
25 CHILD, THAT IS ALLEGEDLY MOTIVATED BOTH G.M.V.P. PLAINTIFFS, AS

1 WELL AS THE MARTIN PLAINTIFFS, TO BRING THIS ACTION. AND AS
2 YOUR HONOR CAN SEE FROM THE LEDFORD DECLARATION, THIS IS NOT A
3 SITUATION WHERE IT APPEARS THAT THE SIGNATURE WAS DUE TO
4 PARKINSON'S OR SOME OTHER INABILITY TO EXECUTE A SIGNATURE --

5 THE COURT: I THINK THAT'S A PROBLEM WE DON'T KNOW
6 WHAT THE PROBLEM IS.

7 MR. WILLARD: IN THIS CASE, YOUR HONOR, I DON'T SEE
8 HOW PROVIDING THE HEARING IS GOING TO ALLEVIATE THE STATE'S
9 CONCERNS THAT WITHOUT PROVIDING TRAINING TO THESE INDIVIDUALS
10 ON A 230(G) APPEAL AS IT RELATES TO A SIGNATURE MISMATCH, TO
11 PROVIDE A PROCESS WHERE THEY'RE GOING TO HAVE TO DEVOTE
12 RESOURCES TO GET UP TO SPEED IN TERMS OF TRAINING ON HOW TO
13 HANDLE THE 230(G) APPLICATIONS OR THE APPEALS AND TO, AS THE
14 BENISEK COURT, AS THE PURCELL COURT, AND AS THE FOURTH CIRCUIT
15 IN PERRY NOTED, THE ELECTION PROCESS AND BALLOTS DON'T
16 MAGICALLY MATERIALIZE. THIS IS A PROCESS THAT IS ALREADY UNDER
17 WAY. AND THERE IS A PUBLIC INTEREST IN MAINTAINING THE
18 INTEGRITY OF THE PROCESS THAT IS ALREADY UNDER WAY WITHOUT
19 INSERTING AN ADDITIONAL VARIABLE IN AT LITERALLY THE 11TH HOUR.

20 WHETHER YOU COUCH IT AS A FAILURE TO -- OR AS ESTABLISHING
21 THE SECOND PRONG OF THE LACHES ANALYSIS, WHETHER YOU COUCH IT
22 AS THE PLAINTIFFS' FAILURE TO CARRY THEIR BURDEN OF
23 ESTABLISHING THAT THE PUBLIC INTEREST IS SERVED BY THE ENTERING
24 OF AN INJUNCTION, OR WHETHER YOU COUCH IT AS THIS COURT SHOULD
25 REFRAIN FROM GRANTING RELIEF GOING FORWARD BASED ON THE FACT

1 THAT THE ELECTORAL PROCESS IS ALMOST COMPLETE AT THIS POINT,
2 THIS COURT SHOULD DECLINE TO GRANT EMERGENCY RELIEF. THERE IS
3 NO TIME OR AVAILABLE BAND WIDTH IN THE SYSTEM TO PROVIDE ANY OF
4 THE BACK-OF-THE-NAPKIN SCRIBBLING RELIEF REQUEST THAT THE
5 PLAINTIFFS HAVE SOUGHT, WHETHER IT'S THE WEDNESDAY FILING BY
6 THE G.M.V.P. PLAINTIFFS, WHETHER IT'S THE FRIDAY SUBMISSION BY
7 THE MARTIN PLAINTIFFS, OR WHETHER IT'S THE REQUESTED RELIEF
8 THAT WAS FILED THIS MORNING BY THE MARTIN PLAINTIFFS, ALL OF
9 THOSE ARE GOING TO INVOLVE TIME, RESOURCE, AND EXPENSE THAT THE
10 COUNTIES DO NOT HAVE AT THIS POINT TO DEVOTE. THEY ARE RUNNING
11 AT MAXIMUM CAPACITY RIGHT NOW, ESPECIALLY IN LIGHT OF THE
12 INCREASED VOTER PARTICIPATION FOR THIS ELECTION CYCLE. YOU'RE
13 ALREADY -- YOU'VE GOT MS. LEDFORD'S AFFIDAVIT WHERE SHE'S GOT
14 FOLKS WHO ARE WORKING OVERTIME, IN SOME CASES ALMOST DOUBLE
15 HOURS DURING THE DAY TRYING TO MEET THE REQUIREMENTS THAT ARE
16 ALREADY IN PLACE, THAT HAVE ALREADY BEEN TRAINED FOR, THAT HAVE
17 ALREADY BEEN TAKEN INTO ACCOUNT WHEN THIS ELECTORAL PROCESS
18 BEGAN. AND INSERTING ANY HICCUP INTO THAT SYSTEM, WHETHER IT'S
19 THE LIMITED RELIEF THAT THE COURT ASKED THE PARTIES TO
20 CONSTRAIN THEMSELVES ON IN TERMS OF THE SIGNATURE MISMATCH OR
21 WHETHER IT'S THE BROADER RELIEF SOUGHT BY BOTH THE G.M.V.P.
22 PLAINTIFFS AND ESPECIALLY THE MARTIN PLAINTIFFS, THAT HAS THE
23 POTENTIAL TO RADICALLY AFFECT HOW COUNTIES ARE GOING TO BE ABLE
24 TO DISCHARGE THEIR DUTIES. WE'VE ALREADY HAD CASES IN THE
25 S.E.B. WHERE COUNTIES HAVE BEEN BROUGHT BEFORE THE STATE

1 ELECTION BOARD FOR FAILURE TO CERTIFY IN A TIMELY MANNER THEIR
2 ELECTION RESULTS BECAUSE OF A HUGE INFLUX OF PROVISIONAL
3 BALLOTS OR SIGNIFICANTLY MORE ABSENTEE BALLOTS THAN THEY WERE
4 ACCOUNTING FOR, AND IT BEGAN TO EBB INTO WHEN THEY WERE
5 SUPPOSED TO CERTIFY THE ELECTION RESULTS SO THAT WE CAN HAVE A
6 STATE-WIDE CERTIFICATION. AND BY INSERTING ANY OF IT, WHETHER
7 IT'S LOOKING AT THE NINE ALLEGEDLY OR POTENTIALLY
8 DISENFRANCHISED VOTERS IN GWINNETT, OR WHETHER IT IS TALKING
9 ABOUT THE BROADER, AS MR. BROWN POINTED OUT, POTENTIALLY
10 HUNDREDS IF NOT THOUSANDS OF FOLKS STATEWIDE WHO FAILED TO FILL
11 OUT A FORM CORRECTLY OR IT'S NOT THE ACTUAL VOTER AND
12 SOMEBODY -- WHETHER IT'S THE NURSING HOME ATTENDANT WHO DECIDES
13 TO EXERCISE THE FRANCHISE ON BEHALF OF ALL THE RESIDENTS OF THE
14 NURSING HOME, WHETHER IT'S THE DAUGHTER WHO'S SUBMITTING A
15 BALLOT ON BEHALF OF THEIR DECEASED PARENT BECAUSE THEY, QUOTE,
16 KNEW HOW THEIR PARENT WAS GOING TO VOTE, THE STATE HAS PUT
17 THESE PROCEDURAL SAFEGUARDS IN PLACE AND HAS ESTABLISHED A
18 FRAMEWORK AT THIS POINT FOR PREVENTING THE INTEGRITY OF THE
19 ELECTION TO BE CALLED INTO QUESTION. AND WE WOULD RESPECTFULLY
20 ASK THIS COURT TO REFRAIN FROM INJECTING ITSELF AT THIS POINT
21 AND GRANTING THE PLAINTIFF-REQUESTED RELIEF.

22 THE COURT: OKAY. THANK YOU.

23 MR. CORREIA: GOOD AFTERNOON, YOUR HONOR.

24 THE COURT: GOOD AFTERNOON.

25 MR. CORREIA: I'M CRIS CORREIA. I GET TO ANSWER ALL

1 THE CONSTITUTIONAL QUESTIONS FOR YOU.

2 THE COURT: WELL, YOU'VE ALREADY HEARD MOST OF THEM.

3 MR. CORREIA: YES. AND I MADE NOTES, BUT PLEASE
4 REMIND ME IF I MISS SOME.

5 THE COURT: I WILL.

6 MR. CORREIA: I DO WANT TO START OUT WITH -- AND WE
7 DO INTEND TO FILE A BRIEF IN THE MARTIN CASE. I HAVE ANOTHER
8 ONE DUE TOMORROW -- SO I PROBABLY CAN'T GET IT DONE BY THEN --
9 IN ANOTHER ACTION, BUT WE WOULD LIKE TO FILE ONE TO ADDRESS
10 THOSE CLAIMS DIRECTLY IN WRITING, BUT I AM PREPARED TO DISCUSS
11 THEM SOMEWHAT TODAY AS WELL.

12 I DO WANT TO JUST TAKE ONE STEP BACK FIRST TO TALK ABOUT
13 THE CONSTITUTIONAL CLAIMS TO -- TO KEEP IN MIND THREE THINGS.
14 WE ALL AGREE THE RIGHT TO VOTE IS FUNDAMENTAL, BUT IT'S NOT THE
15 SAME THING AS THE RIGHT TO VOTE BY ABSENTEE BALLOT. SO THAT'S
16 NUMBER ONE. THE SECOND IS THAT -- BECAUSE THERE IS NO FEDERAL
17 RIGHT TO VOTE BY ABSENTEE BALLOT. THE SECOND IS THAT WHILE WE
18 CAN ALL AGREE THAT MAKING IMPROVEMENTS AND PERFECTING AS BEST
19 WE CAN THE ELECTION STRUCTURE OF THE STATE IS EVERYONE'S GOAL,
20 IT IS NOT THE CONSTITUTIONAL STANDARD. AND, THIRD, I WANT TO
21 POINT OUT THAT IN MR. HARVEY'S AFFIDAVIT, THE ELECTION'S
22 DIRECTOR FOR THE STATE, THAT WE ATTACHED TO OUR BRIEF IN
23 RESPONSE TO THE GEORGIA MUSLIM VOTER PROJECT, THAT HE DOES GO
24 THROUGH AND PROVIDE IN PARAGRAPH 11 THE TOTAL REJECTED BALLOTS
25 THAT THE STATE HAS TRACKED IN ITS SYSTEM. AND HE EXPLAINS IN

1 HIS AFFIDAVIT -- HIS DECLARATION THAT WHILE ALL STATES HAVE TO
2 USE THE STATE SYSTEM TO PROVIDE AN ABSENTEE BALLOT BECAUSE
3 THAT'S HOW THE STATE KEEPS TRACK OF, YOU KNOW, WHO'S ALREADY
4 VOTED BY ABSENTEE SO YOU CAN'T SHOW UP AT THE POLLS AND VOTE
5 AGAIN, THAT NOT ALL STATE'S TRACK -- OR, I'M SORRY -- NOT ALL
6 COUNTY'S TRACK -- IN THAT SYSTEM THEY ALL TRACK IT, THEY -- YOU
7 KNOW, EVERY COUNTY IN GEORGIA IS -- RUNS THEIR OWN ELECTION.
8 THE STATE DOES NOT RUN THEM FOR THEM. AND WHILE THEY'RE ALL
9 REQUIRED TO TRACK THOSE REJECTIONS, THEY DON'T ALL ENTER THAT
10 DATA INTO THE STATEWIDE REGISTRATION SYSTEM BECAUSE THAT
11 FEATURE IS FAIRLY NEW. IT'S A FEW YEARS OLD. BUT OF THOSE
12 COUNTIES THAT HAVE ENTERED THE DATA INTO THE SYSTEM -- AND I
13 BELIEVE MOST DO, BUT -- IN THE DECLARATION, IN PARAGRAPH 11 OF
14 THE DECLARATION, HE GOES THROUGH SOME OF THE NUMBERS. AND JUST
15 TO GET AN UNDERSTANDING OF WHAT WE ARE TALKING ABOUT IN TERMS
16 OF THE TOTAL ABSENTEE BALLOTS THAT GO OUT, IN 2014 THE NUMBER
17 OF ABSENTEE BALLOTS THAT WERE REJECTED FOR ANY REASON WAS
18 .16 PERCENT. THAT'S LESS THAN A QUARTER OF ONE PERCENT. OF
19 THOSE, .06 PERCENT -- I'M SORRY -- NOT OF THOSE. OF ALL
20 ABSENTEE BALLOTS, .06 PERCENT WERE REJECTED BECAUSE OF A
21 SIGNATURE MISMATCH. IN -- NO. THAT IS WRONG AGAIN. I'M
22 SORRY. THE POINT ZERO IS .06 PERCENT OF ALL BALLOTS CAST IN
23 THE STATE. THE SIGNATURE MISMATCH WAS .009 PERCENT --

24 THE COURT: IF I'M DOING --

25 MR. CORREIA: -- THAT WERE REJECTED.

1 THE COURT: IF I'M LOOKING AT A FACIAL CONSTITUTIONAL
2 CHALLENGE TO A STATUTE, HOW DOES THAT FIT WITHIN THAT FRAMEWORK
3 THAT I HAVE TO UTILIZE TO EVALUATE THAT? BECAUSE AT LEAST WHAT
4 THE PLAINTIFF IS ARGUING IS THAT SIX PEOPLE, SEVEN PEOPLE, TEN,
5 50 PEOPLE, IT'S UNCONSTITUTIONAL ON ITS FACE BECAUSE IT DOESN'T
6 PROVIDE THE APPEALS PROCESS THAT WOULD HANDLE THESE SITUATIONS
7 WHERE OTHERWISE THIS PERSON WOULDN'T GET A RIGHT TO VOTE.

8 MR. CORREIA: OKAY. AND SO UNDER SUPREME COURT LAW,
9 A FACIAL CHALLENGE MUST BE UNCONSTITUTIONAL IN ALL
10 APPLICATIONS. AND I THINK WE ARE MAYBE TALKING ABOUT SLIGHTLY
11 DIFFERENT THINGS WHEN WE'RE TALKING IN OUR BRIEFS ABOUT THE
12 APPLICATION PRONG, BUT AS I READ THOSE CASES, IF A STATUTE IS
13 ENACTED WHEREBY ITS VERY DESIGN, THE WAY THE STATUTE WORKS,
14 VOTERS ARE NOT NOTIFIED AND CAN'T TELL -- I'M SORRY -- IF A
15 STATUTE BY ITS VERY DESIGN PROVIDES THAT THE VOTER DOESN'T GET
16 NOTICE AND AN OPPORTUNITY TO CURE, THAT'S WHEN THE STATUTE IS
17 UNCONSTITUTIONAL IN ALL ITS APPLICATIONS BECAUSE YOU COULDN'T
18 APPLY IT CONSTITUTIONALLY IN THAT CIRCUMSTANCE. IN ALL OF THE
19 CASES WHERE BALLOT OATHS OR OTHER OR SIGNATURES -- AND THEY
20 HAVE ALL BEEN SIGNATURES. THERE HAS NEVER BEEN AN ABSENTEE
21 BALLOT PROVISION THAT HAS BEEN STRUCK DOWN THAT WASN'T RELATED
22 TO A SIGNATURE MISMATCH. THAT WAS RELATED TO SOME OTHER
23 MISMATCH, MISSING THE YEAR OR MISSING THE RESIDENCE ADDRESS.
24 BUT WHEN THOSE ARE STRUCK DOWN, IT IS BECAUSE BY OPERATION OF
25 THAT STATUTE NO VOTE CAN CURE BECAUSE --

1 THE COURT: SO YOU'RE SAYING THAT THE CONSTITUTIONAL
2 STANDARD IS THAT AS LONG AS THERE'S NOTICE AND SOME PEOPLE HAVE
3 THE RIGHT TO CURE, IT'S OKAY, BUT NOT EVERYONE?

4 MR. CORREIA: IT'S NOT THAT IT'S SOME PEOPLE OR NOT
5 EVERYONE. IT'S THAT THE STATUTE -- IT'S NOT BECAUSE OF THE
6 STATUTE'S DESIGN THAT A VOTER CAN'T CURE. I AGREE THAT IF A
7 VOTER WAITS UNTIL, YOU KNOW, THE LAST WEEK, THE LAST FEW DAYS,
8 THEY MAY NOT GET THAT LETTER BACK IN TIME TO CURE, BUT THAT'S
9 NOT ON THE STATUTE. THE STATUTE PROVIDES FOR AN OPPORTUNITY TO
10 CURE. IT PROVIDES FOR WEEKS OF EARLY VOTING. IT PROVIDES
11 FOR --

12 THE COURT: WELL, AND, AGAIN, THE CROWD THAT CONCERNS
13 ME ARE THE PEOPLE THAT CAN'T DO EARLY VOTING AND THEY CAN'T
14 COME TO THE POLLS. THERE IS A SEGMENT OF OUR POPULATION THAT
15 CAN'T TRAVEL TO THE POLLS, AND THAT'S ONE OF THE MAIN REASONS
16 WE HAVE ABSENTEE BALLOTS, IS FOR THAT CROWD OF PEOPLE. AND
17 THAT'S WHO MOST CONCERNS ME WITH THIS. IT DOESN'T CONCERN ME
18 AS MUCH AS THE PEOPLE THAT FOR CONVENIENCE SAKE CHOOSE TO TAKE
19 AN ABSENTEE BALLOT, IT'S REJECTED, AND THEY EASILY HAVE AN
20 OPPORTUNITY TO GO TO THE POLLS. THAT GROUP DOES NOT CONCERN ME
21 LIKE THE GROUP THAT CANNOT GO TO THE POLLS AND HAS NO ABILITY
22 TO CONTEST THE FACT THAT THEY REALLY CAN'T VOTE BY ABSENTEE.
23 THAT'S THE GROUP THAT, WHEN I LOOK AT THE STATUTE, AT LEAST I
24 THINK THAT IT DOES NOT PROVIDE AN OPPORTUNITY FOR THAT CLASS OF
25 PERSON TO CURE THE PROBLEM. THE PERSON THAT CAN'T GO TO THE

1 POLLS AND CANNOT CORRECT THE SIGNATURE MISMATCH. THAT'S THE
2 PIECE THAT'S REALLY CONCERNING ME.

3 MR. CORREIA: OKAY. WELL, THERE -- I HAVE TWO
4 THINGS. ONE, IS THERE IS A STATUTE, 21-2 -- 21-2-384A4 THAT
5 PROVIDES THE COUNTIES CAN -- THEY CAN ACTUALLY DEPUTIZE
6 SOMEBODY TO GO TO SOMEONE'S HOME. IT IS USED PRIMARILY FOR
7 THINGS LIKE NURSING HOMES TO ALLOW A VOTER TO VOTE AND COLLECT
8 THE BALLOT THAT WAY. IT'S ALSO USED FOR REGISTRATION. ANOTHER
9 THING IS THAT VOTERS CAN, FOR PURPOSES OF ABSENTEE VOTERS, CAN
10 HAVE SOMEBODY ASSIST. SOMEBODY CAN DELIVER A BALLOT TO YOU.
11 SOMEONE CAN ASSIST YOU IN CASTING IT. SOMEONE CAN RETURN IT
12 BACK TO THE VOTER REGISTRATION OFFICE, THE ELECTIONS OFFICE.

13 THE COURT: HOW DOES THAT WORK WITH THE ABSENTEE
14 BALLOT AND THE SIGNATURE MISMATCH. BECAUSE I UNDERSTAND YOU
15 HAVE TO -- IF YOU'RE VOTING ELECTRONICALLY OR YOU'RE VOTING AT
16 THE POLLING PLACE, YOU HAVE TO GO IN PERSON. SO WHAT DID YOU
17 MEAN BY SOMEONE CAN VOTE FOR YOU?

18 MR. CORREIA: NOT VOTE FOR YOU. I'M SORRY. SOMEONE
19 CAN DELIVER YOUR BALLOT, YOUR ABSENTEE BALLOT FOR YOU.

20 THE COURT: BUT IT DOES HAVE TO HAVE THE SIGNATURE;
21 CORRECT?

22 MR. CORREIA: IT DOES, BUT THERE'S NOTHING -- THERE'S
23 NO EVIDENCE TO SUGGEST -- I MEAN, THE PURPOSE OF THE SIGNATURE
24 IS TO SIMPLY IDENTIFY THE VOTER. IT IS NOT A QUALIFICATION FOR
25 VOTING. IT IS SIMPLY TO -- BECAUSE WHEN YOU VOTE IN PERSON,

1 YOU VOTE WITH A PHOTO I.D. WHEN YOU DON'T, THEN THE STATE
2 NEEDS TO HAVE SOME MEASURE. I MEAN, WHEN I GO -- AND IF I
3 ORDER AN ABSENTEE BALLOT, AND THEN SOMEBODY ELSE GETS MY BALLOT
4 IN THE MAIL AND VOTES IT, WHEN I GO TO THE POLLS, I DON'T VOTE.
5 SO THE STATE HAS TO HAVE SOME WAY TO IDENTIFY AND MAKE SURE
6 THAT THE BALLOTS THAT ARE COMING IN ARE FROM THE CORRECT
7 VOTERS.

8 THE COURT: AND I AGREE WITH YOU AND I DON'T HAVE ANY
9 PROBLEM WITH THERE BEING A SIGNATURE REQUIREMENT, AT LEAST IN
10 TERMS OF WHAT'S IN FRONT OF ME TODAY, AS A MEANS TO DO THAT.
11 AND I THINK THAT THE REASON FOR IT, AS YOU STATED, IS SO THAT
12 YOU CAN PROVE THAT THE PERSON IS WHO THEY SAY THEY ARE. AND,
13 AGAIN, I'M FOLLOWING YOU. I'M RIGHT THERE WITH YOU.

14 MR. CORREIA: RIGHT.

15 THE COURT: BUT HERE'S THE PROBLEM, IS THAT I'M IN A
16 NURSING HOME, I HAVE 15 THINGS THAT PROVE THAT I AM WHO I AM,
17 BUT MATCHING THE SIGNATURE IS NOT ONE OF THE WAYS THAT I CAN DO
18 IT BECAUSE I CAN'T LOOK AT IT, I DON'T SEE IT, I DON'T KNOW HOW
19 IT IS, AND MAYBE I'M NOT PHYSICALLY ABLE TO EXECUTE THE
20 SIGNATURE IN THE SAME WAY. IN FACT, I CAN'T DO THAT. SO, YES,
21 THERE'S A PROVISION THAT SOMEONE MAY DEPUTIZE SOMEONE, BUT
22 THAT'S NOT THERE AS A WAY THAT YOU CAN NECESSARILY MAKE THAT
23 WORK FOR YOU. AND SO WHAT DOES THAT PERSON DO? I CAN'T SEE A
24 WAY THAN PERSON CURRENTLY HAS ANY WAY TO VOTE.

25 MR. CORREIA: I THINK THAT -- WHILE I DO NOT BELIEVE

1 THAT IS NECESSARY FOR PURPOSES OF WHETHER OR NOT THERE'S A
2 PROCEDURAL DUE PROCESS VIOLATION, I'LL GET TO THAT, BUT I THINK
3 THAT ALL THAT PERSON HAS TO DO IS THE SAME THING THEY'D HAVE TO
4 DO IF THEY GO TO A HEARING, IS PROVE THAT THEY'RE WHO THEY ARE.
5 I MEAN, IF THE COURT WERE TO ORDER THAT THAT PERSON GETS A
6 HEARING UNDER THE 21-230 PROVISION, WHICH IS A CHALLENGE TO A
7 VOTER'S QUALIFICATIONS, HAS NOTHING TO DO WITH IDENTITY
8 NORMALLY. AND I'LL GET TO -- THE DISTINCTIONS BETWEEN THOSE,
9 THAT IS WHAT MAKES IT A PROBLEM FOR THE COUNTIES. BUT IF THE
10 COURT WERE TO ORDER THAT A VOTER HAS TO GO TO A HEARING TO
11 PROVE THAT THEY ARE WHO THEY SAY THEY ARE, THEY CAN DO THE SAME
12 THING AT AN ELECTION OFFICE, WHICH THEY'D HAVE TO GO TO ANYWAY.

13 THE COURT: BUT NOT NECESSARILY. AT A HEARING YOU
14 COULD BE REPRESENTED BY A LAWYER. LIKE, BRIAN KEMP IS NOT HERE
15 TODAY. YOU ARE HERE FOR HIM AND PRESENTING THE ARGUMENTS FOR
16 THAT OFFICE. I MEAN, IT WOULD BE THAT PERSON'S OBLIGATION IF
17 THEY COULDN'T GO TO THE HEARING TO HAVE SOMEONE AS AN ATTORNEY
18 OR A REPRESENTATIVE, AND THEY WOULD HAVE TO WIN THAT HEARING.
19 I'M NOT SAYING THAT THEY'D HAVE TO ACCEPT ANYTHING. BUT I
20 WOULD ASSUME THAT WHOEVER IS CONDUCTING THE HEARING, ALL THEY
21 WANT IS TO MAKE SURE THERE'S NO FRAUD AND THE RIGHT PERSON IS
22 VOTING. SO IF THERE IS SOME WAY THAT THEY COULD PROVIDE SOME
23 INFORMATION FROM AN ATTORNEY IF THEY CAN'T COME OR SOMETHING
24 THAT SHOWS THERE'S NO FRAUD, THEN I DO THINK THAT THAT WOULD BE
25 A MEANINGFUL RELIEF.

1 MR. CORREIA: I DON'T THINK THAT THAT IS ANY
2 DIFFERENT THAN THE SAME EFFORT AN ATTORNEY, DOCUMENTATION,
3 PROOF THAT THIS REALLY IS THAT PERSON'S SIGNATURE. THAT'S ALL
4 THE COUNTY ELECTION OFFICE IS GOING TO WANT.

5 THE COURT: BUT THEY CAN'T DO THAT RIGHT NOW.
6 THERE'S NO MECHANISM FOR THEM TO DO THAT.

7 MR. CORREIA: I THINK THAT ANY -- I AM NOT AWARE OF A
8 SINGLE CIRCUMSTANCE AND I WOULD BE SURPRISED IF ANY COUNTY
9 ELECTION OFFICE TOLD A VOTER, UNLESS YOU CAN MATCH YOUR
10 SIGNATURE, EVEN IF YOU CAN PROVE TO ME YOU ARE WHO YOU SAY YOU
11 ARE, YOU CAN VOTE AN ABSENTEE BALLOT --

12 THE COURT: BUT THAT'S WHAT THE STATUTE SAYS AND
13 THAT'S WHAT I'M GRASPING WITH. THE STATUTE DOESN'T PROVIDE ME
14 WITH ANY LAW THAT SAYS THAT THAT'S WHAT HAPPENS.

15 MR. CORREIA: THERE'S ACTUALLY A STATE SUPREME COURT
16 CASE. I DON'T HAVE IT WITH ME, BUT I CAN PROVIDE THE COURT
17 WITH THE CITATION WHEN I GET BACK TO THE OFFICE. I BELIEVE
18 IT'S JONES VS. -- IT WAS AN ELECTION CHALLENGE CASE. IT'S
19 JONES VS. SOMEBODY. IT'S A GEORGIA STATE SUPREME COURT CASE.
20 IT HAS INTERPRETED 21-2-386 PROVISION FOR THE COUNTY ELECTION
21 OFFICIAL VERIFYING ALL OF THE IDENTITY. I KNOW THE STATUTE
22 READS, SHALL COMPLETE THESE PROVISIONS. AND THE COURT HAS
23 INTERPRETED THAT TO MEAN THAT THE COUNTY REGISTER HAS THE
24 DISCRETION, AS LONG AS THEY ARE SATISFIED, THAT THE BALLOT IS
25 OF THAT VOTER.

1 THE COURT: WELL, IF YOU'RE SAYING THAT'S WHAT
2 HAPPENS ANYHOW, WHY WOULD IT BE PROBLEMATIC TO SAY THAT THAT IS
3 JUST WHAT'S REQUIRED, THAT THERE IS SOME ABILITY TO PROVIDE
4 EXTRINSIC EVIDENCE TO PROVE THAT THAT IS YOUR SIGNATURE?
5 YOU'RE SAYING THAT THAT HAPPENS ALREADY, BUT IT IS NOT A RIGHT
6 THAT IS PROVIDED FOR IN THE PLAIN TEXT OF THE LAW. AND SO IT
7 SEEMS CONTRADICTORY TO ME ON ONE HAND FOR THE GOVERNMENT TO
8 SAY, THIS WOULD UP-END EVERYTHING ABOUT THE ELECTION AND WHAT
9 WE DO TO PROVIDE A WAY FOR SOMEONE TO CHALLENGE THIS WITH
10 EXTRINSIC EVIDENCE, AND THEN AT THE SAME TIME SAY THIS IS IN
11 FACT WHAT WE ACTUALLY DO, SO THERE'S NO NEED FOR YOU TO REQUIRE
12 IT BECAUSE WE ALREADY DO IT. BUT IF YOU REQUIRE IT, IT'S GOING
13 TO UP-END EVERYTHING AND WE'RE NOT GOING TO BE ABLE TO
14 FUNCTION, BUT WE ALREADY DO IT. THAT SEEMS CONTRADICTORY TO
15 ME.

16 MR. CORREIA: OKAY. WELL, WE DO NOT INTERPRET THAT
17 STATUTE TO MEAN THAT A VOTER GETS A HEARING OR THAT A HEARING
18 IS REQUIRED UNDER 21-2-230. BECAUSE 21-2-230 IS TO DETERMINE
19 WHETHER A VOTER IS ELIGIBLE TO VOTE --

20 THE WITNESS: I UNDERSTAND. I'M TRYING TO SAY WHAT
21 IS IN PLACE TO PROVIDE THE VOTER WITH AN OPPORTUNITY TO PROVIDE
22 EXTRINSIC EVIDENCE OR BE HEARD ON THE ISSUE OF A SIGNATURE
23 MISMATCH? THERE'S NOTHING I READ IN ANYTHING THAT PROVIDES
24 THAT.

25 MR. CORREIA: OKAY. WELL, TWO THINGS. THE -- ONE,

1 IS THIS GEORGIA SUPREME COURT CASE THAT DOES INTERPRET THE
2 STATUTE TO ALLOW THE COUNTY OFFICIAL TO HAVE DISCRETION AS LONG
3 AS THAT COUNTY OFFICIAL BELIEVES THAT THAT BALLOT --
4 UNDERSTANDS THAT THAT BALLOT IS FROM THAT VOTER, THEY CAN --
5 THEY DO NOT HAVE TO REJECT THAT BALLOT EVEN IF ONE OF THE
6 PIECES OF INFORMATION THAT'S REQUIRED BY STATE LAW IS MISSING.
7 THE SECOND IS THAT I AM NOT SUGGESTING THAT NOT PROVIDING THAT
8 VIOLATES THE PROCEDURAL DUE PROCESS --

9 THE COURT: I UNDERSTAND THAT.

10 MR. CORREIA: -- OR OTHERWISE THE -- YOU KNOW, THE
11 OTHER 14TH AMENDMENT CLAIMS --

12 THE COURT: I JUST HEARD YOU SAY THAT IT VIOLATES
13 PROCEDURAL DUE PROCESS IF YOU DON'T HAVE A NOTICE AND AN
14 OPPORTUNITY TO CURE THE PROBLEM. THAT'S WHAT I HEARD YOU
15 ARGUE. AND I -- MY QUESTION FOR YOU IS I DON'T SEE THERE'S AN
16 OPPORTUNITY TO CURE FOR THE SUBSET OF PEOPLE THAT HAVE AN
17 ABSENTEE BALLOT BECAUSE THEY CAN'T DO EARLY VOTING AND THEY
18 CAN'T VOTE IN PERSON. THAT'S WHY WE GOT ON THAT BECAUSE THAT'S
19 WHAT I HEARD YOU SAY I WAS SUPPOSED TO LOOK AT.

20 MR. CORREIA: I BELIEVE THAT BECAUSE THE STATE HAS
21 CONFERRED THE RIGHT TO ABSENTEE VOTING IN GEORGIA, THERE IS A
22 STATE RIGHT TO DO IT, NOT A FEDERAL RIGHT. THE PROCEDURAL DUE
23 PROCESS PROTECTIONS, THERE IS ONLY A FEDERAL CLAIM FOR A
24 VIOLATION OF THE PROCEDURAL DUE PROCESS WHEN THAT VOTER -- TO
25 BE A VIOLATION FIRST --

1 THE COURT: THE WAY I VIEW THE LAW, THE STATE IS NOT
2 REQUIRED TO PROVIDE ABSENTEE BALLOT, BUT IF THE STATE DOES
3 PROVIDE IT AND TAKES IT AWAY WITHOUT DUE PROCESS OF LAW, THEN
4 THAT'S A VIOLATION OF THE CONSTITUTION.

5 MR. CORREIA: BUT IT'S NOT MEASURED VOTER BY VOTER.
6 IT IS MEASURED WHETHER OR NOT THE STATUTE CREATES CLASSES OF
7 VOTERS THAT HAVE NO -- THAT HAVE NO OPPORTUNITY. YOU -- THIS
8 IS WHERE A FACIAL CHALLENGE HAS TO BE UNCONSTITUTIONAL IN ALL
9 OF ITS APPLICATIONS UNDER THE SUPREME COURT LAW, UNDER MARION
10 OR CRAWFORD VS. MARION COUNTY, WHICH WAS THE PHOTO I.D. CASE
11 FROM INDIANA AT THE U.S. SUPREME COURT, OR WASHINGTON STATE
12 GRANGE CASE ALSO OUT OF THE U.S. SUPREME COURT. A FACIAL
13 CHALLENGE -- IF THE STATUTE HAS A LEGITIMATE PURPOSE, WHICH I
14 THINK WE CAN ALL AGREE THE STATUTE HAS A LEGITIMATE PURPOSE,
15 YOU DON'T WANT SOMEBODY OTHER THAN THE TRUE VOTER GOING TO VOTE
16 SOMEBODY'S ABSENTEE BALLOT. THEN UNLESS IT IS UNCONSTITUTIONAL
17 IN ALL OF ITS APPLICATIONS, IF IT HAS A LEGITIMATE SWEEP, IT IS
18 CONSTITUTIONAL. AND THAT'S NOT TO SAY THAT THE STATUTE CAN'T
19 PROVIDE FURTHER RELIEF. THE STATE CAN'T DO MORE. BUT I DON'T
20 BELIEVE THAT IT IS CONSTITUTIONALLY REQUIRED TO. I THINK AS
21 LONG AS THE -- AS LONG AS YOU DON'T CREATE A STATUTE THAT SAYS
22 THAT THERE IS NO NOTICE AND THERE IS NO OPPORTUNITY TO BE
23 HEARD, WHICH IS WHAT EVERY ONE OF THOSE OTHER STATUTES DID THAT
24 ARE CITED BY THE PLAINTIFFS -- THE FLORIDA CASE IN PARTICULAR,
25 IN THAT CASE, THE DETZNER CASE, IN THAT CASE THE COURT LOOKED

1 TO THE SIGNATURE MISMATCH. AND THE REASON THERE WAS A CLAIM,
2 A -- YOU KNOW, S CONSTITUTIONAL VIOLATION THERE WAS BECAUSE THE
3 STATE PROVIDED AN OPPORTUNITY TO CURE EVERY OTHER KIND OF
4 MISMATCH.

5 THE COURT: BUT I UNDERSTAND THOSE CASES ARE
6 DIFFERENT, BUT I DO HAVE TO PARSE THIS ONE. BUT Y'ALL'S TIME
7 IS MORE THAN UP, SO THANK YOU.

8 MS. CORREIA: THANK YOU.

9 THE COURT: I THINK THE PLAINTIFFS MAY HAVE TWO
10 MINUTES, NOT VERY MUCH.

11 MR. YOUNG: NO PROBLEM. I JUST WANT TO PLUG IN A FEW
12 HOLES. FIRST, THE HEARING THAT WE'RE ASKING FOR IS INFORMAL.
13 AND YOUR HONOR HAD RAISED THE POINT ABOUT VOTERS WHO ARE
14 COMPLETELY OUT OF TOWN, LIKE, HOW WOULD THEY PARTICIPATE IN THE
15 HEARING. LIKE YOU SAID, THEY COULD SEND AN ATTORNEY. BUT JUST
16 REAL BRIEFLY, IN SAUCEDO THEY ACKNOWLEDGE THAT POSSIBILITY OF
17 PEOPLE BEING OUT OF TOWN, AND THEY SAID A HEARING DOESN'T EVEN
18 HAVE TO BE SUPER FORMAL. IT CAN BE RESOLVED REMOTELY OR
19 THROUGH A QUICK PHONE CALL. WE DON'T NEED TO MICROMANAGE
20 EXACTLY HOW THAT GOES, BUT A LOT OF THE DUE PROCESS CASES
21 SIMILARLY CONTEMPLATE A MORE INFORMAL PROCESS.

22 SECONDLY, THE DEFENDANTS TALK ABOUT CHANGE THE PROCESSES
23 AT THE LAST MINUTE OR WHATEVER. THE -- SORRY. THE -- YOUR
24 HONOR KIND OF HONED IN ON THE POINT THEY HAVEN'T ARTICULATED
25 EXACTLY WHY THAT IS SO DIFFICULT FOR THEM. AND THEY ARE

1 HARD-WORKING ELECTIONS OFFICIALS. I DON'T EVER WANT TO TAKE
2 AWAY FROM THAT, BUT THERE ARE PLENTY OF CASES. WE CITE SIX OF
3 THEM IN FOOTNOTE THREE OF PAGE 11 OF OUR REPLY BRIEF WHERE
4 INJUNCTIONS WERE ENTERED NEAR THE ELECTION. AND THE IMPORTANT
5 DISTINCTION IN THOSE CASES, THAT THEY ALL ENTERED BACK-END
6 RELIEF. NONE OF THEM CHANGED THE SUBSTANTIVE FRONT-END RULES
7 FOR HOW TO CAST THE BALLOT. IT ONLY COVERED THINGS ON THE BACK
8 END. THAT'S WHAT WE'RE SEEKING TO DO HERE.

9 THE THIRD POINT, YOUR HONOR CORRECTLY FOCUSES ON PEOPLE
10 WHO CANNOT VOTE IN PERSON. THEY ARE PERMANENTLY
11 DISENFRANCHISED. I STILL JUST WANT TO ADD, EVEN FOR THE PEOPLE
12 WHO CAN, THE WINDOW'S RAPIDLY CLOSING IF THEY GET THEIR
13 REJECTION TOO LATE. THEY ALSO WILL BE PERMANENTLY
14 DISENFRANCHISED.

15 THE LAST POINT, MY FRIEND ON THE OTHER SIDE CITED SECTION
16 21-2-384 TO TALK ABOUT PEOPLE WHO MIGHT BE ABLE TO -- WHO ARE
17 HOME-BOUND OR WHATNOT. THAT'S NOT ACCURATE. THE STATUTE SAYS
18 THAT SOMEONE WHO'S CONFINED IN A HOSPITAL -- AND IT ONLY SAYS
19 HOSPITAL -- CAN DELIVER AN ABSENTEE BALLOT TO A REGISTRAR WHO
20 PRESUMABLY COMES TO THE HOSPITAL. THEY STILL HAVE TO VOTE BY
21 ABSENTEE BALLOT. SO IF THEIR SIGNATURE DOESN'T MATCH, THEY'RE
22 STILL DISENFRANCHISED. SO EVEN THAT IS A THIN REED TO REST.
23 AND UNLESS THIS COURT HAS ANY FURTHER QUESTIONS, THIS COURT
24 SHOULD GRANT PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING
25 ORDER.

1 THE COURT: OKAY. THANK YOU.

2 MR. BROWN: YOUR HONOR, ONE MINUTE.

3 THE COURT: OKAY. ONE MINUTE. THAT'S IT.

4 MR. BROWN: FIRST, AS I'M SURE YOU'RE WELL AWARE OF,
5 THE DEFENDANTS HAVE TOTALLY MISSED THE BOAT ON LACHES. LACHES
6 REQUIRES A LACK OF DILIGENCE AND PREJUDICE. THEY HAVEN'T
7 ESTABLISHED ANY OF THOSE. CASE AFTER CASE, THEY WOULD LOSE
8 THAT ARGUMENT ON THESE FACTS. THE CURE THAT IT -- THE
9 DEFENDANTS SAY THEY ARE GIVING NOW IS NOT GOOD ENOUGH FOR A LOT
10 OF THE REASONS THAT YOU ANTICIPATED. WE HAVE ASKED FOR ALL THE
11 CURE LETTERS FROM GWINNETT COUNTY, FOR EXAMPLE. WE'VE GOTTEN
12 EIGHT. WE'VE GOTTEN EIGHT. THEY HAVE REJECTED 594 PEOPLE.
13 THEY HAVE DISENFRANCHISED 594 PEOPLE. AND THEY'RE SAYING, WE
14 GIVE THEM ALL NOTICE, WE'VE GIVEN EIGHT. SO THEY'RE EITHER
15 VIOLATING THE OPEN RECORDS ACT OR THEY'RE VIOLATING THE
16 STATUTE. IN ANY EVENT, THAT IS NOT SUFFICIENT NOTICE. THE
17 STATE STATUTE IS NOT SUFFICIENT NOTICE. OUR CLAIM HAS NOTHING
18 TO DO WITH THE ARGUMENT OVER A FACIAL CHALLENGE BECAUSE WE'RE
19 MAKING -- WE'RE NOT MAKING A FACIAL CHALLENGE EXCEPT TO THE
20 YEAR OF BIRTH STATUTE. AND THERE CAN BE NO LOGICAL EXPLANATION
21 FOR DISENFRANCHISING AT LEAST 200 PEOPLE. NOW WE LEARNED THAT
22 GWINNETT -- THIS IS STUNNING IN THE DEFENDANTS' RESPONSE --
23 THAT GWINNETT MAY BE THE TIP OF THE ICEBERG IN THAT ALL THOSE
24 STATES THAT THE -- ALL THOSE COUNTIES THAT THE SECRETARY OF
25 STATE IS REPORTING ZERO, THAT THAT'S FALSE. THAT'S FALSE

1 INFORMATION AT THE SECRETARY OF STATE. AND THAT HIS PROBLEM
2 AND THE SECRETARY OF STATE'S PROBLEM MAY BE MUCH WORSE THAN IT
3 APPEARS. I THINK, AT A BEAR MINIMUM, THE STATE DEFENDANTS
4 OUGHT TO GIVE US THE REAL INFORMATION ABOUT WHAT THE COUNTIES
5 ARE DOING. BECAUSE IF THEY'RE WORSE THAN GWINNETT OR THEY'RE
6 ALL AS BAD AS GWINNETT, THEN WE HAVE AN ENTIRELY DIFFERENT
7 PROBLEM. IN ANY EVENT, OUR CASE, THOUGH, I WOULD ENCOURAGE
8 YOUR HONOR TO LOOK AT OUR -- OUR PROPOSED ORDER GRANTING THE
9 AMENDED MOTION, WE HAVE A VERY EASY CURE FOR ALL OF THESE
10 PROBLEMS. ALL YOU NEED IS A STAMP. YOU NEED A COMPUTER
11 PROGRAM THAT YOU CAN SEND OUT TO ALL THE PEOPLE WHO HAVE BEEN
12 REJECTED AND SAYS, HERE'S HOW YOU CAN CURE. THEY CAN DO THAT.
13 A LOT OF VERY ELOQUENT LANGUAGE ON THE OTHER SIDE ABOUT HOW --
14 HOW BURDENSOME THIS IS AND HOW IT'S SO -- YOU HEARD NO
15 SPECIFICS, YOU DIDN'T GET A DOLLAR, YOU DIDN'T GET A -- YOU
16 DIDN'T GET A -- HOW MANY MAN HOURS THIS IS GOING TO BE --

17 THE COURT: MR. BROWN, I CUT THEM OFF, SO I'M GOING
18 TO BE FAIR TO BOTH SIDES.

19 MR. BROWN: THANK YOU, YOUR HONOR.

20 THE COURT: THANK YOU.

21 AS I MENTIONED, I'M NOT GOING TO RULE FROM THE BENCH RIGHT
22 NOW. I'VE LISTENED TO THE ARGUMENTS. I WANT TO GO BACK AND
23 LOOK AT THE LAW AND YOUR BRIEFS AND THE STUFF THAT'S BEEN FILED
24 WITH THE BENEFIT OF YOUR ANSWERS. AND A LOT OF STUFF WE DIDN'T
25 TALK ABOUT TODAY IT'S IN THE WRITTEN DOCUMENTS AND IT'S THERE

1 AND IT'S NOT THAT BECAUSE WE DIDN'T TALK ABOUT IT IT'S NOT
2 IMPORTANT. IT'S PART OF EVERYTHING THAT I'M GOING TO CONSIDER.
3 SO THAT'S CERTAINLY A BIG PART OF WHAT I'M GOING TO TALK ABOUT.
4 THE HEARING IS TO ADD -- ANSWER QUESTIONS FOR ADDITIONAL
5 INFORMATION, BUT I DON'T IGNORE WHAT IT IS THAT YOU'VE FILED.
6 THAT'S PART OF WHAT I DO HERE. AND WHATEVER HAPPENS WITH THE
7 INJUNCTION, I AM GOING TO TRY TO GET IT OUT IN THE NEXT COUPLE
8 OF DAYS. I'M GOING TO DO MY BEST TO DO THAT. THE LAWYERS KNOW
9 THIS, BUT I WANT TO MAKE SURE THAT EVERYONE ELSE DOES, IS THAT
10 THIS IS A LEGAL CASE WITH LOTS OF CLAIMS AND PARTIES -- WELL,
11 ACTUALLY TWO CASES, AND THE INJUNCTION IS JUST ONE PART AND
12 IT'S AN EMERGENCY VERY BEGINNING PART. SO NO MATTER WHAT
13 HAPPENS WITH THE INJUNCTION, UNLESS THE PARTIES WANT OTHERWISE,
14 THE CASE DOES MOVE ON. AND THERE'S RELIEF THAT CAN HAPPEN FOR
15 THIS ELECTION, BUT THERE'S ALSO KIND OF, OKAY, THESE ISSUES MAY
16 BE HEARD FOR THE NEXT ELECTION, AND THE CASE KEEPS GOING
17 FORWARD. AND AT THE SAME TIME, AS I THINK COUNSEL FOR THE
18 STATE SAID, IS THAT THE COURT'S JOB IS NOT TO GO THROUGH AND
19 MAKE THIS THE BEST ABSENTEE STATUTE THAT WE CAN AND MAKE IT THE
20 CLEAREST AND WHAT WE ALL WANT IT TO BE. MY JOB IS TO GO
21 THROUGH IT AND FIND OUT IF IT VIOLATES THE CONSTITUTION, AND
22 THAT'S A VERY DIFFERENT EXERCISE THAN WHAT PEOPLE MIGHT WANT
23 THE COURT TO DO. I HAVE A VERY LIMITED REACH ON MY ROLE AND
24 WHAT IT IS THAT I DO. AND I TAKE THAT VERY SERIOUSLY. SO I'M
25 NOT GOING TO GO THROUGH AND REWRITE THIS STATUTE TO MAKE IT SAY

1 WHAT I WOULD LIKE IT TO SAY AND MAKE IT CLEAR TO EVERYONE. I'M
2 GOING TO ONLY NARROWLY LOOK AT THIS BASED UPON THE CONSTITUTION
3 AND MY ROLE IN THE SYSTEM OF GOVERNMENT THAT WE HAVE.

4 SO FIRST STEP IS TO MAKE A RULING ON THE INJUNCTION. IF I
5 NEED ADDITIONAL BRIEFING AND PUT A TIMETABLE ON THAT ON THE
6 PRELIMINARY INJUNCTION ISSUES, THOSE DON'T GO AWAY. THAT IS
7 STILL HERE AND IT'S STILL IMPORTANT. BUT WITH A COURT CASE OF
8 THIS MAGNITUDE WE DEAL WITH IT IN PIECES AND WHAT'S IN FRONT OF
9 THE COURT AND WHAT'S RIPE AND WHAT'S READY TO DEAL WITH, AND
10 THAT'S HOW THIS WILL PROCEED. SO IF IN THE PROCESS OF DRAFTING
11 THE ORDER I DO HAVE ADDITIONAL QUESTIONS, I WILL E-MAIL ALL THE
12 PARTIES SO THEY KNOW WHAT THEY ARE, BUT I DO FEEL LIKE WITH THE
13 EXTENSIVE BRIEFING, THE DECLARATIONS AND THE QUESTIONS I'VE
14 ASKED TODAY, THAT I DO HAVE A GOOD RECORD AT LEAST TO GET US
15 THROUGH KIND OF THE NEXT STEP. AND I WILL DO MY BEST TO WRITE
16 THE BEST ORDER I CAN IN THE FASTEST TIME THAT I CAN POSSIBLE.
17 SO I DO APPRECIATE THE PREPARATION OF ALL THE PARTIES AND THE
18 FACT THAT YOU WERE VERY WILLING TO ANSWER THE QUESTIONS THAT I
19 HAVE. SO THAT'S ALL I HAVE.

20 YES.

21 MR. TYSON: YOUR HONOR, COULD I JUST GIVE YOU ONE
22 OTHER CITATION AS YOU'RE WORKING ON THE ORDER --

23 THE COURT: SURE.

24 MR. TYSON: -- 22-419, WHICH IS THE PROVISIONAL
25 BALLOTING PROCESS. IT DOESN'T REQUIRE A HEARING. IT'S ANOTHER

1 WAY THAT COULD -- A REMEDY COULD BE CRAFTED AS YOU'RE LOOKING
2 AT THAT.

3 THE COURT: OKAY. THANK YOU. I APPRECIATE THAT.

4 OKAY. AND THANK YOU ALL FOR BEING IN THIS LENGTHY
5 HEARING. AND, WITH THAT, WE ARE ADJOURNED. THANK YOU.

6 (PROCEEDINGS ADJOURNED.)
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C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, MONTRELL VANN, RPR, RMR, RDR, CRR, OFFICIAL COURT REPORTER FOR THE UNITED STATES DISTRICT COURT, FOR THE NORTHERN DISTRICT OF GEORGIA, DO HEREBY CERTIFY THAT THE FOREGOING 92 PAGES CONSTITUTE A TRUE TRANSCRIPT OF PROCEEDINGS HAD BEFORE THE SAID COURT, HELD IN THE CITY OF ATLANTA, GEORGIA, IN THE MATTER THEREIN STATED.

IN TESTIMONY WHEREOF, I HEREUNTO SET MY HAND ON THIS, THE 25TH DAY OF OCTOBER 2018.

/S/ MONTRELL VANN
MONTRELL VANN, RPR, RMR, RDR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT