

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF GEORGIA  
3 ATLANTA DIVISION

4 FAIR FIGHT ACTION, ET AL., ) CIVIL ACTION FILE  
5 ) NO. 1:18-CV-5391-SCJ  
6 PLAINTIFFS, ) ATLANTA, GEORGIA  
7 ) APRIL 29, 2019  
8 V. )  
9 )  
10 BRAD RAFFENSPERGER, IN HIS )  
11 OFFICIAL CAPACITY AS THE )  
12 SECRETARY OF STATE OF )  
13 GEORGIA; ET AL., )  
14 )  
15 DEFENDANTS. )

16  
17 TRANSCRIPT OF MOTIONS HEARING  
18 BEFORE THE HONORABLE STEVE C. JONES  
19 UNITED STATES DISTRICT JUDGE  
20

21 APPEARANCES OF COUNSEL:

22 FOR THE PLAINTIFFS: ALLEGRA J. LAWRENCE  
23 ELIZABETH V. TANIS  
24 MAIA J. COGEN

25 FOR THE DEFENDANTS: BRYAN P. TYSON  
JOSHUA B. BELIFANTE

COURT REPORTER: ANDY ASHLEY  
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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY, TRANSCRIPT  
PRODUCED BY COMPUTER.

1 P R O C E E D I N G S

2 (ATLANTA, FULTON COUNTY, GEORGIA; APRIL 29, 2019  
3 IN OPEN COURT.)

4 THE COURT: GOOD AFTERNOON TO EVERYONE. MS. WRIGHT  
5 WILL CALL THE CASE FOR TODAY.

6 THE CLERK: YES, SIR, THE COURT CALLS THE MATTER OF  
7 FAIR FIGHT ACTION, INCORPORATED AND OTHERS VERSUS BRAD  
8 RAFFENSPERGER AS SECRETARY OF STATE AND OTHERS, CIVIL ACTION  
9 NUMBER 1:18-CV-5391.

10 THE COURT: I'M GOING TO ASK PLAINTIFFS' ATTORNEYS  
11 FOR THE RECORD TO STAND UP AND INTRODUCE THEMSELVES STARTING  
12 WITH MS. LAWRENCE.

13 MS. LAWRENCE: GOOD AFTERNOON, YOUR HONOR. I'M  
14 ALLEGRA LAWRENCE, COUNSEL FOR PLAINTIFFS.

15 THE COURT: GOOD AFTERNOON.

16 MS. COGEN: GOOD AFTERNOON, YOUR HONOR. MAIA COGEN  
17 FOR THE PLAINTIFFS.

18 THE COURT: GOOD AFTERNOON.

19 MS. TANIS: GOOD AFTERNOON, YOUR HONOR. BETH TANIS  
20 FOR THE PLAINTIFFS.

21 THE COURT: GOOD AFTERNOON.

22 MS. BRYAN: GOOD AFTERNOON, YOUR HONOR. LESLIE BRYAN  
23 FROM LAWRENCE & BUNDY FOR THE PLAINTIFFS.

24 THE COURT: GOOD AFTERNOON.

25 MS. DOWD: GOOD AFTERNOON, YOUR HONOR. SARAH DOWD

1 FOR THE PLAINTIFFS.

2 THE COURT: GOOD AFTERNOON. FOR THE DEFENSE?

3 MR. TYSON: GOOD AFTERNOON. BRYAN TYSON FOR THE  
4 DEFENDANTS.

5 THE COURT: GOOD AFTERNOON.

6 MR. BELINFANTE: GOOD AFTERNOON, JUDGE. JOSHUA  
7 BELINFANTE ALSO FOR THE DEFENDANTS.

8 THE COURT: GOOD AFTERNOON.

9 MR. RUSSO: GOOD AFTERNOON, YOUR HONOR. VINCENT  
10 RUSSO FOR THE DEFENDANTS.

11 MR. TYSON: WE HAVE RYAN GERMANY, THE GENERAL COUNSEL  
12 FOR THE SECRETARY OF STATE'S OFFICE.

13 THE COURT: GOOD AFTERNOON.

14 MR. WILLARD: GOOD AFTERNOON, YOUR HONOR. RUSSELL  
15 WILLARD WITH THE ATTORNEY GENERAL'S OFFICE HERE FOR THE  
16 DEFENDANTS.

17 THE COURT: GOOD AFTERNOON.

18 MS. ANDERSON: GOOD AFTERNOON. KIMBERLY ANDERSON FOR  
19 THE DEFENDANTS.

20 THE COURT: GOOD AFTERNOON.

21 MR. MILLER: GOOD AFTERNOON, YOUR HONOR. CAREY  
22 MILLER HERE FOR THE DEFENDANTS.

23 THE COURT: ANYONE ELSE? THE LAST TIME I HAD THIS  
24 MANY LAWYERS, I CAN'T REMEMBER. WE'RE HERE ON A MOTION TO  
25 DISMISS. I'VE READ YOUR BRIEFS, AND I COMPLIMENT YOU ON YOUR

1 BRIEFS. YOUR BRIEFS ARE EXCELLENT, BUT AS I INDICATED I MAY  
2 HAVE A FEW QUESTIONS FOR YOU. SO HERE'S HOW I WOULD LIKE TO DO  
3 IT TODAY, THE DEFENDANT IS THE MOVANT, AND SO YOU ALL WILL GO  
4 FIRST. YOU'LL HAVE ONE HOUR. YOU CAN USE YOUR WHOLE HOUR, OR  
5 YOU CAN USE AS MUCH AS YOU WANT, AND THEN YOU CAN RESERVE  
6 REBUTTAL TIME. I SAY THIS TO BOTH SIDES, DON'T FEEL OBLIGATED  
7 TO USE ALL YOUR TIME. THEN THE PLAINTIFFS WILL GO IN THE  
8 MIDDLE. YOU CAN USE ALL YOUR HOUR OR AS MUCH AS YOU WANT.

9 I HAVE A FEW QUESTIONS. IF YOU ADDRESS THE  
10 QUESTIONS, I'LL PROBABLY BE QUIET. IF YOU DON'T ADDRESS THE  
11 QUESTIONS I HAVE IN MIND, I WILL NOT INTERRUPT YOU MID  
12 SENTENCE, BUT THERE ARE CERTAIN THINGS I WANT IN MY MIND  
13 RESOLVED, AND I KIND OF GAVE YOU ALL A HINT WHAT I'M THINKING  
14 ABOUT.

15 SO WITH THAT STATED, YOU MAY PROCEED.

16 MR. TYSON: THANK YOU. GOOD AFTERNOON. BRYAN TYSON  
17 FOR THE STATE DEFENDANTS. I WANT TO DIG IN ON THE QUESTIONS  
18 YOU ASKED PARTICULARLY. I'M GOING TO BE COVERING STANDING,  
19 SOME OF THE 11TH AMENDMENT ISSUES AND ISSUES RELATED TO THE  
20 HUSTED CASE, THE HAVA AND NATIONAL VOTER REGISTRATION ACT  
21 CASE. MR. BELINFANTE WILL TAKE THE KIND OF INTERACTIONS OF  
22 HOUSE BILL 316 WITH THE MOOTNESS QUESTIONS THAT ARE AT ISSUE  
23 HERE ALONG WITH THE ISSUES RELATED TO COUNTY AND LOCAL  
24 OFFICIALS AND THEM BEING NECESSARY PARTIES TO THE CASE.

25 THE COURT: SOUNDS GOOD.

1                   MR. TYSON:   SO I'LL BEGIN WITH STANDING.   STANDING  
2   OBVIOUSLY AS WE KNOW IS MEASURED AT THE TIME OF THE FILING OF  
3   THE LAWSUIT.

4                   THE COURT:   CORRECT.

5                   MR. TYSON:   AND SO I WANT TO WALK THROUGH THE THREE  
6   ELEMENTS IN TERMS OF HOW THE PLAINTIFFS HAVE DEALT WITH THIS.  
7   YOU'VE READ OUR BRIEF, AND YOU'VE SEEN THAT WE DO NOT BELIEVE  
8   THE PLAINTIFFS HAVE SUFFICIENTLY ALLEGED STANDING AT THE  
9   INITIAL PART OF THEIR COMPLAINT, THAT HOUSE BILL 316 KIND OF  
10  ADDS TO A NUMBER OF THE PROBLEMS THE PLAINTIFFS HAVE WITH  
11  STANDING, AND AS WE'LL DISCUSS THIS, I THINK YOU'LL SEE THAT  
12  STANDING AND MOOTNESS AND THE ELEVENTH AMENDMENT ACTUALLY KIND  
13  OF FOLD IN ON EACH OTHER A LITTLE BIT AS WE TRY TO FIGURE OUT  
14  WHERE WE ARE.

15                  AS IT RELATES TO A CONCRETE INJURY, THAT FIRST  
16  ELEMENT OF STANDING, THE PLAINTIFFS HAVEN'T SUFFICIENTLY  
17  ALLEGED THEY HAVE THAT CONCRETE AND PARTICULARIZED INJURY, AND  
18  I THINK IT'S IMPORTANT FOR US TO REMEMBER THAT THE ONLY BASIS  
19  THEY'RE ADVOCATING STANDING ON IS ORGANIZATIONAL STANDING BASED  
20  ON A DIVERSION OF FUNDS.

21                  THERE ARE NO INDIVIDUAL VOTERS.   THERE'S NO  
22  ASSOCIATIONAL STANDING, AND SO FIRST LET'S KIND OF TALK ABOUT  
23  THE PEOPLE, THE GROUPS THAT HAVE POSSIBLE FUTURE INJURIES,  
24  BECAUSE AT THAT POINT WE HAVE THIS GROUP THAT THE PLAINTIFFS  
25  ACKNOWLEDGE HAVE NOT YET DONE ANYTHING RELATED TO THE ELECTION

1 LAWS, AND WITH THAT GROUP WE'RE ALREADY KIND OF AT ALMOST THE  
2 OUTER LIMITS OF ARTICLE 3 STANDING TO START WITH BECAUSE THE  
3 SUPREME COURT AND THE ELEVENTH CIRCUIT ARE CLEAR THAT YOU HAVE  
4 TO ALLEGE EACH PART OF THE CAUSAL CHAIN TO BE ABLE TO SHOW YOU  
5 HAVE STANDING FOR A FUTURE INJURY.

6 AND SO FOR PLAINTIFFS LIKE FAIR FIGHT ACTION AND  
7 OTHERS, THEY'RE ONLY ALLEGING THEY'RE GOING TO IMPLEMENT NEW  
8 EDUCATION PROGRAMS IN RESPONSE TO THE 2018 ELECTION LAWS THAT  
9 WERE IN PLACE. WITH THE PASSAGE OF HOUSE BILL 316, THE  
10 ELECTIONS ARE NOT GOING TO BE RUN ON THOSE LAWS GOING FORWARD.  
11 THERE WILL BE A NEW SYSTEM IN PLACE --

12 THE COURT: 316 THOUGH, HOUSE BILL 316 AS I LOOK AT,  
13 IT HAS NINE ISSUES THAT THE PLAINTIFFS HAVE BROUGHT FORTH. IT  
14 LOOKS LIKE HOUSE BILL 316 ADDRESSES TWO OF THEM DEFINITELY,  
15 MAYBE TWO MORE, SO THAT'S NINE. SO THEN WHAT ABOUT THE OTHER  
16 FIVE?

17 MR. TYSON: SO THERE ARE CHANGES TO -- WE CAN WALK  
18 THROUGH SOME OF THOSE SPECIFICS. THERE ARE SIGNIFICANT CHANGES  
19 TO A NUMBER OF AREAS. I THINK INITIALLY AS TO ABSENTEE  
20 BALLOTS, CLEARLY AND KIND OF MOVING TO THE MOOTNESS PART OF THE  
21 EQUATION HERE, WHEN WE'RE TALKING ABOUT MOOTNESS, IT'S CAN YOU  
22 FASHION EFFECTIVE RELIEF AT THIS POINT, AND U.S. VERSUS GEORGIA  
23 GETS INTO THAT QUESTION OF WHEN THE LEGISLATURE, FOR EXAMPLE,  
24 WITH THE UOCAVA VOTERS TOOK THE EXACT SAME TIME PERIOD WITH THE  
25 45 DAYS THAT THIS COURT HAD ORDERED. IN THAT CASE THERE WAS NO

1 MORE RELIEF THAT COULD BE ORDERED.

2 SO THERE ARE SEVERAL AREAS AND MR. BELINFANTE WILL  
3 GET INTO SOME OF THE SPECIFICS ON THIS WHERE THERE IS NO  
4 FURTHER RELIEF THAT CAN BE ORDERED. WE'RE TALKING ABOUT  
5 ABSENTEE BALLOTS. THE LEGISLATURE INCLUDED EVERY BIT OF RELIEF  
6 ORDERED BY THIS COURT AND JUDGE MAY AND THEN SOME --

7 THE COURT: WHAT ABOUT INADEQUATE VOTER REGISTRATION  
8 ROLLS, INADEQUATE RESOURCES AT POLLING PLACES, OVERSIGHT AND  
9 TRAINING. HOUSE BILL 316 TALKS A LITTLE BIT ABOUT THAT ONE BUT  
10 NOT COMPLETELY, AND THEN YOU ALSO HAVE POLLING PLACES, AND I  
11 RECOGNIZE WHEN MR. BELINFANTE GETS UP HERE, HE'S GOING TO SAY  
12 THAT'S SOMETHING THAT FALLS TO THE COUNTIES; HOWEVER, WE'RE  
13 TALKING ABOUT STANDING, AND THAT'S ISSUES THAT COULD NOT BE  
14 FAIR FIGHT AND THE OTHER FIVE SAY WE STILL HAVE TO ADDRESS THAT  
15 AND HOUSE BILL 316 DOESN'T TAKE CARE OF ALL OF THAT.

16 MR. TYSON: YES, YOUR HONOR, THEY COULD STILL SAY  
17 THAT, BUT THE CHALLENGE IS SINCE THEIR COMPLAINT IS CHALLENGING  
18 THE LAW AS IT WAS IN 2018, WE'RE IN A SCENARIO WHERE THAT LAW  
19 IS NOT GOING TO BE USED AGAIN, AND THEIR COMPLAINT, AT LEAST  
20 RIGHT NOW, IS NOT MAKING ALLEGATIONS REGARDING HOW THE LAW WILL  
21 BE GOING FORWARD.

22 I CAN UNDERSTAND THEM SAYING WE'RE GOING TO HAVE  
23 DISAGREEMENTS WITH THE LAW AS IT WILL BE IMPLEMENTED, BUT THAT  
24 ALONE IS NOT GOING TO BE ENOUGH TO GET THEM STANDING,  
25 ESPECIALLY WHEN YOU HAVE THIS WHOLE NEW STRUCTURE IN PLACE.

1 I THINK ONE OF THE PIECES THAT WE'RE KIND OF REALLY  
2 TALKING AROUND IS WHEN YOU GET DOWN TO WHAT KIND OF DIVERSION  
3 OF RESOURCES IS THIS, THAT EVEN ASSUMING THERE'S A BASIS IN THE  
4 LAW THAT SAYS OKAY, THERE'S SOMETHING THEY CAN CHALLENGE HERE,  
5 THEY STILL -- THE ALLEGATIONS OF DIVERSION OF FUNDS ARE  
6 PRIMARILY WELL WE WERE GOING TO EDUCATE VOTERS ABOUT ONE TOPIC,  
7 NOW WE'RE GOING TO EDUCATE VOTERS WITH A SLIGHTLY DIFFERENT  
8 MESSAGE IN LIGHT OF THE WAY THE LAWS HAVE BEEN PUT FORWARD AND  
9 SO --

10 THE COURT: IN THE CASE OF THE NAACP I THINK IT'S  
11 VERSUS ARCIA, A R C I A, DON'T THEY ADDRESS THAT? TELL ME WHY  
12 THAT DOESN'T APPLY, WHY CASE DOESN'T APPLY?

13 MR. TYSON: YES, YOUR HONOR. ARCIA WAS A SITUATION  
14 AND IN THE ALL THE ELEVENTH CIRCUIT CASES, IN BROWNING AND  
15 COMMON CAUSE, YOU ALWAYS SEE A DIFFERENCE HAPPENING HERE, YES,  
16 WE'RE GOING TO DO A LITTLE MORE, BUT WE'RE DOING SOMETHING  
17 CATEGORICALLY DIFFERENT THAT WE'RE SPENDING MONEY ON.

18 HERE WE HAVE ORGANIZATIONS THAT ARE ABOUT VOTER  
19 EDUCATION, THEY'RE ABOUT VOTER TURNOUT, AND THEY'RE SAYING  
20 WELL, WE'RE GOING TO DO MORE OF THAT ACTIVITY, THAT'S STILL THE  
21 PURPOSE OF THE ORGANIZATION, AND IF WE'RE GOING TO BE IN A  
22 SITUATION WHERE ARTICLE 3 STANDING EXTENDS THAT FAR OUT TO THAT  
23 KIND OF INJURY, THEN WE'RE NOW AT A POINT WHERE PRETTY MUCH ANY  
24 ORGANIZATION THAT ALLEGES SOMETHING TO DO WITH VOTING RIGHTS IS  
25 GOING TO HAVE STANDING TO BRING CASES IN THE FEDERAL COURT,



1 WHICH IS A COURT OF LIMITED JURISDICTION.

2 THERE'S GOT TO BE MORE THAN JUST A SETBACK TO THEIR  
3 ABSTRACT SOCIAL INTEREST WHICH I BELIEVE IS ALSO IN ARCIA FROM  
4 THE ELEVENTH CIRCUIT.

5 THE COURT: IN THAT CASE, AND I KNOW I HAVE THIS  
6 WRITTEN OUT, THE COURT READS THAT ORGANIZATIONS CAN ESTABLISH  
7 STANDING TO CHALLENGE THE ELECTION LAWS BY SHOWING THAT THEY  
8 WILL HAVE TO DIVERT PERSONNEL AND TIME TO EDUCATE POTENTIAL  
9 VOTERS IN COMPLIANCE WITH THE LAWS TO ASSIST THE VOTERS WHO  
10 MIGHT BE LEFT OFF THE REGISTRATION ROLLS ON ELECTION DAY.  
11 YOU'RE SAYING THAT HOUSE BILL 316 TAKES CARE OF ALL OF THAT?

12 MR. TYSON: I'M SAYING THAT IN TERMS OF THE  
13 PLAINTIFFS WHO HAVE A POSSIBLE FUTURE INJURY, THEY ARE NOW NOT  
14 GOING TO HAVE TO SPEND THE MONEY THEY WERE OTHERWISE GOING TO  
15 HAVE TO SPEND. THEY'RE CHOOSING NOW -- AS FAR AS THE CAUSAL  
16 CHAIN GOES, THE ALLEGATIONS ARE NOT THERE TO SUPPORT EVERY LINK  
17 OF THE CAUSAL CHAIN IN THE COMPLAINT. SO EITHER THEY NEED TO  
18 CLARIFY WHAT'S GOING ON WITH THAT, OR THERE NEEDS TO BE -- THIS  
19 IS A BASIS TO DISMISS BECAUSE THEY HAVE NOT ALLEGED A CONCRETE  
20 INJURY.

21 THAT LEADS US, THOUGH, TO THE TRACEABILITY AND  
22 REDRESSABILITY PROBLEMS WHEN YOU'RE LOOKING AT THE QUESTION OF  
23 STANDING, AS WELL. WE HAVE PLAINTIFFS WHO HAVE CHOSEN TO SPEND  
24 MONEY. THEY HAVE BASED THAT ON THEIR BELIEF THAT THE LAWS ARE  
25 PROBLEMATIC. THAT'S A LOT LIKE THE SITUATION IN CLAPPER WHERE

1 YOU HAD PLAINTIFFS WHO CHOSE TO SPEND MONEY. THEY  
2 SELF-INFLICTED BASICALLY THE HARM ON THEMSELVES, AND THE  
3 SUPREME COURT SAID THAT WASN'T ENOUGH TO GET YOU ACROSS  
4 STANDING.

5 THE CONCERN HERE IS SINCE WE'RE HAVING SUCH A  
6 SIGNIFICANT CHANGE IN ELECTION LAW, WE'RE NOW IN A SITUATION  
7 WHERE WE'RE GOING TO HAVE A NEW SET OF LAWS APPLYING WHERE YOU  
8 CAN NO LONGER TRACE DIRECTLY THE EXPENDITURE OF FUNDS BACK TO  
9 THE LAWS THAT ARE BEING CHALLENGED BECAUSE THESE LAWS AGAIN ARE  
10 CHANGING, AND THIS IS WHERE THE MOOTNESS AND THE STANDING  
11 QUESTION COME TOGETHER, THAT THERE'S THIS DIFFERENCE HAPPENING  
12 BETWEEN WHAT THE LAW WAS IN 2018 AND WHAT THE LAW WILL BE IN  
13 2020.

14 SO OUR CONCERN IS -- OUR POSITION IS THAT BECAUSE  
15 WE'RE STILL IN THIS KIND OF HIGHLY ATTENUATED CHAIN OF  
16 CAUSATION TO GET THERE, IF THE LAW IS IMPLEMENTED IN A WAY  
17 PLAINTIFFS DISAGREE WITH, THEY MIGHT SPEND FUNDS ONE DAY OR  
18 LOOKING AT A CAUSAL CHAIN THAT'S NOT SUFFICIENTLY ALLEGED GIVEN  
19 THE CHANGE IN LAW THAT'S HAPPENED.

20 THE COURT: LET'S SAY HYPOTHETICALLY, VERY  
21 HYPOTHETICALLY I AGREE WITH YOU ON THE ONES THAT HOUSE BILL 316  
22 MIGHT APPLY TO. I'M STILL NOT HEARING HOW THE REMAINING ONES  
23 THAT HOUSE BILL 316 DOES NOT APPLY TO WILL NOT CAUSE THE  
24 PLAINTIFFS TO STILL HAVE TO DIVERT FUNDS.

25 MR. TYSON: YES, YOUR HONOR, SO WHAT I'M SAYING IS

1 THAT FOR THE GROUPS OF PLAINTIFFS THAT ALLEGE ONLY POSSIBLE  
2 FUTURE INJURY, THERE'S A PROBLEM WITH THE CAUSAL CHAIN TO GET  
3 THERE.

4 FOR THE PLAINTIFFS THAT HAVE ALLEGED THAT THEY'VE  
5 ALREADY DONE SOMETHING WHICH IS CARE IN ACTION, EBENEZER  
6 BAPTIST CHURCH AND BACONTON MISSIONARY BAPTIST CHURCH, FOR  
7 THOSE THREE WE STILL DON'T -- WOULD SAY THAT THAT'S NOT A  
8 CONCRETE ENOUGH INJURY, BUT IN THAT CASE HOUSE BILL 316 REALLY  
9 DOESN'T IMPLICATE THEIR STANDING BECAUSE THEY'VE ALREADY TAKEN  
10 STEPS. SO I THINK WE HAVE TO SEPARATE THE TWO GROUPS OF  
11 PLAINTIFFS HERE IN TERMS OF THE ONES WHO HAVE ALREADY  
12 DONE SOMETHING AND THE ONES WHO HAVE NOT YET TAKEN ANY ACTION.

13 AND, OF COURSE, THE ELEVENTH CIRCUIT RECOGNIZES AN  
14 IMMINENT HARM CAN GET YOU ACROSS THAT STANDING LINE, BUT WE  
15 STILL HAVE THE CLAPPER PIECE OF THE EQUATION THAT SAYS WE CAN'T  
16 HAVE THIS HIGHLY ATTENUATED CHAIN OF POSSIBILITIES. SO THAT'S  
17 OUR ISSUES IN TERMS OF STANDING.

18 THE OTHER PIECE THAT HOUSE BILL 316 LEADS US TO IS  
19 THE ELEVENTH AMENDMENT PROBLEMS THAT ALSO KIND OF GET WRAPPED  
20 UP IN THIS QUESTION OF STANDING. WE DISCUSS THE INITIAL BAR  
21 AND SUITS AGAINST STATES IN FEDERAL COURT, AND THE PLAINTIFFS  
22 OBVIOUSLY HAVE WITHDRAWN SOME OF THEIR CLAIMS RELATED TO THE  
23 STATE ELECTION BOARD ON ELEVENTH AMENDMENT --

24 THE COURT: LET ME JUST MAKE SURE WE'RE ALL ON THE  
25 SAME PAGE WITH THAT ONE. MY UNDERSTANDING IS THE PLAINTIFFS

1 ARE AGREEING WITH DEFENDANTS THAT COUNTS 1 THROUGH 4 AND COUNT  
2 6 SHOULD BE DISMISSED AGAINST THE BOARD MEMBERS, AND COUNT 5  
3 WOULD REMAIN; IS THAT CORRECT?

4 MS. TANIS: YES, YOUR HONOR, THAT IS CORRECT.

5 THE COURT: ALL RIGHT.

6 MR. TYSON: SO, YOUR HONOR, OUR CONCERN WITH THE EX  
7 PARTE YOUNG EXCEPTION THAT WE HAVE, YOU CAN PURSUE AGAINST  
8 STATE OFFICIALS FOR CONTINUING PROSPECTIVE EQUITABLE RELIEF TO  
9 END CONTINUING VIOLATIONS OF FEDERAL LAW. SO AT LEAST IN TERMS  
10 OF THE AREAS THAT ARE MODIFIED BY HOUSE BILL 316, THERE'S NO  
11 CONTINUING VIOLATIONS HAPPENING. WE HAVE A NEW SET OF LAWS,  
12 AND THE PLAINTIFFS' CLAIMS ARE NOW NOT SUBJECT TO EX PARTE  
13 YOUNG RELATED TO THOSE ISSUES BECAUSE THERE'S BEEN A CHANGE IN  
14 THE LAW, AND THOSE ONGOING VIOLATIONS DON'T EXIST.

15 THE OTHER CHALLENGE IS IN THE CONTEXT OF ELECTIONS,  
16 THE ELEVENTH CIRCUIT RECOGNIZES THERE ARE SPECIAL SOVEREIGNTY  
17 INTERESTS GIVEN FOR STATES. STATES HAVE THE POWER UNDER THE  
18 CONSTITUTION TO SET THE TIME, PLACES AND MANNERS OF THEIR  
19 ELECTIONS, AND WHILE AN INJUNCTION AGAINST A PARTICULAR  
20 UNCONSTITUTIONAL STATUTE OR ONE THAT IS ALLEGED TO BE  
21 UNCONSTITUTIONAL WOULD FALL UNDER THE EX PARTE YOUNG  
22 EXCEPTION.

23 THE ELEVENTH CIRCUIT HAS SPECIFICALLY FOUND THAT IN  
24 CASES WHERE A PLAINTIFF -- IT WAS APPROPRIATE IN CASES WHERE  
25 THE PLAINTIFFS WERE NOT SEEKING AN ORDER DIRECTING THE PRECISE

1 WAY IN WHICH GEORGIA SHOULD CONDUCT VOTING, AND THAT WAS THE  
2 ELEVENTH CIRCUIT'S RULING IN THE CURLING APPEAL A COUPLE OF  
3 MONTHS AGO.

4 THAT'S EXACTLY WHAT THE PLAINTIFFS ARE DOING HERE,  
5 THEY'RE ASKING FOR THIS COURT TO TAKE THE ENTIRETY OF TITLE 21  
6 AND FASHION A NEW SET OF RULES RELATED TO ELECTIONS IN THE  
7 STATE OF GEORGIA. SO THEY ARE DEFINITELY ASKING FOR DIRECTION  
8 FOR THE PRECISE WAY THAT VOTING IS BEING CONDUCTED, AND SO  
9 ANOTHER ISSUE RELATED TO MOOTNESS IN HOUSE BILL 316 WILL BE THE  
10 IMPACT ON THE ELEVENTH AMENDMENT ISSUES, AS WELL.

11 LET ME TALK NEXT ABOUT THE VOTING RIGHTS ACT CLAIM  
12 AND THE NATIONAL VOTER REGISTRATION ACT LIST MAINTENANCE CLAIMS  
13 THAT ARE ALSO IMPACTED. SO IN TERMS OF THE VOTING RIGHTS ACT  
14 CLAIM THERE IS GOING TO BE A SIGNIFICANT LIMITING FOR THE  
15 PLAINTIFFS OF HOUSE BILL 316 ON THEIR INTENTIONAL  
16 DISCRIMINATION COUNT.

17 SO UNDER SECTION 3(C) OF THE VOTING RIGHTS ACT, A  
18 JUDGE HAS THE POWER TO BAIL IN A STATE UNDER THE PRECLEARANCE  
19 FORMULA UNDER THE VOTING RIGHTS ACT FOR APPROVAL OF ELECTION  
20 LAWS WHEN THERE'S BEEN A FINDING OF INTENTIONAL DISCRIMINATION,  
21 AND ALTHOUGH NOT MANY COURTS HAVE LOOKED AT THIS QUESTION GIVEN  
22 THE RECENTNESS OF SHELBY COUNTY, THE FIFTH CIRCUIT IN LOOKING  
23 AT THE TEXAS PHOTO I.D. LAW FOUND THAT WHEN THERE WAS A CHANGE  
24 IN THE LAW ABOUT AN ALLEGEDLY INTENTIONALLY DISCRIMINATORY LAW  
25 THAT CUT OFF THE POTENTIAL LIABILITY IN TERMS OF THE VOTING

1 RIGHTS ACT GOING FORWARD BECAUSE THE COURT WAS REQUIRED TO NOT  
2 ONLY LOOK BACK AT THE INTENTIONAL BASIS INITIALLY BUT TO  
3 RECOGNIZE THAT MEANINGFUL ALTERATIONS IN A CHALLENGED STATUTE  
4 CAN MAKE A STATUTE VALID, AND SO THAT CUTS OFF BASICALLY YOUR  
5 CONCERNS ABOUT INTENTIONAL DISCRIMINATION THAT WOULD GIVE RISE  
6 TO LIABILITY UNDER SECTION 3(C) OF THE VOTING RIGHTS ACT FOR  
7 BAIL IN PURPOSES.

8           AND THEN THE LAST PIECE I'LL TALK ABOUT IS THE NVRA  
9 MANDATED LIST MAINTENANCE. THE PLAINTIFFS OBVIOUSLY CONTINUE  
10 TO CALL THIS THE USE IT OR LOSS IT STATUTE, WHICH IS NOT  
11 ACCURATE.

12           THE COURT: ONE OF MY LAW CLERKS SPECIFICALLY TOLD ME  
13 WHEN YOU TALK TO THE DEFENDANTS, IT'S MAINTENANCE, AND WHEN  
14 YOU'RE TALKING TO THE PLAINTIFFS, IT'S USE IT OR LOSE IT.

15           MR. TYSON: AS LONG AS WE'RE ALL TALKING ABOUT THE  
16 SAME STATUTE. WELL, WE HAVE -- WE'RE REQUIRED, THE STATE OF  
17 GEORGIA IS REQUIRED BY THE NATIONAL VOTER REGISTRATION ACT TO  
18 CONDUCT LIST MAINTENANCE, AND SO UNDER 52 USC 20507(A)(4)(B),  
19 WE'VE GOT TO REMOVE PEOPLE FROM THE ROLLS WHO MOVE AND ARE  
20 REQUIRED TO DO SO.

21           THE COURT: MR. TYSON, AND AGAIN, FORGIVE ME FOR  
22 CUTTING YOU OFF. MY MOM TAUGHT ME BETTER MANNERS, BUT JUDGING  
23 KIND OF JUST MESSES YOU UP IN LIFE.

24           THEY'RE SAYING IT'S NOT A CONSTITUTIONAL CHALLENGE.  
25 IN OTHER WORDS THIS CASE WENT I THINK IN FRONT OF THE ELEVENTH

1 CIRCUIT. I HAD A CASE HERE. I THINK THE BONDURANT LAW FIRM  
2 WAS ON ONE SIDE. THE ELEVENTH CIRCUIT SENDS IT BACK, AND THEN  
3 YOU HAVE HUSTED V. A. PHILIP RANDOLPH CASE COMES OUT. THE  
4 SUPREME COURT RULES. THE ARGUMENT FROM THE PLAINTIFFS AND THE  
5 ARGUMENT FROM OTHER PEOPLE AROUND THE COUNTRY IS THEY DIDN'T  
6 TALK ABOUT THE CONSTITUTIONALITY. LET'S TALK ABOUT THAT.

7 MR. TYSON: YES, YOUR HONOR, THEY DID NOT TALK ABOUT  
8 THE CONSTITUTIONALITY. THE KEY ISSUE HERE IS UNDER THE  
9 NATIONAL VOTER REGISTRATION ACT THERE'S A SPECIFIC PROVISION  
10 THAT SAYS YOU CANNOT REMOVE SOMEONE FROM THE ROLLS FOR FAILING  
11 TO VOTE, AND SO THAT WAS THE QUESTION IN THOSE CASES.

12 WHEN WE LOOK AT THE CONSTITUTIONAL CHALLENGE HERE,  
13 THAT'S THE BASIS OF THE PLAINTIFFS' CONSTITUTIONAL CHALLENGE,  
14 AS WELL. THEY'RE SAYING YOU'RE REMOVING PEOPLE FROM THE ROLLS  
15 FOR FAILING TO VOTE. THE SUPREME COURT HAS ALREADY REVIEWED  
16 THE SPECIFIC LEGAL STRUCTURE THAT'S IN PLACE UNDER THE NVRA AND  
17 CONCLUDED THAT'S NOT THE CASE. IN FACT, THIS IS VALID LIST  
18 MAINTENANCE AS REQUIRED BY THE NVRA.

19 THE COURT: THE PLAINTIFFS' ARGUMENT IS THAT YOU ONLY  
20 SENT OUT THE POSTCARDS IF ONE OR TWO THINGS HAPPENED. THE POST  
21 OFFICE NOTIFIES YOU THE PERSON HAS MOVED, OR IF THE PERSON HAS  
22 NOT VOTED OVER A PERIOD OF TIME.

23 SO THEIR ARGUMENT IS THAT YOU ARE REMOVING THEM  
24 BECAUSE THEY'RE NOT VOTING. I UNDERSTAND YOUR ARGUMENT. I  
25 READ THE CASE. IN A SENSE ISN'T THAT -- AND I'M NOT ARGUING

1 WITH THE SUPREME COURT. THEY'RE NINE GENIUSES, AS FAR AS I'M  
2 CONCERNED, BUT IN A SENSE, IF YOU'RE NOT CONTACTING THEM  
3 UNTIL THEY FAIL TO VOTE, IS THAT NOT TRIGGERING THE WHOLE  
4 PROCESS?

5 MR. TYSON: I THINK THE CONCERN IS AS TO THE PEOPLE  
6 WHO HAVE A NATIONAL CHANGE OF ADDRESS INDICATED ADDRESS  
7 CHANGE. THAT'S ONE CATEGORY. I THINK WE CAN SET THAT TO THE  
8 SIDE.

9 THE COURT: THAT'S NOT HERE.

10 MR. TYSON: FOR PEOPLE WHO ARE NOT CONTACTING OR  
11 HAVING NO CONTACT WITH THE ELECTION OFFICIALS, THE CONCERN IS  
12 THEY MAY HAVE MOVED OR TAKEN SOME ACTION, AND THEY HAVEN'T  
13 SHOWED UP ON ANYTHING THAT HAS LED TO THEIR INELIGIBILITY, AND  
14 THE ONLY WAY WE KNOW IS IF WE ASK THEM.

15 NOW, THIS IS ALSO AN AREA WHERE HOUSE BILL 316 MAKES  
16 SIGNIFICANT POSITIVE CHANGES IN TERMS OF LINING UP THE  
17 REGISTRATION WITH THE DEPARTMENT OF DRIVER SERVICES.

18 THE COURT: LET ME ASK YOU A QUESTION. I'M KIND OF  
19 JUMPING AHEAD OF MR. BELINFANTE -- I'LL SAVE IT FOR HIM.

20 MR. TYSON: AND, YOUR HONOR, JUST ALONG THAT LINE,  
21 TOO, I THINK ONE OF THE IMPORTANT THINGS TO REMEMBER IS THERE  
22 WAS A STORY THIS MORNING THE BRENNAN CENTER HAS DONE A STUDY  
23 RECENTLY THAT SHOWS THAT GEORGIA NOW IS ONE OF THE NATIONAL  
24 LEADERS IN AUTOMATIC VOTER REGISTRATION THAT'S LED TO AN  
25 EXTREMELY HIGH RATE OF PEOPLE REGISTERING AT THE DEPARTMENT OF



1 DRIVER SERVICES.

2 SO HAVING THE LIST MATCHING PROCESS AND THE DATABASE  
3 MATCHING HAPPENING SIMULTANEOUSLY WHEN SOMEONE GOES TO GET A  
4 DRIVER'S LICENSE, UNDER HOUSE BILL 316 THAT TIMELINE, THAT LACK  
5 OF CONTACT WOULD BE LINED UP WITH THE TIME WHICH YOU HAVE TO  
6 RENEW YOUR DRIVER'S LICENSE. SO IF YOU GO NINE YEARS WITHOUT  
7 VOTING, IN THAT 10TH YEAR WHEN YOU'RE RENEWING YOUR DRIVER'S  
8 LICENSE THAT WILL CONSTITUTE A CONTACT. WE CAN VERIFY YOU'RE  
9 STILL AN ELIGIBLE VOTER AT A LOCATION AND CAN PROCEED FROM  
10 THERE. SO THAT'S ANOTHER AREA WHERE WE HAVE A SIGNIFICANT  
11 MOOTNESS QUESTION RELATED TO THOSE ISSUES IN THE CASE.

12 THE COURT: IS IT YOUR ARGUMENT THEN THAT HOUSE BILL  
13 316 WITH THE CHANGES HAS MADE THAT PART MOOT?

14 MR. TYSON: YES, YOUR HONOR, IT DOES MAKE THAT PART  
15 OF THE CHALLENGE MOOT, AND MR. BELINFANTE WILL GET INTO SOME OF  
16 THOSE DETAILS ON HERE, AND I KEEP ADVANCING MR. BELINFANTE'S  
17 SLIDES ACCIDENTALLY. SO WITH THAT, THAT'S THE ISSUES I HAVE TO  
18 COVER, YOUR HONOR, SO I'LL HAND IT OFF TO MR. BELINFANTE.

19 THE COURT: THANK YOU, MR. TYSON.

20 MR. BELINFANTE: GOOD AFTERNOON, JUDGE. I'VE GOT A  
21 NOTEBOOK WITH SOME DOCUMENTS I'LL BE REFERRING TO. MAY I  
22 APPROACH?

23 THE COURT: YES. THANK YOU.

24 MR. BELINFANTE: YOUR HONOR, I'LL BE ADDRESSING THE  
25 CONSTITUTIONAL CLAIMS 1 TO 4 AND ONLY ONE PART OF THE VOTING

1 RIGHTS ACT, WHICH IS THE MOVING OR CLOSING OF PRECINCTS, AND AS  
2 YOU KNOW FROM THE MOTION TO DISMISS, THE STATE SUBMITS THOSE  
3 CLAIMS SHOULD BE DISMISSED FOR AT LEAST THREE REASONS, AND  
4 WHILE WE'LL REST ON OUR BRIEF IN THEIR ENTIRETY, I'M GOING TO  
5 TRY TO FOCUS MY ARGUMENT ON THE QUESTIONS YOU'VE RAISED.

6 FIRST, THE CLAIMS ARE MOOT. HOUSE BILL 316, WE'VE  
7 GOT CERTIFIED COPIES OF THE LEGISLATION, IF NEEDED, AND ALSO  
8 ANOTHER BILL SIGNED TODAY, HOUSE BILL 392 ADDRESSES SOME OF  
9 THOSE ISSUES AS WELL.

10 THE SECOND IS THAT THE PLAINTIFFS HAVE FAILED TO JOIN  
11 NECESSARY PARTIES, SPECIFICALLY COUNTY BOARDS OF REGISTRARS AND  
12 COUNTY SUPERINTENDENTS. I KNOW YOU'VE ASKED A QUESTION ABOUT  
13 THAT; AND, THIRD, JUST SIMPLY ON THE MERITS THE PLAINTIFFS HAVE  
14 FAILED TO STATE A CLAIM, BUT I THINK IT'S IMPORTANT TO PUT ALL  
15 OF THIS IN THE CONTEXT OF AGAIN THE FOUR CORNERS OF THE  
16 PLAINTIFFS' COMPLAINT.

17 PARAGRAPH 43 OF THE FIRST AMENDED COMPLAINT  
18 ACKNOWLEDGES THAT THE 2018 ELECTION WAS SOMETHING UNIQUE. THAT  
19 AS THEY ALLEGE IN THE PARAGRAPH, IT DREW HISTORIC VOTER  
20 REGISTRATION AND TURNOUT PARTICULARLY AMONG VOTERS OF COLOR.  
21 THE COMPLAINT GOES ON TO SAY THAT VOTER TURNOUT WAS MORE THAN  
22 FOR ANY PREVIOUS MIDTERM ELECTION IN GEORGIA HISTORY, AND THAT  
23 MATTERS PARTICULARLY WHEN YOU GET TO QUESTIONS OF FAILURE TO  
24 TRAIN AND FAILURE TO SUPERVISE.

25 AND THE FIRST -- AND ALSO IN ADDITIONAL CONTEXT,

1 THERE'S A SIGNIFICANT DISAGREEMENT BETWEEN THE SIDES ON WHAT IS  
2 THE STATE'S ROLE IN SEEING ELECTIONS VERSUS THAT OF THE LOCAL  
3 GOVERNMENTS, AND I KNOW THAT DREW A QUESTION FOR THE COURT, AS  
4 WELL.

5 IN YOUR NOTEBOOK THERE'S A STATUTE 21-2-50 WHICH IS  
6 CITED IN THE COMPLAINT. YOU DON'T NEED TO TURN TO IT, BUT IT'S  
7 THERE IF YOU WANT. PARAGRAPH 53, 55 AND 56 ALL TALK ABOUT THE  
8 ROLE OF THE SECRETARY OF STATE AS OVERSEEING ELECTIONS, BUT IF  
9 YOU READ THAT STATUTE, THE ONE CITED IN THE COMPLAINT, WHAT IT  
10 SAYS IS SOMETHING A BIT MORE LIMITED.

11 IT SAYS THAT THE SECRETARY SHALL EXERCISE ALL POWERS  
12 GRANTED TO THE SECRETARY OF STATE BY THIS CHAPTER AND SHALL  
13 PERFORM DUTIES IMPOSED BY THIS CHAPTER WHICH SHALL INCLUDE THE  
14 FOLLOWING AND THEN LISTS A SERIES OF POWERS. IT IS NOT A  
15 GENERALIZED GRANT OF AUTHORITY.

16 IT IS NOT AS WE'VE SEEN FROM CASES CITED BY THE  
17 PLAINTIFFS, THE BURMAN CASE FROM NEW YORK AND THE BLACKWELL  
18 CASE IN OHIO, WHERE THE STATE TAKES A MUCH MORE HEAVY AND  
19 INVOLVED ROLE IN ELECTIONS. HERE IN GEORGIA THEY ARE LARGELY  
20 ADMINISTERED BY COUNTIES.

21 IN LOOKING AT THE QUESTION OF TRAINING, THE SAME CODE  
22 SECTION AT SUBSECTION (A)(11) SAYS THAT THE SECRETARY IS  
23 REQUIRED TO CONDUCT TRAINING SESSIONS AT SUCH PLACES THE  
24 SECRETARY OF STATE DEEMS APPROPRIATE IN EACH YEAR FOR THE  
25 TRAINING OF REGISTRARS AND SUPERINTENDENTS OF ELECTIONS. THE

1 SECRETARY DOES NOT TRAIN POLL WORKERS. THE SECRETARY DOES NOT  
2 TRAIN EVERYONE THAT'S SITTING AT A POLL SPACE, AND THERE'S NO  
3 ALLEGATION IN THE COMPLAINT THAT THESE STATUTORILY MANDATED  
4 TRAINING DID NOT OCCUR. THE QUESTION IS TO THE QUALITY OF THE  
5 TRAINING, BUT NOT WHETHER IT WAS IN FACT DONE.

6 SO THEN WE TURN TO SOME EXTENT TO THE STATE ELECTION  
7 BOARD, AND I REALIZE THAT THEY'VE BEEN DISMISSED AS TO THOSE  
8 CONSTITUTIONAL --

9 THE COURT: RIGHT.

10 MR. BELINFANTE: BUT TO SOME EXTENT, IF I GO BACK AND  
11 FORTH, IT'S BECAUSE THE NATURE OF HOW THAT WAS DONE IN THE  
12 BRIEF AS OPPOSED TO THE COMPLAINT, SO I WILL GO AHEAD AND GET  
13 THAT OUT.

14 THE STATE ELECTION BOARD PROMULGATES RULES AND  
15 REGULATIONS. THAT'S ACKNOWLEDGED IN PARAGRAPH 61 OF THE  
16 COMPLAINT, BUT THEY DON'T ENGAGE IN TRAINING UNLESS -- AND THIS  
17 IS IN CODE SECTION 21-2-31(9) -- THEIR OBLIGATION FOR TRAINING  
18 IS, QUOTE, SUBJECT TO FUNDS SPECIFICALLY APPROPRIATED BY THE  
19 GENERAL ASSEMBLY.

20 THE COURT: HOW MUCH OVERSIGHT, ACCORDING TO THE  
21 PLAINTIFFS, THE TEST HERE IS OVERSIGHT. HOW MUCH OVERSIGHT  
22 DOES THE SECRETARY OF STATE HAVE OVER WHERE POLLING PLACES ARE  
23 GOING TO BE AND THINGS LIKE THAT?

24 MR. BELINFANTE: WHERE THE POLLING PLACE IS GOING TO  
25 BE?

1 THE COURT: YES.

2 MR. BELINFANTE: THAT IS A PURELY COUNTY DECISION.

3 THE STATUTES AND I'LL GET TO IT, BUT EFFECTIVELY THEY WERE SET  
4 IN 1982. THAT'S WHEN THE BASELINE WAS SET, SINCE THEN CITIES  
5 AND/OR COUNTIES MAY CHANGE THEM, AND THEY SIMPLY PROVIDE NOTICE  
6 TO THE SECRETARY OF STATE THAT THEY HAVE IN FACT DONE SO.  
7 PRIOR TO SHELBY COUNTY IT HAD TO GO THROUGH THE JUSTICE  
8 DEPARTMENT, AND SINCE THEN IT DOES NOT.

9 HOUSE BILL 316 ADDRESSES THIS. I DON'T KNOW THAT IT  
10 DOES IN A MANNER THAT CANDIDLY AFFECTS PLAINTIFFS' CLAIMS IN  
11 THAT COUNTIES CAN NO LONGER MOVE POLLING PLACES 60 DAYS BEFORE  
12 A GENERAL AND 30 DAYS BEFORE A SPECIAL.

13 THE COURT: HYPOTHETICALLY, I WON'T PICK ON ANY  
14 COUNTY, BUT LET'S SAY COUNTY "A" DECIDES 45 DAYS BEFORE AN  
15 ELECTION TO CHANGE A POLLING PLACE, WHAT, IF ANYTHING, CAN THE  
16 SECRETARY OF STATE DO?

17 MR. BELINFANTE: IT'S UNCLEAR WHAT THE SECRETARY OF  
18 STATE COULD DO AT THAT POINT. AT BEST PERHAPS THE STATE  
19 ELECTION BOARD COULD FINE, OR SOMEONE COULD BRING A CHALLENGE  
20 TO THE COUNTY TO DO IT. THEY COULD CERTAINLY DO IT IN A  
21 FEDERAL OR STATE COURT FOR VIOLATIONS OF STATE LAW, BUT THE  
22 SECRETARY OF STATE HIMSELF, EXCEPT PERHAPS IN HIS CAPACITY AS  
23 CHAIR OF THE STATE ELECTION BOARD, COULD NOT INDEPENDENTLY STOP  
24 A CITY OR COUNTY FROM DOING THAT UNDER EXISTING STATUTORY LAW.

25 AND SO THE QUESTION GENERALLY THEN GETS BROKEN IN THE

1 PLAINTIFFS' COMPLAINT DOWN TO REALLY TWO TYPES OF CLAIMS.  
2 FIRST ARE CLAIMS ABOUT WHAT IS TRULY STATE ACTION, SUPPLYING  
3 VOTING MACHINES, DOING THINGS LIKE MAINTAINING VOTER DATABASES,  
4 THINGS LIKE THAT, THAT IS UNQUESTIONABLY A STATE  
5 RESPONSIBILITY.

6           HOWEVER, MOST OF THAT WE ARGUE HAS BEEN MOOTED BY 316  
7 AND HOUSE BILL 392, AND TO THE EXTENT IT HAS NOT BEEN OR IN  
8 SOME WAYS BECAUSE IT HAS, THE ELEVENTH AMENDMENT KICKS IN  
9 BECAUSE THE PLAINTIFFS ARE LIMITED TO SEEKING PROSPECTIVE  
10 INJUNCTIVE RELIEF FOR A CONTINUING VIOLATION. THERE CAN'T BE A  
11 CONTINUING VIOLATION OF A LAW THAT IN THE CASE OF 316 WAS  
12 SIGNED JUST THIS MONTH, AND IN THE CASE OF 392 WAS SIGNED  
13 TODAY.

14           THE SECOND TYPE OF CLAIM ARE THE FAILURE TO TRAIN OR  
15 FAILURE TO SUPERVISE, AND IN THE CITY OF MIAMI VERSUS GOLD  
16 DECISION THE ELEVENTH CIRCUIT SAID THAT THE ELEMENTS BETWEEN  
17 FAILURE TO MANAGE OR SUPERVISE AND FAILURE TO TRAIN ARE  
18 EFFECTIVELY THE SAME, AND AT LEAST FOR THE PURPOSES WE'LL BE  
19 TALKING ABOUT TODAY, THE ARGUMENT THERE IS THEY'VE FOCUSED  
20 THEIR ENTIRE CASE ON THE 2018 ELECTION.

21           FAILURE TO TRAIN AND FAILURE TO MANAGE CASES TEND TO  
22 TAKE SOME TYPE OF HISTORICAL RECORD, NOT ONE EVENT. EVEN IF  
23 IT'S HAPPENED IN DOZENS OF POLLING PLACES, YOU NEED SOMETHING  
24 MORE TO PUT THE GOVERNMENT ON NOTICE.

25           THE COURT: WHY? WHY, WHY DO YOU NEED MORE YEARS IF

1 YOU HAVE I THINK THEY ALLEGE LIKE TEN COUNTIES IN A -- I  
2 REMEMBER ONE OF THEM WAS COBB COUNTY AND FULTON. WHY DO YOU  
3 NEED MORE THAN THAT?

4 MR. BELINFANTE: WELL, YOUR HONOR, BECAUSE THERE'S  
5 BEEN ONE ELECTION, AND IF YOU LOOK AT THE THING HOLISTICALLY,  
6 THIS IS HOW IT'S SUPPOSED TO WORK. THERE WAS ONE ELECTION.  
7 THERE WERE CONCERNS RAISED AND VARIOUS LAWSUITS, SOME BEFORE  
8 THIS COURT, MANY WRITTEN ABOUT IN THE PAPER, AND THE GENERAL  
9 ASSEMBLY REACTED. IT CHANGED THE LAW. IT CHANGED THE POLICY,  
10 AND ACCORDING TO THOSE NEW STATUTES AND TO THE EXTENT THAT THE  
11 SECRETARY HIMSELF AS OPPOSED TO THE STATE ELECTION BOARD HAS AN  
12 OBLIGATION TO TRAIN LOCAL OFFICIALS, THEIRS ARE GOING TO BE  
13 BASED ON NEW RULES FROM THE SEB AND A NEW STATUTE. SO THERE  
14 CAN'T BE A FAILURE TO TRAIN ON SOMETHING THAT HAS JUST BEEN  
15 SIGNED EITHER EARLIER THIS MONTH OR TODAY BECAUSE THE TRAINING  
16 HASN'T EVEN COMMENCED.

17 YOU NEED THAT HISTORICAL BASIS, AND THE ELEVENTH  
18 CIRCUIT AND THE SUPREME COURT HAVE SAID YOU NEED TO PROVIDE  
19 NOTICE SO THAT YOU KNOW WHAT TO TRAIN ON; OTHERWISE, YOU  
20 DEVOLVE 42 USC 1983 CLAIMS INTO EFFECTIVELY RESPONDEAT  
21 SUPERIOR.

22 THE COURT: THAT'S A GOOD POINT.

23 MR. BELINFANTE: AND YOU MAKE IT -- AND IN THIS CASE  
24 I WOULD ARGUE IT'S MORE OF A RES IPSA ARGUMENT. IT'S WELL,  
25 SOMETHING BAD HAPPENED AT THE POLLS. THEREFORE, IT MUST HAVE

1 BEEN THE TRAINING THAT CAUSED SOMETHING BAD TO HAPPEN, AND THE  
2 COURTS HAVE SAID THERE'S A HIGHER BAR THAN THAT.

3 FOCUSING ON THOSE ISSUES THAT ARE STATE CLAIMS, AND  
4 I'LL GET TO THOSE, THE FIRST ARGUMENT RAISED AND THAT I THINK  
5 YOU'RE FOCUSED US ON IS THE MOOTNESS ARGUMENT, AND IF YOU NEED  
6 ANY FURTHER QUESTION OF WHY THE CASE IS MOOT, I URGE YOU SIMPLY  
7 TO LOOK AT THE PRAYER FOR RELIEF FOR THE ADDENDUM CLAUSE WHICH  
8 IS IN YOUR NOTEBOOK I BELIEVE IT'S THE LAST TAB.

9 PARAGRAPHS 1, 2, 3 AND 5 ALL SEEK TO DECLARATORY  
10 RELIEF ON GEORGIA'S, QUOTE, CURRENT ELECTION SYSTEM. WHEN THE  
11 FIRST AMENDED COMPLAINT WAS FILED IN FEBRUARY OF THIS YEAR, THE  
12 CURRENT ELECTION SYSTEM IS NOT WHAT IT IS TODAY AND NOT WHAT  
13 WILL BE ON JULY 1 WHEN HOUSE BILL 392 BECOMES EFFECTIVE.

14 THE COURT: WELL, LET ME ASK YOU A QUESTION I WAS  
15 GOING TO ASK MR. TYSON. ARE YOU ARGUING THAT THIS ENTIRE  
16 LAWSUIT SHOULD BE DISMISSED BECAUSE IT'S NOW MOOT BECAUSE OF A  
17 REPEAL OF A STATUTE OR AN ENACTMENT OF A LAW?

18 MR. BELINFANTE: I WOULD ARGUE THAT THE  
19 INDIVIDUALIZED CLAIMS, AND I'LL WALK THROUGH THEM, HAVE BEEN  
20 MOOTED, NOT THE LAWSUIT ITSELF. JUST MERELY PASSING A LAW IS  
21 NOT GOING TO MOOT THE WHOLE LAWSUIT, BUT IF YOU LOOK AT WHAT IS  
22 ALLEGED, THEY'RE EITHER ADDRESSED IN HOUSE BILL 316 AND 392, OR  
23 THE STATE IS NOT -- THERE ARE OTHER PARTIES THAT NEED TO BE  
24 HERE FOR THAT, BUT, NO, THE PASSAGE OF THE LAW DOES NOT MOOT  
25 THE LAWSUIT JUST ON ITS FACE.



1           PARAGRAPHS 4, 7 AND 9 ADDRESS THE MAINTENANCE ISSUE  
2 OR THE USE IT OR LOSE IT ISSUE, THAT LAW HAS NOW CHANGED, AND  
3 PARAGRAPH 7 ADDRESSES VOTER MACHINES ALL OF WHICH IS CHANGING,  
4 AS WELL, AND UNDER THESE FACTS THE SUPREME COURT -- THE  
5 ELEVENTH CIRCUIT SAID IN THE UNITED STATES VERSUS GEORGIA  
6 DECISION THAT THE SUPREME COURT HAS RULED IN A NUMBER OF CASES  
7 THAT THE ENACTMENT OF NEW LEGISLATION WHICH REPEALS OR  
8 MATERIALLY AMENDS THE LAW BEING CHALLENGED RENDERS THE CASE  
9 MOOT.

10           THERE'S IS NO QUESTION THAT A 39-PAGE BILL ADDRESSING  
11 VARIOUS SECTIONS OF CHAPTER 2 OF TITLE 21, THE ELECTION CODE,  
12 IS A SIGNIFICANT PIECE OF LEGISLATION THAT ADDRESSES A LARGE  
13 SWATCH OF GEORGIA ELECTION LAW. THE COURT IN THAT CASE, AS I  
14 KNOW YOU KNOW, WENT ON TO SAY THAT WHEN YOU LOOK AT WHETHER  
15 THERE'S BEEN A VOLUNTARY CESSATION BY A GOVERNMENT ACTOR THAT  
16 GIVES RISE TO A REBUTTABLE PRESUMPTION THAT THE OBJECTIONABLE  
17 BEHAVIOR WILL NOT REOCCUR. THAT'S WHAT HAPPENED HERE.

18           NOW, THE PLAINTIFFS HAVE CITED FOR YOU THE TRUST ONE  
19 PAYMENT DECISION, AND REALLY THAT CITES THE CHARLES WESLEY  
20 EDUCATION FOUNDATION DECISION. TRUST ONE INVOLVED CONTRACTS.  
21 IT DIDN'T INVOLVE A GOVERNMENT ACTION. CHARLES WESLEY WOOD  
22 WHERE THE STATE CAME THERE AND SAID IT'S ALL BEEN RESOLVED, IT  
23 WAS RESOLVED BECAUSE THE COURT ISSUED A PERMANENT INJUNCTION.  
24 IT WAS NOT THE TYPE OF VOLUNTARY CESSATION THAT UNITED STATES  
25 VERSUS GEORGIA TALKS ABOUT. THAT'S WHY IT PROVIDES THE

1 MOOTNESS TO THE EXTENT THAT 316 OR 392 TOUCH ON THE  
2 ALLEGATIONS.

3 THE SECOND DEFENSE THAT I'LL BE FOCUSING ON IS THE  
4 FAILURE TO JOIN NECESSARY PARTIES --

5 THE COURT: BEFORE WE MOVE ON FROM THE MOOTNESS, I'D  
6 LIKE TO JUST KIND OF WALK THROUGH ALL NINE OF THEM AGAIN. YOU  
7 TALKED ABOUT THEM. LET'S KIND OF WALK THROUGH ALL NINE OF THEM  
8 AGAIN.

9 MR. BELINFANTE: SURE. WERE YOU GOING TO WALK ME  
10 THROUGH?

11 THE COURT: NO, YOU CAN DO IT. I'LL JUST FOLLOW YOUR  
12 WALK.

13 MR. BELINFANTE: I'M NOT GOING TO ARGUE WITH YOU,  
14 SIR, BUT I'LL DO IT HOWEVER YOU WANT TO DO IT. I'LL ADDRESS IT  
15 THIS WAY. THESE ARE THE CLAIMS AGAINST THE STATE, AND IF YOU  
16 LOOK AT THE COMPLAINT, IN THE FIRST AMENDED COMPLAINT, WHAT YOU  
17 TEND TO SEE IN THE COUNTS ARE YOU'LL HAVE A PARAGRAPH THAT  
18 ALLEGES ACTIONS AGAINST THE STATE, FOLLOWED BY A PARAGRAPH THAT  
19 ALLEGES FAILURE TO TRAIN OR FAILURE TO SUPERVISE, BUT THE  
20 ELEMENTS OF THOSE CLAIMS I'VE SPELLED OUT HERE, AND THEY'RE THE  
21 SAME IN EACH ONE.

22 SO WALKING THROUGH THE ISSUES THAT ARE PART OF THE  
23 COMPLAINT, THE FIRST IS, AND THIS IS SECTION 2G, THAT THERE IS  
24 AN INSUFFICIENT NUMBER OF DRE MACHINES IN THE ACTUAL  
25 PRECINCTS. THAT'S PARAGRAPHS 121 AND 122. THE STATE

1 OBLIGATION IN 2018 WAS TO PROVIDE THE COUNTY SUPERINTENDENTS  
2 WITH SOME MACHINES, AND THAT GOES ALL THE WAY BACK TO 2004, AND  
3 THEN IF COUNTIES WANTED MORE MACHINES, THE CODE SAID IN THESE  
4 SECTION CITED HERE THEY COULD GET THEM. THEY COULD BUY THEM  
5 FROM THE STATE, AND THEY WOULD BE PROVIDED TO THEM.

6 SO IF THERE'S A SHORTAGE OF MACHINES, YOU SHOULD LOOK  
7 TO THE COUNTIES AND HAVE THEM PURCHASE THE MACHINES, BUT WHAT  
8 WE'VE SEEN WITH HOUSE BILL 316 AND THE BUDGET IS 150 MILLION  
9 DOLLAR APPROPRIATION FOR NEW MACHINES THAT ARE COMING ON, AND  
10 TO THE MOOTNESS QUESTION, WE HAVE IN YOUR NOTEBOOK, AND IT'S  
11 PART OF THE STATUTE IS AN RFP ISSUED BY THE SECRETARY OF  
12 STATE'S OFFICE, AND THAT RFP PROVIDES A TIMELINE THAT FURTHER  
13 MOOTS THE CASE. BECAUSE ON PAGE 8 OF THE PLAINTIFFS' BRIEF,  
14 THEY ACKNOWLEDGE THAT THEIR STANDING IS BASED, QUOTE, IN  
15 CONNECTION WITH THE 2020 ELECTION AND HAVING TO DIVERT  
16 RESOURCES REGARDING THE 2020 ELECTION.

17 SO IF YOU LOOK AT THE RFP AND THE TIMELINE FOR THE  
18 MACHINES, THE RESPONSES TO THE PROPOSALS WERE DUE APRIL 23RD.  
19 THEY'VE BEEN SUBMITTED. THAT'S CLOSED. THE SECRETARY'S OFFICE  
20 IS NOW EVALUATING THEM. THEY INTEND TO ISSUE WHAT'S CALLED A  
21 NOTICE OF INTENT TO AWARD ON JULY 9TH, AND THEN PHASE 1, THERE  
22 WILL BE TEN COUNTIES IN NOVEMBER OF 2019 WHERE THEY WILL PUT  
23 OUT THESE NEW MACHINES. THEY'RE CALLED BALLOT MARKING DEVICE  
24 MACHINES OR BMD'S.

25 THE COURT: LET'S SAY HOUSE BILL 316 DOES ADDRESS THE

1 VOTER MACHINE AS FAR AS THE PAPER BALLOT PART, BUT THERE'S AN  
2 ARGUMENT DEALING WITH THE ELECTION TECHNOLOGY PART WHERE  
3 THEY'RE ARGUING THAT THE DATA IS NOT AS SECURE.

4 NOW, HERE'S THE QUESTION IN FRONT OF THIS COURT THAT  
5 I'LL ASK YOU: HAS THE GEORGIA GENERAL ASSEMBLY AND THE  
6 GOVERNOR MADE A DECISION THAT THIS TYPE OF MACHINE IS  
7 MORE SECURE THAN THE OTHER ONES BEING ARGUED FOR? IS THAT  
8 THEIR DECISION ALONE, OR IS THAT A DECISION THAT COMES TO THE  
9 COURT?

10 MR. BELINFANTE: I THINK THE DECISION HAS FIRST BEEN  
11 MADE BY THE GEORGIA GENERAL ASSEMBLY AND THE GOVERNOR. THE  
12 QUESTION OF WHEN IT COMES BEFORE THE COURT, I DON'T THINK IS  
13 RIPE BECAUSE THE NEW MACHINES HAVE NOT EVEN BEEN PROCURED IN  
14 THE SENSE THAT THEY HAVE NOT BEEN PURCHASED.

15 THE COURT: GOOD POINT.

16 MR. BELINFANTE: SO WE DON'T KNOW WHAT THOSE MACHINES  
17 ARE EXCEPT WHAT IS SET FORTH IN HOUSE BILL 316.

18 BUT TO ADDRESS YOUR HONOR'S SECOND POINT, WHICH IS  
19 THE DATA BEHIND THOSE MACHINES, AND THAT WAS ONE OF THE ISSUES  
20 AND STILL AN ISSUE IN THE COMMON CAUSE LITIGATION WHICH IS  
21 STAYED IN FRONT OF JUDGE TOTENBERG RIGHT NOW BECAUSE OF HOUSE  
22 BILL 392.

23 HOUSE BILL 392 IS A SEPARATE PIECE OF LEGISLATION.  
24 IT CONTAINED -- IT WAS ORIGINALLY DEALING WITH PUBLIC SAFETY'S  
25 BOARD. THERE WAS A BIPARTISAN AMENDMENT PUT ON IN THE SENATE

1 TO ADDRESS THE SECRETARY OF STATE'S AUTHORITY IN PARTICULAR,  
2 AND IT ADDS A NEW PARAGRAPH 14.1 TO CODE SECTION 45-13-20  
3 DEALING WITH THE SECRETARY'S AUTHORITY GENERALLY. IT'S NOT IN  
4 THE ELECTION CODE.

5 AND WHAT THAT CODE SECTION SAYS IS THAT THE SECRETARY  
6 SHALL PROMULGATE A REGULATION SUBJECT TO THE ADMINISTRATIVE  
7 PROCEDURES ACT, AND THAT REGULATION WILL SET FORTH INDUSTRY  
8 LEADING STANDARDS FOR DATA SECURITY, AND IT HAS TO TAKE INTO  
9 CONSIDERATION THINGS LIKE THE NATIONAL INSTITUTE OF STANDARDS  
10 AND TECHNOLOGY OR NIST, THE CENTER FOR INTERNET SECURITY,  
11 THE FEDERAL ELECTION ASSISTANCE COMMISSION WHEN PROMULGATING  
12 THAT.

13 NOT ONLY DOES THE RULE HAVE TO BE PROMULGATED, BUT ON  
14 AN ANNUAL BASIS, THE SECRETARY IS REQUIRED TO STATE OR CERTIFY  
15 THAT GEORGIA HAS SUBSTANTIALLY COMPLIED WITH ITS OWN SECURITY  
16 GUIDELINES, AND SO THAT IS SOMETHING NEW IN THE LAW THAT ALSO  
17 ADDRESSES THE VOTER SECURITY.

18 BUT, YOUR HONOR, EVEN IF YOU GET TO THE QUESTION OF  
19 MOOTNESS ON VOTER SECURITY, THE COMPLAINT ITSELF REALLY DOES  
20 NOT ALLEGE THAT THERE HAS BEEN ANY PARTICULAR INCIDENT WHERE  
21 SOMEONE HAS -- THAT THERE HAS BEEN A HACKING OF THE ACTUAL  
22 VOTER REGISTRARS. THERE'S REFERENCE TO A GEORGIA TECH  
23 MATTER -- EXCUSE ME, KENNESAW STATE ISSUE, BUT THAT WAS  
24 DEALING WITH A SEPARATE DATABASE, NOT ANYTHING ANY VOTER THAT  
25 WAS ACTUALLY PREVENTED FROM GOING TO THE POLLS BECAUSE OF

1 THAT.

2 GETTING BACK I THINK TO WHAT DOES HOUSE BILL 316 DO,  
3 SO WE'VE ADDRESSED THE VOTING MACHINES. WE'VE ADDRESSED THE  
4 DATA. ONE OF THE OTHER ALLEGATIONS IS IN PARAGRAPHS 122 AND  
5 127 THAT THERE WAS AN INSUFFICIENT NUMBER OF PROVISIONAL  
6 BALLOTS AT THE POLLING PLACES.

7 ANDY THE STATE'S OBLIGATION, AND THIS SPEAKS I GUESS  
8 MORE TO THE NECESSARY PARTY ANALYSIS, BUT THE STATE'S  
9 OBLIGATION IS TO PROVIDE WHAT THE PROVISIONAL BALLOT LOOKS  
10 LIKE. THE COUNTY'S OBLIGATION, AND THIS IS SET FORTH IN  
11 STATUTORY LAW AND IN A REGULATION BY THE SEB, IT'S THE COUNTY'S  
12 OBLIGATION SPECIFICALLY THE ELECTION SUPERINTENDENT TO PROVIDE  
13 SUFFICIENT SUPPLIES AND PROVISIONAL BALLOTS.

14 NOW IF THE COURT WERE TO ORDER SOME TYPE OF REMEDY  
15 THAT REQUIRES SUFFICIENT NUMBER, AND I DON'T KNOW -- I MEAN  
16 IT'S EFFECTIVELY AN OBEY THE LAW ORDER, BUT IF THE COURT WERE  
17 TO ORDER SOMETHING THAT SAYS PROVIDE SUFFICIENT NUMBER OF  
18 PROVISIONAL BALLOTS, THAT'S A COST THAT IS COMING OUT OF THOSE  
19 COUNTY BUDGETS, AND THE REMEDY CAN'T BE COMPELLED FROM THE  
20 STATE. THAT'S WHAT MAKES THEM A NECESSARY PARTY BECAUSE THEY  
21 NEED TO BE BROUGHT IN TO BE SUBJECT TO THAT ORDER.

22 NOW FOR THE COUNTIES WITHIN THE NORTHERN DISTRICT,  
23 THAT'S FEASIBLE. FOR THE COUNTIES OUTSIDE THE NORTHERN  
24 DISTRICT SPECIFICALLY THOSE THAT ARE MENTIONED IN THE COMPLAINT  
25 LIKE HENRY AND MUSCOGEE, THAT MAKES THEM NOT FEASIBLE, AND THE

1 QUESTION THEN BECOMES CAN RELIEF BE GRANTED THAT IS NARROWLY  
2 TAILORED. WE WOULD SUGGEST TO YOU THE ANSWER IS NO, AND TO THE  
3 EXTENT THAT THEY'RE LOOKING FOR A STATEWIDE SOLUTION, THIS IS  
4 NOT A COURT THAT CAN GRANT THAT KIND OF RELIEF.

5 AND IT CAN'T BECAUSE THERE'S -- THE TYPE OF RELIEF  
6 THAT WOULD BE SOUGHT, YOU WOULD EFFECTIVELY EXCISE ALL OF  
7 PARAGRAPH 11 FROM THE PRAYER FOR RELIEF. THAT'S WHERE IT GOES  
8 THROUGH, AND THE STATE IS SOMEHOW TO CONTROL EVERYTHING FROM  
9 HOW MANY PEOPLE COUNTIES HIRE, AND HOW MANY PEOPLE THEY HAVE  
10 WORKING AT THE POLLS TO WHAT THEY ORDER IN TERMS OF HAVING  
11 MACHINES, OR EVEN IN ONE CASE POWER CORDS AT A POLLING BOOTH,  
12 AND, AGAIN, FOR THOSE COUNTIES IN THE NORTHERN DISTRICT, THAT  
13 MAY BE OKAY, BUT TO THE EXTENT THAT THEY'RE CONTINUING TO LOOK  
14 FOR A STATEWIDE SOLUTION, THAT'S THE NECESSARY PARTY PROBLEM  
15 THEY HAVE, AND THOSE COUNTIES CANNOT BE BROUGHT IN AND ARE  
16 FEASIBLE.

17 GETTING BACK TO THE REST OF THE HOUSE BILL --

18 THE COURT: 316, THOUGH, DOES NOT TOTALLY ADDRESS  
19 THAT ISSUE. I UNDERSTAND THAT YOUR ARGUMENT IS IT'S MORE ON  
20 THE NECESSARY PARTY'S ISSUE.

21 MR. BELINFANTE: THAT'S RIGHT, YES, YOUR HONOR, NOR  
22 DOES 316 ADDRESS, AND I PUT THIS IN HERE PARAGRAPH 122  
23 INVOLVING A PRECINCT IN SNELLVILLE THAT LACKED A POWER CORD.  
24 AGAIN THAT'S NOT THE RESPONSIBILITY OF THE SECRETARY OF STATE  
25 NOR THE BOARD, BUT THAT, TOO, IS A NECESSARY PARTY ISSUE THAT

1 IS NOT ADDRESSED BY 316, BUT IT IS NOT A STATE ISSUE.

2 THIS WAS MEANT TO COVER THE VOTING MACHINES. I THINK  
3 I'VE ALREADY COVERED THAT WITH THE COURT, AND VOTER SECURITY, I  
4 ALSO COVERED THAT WITH THE COURT AND HOUSE BILL 392 SPEAKS TO  
5 THAT.

6 SO THEN YOU LOOK AT THE FAILURE TO TRAIN OR FAILURE  
7 TO SUPERVISE CLAIMS, AND AGAIN THE GOLD STANDARD SAYS THAT IT'S  
8 EFFECTIVELY THE SAME ANALYSIS. THERE ARE -- I BELIEVE IT WENT  
9 FROM A TO J ON THE LISTING OF THINGS THAT THE STATE ALLEGEDLY  
10 DID NOT TRAIN SUPERINTENDENTS AND REGISTRARS ON. I'VE BROKEN  
11 THEM DOWN INTO JUST FOUR CATEGORIES, ABSENTEE BALLOTS,  
12 PROVISIONAL BALLOTS, MACHINES AND THEN ALL OF THAT WHICH THEN  
13 CREATED LONG LINES THAT HAD PEOPLE TURN AWAY FROM THE POLLING  
14 PLACES.

15 THIS IS WHY ON THE LAW ITSELF, PLAINTIFFS' CLAIMS ON  
16 FAILURE TO TRAIN SHOULD BE DISMISSED, AND THIS GETS TO WHAT WE  
17 TALK ABOUT A LITTLE BIT EARLIER IN TERMS OF WHY 1983 DOES NOT  
18 ALLOW RESPONDEAT SUPERIOR TYPE DECISION, AND CANDIDLY, YOUR  
19 HONOR, MOST OF THE CASES INVOLVING THIS AREN'T IN THE ELECTIONS  
20 AREA. YOU TEND TO SEE THEM WHERE SOMEONE IS IN THE CUSTODY OF  
21 THE STATE AT LEAST AS IT INVOLVES STATES.

22 CITIES ARE HERE ALL THE TIME ON FAILURE TO TRAIN AND  
23 DELIBERATE INDIFFERENCE DEALING WITH USE OF FORCE AND THINGS OF  
24 THAT NATURE, BUT WHEN IT'S THE STATE, IT'S TYPICALLY SOMEONE IN  
25 THEIR CUSTODY. THE PLAINTIFFS CITE A CASE INVOLVING FOSTER



1 KIDS. THERE ARE OTHER CASES TYPICALLY IN THE PRISON CONTEXT  
2 AND MEDICAL TREATMENT, BUT NOT TYPICALLY IN ELECTION CASES.

3 AND THIS IS WHERE THE ELEVENTH CIRCUIT IN THE HARTLEY  
4 CASE SAID YOU NEED TO SHOW OR NEED TO AT LEAST ALLEGE A HISTORY  
5 OF WIDESPREAD ABUSE. NOW TO BE SURE, GEORGIA DOES NOT HAVE THE  
6 BEST HISTORY IN TERMS OF VOTING RIGHTS AND SO ON, BUT THE  
7 COMPLAINT ITSELF FOCUSES ON THE 2018 ELECTION. IT DOESN'T SAY  
8 THAT THESE WERE PROBLEMS EVIDENT IN 2016 OR 2014, AND  
9 IMPORTANTLY 2018, IN LARGE PART DUE TO SOME OF THE REALLY HARD  
10 WORK OF THE PLAINTIFFS, HAVE MADE IT A CASE OR A SITUATION  
11 WHERE VOTER TURNOUT WAS WELL BEYOND WHAT PEOPLE EXPECTED.

12 SO THERE'S NOT THE HISTORY OF ABUSE, AND THAT SPEAKS  
13 TO THE GOLD CASE AGAIN WHY THERE HAS TO BE NOTICE TO TRAIN OR  
14 SUPERVISE IN A PARTICULAR AREA, AND I CITE AT THE BOTTOM THE  
15 SUPREME COURT'S DECISION IN BOARD OF COMMISSIONERS AGAINST  
16 BROWN FROM 1997 BECAUSE THAT GIVES AN EXAMPLE OF A TYPE OF  
17 FAILURE TO TRAIN CASE.

18 IF A STATE HAS CONTINUED ADHERENCE TO AN APPROACH  
19 THAT THEY KNOW OR SHOULD KNOW HAS FAILED, THAT CAN LEAD TO A  
20 POTENTIAL FAILURE TO TRAIN, BUT HERE AGAIN THE SYSTEM WORKED.  
21 THERE WERE CONCERNS RAISED ABOUT GEORGIA'S ELECTION LAWS. THE  
22 STATE CHANGED THEM IN MANY OF THE WAYS WALKING THROUGH YOU'VE  
23 SEEN THAT WERE THERE, AND IN SOME OF THE WAYS WERE JUST NOT  
24 STATE ISSUES TO BEGIN WITH.

25 HERE'S THE OTHER PROBLEM THEY HAVE ON THEIR FAILURE

1 TO TRAIN, AND THIS IS ACTUALLY CITED. I KNOW THE PLAINTIFFS  
2 RELY HEAVILY ON THE ELEVENTH CIRCUIT'S DECISION IN CURLING, BUT  
3 IN CURLING THE ELEVENTH CIRCUIT CITED THE SUMMIT DECISION  
4 HEAVILY, AS WELL, BECAUSE IT TALKED ABOUT YOU CAN HAVE  
5 PROSPECTIVE INJUNCTIVE RELIEF WHEN PEOPLE ARE SUED IN THEIR  
6 INDIVIDUAL CAPACITIES AND SO ON, BUT IT ONLY APPLIES TO, QUOTE,  
7 ONGOING AND CONTINUOUS VIOLATIONS.

8 ANY TIME THAT HOUSE BILL 316, HOUSE BILL 392 TOUCH ON  
9 THE ELECTION LAW, THERE WILL PRESUMABLY BE AND WILL HAVE TO BE  
10 IN MANY OF THESE CASES NEW REGULATIONS, AND TO THE EXTENT THAT  
11 THE SECRETARY IS ENGAGED IN TRAINING REGISTRARS AND  
12 SUPERINTENDENTS, THERE WILL BE NEW TRAINING BASED ON THE NEW  
13 LAWS. THERE'S NOT A CONTINUING OR ONGOING VIOLATION BECAUSE THE  
14 LINK OR THE CHAIN HAS BEEN BROKEN.

15 THE COURT: NO VIOLATION OF THAT PARTICULAR LAW YET  
16 IS YOUR ARGUMENT.

17 MR. BELINFANTE: CORRECT, YES, YOUR HONOR, AND  
18 BECAUSE YOU CAN'T UNDER THE ELEVENTH AMENDMENT GET RELIEF FOR  
19 PAST HARM. PAST HARM CAN BE EVIDENCE OF POTENTIAL FUTURE HARM,  
20 BUT IF THE PAST HARM WAS BASED ON LAWS AND REGULATIONS THAT ARE  
21 NO LONGER IN PLACE, THAT YOU CAN'T HAVE PROSPECTIVE RELIEF  
22 GOING FORWARD.

23 LOOKING AT THE CLAIMS THAT WERE THERE IN THE  
24 COMPLAINT, AS I INDICATED WERE BROKEN DOWN, ABSENTEE BALLOTS  
25 PARAGRAPHS 140 TO 57 THAT, TOO, AND THIS DEALS WITH BOTH

1 NECESSARY PARTY AND MOOTNESS UNDER 316, THAT IS A  
2 RESPONSIBILITY OF COUNTY OFFICERS. HERE, TOO, THE SECRETARY  
3 DECIDES WHAT THE ABSENTEE BALLOT LOOKS LIKE, BUT THIS IS NOT A  
4 CASE LIKE A BUSH V. GORE IN 2000 WHERE PEOPLE DIDN'T KNOW HOW  
5 THEY WERE VOTING OR WHAT THEY WERE VOTING ON.

6 IT'S A QUESTION OF NUMBERS. PEOPLE FAILED TO PROVIDE  
7 A SUFFICIENT NUMBER OF BALLOTS THEY WANT PROCESSED, THAT'S ALL  
8 COUNTY OBLIGATIONS UNDER EXISTING CODE, AND THOSE CODE  
9 SECTIONS, SOME OF THEM HAVE NOT BEEN CHANGED, BUT WHAT HAS BEEN  
10 CHANGED IS THAT THE ABSENTEE BALLOT METHOD IS NOW MORE VOTER  
11 FRIENDLY, AND CODE SECTION UNDER 316 21-2-386, REGISTRARS HAVE  
12 TO PROMPTLY NOTIFY VOTERS THAT AN ABSENTEE BALLOT IS BEING  
13 DEEMED PROVISIONAL. PROMPTLY WILL LIKELY REQUIRE A RULE BY THE  
14 STATE ELECTION BOARD ABOUT WHAT THAT MEANS, AND SO THERE WILL  
15 BE A NEW RULE ON THIS NEW LAW.

16 SIMILARLY IF SOMEONE HAD REQUESTED AN ABSENTEE BALLOT  
17 BUT BY THE TIME OF ELECTION DATE DOES NOT RECEIVE IT,  
18 FREQUENTLY WE HAD ISSUES THAT ARE ALLEGED HERE THEY WOULD GO  
19 INTO THE POLLS AND BE TOLD THEY COULDN'T VOTE BECAUSE THEY'RE  
20 SHOWING UP ON --

21 THE COURT: RIGHT.

22 MR. BELINFANTE: THAT IS ADDRESSED NOW, TOO, AND  
23 THERE'S A NEW PROCEDURE WHERE THE REGISTRAR IS NOW EMPOWERED TO  
24 LOOK UP VARIOUS OTHER FORMS OF INFORMATION TO SEE WHAT'S  
25 AVAILABLE, CAST A PROVISIONAL IF NEED BE, AND THERE'S MORE TIME

1 PROVIDED FOR THAT VOTER TO CAST A PROVISIONAL BALLOT.

2 THE COURT: LOOKING AT THAT PART OF THE BILL, I MADE  
3 A NOTE AND HOPEFULLY YOU CAN ADDRESS THIS, HOUSE BILL 316 ONLY  
4 ADDRESSES SIGNATURE MISMATCHES FOR ABSENTEE BALLOTS BUT NOT FOR  
5 OTHER MISMATCHES SUCH AS BIRTHDAYS.

6 MR. BELINFANTE: THE BIRTHDAY ISSUE, AS I UNDERSTAND  
7 IT, YOUR HONOR, WAS BASED ON THE FORM OF THE ABSENTEE BALLOT  
8 WHERE IT WAS LISTED THE VOTER NAME AND THEN DATE.

9 THE COURT: BECAUSE YOU REMEMBER BACK IN NOVEMBER  
10 WHEN THAT CASE CAME IN FRONT OF ME THAT WAS THE MAIN ISSUE, AND  
11 I WAS LIKE WHY DID IT NOT ADDRESS THAT.

12 MR. BELINFANTE: THAT IS IF YOU -- IN HOUSE BILL 316,  
13 AND THERE'S A LINE-BY-LINE VERSION IN YOUR NOTEBOOK, ON PAGE 23  
14 I THINK IS WHERE THE STATE HAS ADDRESSED THAT ISSUE BECAUSE IT  
15 CLARIFIES WHERE IT STRUCK THROUGH THE YEAR OF THE ELECTOR'S  
16 BIRTH AND THEIR ADDRESS. THAT'S WHERE PEOPLE WERE FILLING OUT  
17 JUST QUICKLY THE DATE THEY SUBMITTED THE BALLOT. SO THAT, TOO,  
18 HAS BEEN ADDRESSED IN TERMS OF THE FORM, BUT THE FORM, YOU  
19 KNOW, I DON'T WANT TO SPEAK FOR THE PLAINTIFFS, BUT AS I READ  
20 IT, IT WAS NOT AS MUCH AN ISSUE AS HOW THEY WERE COUNTED AND  
21 THE NUMBER.

22 THE COURT: BUT YOUR POSITION IS THE BIRTHDAY ASPECT  
23 HAS BEEN ADDRESSED IN 316?

24 MR. BELINFANTE: IT HAS BEEN, YES, YOUR HONOR.

25 THE COURT: WELL, I'M GOING TO GO BACK AND TAKE A

1 LOOK AT THAT.

2 MR. BELINFANTE: AND THERE ARE FAILSAFE PROVISIONS  
3 THAT ALLOW A VOTER BECAUSE THEY WILL BE NOTIFIED PROMPTLY IF  
4 THEIR BALLOT IS DEEMED TO BE PROVISIONAL BECAUSE OF SOMETHING  
5 LIKE THAT THEY CAN THEN GO TO IT.

6 ALSO ON THIS SLIDE DEALING WITH PROVISIONAL BALLOTS,  
7 ONE OF THE THINGS IN 316, IT'S IN THE BOTTOM RIGHT THERE, CODE  
8 SECTION 21-2-493 SAYS THAT THE SECRETARY IS EMPOWERED TO EXTEND  
9 THE DEADLINE TO CERTIFY RESULTS. YOU REMEMBER THAT'S ONE OF  
10 THE ISSUES WE HAD HERE --

11 THE COURT: RIGHT.

12 MR. BELINFANTE: THE SECRETARY NOW HAS THE DISCRETION  
13 TO DELAY THAT, AND THERE'S A PROVISION IN THERE FOR CONDUCTING  
14 AUDITS, IF NEED BE, ON PROVISIONAL BALLOTS IN MANY WAYS  
15 INCORPORATING THE RULINGS OF THIS COURT WHETHER IN THIS  
16 COURTROOM OR JUDGE MAY'S OR JUDGE TOTENBERG'S, BUT THE  
17 PROVISIONAL BALLOTS MUCH LIKE THE ABSENTEE BALLOTS ARE A  
18 RESPONSIBILITY OF THE COUNTIES, AND THE SUPERINTENDENT GETS THE  
19 BALLOTS, THE REGISTRARS IMPLEMENT THE BALLOTS.

20 BUT AS WE HAVE ALREADY DISCUSSED, THE METHOD BY WHICH  
21 PEOPLE WILL BE CHECKED IN TERMS OF IDENTIFICATION HAS BEEN  
22 EXPANDED. IT'S NOW MORE VOTER FRIENDLY. THE STATE OR THE  
23 LOCAL OFFICIALS HAVE TO CONSIDER EVERYTHING FROM DEPARTMENT OF  
24 NATURAL RESOURCES TO DEPARTMENT OF DRIVER SERVICES OR LARGELY A  
25 NEW HOST OF DATA THAT WAS NOT THERE BEFORE, AND THAT, TOO,

1 COMES OUT OF -- I REMEMBER THE COMMON CAUSE CASE AND SOME OF  
2 THE WAYS THAT PROVISIONAL BALLOTS WERE BEING CHALLENGED.

3 THIS SLIDE DEALS WITH POLLING PRECINCTS. I THINK  
4 WE'VE ALREADY TALKED ABOUT THAT IN TERMS OF WHAT THE COUNTY  
5 OBLIGATIONS ARE AND WHAT THE STATE CAN DO, AND THUS IN SUMMARY,  
6 YOUR HONOR, AND I WILL RESERVE THE REST OF MY TIME IF NEED BE  
7 FOR REBUTTAL, THE CLAIMS AGAINST THE STATE EITHER THERE'S BEEN  
8 A FAILURE TO JOIN THE NECESSARY PARTY, THE COUNTIES THAT  
9 IMPLEMENT THOSE LAWS, OR THEY HAVE BEEN MOOTED BY THE TWO  
10 PIECES OF LEGISLATION PASSED THIS PAST SESSION.

11 THE FAILURE TO TRAIN OR SUPERVISE, AS A THRESHOLD  
12 MATTER, ONE ELECTION DOES NOT MEET THE STANDARD IN THE ELEVENTH  
13 CIRCUIT OR THE UNITED STATES UNDER SUPREME COURT PRECEDENT TO  
14 DO IT. IT DOESN'T PROVIDE THE TYPE OF NOTICE, AND TO THE  
15 EXTENT IT DID, THE STATE HAS ACTED, AND IT'S THAT LAW CHANGE  
16 THAT WOULD REQUIRE ANY NEW TRAINING OR OVERSIGHT THAT WE JUST  
17 DON'T HAVE THE FACTS BEFORE THAT CLAIM, LIKE ONE CHALLENGING  
18 ANY NEW VOTING MACHINES, IS NOT RIPE.

19 THE COURT: ONE QUESTION BEFORE YOU SIT DOWN. WHAT  
20 IF THE COURT SAYS JUST JOIN ALL 159 COUNTIES.

21 MR. BELINFANTE: THEN I WOULD LEAVE IT TO MANY OF  
22 THOSE COUNTIES WHO ARE OUTSIDE OF THE COURT'S JURISDICTION TO  
23 MAKE THEIR ARGUMENTS IN TERMS OF WHETHER THEY'RE SUBJECT TO THE  
24 COURT'S JURISDICTION, AND WHETHER THAT WOULD BE FEASIBLE.

25 WE WOULD SUBMIT --

1 THE COURT: LET'S SAY THE COURT SAID JOIN ALL THE  
2 COUNTIES IN THE NORTHERN DISTRICT.

3 MR. BELINFANTE: THEN I CAN'T SPEAK FOR THOSE  
4 COUNTIES, THEY MAY HAVE INDEPENDENT ARGUMENTS, BUT THAT WOULD  
5 CERTAINLY ADDRESS THE FEASIBILITY SIDE OF THE NECESSARY PARTY  
6 ANALYSIS UNDER 19B.

7 THE COURT: THANK YOU.

8 MR. BELINFANTE: THANK YOU, JUDGE.

9 MS. TANIS: GOOD AFTERNOON, YOUR HONOR. BETH TANIS  
10 FOR THE PLAINTIFFS. YOUR HONOR, I WAS GOING TO GO IN ORDER  
11 BASICALLY OF THE COURT'S QUESTIONS; ALTHOUGH, I'M HAPPY --

12 THE COURT: YOU DO IT HOWEVER YOU SEE FIT, AND I'LL  
13 TRY TO FOLLOW HOW YOU PRESENT IT WITH MY QUESTIONS. I KNOW YOU  
14 ALL PREPARE PRESENTATIONS, SO I DON'T WANT TO THROW YOU OFF  
15 YOUR PRESENTATION.

16 MS. TANIS: WELL, I HOPE YOU WON'T BE THROWING ME  
17 OFF. IF YOU'VE GOT A QUESTION, YOU KNOW, THAT'S REALLY WHAT  
18 MATTERS TO ME MORE THAN ANYTHING IS TO MAKE SURE THAT I ANSWER  
19 YOUR QUESTIONS.

20 THE COURT: GREAT LAWYER.

21 MS. TANIS: I LOOK FORWARD TO YOUR QUESTIONS. SO LET  
22 ME START AND SOME OF THESE I THINK HAVE ALREADY BEEN TAKEN CARE  
23 OF IN TERMS OF THE DEFENDANTS' PRESENTATION, BUT I WANT TO GO  
24 BACK TO THIS ISSUE OF THE COURT'S FIRST QUESTION WHICH IS WHAT  
25 IS THE EFFECT OF HB 316 ON STANDING. I THOUGHT I HEARD THE

1 DEFENDANTS' COUNSEL STAND UP AND SAY WELL, NO, STANDING IS  
2 MEASURED AT THE TIME THE COMPLAINT IS FILED, BUT THEN THE  
3 ARGUMENT ON STANDING SEEMED TO SHIFT INTO THE EFFECT OF 316 ON  
4 THINGS LIKE REDRESSABILITY AND TRACEABILITY, ET CETERA. A  
5 QUICK RESPONSE TO THAT IS THAT DOESN'T MATTER BECAUSE STANDING,  
6 YOU HAVE TO LOOK AT IT AT THE TIME --

7 THE COURT: IT WAS FILED.

8 MS. TANIS: SO I'M NOT GOING TO GO FURTHER ON THAT.

9 THE NEXT QUESTION IS THE MOOTNESS QUESTION. I HAVE  
10 SO MANY PAGES HERE THAT I WAS GOING TO TELL YOU THAT UNLESS  
11 EVERY SINGLE CLAIM IS ELIMINATED THIS COURT HAS SUBJECT MATTER  
12 JURISDICTION AND CONVINCE YOU THAT EVERY CLAIM WAS NOT  
13 ELIMINATED, BUT THE DEFENDANTS HAVE CONCEDED THAT, SO I'M  
14 HAPPILY GOING TO MOVE OFF OF THAT.

15 THE COURT: BUT WHAT ABOUT THE ONES THEY DIDN'T  
16 CONCEDE ON, THE VOTING MACHINES --

17 MS. TANIS: RIGHT, SO I WANTED TO TALK ABOUT THOSE.  
18 NOW, YOUR HONOR, IF I MAY, I DO HAVE A NOTEBOOK FOR THE  
19 COURT.

20 THE COURT: ALL RIGHT. JUST WHAT I NEED IS MORE  
21 STUFF TO READ.

22 MS. TANIS: I'M HOPING THAT IT WILL CAUSE THINGS TO  
23 BE EASIER. IN THAT NOTEBOOK AT TAB I BELIEVE IT'S 23, WE HAVE  
24 A CHART, AS WELL THAT DEALS WITH THE MOOTNESS ISSUE, AND IT  
25 BASICALLY TAKES OUR CLAIMS AND TALKS ABOUT THE FIRST COLUMN ON



1 THERE ARE WHAT ARE OUR SPECIFIC ALLEGATIONS THAT WE ARE GIVING  
2 THE COURT. THE PARAGRAPH CITES FROM THE AMENDED COMPLAINT AS  
3 WELL AS PRAYER FOR RELIEF PARAGRAPH CITES. THE NEXT COLUMN IS  
4 HB 316 PROVISIONS, AND THE NEXT COLUMN IS WHAT IS THE EFFECT,  
5 DO THOSE HB 316 PROVISIONS ELIMINATE OUR CLAIM.

6 WHAT YOU SEE ON THE FIRST 9 PAGES OR SO OF THAT IS  
7 THERE IS NO HB 316 PROVISION ON THERE, AND I THINK WE'VE  
8 ALREADY DISCUSSED THAT. I DON'T NEED TO BELABOR THAT POINT,  
9 BUT WHAT THAT CERTAINLY DOES MEAN IS THAT THIS COURT HAS  
10 SUBJECT MATTER JURISDICTION OF THIS CASE.

11 THE COURT: I AGREE.

12 MS. TANIS: ALL WE'RE NOW TALKING ABOUT IS YEAH, CAN  
13 WE GET RID OF SOME CLAIMS BECAUSE THEY'RE MOOT.

14 THE COURT: I'M GOING TO AGREE WITH YOU 316 IS OUT OF  
15 THE CASE. DEFENSE COUNSEL DOES NOT ELIMINATE ALL ASPECTS, ITS  
16 MOOTNESS. I SAW POSSIBLY THREE, I THINK THEY MAY HAVE  
17 IDENTIFIED FOUR, BUT LET'S TALK ABOUT THE ONES THAT I THINK ARE  
18 A POSSIBILITY. I'LL MAKE MY MIND UP EITHER WAY, YOU  
19 UNDERSTAND?

20 MS. TANIS: ALL RIGHT. I BELIEVE THE COURT MENTIONED  
21 THE USE-IT-OR-LOSE-IT STATUTE.

22 THE COURT: OR BETTER KNOWN AS OR OTHERWISE KNOWN,  
23 NOT BETTER KNOWN, OTHERWISE KNOWN AS THE MAINTENANCE ONE.

24 MS. TANIS: RIGHT, OR THE PURGE STATUTE, OR THERE'S  
25 SO MANY DIFFERENT NAMES WE COULD CALL IT. HB 316 DOES NOT

1 RENDER THAT CLAIM MOOT, AND THERE ARE TWO MAJOR REASONS,  
2 ALTHOUGH OUR CHART ACTUALLY HAS SOME OTHER REASONS, AS WELL.  
3 OUR CLAIMS HAVE TWO FUNDAMENTAL CHALLENGES TO THE STATUTE ALONG  
4 WITH SOME OTHER ONES.

5 ONE IS THAT THE USE-IT-OR-LOSE-IT STATUTE, PURGE  
6 STATUTE IS UNCONSTITUTIONAL BECAUSE IT USES AS A TRIGGERING  
7 EVENT A VOTER'S INACTIVITY.

8 THE COURT: WHAT ABOUT THE SUPREME COURT HAS LOOKED  
9 AT THIS. THEY DIDN'T LOOK AT IT FROM A CONSTITUTIONAL POINT OF  
10 VIEW. THEY LOOKED AT IT AND ISSUED A RULING. YOUR ARGUMENT IS  
11 THAT IF IT COMES BACK IN FRONT OF THEM AGAIN, YOU'RE LOOKING AT  
12 AN ENTIRELY DIFFERENT RULING?

13 MS. TANIS: YOUR HONOR, WELL, IT MAY BE AN ENTIRELY  
14 DIFFERENT RULING. OF COURSE WHAT THE SUPREME COURT LOOKED AT  
15 WAS EXCLUSIVELY A STATUTORY CONSTRUCTION ISSUE, IS THIS OHIO  
16 STATUTE INCONSISTENT, OR DOES IT VIOLATE TWO DIFFERENT FEDERAL  
17 STATUTES ABOUT VOTING. THAT WAS IT AND --

18 THE COURT: BUT THE ISSUE WAS YOU CAN'T PURGE THEM  
19 JUST BECAUSE THEY'RE NOT VOTING, RIGHT?

20 MS. TANIS: I'M SORRY, SAY IT AGAIN.

21 THE COURT: FAILURE TO VOTE DOES NOT GIVE THEM A  
22 REASON TO PURGE.

23 MS. TANIS: RIGHT.

24 THE COURT: AND WHEN THEY ANALYZED IT, THEY SAID WE  
25 AGREE WITH THAT. THEY'RE NOT BEING PURGED BECAUSE THE PERSON

1 DIDN'T RESPOND TO THE POSTCARD, BUT AS YOU'RE GOING TO ARGUE  
2 AND YOU HAVE ARGUED, THE POSTCARD WAS SENT OUT, IT WAS SENT OUT  
3 ONE OF TWO WAYS. THE POST OFFICE CONTACTED US AND SAYS THIS  
4 PERSON IS LONGER HERE, AND WE ALL AGREE THAT'S NOT AN ISSUE IN  
5 THIS CASE, OR THE PERSON HAS NOT VOTED FOR A PERIOD OF TIME AND  
6 THEY SEND A POSTCARD OUT. THE POSTCARD IS NOT RETURNED. AS I  
7 READ THE CASE THEY SAYS THAT'S GROUNDS OR GIVES YOU REASON TO  
8 PURGE.

9 WHAT ELSE ARE -- HOW ELSE ARE THEY GOING TO ATTACK  
10 THIS?

11 MS. TANIS: WELL, THERE'S A VERY IMPORTANT PART OF  
12 THAT DECISION THAT JUSTICE ALITO REFUSED TO LOOK AT, AND THAT  
13 WAS THE REASONABLENESS OF THIS STATUTE, AND WHAT JUSTICE ALITO  
14 SAID IN THAT CASE IN ESSENCE WAS I DON'T HAVE THE LUXURY OF  
15 LOOKING AT THAT, THAT'S NOT BEFORE ME. BECAUSE WHEN YOU'VE GOT  
16 THIS TYPE OF A CHALLENGE THAT IS LOOKING AT THE STATUTORY  
17 INTERPRETATION, JUST WHAT DO THE WORDS OF THE STATUTE SAY, AND  
18 HOW DO THEY JIVE WITH THE FEDERAL STATUTES OR NOT, WE CAN'T  
19 CONSIDER THE REASONABLENESS OF THIS STATUTE.

20 SO, FOR EXAMPLE, WHEN YOU LOOK AT THE DISSENTING  
21 OPINIONS IN THAT CASE, THERE ARE ISSUES RAISED LIKE HOW CAN  
22 VOTING INACTIVITY BE A PROXY FOR WHETHER SOMEBODY MOVED OR NOT,  
23 THAT SIMPLY IS NOT A REASONABLE ASSUMPTION, AND JUSTICE ALITO  
24 RESPONDS TO THAT AND SAYS THAT'S OFF THE TABLE FOR THIS, THAT  
25 IS NOT SOMETHING THAT WE ARE ENTITLED TO CONSIDER WHEN WE ARE

1 DOING NOTHING BUT WHAT DO THE WORDS ON THE PAGE MEAN, AND THAT,  
2 YOUR HONOR, IS WHERE THERE IS THIS HUGE UNRECONCILED ISSUE WITH  
3 RESPECT TO THE CONSTITUTIONAL ISSUES, AND I'LL TELL YOU THE  
4 ELEVENTH CIRCUIT'S --

5 THE COURT: WHAT WOULD BE REASONABLE GROUNDS FOR THE  
6 SECRETARY OF STATE TO REMOVE SOMEONE OR PURGE SOMEONE FROM THE  
7 VOTERS LIST? WHAT WOULD BE REASONABLE, OTHER THAN THE POST  
8 OFFICE CONTACTING THEM SAYING THEY MOVED?

9 MS. TANIS: YOUR HONOR, I WOULDN'T KNOW THE WHOLE  
10 RANGE OF THINGS. I THINK THAT --

11 THE COURT: GIVE ME SOMETHING BECAUSE I'VE GOT TO  
12 DECIDE IT.

13 MS. TANIS: WELL, THERE'S ANOTHER SECURITY PROVISION  
14 FOR EXAMPLE THAT ALLOWS THE SECRETARY OF STATE NOW TO JOIN UP  
15 WITH THIS PROGRAM WHERE YOU CAN GET BETTER INFORMATION IN  
16 TERMS OF WHETHER SOMEONE HAS MOVED. YOU COULD CERTAINLY RAMP  
17 UP THE NOTICE PROVISIONS ON THAT RATHER THAN JUST THIS SINGLE  
18 POSTCARD.

19 BUT THE PROBLEM THAT WE HAVE ALLEGED IN THIS IS THAT  
20 USING VOTING INACTIVITY IS NOT -- IT'S NOT JUST THE  
21 REASONABLENESS, IT'S ALSO A FIRST AMENDMENT VIOLATION BECAUSE  
22 OF THE POLITICAL MESSAGE THAT IS SENT BY PEOPLE NOT VOTING, AND  
23 IF I CAN TALK FOR A MINUTE ABOUT WHAT THE ELEVENTH CIRCUIT DID  
24 WITH JUDGE BATTEN'S RULING, AND WHEN THE ELEVENTH CIRCUIT  
25 REMANDED THAT CASE --

1 THE COURT: THEY SAID LOOK AT THE FIRST AMENDMENT.

2 MS. TANIS: RIGHT. AND WHAT'S IMPORTANT ABOUT THAT  
3 IS THAT THE COURT TREATED LOOKING AT THE FIRST AMENDMENT  
4 DIFFERENT FROM WHEN THE COURT SAID JUDGE BATTEN, YOU NEED TO  
5 CONSIDER THESE OTHER ISSUES WHEN THE SUPREME COURT DECIDES THE  
6 HUSTED OPINION, RIGHT? IT SAYS YOU'VE GOT TO CONSIDER THOSE IN  
7 RELATION TO THAT, BUT TREATED THE FIRST AMENDMENT CLAIM  
8 DIFFERENTLY PRECISELY BECAUSE HUSTED DID NOT MAKE ANY  
9 RESOLUTION OF CONSTITUTIONAL CLAIMS, BUT TREATED THAT  
10 DIFFERENTLY WHEN YOU LOOK AT THE LANGUAGE --

11 THE COURT: I FIND IT INTERESTING THAT THE MOVING  
12 PARTY IN THAT CASE NEVER FOLLOWED BACK UP.

13 MS. TANIS: WELL, YOUR HONOR, WE FOLLOWED BACK UP.  
14 WHAT CAN I SAY? I WAS GOING TO SAY WE PICKED UP THE SLACK, BUT  
15 THAT'S A HARD THING TO ARGUE WITH AS TO BONDURANT IN TERMS OF  
16 SLACK, BUT --

17 THE COURT: YOU SAID THAT, NOT ME, LET THE RECORD SO  
18 REFLECT.

19 MS. TANIS: HE IS A DEAR FRIEND SO I CAN ONLY HOPE  
20 THAT HE WILL FORGIVE ME FOR SAYING THAT IN CONNECTION WITH  
21 THAT, BUT THAT IS A LIVE ISSUE. SO THE CONSTITUTIONAL  
22 CHALLENGES WE HAVE TO THAT, IT CERTAINLY ENCOMPASSES THE  
23 REASONABLENESS, BUT IT ALSO ENCOMPASSES FIRST AMENDMENT  
24 CHALLENGES TO IT.

25 THE COURT: BUT STILL YOU'RE SAYING -- I CAN

1 UNDERSTAND THE ARGUMENT ON THE REASONABLENESS OF IT, BUT WHAT  
2 STANDARD DO I USE IN DETERMINING WHAT'S REASONABLE AND WHAT'S  
3 NOT REASONABLE? WE'RE ALL I THINK IN TOTAL AGREEMENT, IF THE  
4 POST OFFICE SENDS YOU A NOTICE THAT SAYS THIS PERSON HAS MOVED,  
5 THAT'S REASONABLE, BUT THAT'S NOT IN THIS CASE AS I READ IT.

6 SO WHAT OTHER STANDARD SHOULD I BE LOOKING AT OR  
7 CONSIDERING ON WHAT'S REASONABLE?

8 MS. TANIS: WELL, YOUR HONOR, HERE IS A QUICK  
9 RESPONSE, AND I DON'T MEAN IT TO SOUND GLIB. I ALSO DON'T WANT  
10 TO GIVE YOU A WRONG ANSWER ON THIS. I COULD NOT ARGUE WITH ALL  
11 OF THE CONSTITUTIONAL ISSUES THAT WOULD BE RAISED IN THAT AND  
12 THE VARIOUS ARGUMENTS AND THE VARIOUS CASE LAW. THOSE ARE  
13 ISSUES THAT WE WOULD NEED TO LOOK AT.

14 WHAT I CAN SAY IS THAT BASED ON THE MOTION TO DISMISS  
15 HUSTED HAS NOT DISPOSED OF THIS CASE, AND I AM VERY SURE THAT  
16 WE WILL HAVE FULSOME BRIEFING IN TERMS OF THESE OTHER ISSUES.  
17 I THINK THOSE ISSUES ARE ALSO GOING TO BE AFFECTED BY WHAT WE  
18 LEARN IN DISCOVERY, SO I THINK THAT THOSE ARE MERITS TYPES OF  
19 ISSUES, AND THEY WILL GET RESOLVED AS WE ACTUALLY GET INTO THIS  
20 CASE AND GET DISCOVERY.

21 THE COURT: I CAN UNDERSTAND THAT ARGUMENT.

22 MS. TANIS: ALL RIGHT. SO IN THE HB 316 CONTEXT, OF  
23 COURSE HB 316 DOESN'T DO ANYTHING.

24 THE COURT: I AGREE.

25 MS. TANIS: ALL RIGHT. OKAY. SO WHY DON'T I MOVE TO

1 VOTING MACHINES WHICH I THINK IS ONE OF THE OTHER THINGS THAT  
2 THE DEFENDANTS HAVE MENTIONED. MY QUICK RESPONSE ON THE VOTING  
3 MACHINE ARGUMENT IS THE EXPRESSION THE ROAD TO HELL IS PAVED  
4 WITH GOOD INTENTIONS, AND ONE OF THE -- THE NEW VOTING MACHINES  
5 ARE NOT IN PLACE YET. I MEAN THAT'S ONE OF THE REASONS THAT  
6 JUDGE TOTENBERG SAID THAT SHE WOULD NOT FIND A MOOTNESS  
7 CHALLENGE MERITORIOUS BECAUSE THEY ARE NOT GOING TO BE IN PLACE  
8 FOR 2019 ELECTIONS.

9 I ALSO WANT TO CORRECT ANY IMPRESSION CREATED THAT  
10 OUR COMPLAINT ONLY RELATES TO 2020 ELECTIONS BECAUSE IN FACT WE  
11 SAID FUTURE ELECTIONS INCLUDING 2020 ELECTIONS, SO 2019 IS  
12 STILL A LIVE ISSUE.

13 BUT FROM A MOOTNESS ARGUMENT IF YOU LOOK AT WHAT HB  
14 316 DOES, IT REALLY TALKS ABOUT -- AND, YOUR HONOR, WE ALSO  
15 HAVE IN YOUR NOTEBOOK, WE'VE HAVE GOT THE RED LINED HB 316.

16 THE COURT: I HAVE THE BILL. I'VE READ IT A NUMBER  
17 OF TIMES.

18 MS. TANIS: OKAY. THEN YOU'LL BE FAMILIAR WITH  
19 THIS. IT'S GOT THINGS LIKE THESE VOTING MACHINES NEED TO BE IN  
20 PLACE AS SOON AS POSSIBLE. THAT'S AS DEFINITE AS THE TIMELINE  
21 IS, AND THERE ARE A NUMBER OF CONTINGENCIES THAT THE BILL  
22 ACTUAL RECOGNIZE, THINGS LIKE APPROPRIATIONS, AND IT'S GOT SOME  
23 CATEGORY CALLED COUNTY RESPONSIBILITIES AND SEVERAL OTHER TYPES  
24 OF THINGS, AND I KNOW THAT THE DEFENDANTS HAVE SAID THAT THE  
25 SECRETARY OF STATE HAS SENT OUT AN RFP, BUT THAT'S A VERY LONG

1 WAY FROM HAVING --

2 THE COURT: WELL, HERE'S THE QUESTION. DOES THE NEW  
3 VOTING MACHINES ADDRESS THE CONCERNS AND WHAT RELIEF CAN I GIVE  
4 YOU AS A PLAINTIFF REGARDING THAT VOTING MACHINE. I KNOW YOUR  
5 ARGUMENT IS IT'S NOT IN PLACE YET, BUT LET'S SAY DOES THE  
6 VOTING MACHINE APPROVED BY THE GENERAL ASSEMBLY THIS YEAR,  
7 SIGNED BY THE GOVERNOR, DOES IT ADDRESS YOUR CONCERN, AND IF IT  
8 DOES NOT, WHAT RELIEF CAN I GIVE YOU REGARDING THAT VOTING  
9 MACHINE?

10 MS. TANIS: THESE NEW VOTING REASONS DO NOT ADDRESS  
11 OUR CONCERNS WHEN YOU GET INTO IT ON THE MERITS --

12 THE COURT: WHY NOT?

13 MS. TANIS: BECAUSE THEY DON'T HAVE AN AUDIT TRAIL ON  
14 THEM THAT IS SUFFICIENT. IT'S ONE OF OUR CLAIMS UNDER THE HELP  
15 AMERICA TO VOTE. IT DOESN'T CONTAIN THAT, SO YOU DON'T HAVE AN  
16 AUDIT TRAIL. IT DOESN'T HAVE PAPER BALLOTS. I MEAN IT'S SO  
17 MANY OF THE THINGS THAT WE'VE TALKED ABOUT THAT ARE NECESSARY  
18 FOR MAKING THAT VOTING SYSTEM SECURE --

19 THE COURT: THE NEW VOTING MACHINE DOES NOT GIVE A  
20 PAPER BALLOT?

21 MS. TANIS: NOT THE ONE THAT CREATES ANY TYPE OF AN  
22 AUDIT TRAIL WHERE YOU CAN GO BACK AND SEE THE PROBLEMS. SO IF  
23 YOU HAVE THE SAME TYPES OF PROBLEMS, FOR EXAMPLE, THAT WERE IN  
24 THE LAST ELECTION, VOTE SWITCHING, ET CETERA, THESE ARE  
25 CERTAINLY HIGHLY TECHNICAL ISSUES IN CONNECTION WITH THAT, BUT,



1 AGAIN, THIS IS ANOTHER MATTER THAT WHEN WE CAN GET INTO  
2 DISCOVERY ON THIS AND ACTUALLY GET BEFORE THE COURT EXPERTS IN  
3 THIS AREA WHO CAN TALK ABOUT WHY THESE MACHINES DOESN'T COMPLY  
4 WITH --

5 THE COURT: ALL RIGHT. LET'S SAY IF WE GET INTO  
6 DISCOVERY AND YOU HAVE FIVE EXPERTS THAT SAY THIS MACHINE IS  
7 INADEQUATE. THEY HAVE FIVE EXPERTS THAT SAY THIS MACHINE IS  
8 ADEQUATE.

9 SAME QUESTION I ASKED MR. TYSON, HAS THE GEORGIA  
10 GENERAL ASSEMBLY AND THE GOVERNOR ALREADY DECIDED THAT MATTER  
11 THAT THIS MACHINE IS ADEQUATE?

12 MS. TANIS: RIGHT, YOUR HONOR, BUT WHAT WE'RE SAYING  
13 IS -- IT'S GOT TO RISE TO THE LEVEL, RIGHT, FOR EITHER A  
14 VIOLATION OF FEDERAL LAW ON THAT OR FOR A CONSTITUTIONAL  
15 VIOLATION, AND JUST BECAUSE THE GOVERNOR SAID IT  
16 DOESN'T MEAN --

17 THE COURT: I UNDERSTAND THAT PART, BUT WHAT I'M  
18 SAYING IS THAT YOUR ARGUMENT IS GOING TO BE THIS MACHINE IS NOT  
19 ADEQUATE.

20 MS. TANIS: WELL, I THINK IT'S GOING TO REALLY BE  
21 BECAUSE WE HAVE THAT CLAIM UNDER THE HAVA COUNT IS GOING TO BE  
22 THAT THESE MACHINES DON'T COMPLY WITH FEDERAL LAW FOR VOTING  
23 MACHINES AND THAT THESE MACHINES ALSO JUST DO NOT PROVIDE THE  
24 SECURITY THAT THEY ARE REQUIRED TO HAVE.

25 THE COURT: I HAVEN'T READ HOUSE BILL 392. THEY'VE

1 INDICATED THE GOVERNOR SIGNED IT TODAY, AND THEY'VE INDICATED  
2 THAT HOUSE BILL 392 ADDRESSES THE DATA SECURITY. I'M SURE YOU  
3 PROBABLY HAVE NOT HAD TIME TO READ IT EITHER. YOU MAY HAVE.

4 MS. TANIS: WELL, YOUR HONOR, I READ A NEWSPAPER  
5 ARTICLE ABOUT IT, AND I'VE SEEN IT, BUT THE PROBLEM WITH THAT  
6 AGAIN NOT ADDRESSING THIS FROM A MOOTNESS PERSPECTIVE --

7 THE COURT: NO, THAT'S WHAT I'M TALKING ABOUT.

8 MS. TANIS: I DON'T MEAN TO DODGE YOUR QUESTION, BUT  
9 I'M KIND OF LOOKING AT IT FROM A MOOTNESS PERSPECTIVE, AND IT  
10 REALLY JUST SAYS YOU NEED TO DO SOMETHING ABOUT THIS, A  
11 REGULATION NEEDS TO BE ESTABLISHED, AND A REGULATION IS NOT YET  
12 ESTABLISHED, SO WE DON'T KNOW WHAT THAT REGULATION IS GOING TO  
13 SAY, AND IT SAYS THE REGULATION SHALL BE GENERALLY CONSISTENT  
14 WITH CURRENT INDUSTRY SECURITY STANDARDS, BUT, AGAIN, WE DON'T  
15 KNOW WHAT THAT REGULATION SAYS, AND IT TELLS THE SECRETARY OF  
16 STATE TO CONSIDER THOSE SECURITY STANDARDS.

17 I THINK FROM A MOOTNESS PERSPECTIVE, I THINK KIND OF  
18 CUTTING TO THE CHASE ON THESE ISSUES ABOUT SOMETHING THAT MIGHT  
19 HAPPEN IN THE FUTURE, INCLUDING IF THESE -- HOW THESE RFP'S  
20 EVEN GET ANSWERED, ET CETERA. I WANT TO DIRECT THE COURT'S  
21 ATTENTION TO A CASE THAT WE HAVE IN OUR NOTEBOOK. IT'S THE  
22 FANIN CASE. IT SHOULD BE TAB 7, AND WE'VE HIGHLIGHTED THESE  
23 CASES, YOUR HONOR, AND WE'VE GIVEN A COPY OF THOSE CASES  
24 HIGHLIGHTED, EXACTLY WHAT THE COURT HAS, TO THE DEFENDANTS, AND  
25 IF YOU LOOK AT PAGE 876 IN THIS CASE, IT SAYS THAT THERE IS A

1 WIDE GULF -- THIS IS A VA CASE WHERE THE VA HADN'T BEEN DOING  
2 WHAT THE PLAINTIFFS SAID IT SHOULD DO. HAVE I GIVEN THE COURT  
3 TIME TO GET THERE?

4 OKAY. SO THE VA SAID YEAH, BUT WE'RE WORKING ON IT,  
5 WE'VE GOT PROCESSES THAT WE'RE WORKING ON, AND THE ELEVENTH  
6 CIRCUIT SAYS THERE'S A WIDE GULF BETWEEN THE VA BEING IN THE  
7 PROCESS OF IMPLEMENTING NEW PROCEDURES, AND IT HAVING THOSE NEW  
8 PROCEDURES FULLY IN PLACE, AND HERE'S THE CRITICAL LANGUAGE:  
9 ALMOST MOOT IS NOT ACTUALLY MOOT.

10 AND IN SAYING THAT THE ELEVENTH CIRCUIT CITES TO THIS  
11 CASE OF BUONO V NORTON WHICH IS ALSO IN YOUR NOTEBOOK AT TAB 1,  
12 AND I'M NOT GOING TO QUOTE THE LANGUAGE OF THAT, BUT WHAT I  
13 WILL SAY ABOUT THAT THAT IS A FACT SITUATION THAT'S ACTUALLY  
14 MORE ON POINT BECAUSE PLAINTIFFS WERE CHALLENGING THE EXISTENCE  
15 OF A CHRISTIAN CROSS ON FEDERAL PARK PROPERTY.

16 AFTER THE CASE WAS FILED, CONGRESS ENACTED  
17 LEGISLATION THAT BASICALLY SAID THAT THAT LAND WHERE THE CROSS  
18 WAS ON WAS GOING TO BE TRANSFERRED TO A PRIVATE ORGANIZATION,  
19 AND WHAT THE NINTH CIRCUIT SAID IN THAT CASE IS, YOU KNOW, THAT  
20 MIGHT TAKE AS MUCH AS TWO YEARS FOR THAT TO HAPPEN. THIS IS  
21 NOT MOOT AT THIS POINT. THERE ARE TOO MANY THINGS THAT CAN  
22 HAPPEN BETWEEN NOW AND THEN FOR THAT TO RENDER THIS CASE MOOT  
23 ON THOSE CLAIMS NOW.

24 SO IT'S NOT JUST A MATTER -- I MEAN IT'S A MATTER OF  
25 RIGHT NOW WHAT WE HAVE IN THE STATE OF GEORGIA IS THE OLD

1 VOTING MACHINES. I UNDERSTAND THERE'S AN RFP. I UNDERSTAND --

2 THE COURT: BUT IN UNITED STATES VERSUS GEORGIA,  
3 JUDGE JORDAN POINTED OUT ONCE THE STATE OF GEORGIA PASSED THAT  
4 BILL REGARDING RUNOFF ELECTIONS THAT MADE IT MOOT AT THAT  
5 POINT.

6 MS. TANIS: YES, YOUR HONOR, THAT ALSO WAS -- IT WAS  
7 ALREADY DONE. I MEAN THE ACTION TO BE TAKEN IN THAT CASE WAS  
8 DONE, RIGHT? IT WAS WHEN THOSE ABSENTEE BALLOTS NEEDED TO BE  
9 SENT OUT.

10 THE COURT: IN OTHER WORDS IN THE 2014 ELECTION, SOME  
11 JUDGE SAID YOU HAD TO HAVE A 45-DAY RUNOFF PERIOD.

12 MS. TANIS: RIGHT.

13 THE COURT: THE STATE OF GEORGIA CAME IN ON JANUARY  
14 1ST, I THINK THEY PASSED IT IN LIKE TEN DAYS, BUT THE CASE GOES  
15 UP IN FRONT OF THE ELEVENTH CIRCUIT, A THREE JUDGE PANEL WITH  
16 JUDGE JORDAN. ABOUT A YEAR LATER HE ISSUES AN OPINION THAT  
17 SAYS WHEN GEORGIA PASSED THAT BILL AND THE GOVERNOR SIGNED IT,  
18 IT MADE IT MOOT TO CHALLENGE WHAT GEORGIA WAS HAVING TO THE  
19 RUNOFF ELECTION. I UNDERSTAND YOUR ARGUMENT IS THAT WELL, IT  
20 DOESN'T BECOME MOOT UNTIL THE VOTING MACHINES ARE ACTUALLY PUT  
21 INTO PLACE.

22 MS. TANIS: RIGHT, THERE WAS NOTHING ABOUT THE  
23 STATUTE, THOUGH. IN THE UNITED STATES VERSUS GEORGIA CASE IT  
24 SAID, YOU KNOW, HERE IS WHAT WILL HAPPEN, YOU KNOW, HERE IS  
25 WHAT IS GOING TO HAPPEN. IT DIDN'T REQUIRE A SERIES OF

1 CONTINGENCIES, THINGS LIKE WE HAVE TO SEND OUT THESE RFP'S,  
2 WE'VE GOT TO BE ABLE TO GET THE RFP'S AND FIND A VENDOR, WE  
3 NEED TO HAVE COUNTIES DO THINGS WITH THEIR RESPONSIBILITIES AND  
4 APPROPRIATIONS AND ALL THESE OTHER TYPES OF THINGS WHICH ARE  
5 ALL KINDS OF CONTINGENCIES THAT NEED TO HAPPEN BEFORE THOSE  
6 VOTING MACHINES ARE IN PLACE.

7 UNLIKE THE UNITED STATES VERSUS GEORGIA CASE WHERE  
8 IT'S JUST SAYING HERE IS NOW THE TIMEFRAME THAT YOU HAVE TO  
9 SEND AN ABSENTEE BALLOT TO OVERSEAS MILITARY PERSONNEL. THERE  
10 IS NO --

11 THE COURT: IT'S MORE THAN THAT. THEY HAD TO CHANGE  
12 THE PRIMARY ELECTIONS IN GEORGIA TO MEET THE RUNOFF PERIOD.

13 MS. TANIS: RIGHT, AND IT WAS DONE. SO I THINK THAT  
14 IT'S JUST A VERY DIFFERENT SITUATION, AND IT'S MUCH MORE LIKE  
15 THE BUONO CASE WHERE YOU SAY ALL RIGHT, THE LEGISLATION SAYS  
16 THAT THIS LAND SHALL BE TRANSFERRED, AND THE COURT IS SAYING  
17 WELL THAT'S GOOD, BUT IT'S TALKING ABOUT FUTURE EVENTS, AND  
18 THERE ARE TOO MANY UNCERTAINTIES --

19 THE COURT: SO IS YOUR ARGUMENT THERE'S A POSSIBILITY  
20 THE STATE OF GEORGIA MAY NOT USE THESE VOTING NEW MACHINES THEY  
21 PASSED IN HOUSE BILL 316 IF ALL THESE CONTINGENCIES ARE NOT  
22 MET?

23 MS. TANIS: YES, YOUR HONOR, AND THERE IS A  
24 POSSIBILITY OF THAT. I MEAN THEY HAVE TO GO THROUGH A PRE-  
25 CERTIFICATION PROCEDURE. THERE ARE ALL KINDS OF THINGS THAT

1 WILL HAPPEN ON THAT, AND MEANWHILE WHAT WE HAVE, THE CURRENT  
2 STATE OF AFFAIRS, I MEAN THIS IS ONE OTHER BIG DIFFERENCE  
3 BETWEEN THE UNITED STATES VERSUS GEORGIA CASE. RIGHT NOW AND  
4 IN THE NEXT ELECTION CYCLE WHICH IS, OF COURSE, WHAT JUDGE  
5 TOTENBERG FOUND, WE'RE STILL GOING TO HAVE THESE OLD MACHINES.  
6 THAT WAS NOT THE CASE IN UNITED STATES VERSUS GEORGIA AT LEAST  
7 INSOFAR AS I KNOW.

8           THAT YOU WEREN'T TALKING ABOUT WELL, WE'RE NOT GOING  
9 TO IMPLEMENT THIS NEW NOTICE, YOU KNOW, THE DATE AND THE  
10 TIMELINE. WE'RE GOING TO WAIT. WE WON'T DO IT IN THE NEXT  
11 ELECTION. WE'RE GOING TO DO IT SOME TIME IN THE FUTURE WHICH  
12 WOULD BE THE ANALOGY TO WHAT'S HAPPENING WITH THESE VOTING  
13 MACHINES, AND I THINK THAT'S THE REAL DISTINCTION THERE IN  
14 THOSE CASES.

15           SO UNLESS YOU'VE GOT A QUESTION, LET ME GO.

16           THE COURT: GO AHEAD.

17           MS. TANIS: ALL RIGHT. SO, YOUR HONOR, I'M NOT  
18 EXACTLY SURE WHAT YOUR -- I'D KIND OF LIKE TO HEAR FROM YOU  
19 WHERE YOU THINK THERE MIGHT BE OTHER MOOTNESS ISSUES, AND I CAN  
20 ADDRESS THOSE BECAUSE I DIDN'T HEAR THE DEFENDANTS ADDRESS  
21 THESE OTHERS.

22           THE COURT: I THINK THEY TALKED ABOUT ONE, AND I HAD  
23 ONE CONSIDERATION, BUT YOU'VE TALKED ABOUT THE DATA SECURITY,  
24 SO YOU'VE ADDRESSED IT.

25           MS. TANIS: OKAY. ALL RIGHT, YOUR HONOR, SO I THINK

1 I WILL GO AHEAD AND SKIP AHEAD. ONE OTHER ISSUE I WILL SAY IS  
2 A DISTINGUISHING CHARACTERISTIC ALTHOUGH IT'S ON THE  
3 PRESUMPTION. MANY -- MOST OF OUR CLAIMS IN THIS CASE REALLY  
4 HAVE TO DO WITH A FAILURE FOR GEORGIA LAW TO BE FOLLOWED. I  
5 MEAN THAT'S A GOOD BIT OF WHAT WE'RE TALKING ABOUT.

6 SO HB 316 EVEN IT PUTS A PROVISION IN PLACE, WHAT  
7 DIFFERENCE DOES IT MAKE IF PEOPLE AREN'T GOING TO FOLLOW IT.  
8 WE DO HAVE AN ISSUE, AND I THINK THEREFORE WE HAVE FACTS HERE  
9 THAT ARE DEMONSTRABLY DIFFERENT FROM THE FACTS IN, FOR EXAMPLE,  
10 UNITED STATES VERSUS GEORGIA WHEN YOU'RE TALKING ABOUT  
11 REBUTTABLE PRESUMPTIONS, ET CETERA, WITH THE GOVERNMENT, BUT  
12 THAT, OF COURSE, IS SOMETHING THAT WILL BE EXPLORED IN  
13 DISCOVERY.

14 THE COURT: IT GOES BEYOND UNITED STATES VERSUS  
15 GEORGIA. THERE WAS ANOTHER CASE CORAL SPRINGS STREET SYSTEMS  
16 VERSUS CITY OF SUNRISE, 371 F.3D, ELEVENTH CIRCUIT, THAT  
17 TALKS ABOUT MORE THAN WHAT UNITED STATES VERSUS GEORGIA TALKS  
18 ABOUT.

19 MS. TANIS: WHICH CASE IS THAT?

20 THE COURT: CORAL SPRINGS SYSTEMS, INCORPORATED  
21 VERSUS CITY OF SUNRISE, 371 F.3D 1320, AN ELEVENTH CIRCUIT  
22 CASE, 2004. I'M GOING TO GIVE YOU BOTH SIDES A CHANCE TO BRIEF  
23 THIS. SO THAT'S A CASE YOU MIGHT WANT TO LOOK AT.

24 MS. TANIS: AND ONE OTHER THING IN TERMS OF WHILE  
25 WE'RE TALKING ABOUT UNITED STATES VERSUS GEORGIA, THE COURT HAD

1 ALSO ASKED A QUESTION ABOUT WHETHER UNITED STATES VERSUS  
2 GEORGIA IS THE PROPER ANALYSIS, AND THERE'S NOTHING ABOUT THAT  
3 CASE THAT I WOULD SAY GEE, THAT'S REALLY WRONG LAW, YOUR HONOR,  
4 THAT'S NOT WHAT I WOULD SAY; HOWEVER, WE DO HAVE OTHER CASES  
5 AND THEY HAPPEN TO BE IN YOUR NOTEBOOK THAT WE THINK ARE MORE  
6 ON POINT TO THIS.

7 UNITED STATES VERSUS GEORGIA WAS NOT THIS  
8 MULTIFACETED STATUTE. IT JUST IN A WAY WAS A MORE  
9 STRAIGHTFORWARD CASE. SO WE HAVE IN OUR NOTEBOOK A COUPLE OF  
10 OTHER ELEVENTH CIRCUIT CASES THAT WE THINK PROBABLY PROVIDE  
11 BETTER GUIDANCE WHEN YOU HAVE A SITUATION WHERE THE STATUTE  
12 THAT IS MULTIFACETED AND CLAIMS THAT ARE MULTIFACETED.

13 THE FIRST IS A CASE THAT WE'VE GOT AT TAB 12 WHICH IS  
14 THE NATURIST SOCIETY, INC. VERSUS FILLYAW CASE, 958 F.2D 1515,  
15 ELEVENTH CIRCUIT, 1992. ANOTHER CASE IS AT TAB 2 OF THE  
16 COURT'S NOTEBOOK COALITION FOR THE ABOLITION OF MARIJUANA  
17 PROHIBITION VERSUS CITY OF ATLANTA AT 2189 F.3D 1301, ELEVENTH  
18 CIRCUIT, 2000, AND THEN WE'VE ALSO INCLUDED A SUPREME COURT  
19 CASE THE NORTHEASTERN FLORIDA CHAPTER OF ASSOCIATED GENERAL  
20 CONTRACTORS OF AMERICA VERSUS CITY OF JACKSONVILLE, FLORIDA AT  
21 508 U.S. 656, 1992. I DON'T NEED TO GO THROUGH THOSE WITH YOU  
22 RIGHT NOW, BUT THOSE WE THINK FLUSH THESE ISSUES OUT A LITTLE  
23 BIT MORE.

24 THE COURT HAD ASKED THE QUESTION ABOUT HOW SHOULD THE  
25 COURT CONSIDER MOOTNESS AND TIMELINESS, BUT I ASSUME THAT THAT



1 QUESTION IS ACTUALLY MOOT ITSELF SINCE WE'RE HERE. SO LET ME  
2 THEN GO TO THE ISSUE OF JOINDER AND WHETHER THE ELECTION  
3 OFFICIALS FROM 159 COUNTIES ARE NECESSARY PARTIES IN THE  
4 FEASIBILITY OF JOINING THEM.

5 SHORT ANSWER IS NO, THEY ARE NOT NECESSARY PARTIES,  
6 AND IN CONNECTION WITH FEASIBILITY, YES, IT IS FEASIBLE. I'M  
7 ACTUALLY -- THAT'S SUCH AN EASY ISSUE THAT I THINK I'LL JUST --  
8 THEY'RE BOTH EASY, BUT I THINK IT'S A SHORT ISSUE.

9 THIS COURT ACTUALLY DOES HAVE PERSONAL JURISDICTION  
10 OVER ANY RESIDENT IN THE STATE OF GEORGIA. I'M ASSUMING  
11 ELECTIONS OFFICIALS IN THE STATE OF GEORGIA ARE GEORGIA  
12 RESIDENTS, AND THEREFORE, IT CAN GET SERVICE OF PROCESS OVER  
13 THEM, AND OBVIOUSLY IT WOULDN'T AFFECT SUBJECT MATTER  
14 JURISDICTION SINCE IT'S A FEDERAL QUESTION.

15 THE COURT: WE'RE IN AGREEMENT.

16 MS. TANIS: VERY GOOD. ALL RIGHT. SO THEN LET'S  
17 TALK ABOUT WHETHER THESE OFFICIALS FROM 159 DIFFERENT COUNTIES  
18 ARE NECESSARY PARTIES.

19 THE COURT: HERE'S ONE QUESTION I HAVE. IT SEEMS  
20 LIKE A NUMBER OF THESE THINGS THAT'S BEING REQUESTED, I THINK  
21 IT'S FOUR THAT I'VE COUNTED, FALL UNDER THE HEADING COUNTY  
22 CONTROLS, THE LOCATION OF A POLLING PLACE FOR ONE. LET'S TAKE  
23 A HYPOTHETICAL. IF I ORDER THE SECRETARY OF STATE TO MAKE SURE  
24 ALL POLLING PLACES IN GEORGIA MEET REQUIREMENTS AS ALLEGED IN  
25 YOUR COMPLAINT. TWO COUNTIES FAILED TO DO THAT. WHAT

1 AUTHORITY -- YOUR ARGUMENT IS OVERSIGHT. MY QUESTION IS WHAT  
2 AUTHORITY DOES THE SECRETARY OF STATE HAVE IN THE GEORGIA  
3 STATUTES AND THE GEORGIA LAW TO MAKE THE COUNTY SUPERINTENDENT  
4 PLACE A POLLING PLACE IN A CERTAIN COMMUNITY OR LOCATION.

5 MS. TANIS: THE SECRETARY OF STATE -- I'M GOING TO  
6 WALK THROUGH THIS IN A MINUTE -- UNDER THE ELEVENTH CIRCUITS  
7 HOLDING IN GRIZZLE VERSUS KEMP WHICH IS REALLY A CRITICAL  
8 HOLDING IN TERMS OF ADDRESSING ALL OF THESE ISSUES, AND I'M  
9 GOING TO WALK THROUGH IT A LITTLE BIT.

10 THE COURT: GO AHEAD.

11 MS. TANIS: WHICH MAKES IT VERY CLEAR, IN FACT COMES  
12 RIGHT OUT AND SAYS THAT BECAUSE THE SECRETARY OF STATE IS  
13 CHARGED WITH THE RESPONSIBILITY TO ENFORCE THE GEORGIA ELECTION  
14 CODE, THE SECRETARY OF STATE IS ALSO CHARGED WITH THE  
15 RESPONSIBILITY TO MAKE SURE THAT COUNTIES AND OTHER LOCAL  
16 ELECTION OFFICIALS ARE GOING WHAT THEY ARE REQUIRED TO DO UNDER  
17 THE GEORGIA ELECTION CODE, THAT IS JUST PART OF HIS  
18 RESPONSIBILITY.

19 THE COURT: AND HOW DOES THE SECRETARY OF STATE  
20 ENFORCE IT?

21 MS. TANIS: THE SECRETARY OF STATE ESPECIALLY  
22 COMBINED WHEN YOU TALK ABOUT THE STATE ELECTION BOARD AND IT'S  
23 MEMBERS.

24 THE COURT: I'M SORRY, HOW DOES THE SECRETARY OF  
25 STATE ENFORCE, I'LL USE POLLING PLACES AS AN EXAMPLE, HOW DO

1 THEY ENFORCE IT IF A COUNTY SUPERINTENDENT FAILS TO DO WHAT THE  
2 SECRETARY OF STATE WANTS THEM TO DO IN THEIR OVERSIGHT  
3 CAPACITY?

4 MS. TANIS: WELL, THE STATE ELECTION BOARD AND OF  
5 COURSE THE SECRETARY OF STATE IS THE CHAIR.

6 THE COURT: RIGHT, THE STATE ELECTION BOARD.

7 MS. TANIS: HE HAS ENFORCEMENT PROCEEDINGS. IT'S GOT  
8 ENFORCEMENT POWER --

9 THE COURT: WHAT STATUTE?

10 MS. TANIS: THAT IS UNDER 21-2-31, AND I BELIEVE THAT  
11 IS IN TAB 15 IN THERE, AND IT TALKS ABOUT THE ENFORCEMENT  
12 PROVISIONS OF THE STATE ELECTION BOARD, AND THE STATE ELECTION  
13 BOARD, OF COURSE, CAN ALSO PROMULGATE RULES.

14 NOW, I UNDERSTAND YOUR QUESTION WAS YES, OKAY, THAT'S  
15 GREAT, BUT WHAT ABOUT IF THE COUNTY DOESN'T FOLLOW THE RULES.  
16 THE SECRETARY OF STATE CAN OBVIOUSLY DIRECT THE COUNTIES, AND  
17 SO CAN THE ELECTION BOARD DO THAT, BUT THERE IS ALSO THIS  
18 ENFORCEMENT MECHANISM IN THE GEORGIA ELECTION CODE FOR BEING  
19 ABLE TO ENFORCE THOSE RULES WHICH I'LL GET TO IN A MINUTE, BUT  
20 THAT IS BASICALLY HOW THAT WOULD OCCUR.

21 NOW, LET ME JUST MOVE ON ON THAT. ON THE JOINDER  
22 ISSUE, OF COURSE, THE DEFENDANTS DO HAVE THE BURDEN OF PROVING  
23 THAT ALL THE COUNTY ELECTION OFFICIALS ARE NECESSARY, AND I  
24 WILL POINT OUT THAT THE DEFENDANTS HAVEN'T CITED A SINGLE CASE  
25 IN SUPPORT OF THAT. WE HAVE CITED SEVERAL CASES. I KNOW THAT

1 THE DEFENDANTS SAY THAT OUR CASES ARE DISTINGUISHABLE TO THE  
2 EXTENT THAT THEY ARE FROM OTHER JURISDICTIONS, BUT, IN FACT,  
3 THE LAW AND THE STATUTORY SCHEME IN THOSE JURISDICTIONS IS  
4 BASICALLY THE SAME.

5 THE COURT: DO THE BOARD OF ELECTIONS OR SECRETARY OF  
6 STATE IN THOSE STATES DO THEY HAVE MORE STATUTORY AUTHORITY  
7 GIVEN TO THEM THAN THE SECRETARY OF STATE IN GEORGIA?

8 THE CUNNINGHAM CASE IS A CASE I'M QUITE FAMILIAR  
9 WITH. THE CUNNINGHAM CASE HAD TO DO WITH A RUNOFF ELECTION. I  
10 REMEMBER READING ABOUT THAT CASE, BUT DID THAT SECRETARY OF  
11 STATE AND THEIR BOARD OF ELECTION HAVE MORE STATUTORY AUTHORITY  
12 OVER THE LOCAL COUNTIES?

13 MS. TANIS: NO, YOUR HONOR, IN LOOKING AT THE BERMAN  
14 CASE WHICH DEALS WITH NEW YORK AND THE LEAGUE OF WOMEN VOTERS  
15 OF OHIO DEALING WITH OHIO, AND THOSE ARE VERY, VERY SIMILAR,  
16 AND, YOU KNOW, THE LEAGUE OF WOMEN VOTERS CASE ALSO MAKES THE  
17 POINT THAT WHEN YOU'RE SEEKING A STATEWIDE REMEDY, YOU'RE GOING  
18 FOR UNIFORMITY, AND THAT, OF COURSE, IS SOMETHING THAT WE WANT  
19 TO HAVE HERE SO THAT WE DON'T HAVE THESE PIECEMEAL ACTIONS  
20 COUNTY BY COUNTY.

21 THE COURT: I AGREE WITH THAT.

22 MS. TANIS: RIGHT, AND THAT IS ACTUALLY SOMETHING  
23 THAT THE STATE ELECTION BOARD IS CHARGED WITH AS IS THE  
24 SECRETARY OF STATE SO INSURE UNIFORMITY IN PRACTICES.

25 SO LET ME --

1 THE COURT: ONE OF THE EXAMPLES OR ARGUMENTS THAT THE  
2 DEFENSE MAKES IS THAT WE TRAIN THE SUPERINTENDENTS, BUT WE  
3 CAN'T BE RESPONSIBLE FOR TRAINING THAT THE SUPERINTENDENT GIVES  
4 TO EACH POLLING PERSON.

5 MS. TANIS: ALL RIGHT. SO I WANT TO ADDRESS THAT  
6 FROM TWO DIFFERENT STANDPOINTS, AND IF THE COURT WILL BEAR WITH  
7 ME.

8 THE COURT: I WILL. DO IT.

9 MS. TANIS: I REALLY WANT TO ANSWER YOUR QUESTION,  
10 BUT I WANT --

11 THE COURT: YOU PRESENT IT, AND I'M GOING TO QUIT  
12 INTERRUPTING. GO AHEAD.

13 MS. TANIS: YOUR HONOR, I'VE GOT AN AUDIENCE OF ONE  
14 IN THIS COURTROOM, AND IT'S YOU, AND SO IF YOU'VE GOT A  
15 QUESTION ON YOUR MIND, I WANT TO MAKE SURE TO ANSWER IT, AND  
16 WHAT I DON'T WANT YOU TO THINK IS THAT IF I'M STARTING AT THE  
17 BASICS I'M NOT GETTING TO YOUR QUESTION.

18 THE COURT: I'M NOT ENTERTAINING THAT IDEA  
19 WHATSOEVER. YOU'RE ADDRESSING THE QUESTIONS.

20 MS. TANIS: ALL RIGHT. VERY GOOD. SO IN THE  
21 DEFENDANT'S BRIEF, THE DEFENDANTS HAVE BASICALLY SAID WE NEED  
22 TO HAVE ALL THESE COUNTIES BECAUSE WE, THE DEFENDANTS, DON'T  
23 HAVE THE POWER, WE DON'T HAVE THE POWER TO DO ANY OF THESE  
24 THINGS, AND SO IN THEIR BRIEFS THEY SAY, AND I'M GOING TO QUOTE  
25 THESE A LITTLE BIT BECAUSE I WANT TO KIND OF METHODOLOGY GO

1 THROUGH THEM, AND I THINK I'M GOING TO ANSWER YOUR QUESTION IF  
2 I DO THAT.

3 SO AT PAGE 13 OF THE OPENING BRIEF, THE DEFENDANTS  
4 SAY DEFENDANTS NEITHER MANAGE NOR ADMINISTER ELECTIONS, AND  
5 THEN THEY SAY THAT THE PLAINTIFFS' FIRST ERROR IS ALLEGING THAT  
6 THE SECRETARY OF STATE OVERSEES AND ADMINISTERS ELECTIONS, AND  
7 THEN THEY SAY THAT DESPITE PLAINTIFFS' LITANY OF CLAIMS THAT  
8 THE SECRETARY IS RESPONSIBLE FOR ELECTIONS, NONE OF THE 15  
9 ENUMERATED ITEMS IN O.C.G.A. 21-2-50 GIVES THE SECRETARY OF  
10 STATE CONTROL OVER THE COUNTIES AND ELECTION SUPERINTENDENTS.  
11 SO IF THE COURT WILL PERMIT ME, I WANT TO WRITE ALL THESE  
12 THINGS DOWN?

13 THE COURT: YES.

14 MS. TANIS: SO THEY SAY YOU DO NOT CONTROL, DO NOT  
15 OVERSEE, DO NOT MANAGE, DO NOT ADMINISTER. SO THIS IS THE  
16 BASIS FOR SAYING THAT COUNTY ELECTION OFFICIALS NEED TO BE  
17 ADDED. SO I WANT TO GO THROUGH EACH ONE OF THOSE THINGS, AND  
18 WHAT I AM GOING TO SHOW THE COURT IS THAT WHAT THE SECRETARY OF  
19 STATE AND THE OTHER DEFENDANTS ARE SAYING IN HERE IS COMPLETELY  
20 CONTRARY TO WHAT THE ELEVENTH CIRCUIT HAS SAID, WHAT THE  
21 GEORGIA ELECTION CODE PROVIDES, WHAT THE GEORGIA ATTORNEY  
22 GENERAL HAS SAID, AND WHAT THE SECRETARY OF STATE HIMSELF HAS  
23 SAID IN CONNECTION WITH HIS RESPONSIBILITIES.

24 SO LET'S START WITH THAT CONTROL ISSUE, AND I KNOW  
25 THE COURT HAS BEEN ASKING ME ABOUT THE STATUTORY BASIS OF THIS,

1 AND, YOU KNOW, THE TWO MAIN PROVISIONS, ALTHOUGH THE GEORGIA  
2 ELECTION CODE IS HUGE IN TERMS OF WHAT IT COVERS, BUT SECTIONS  
3 21-2-50 AND 21-2-31 ARE TWO OF THE OVERARCHING STATUTES THAT  
4 DEFINE THE POWERS AND THE DUTIES OF THE SECRETARY OF STATE AND  
5 THE STATE ELECTION BOARD, AND, AGAIN, I REALLY WANT TO  
6 UNDERSCORE THAT THE SECRETARY OF STATE WEARS TWO HATS, RIGHT,  
7 HE'S THE SECRETARY OF STATE, BUT HE'S ALSO THE CHAIR OF THE  
8 STATE ELECTION BOARD, SO HE'S GOT THE RESPONSIBILITIES  
9 BASICALLY GIVEN TO BOTH OF THOSE OFFICES.

10 AND IN 21-2-50 WHICH IS THAT PROVISION THAT COVERS  
11 THE SECRETARY OF STATE, THAT STATUTE REFERS TO THE SECRETARY OF  
12 STATE AS THE CHIEF ELECTION OFFICIAL IN GEORGIA. THAT'S IN  
13 SUBPARAGRAPH 14 I THINK OF THAT, AND THAT IS ALSO IN YOUR  
14 NOTEBOOK -- THOSE TWO STATUTES ARE IN THE NOTEBOOK AT TABS 15  
15 AND 16. 21-2-31 SETS OUT THE RESPONSIBILITIES OF THE STATE  
16 ELECTION BOARD.

17 NOW THE OPENING LANGUAGE OF O.C.G.A. 21-2-31 AND IT'S  
18 FIRST PARAGRAPH SAY THIS, AND IT SAYS THAT -- NOPE, DO SLIDE  
19 36. SO, YOUR HONOR, IF YOU TAKE A LOOK AT THAT LANGUAGE IN  
20 YOUR ACTUAL NOTEBOOK.

21 THE COURT: I WILL.

22 MS. TANIS: IT SAYS THAT IT SHALL BE THE DUTY OF THE  
23 STATE ELECTION BOARD, AND THIS IS THE VERY FIRST PARAGRAPH, TO  
24 PROMULGATE RULES AND REGULATIONS SO AS TO OBTAIN UNIFORMITY IN  
25 THE PRACTICES AND PROCEEDINGS OF SUPERINTENDENTS, REGISTRARS,

1 DEPUTY REGISTRARS, POLL OFFICERS AND OTHER OFFICIALS AS WELL AS  
2 THE LEGALITY AND PURITY IN ALL PRIMARIES AND ELECTIONS. SO  
3 RIGHT THERE YOU SEE THAT THE STATUTE SAYS TO THE STATE ELECTION  
4 BOARD, YOU HAVE TO ISSUE THESE REGULATIONS TO BE TELLING COUNTY  
5 AND POLL OFFICIALS WHAT IT IS THAT THEY NEED TO DO.

6           THERE ISN'T THIS DIVISION UNDER THE GEORGIA ELECTION  
7 CODE OF THE COUNTIES OR OTHER ENTITIES HAVING THIS COMPLETE  
8 AUTONOMY, AND I THINK THAT THAT'S REALLY ONE OF THE UNDERLYING  
9 FALLACIES IN WHAT THE DEFENDANTS ARE ARGUING AS IF WE HAVE  
10 THESE TWO SYSTEMS. WE'VE GOT THIS STATE SYSTEM, AND THEN WE'VE  
11 GOT THIS LOCAL SYSTEM, AND THE LOCAL SYSTEM HAS COMPLETE  
12 AUTONOMY TO DO WHAT IT WANTS TO DO, AND THAT THE SECRETARY OF  
13 STATE IS JUST HELPLESS TO DO ANYTHING ABOUT IT IF THOSE  
14 COUNTIES RUN AMUCK.

15           THAT IS NOT THE STATUTORY SCHEME HERE AT ALL. IN  
16 FACT, GEORGIA HAS A VERY TOP DOWN STATUTORY SCHEME AS I'M GOING  
17 TO DEVELOP IN A MINUTE. SO RIGHT HERE WE SEE THAT THERE'S AN  
18 OBLIGATION. IT'S A DUTY ON THE PART OF THE STATE ELECTION  
19 BOARD AND OF COURSE THE SECRETARY OF STATE AS THE CHAIR OF THAT  
20 BOARD TO ACTUALLY BE PROMULGATING RULES AND REGULATIONS  
21 ENFORCEABLE THROUGH ENFORCEMENT PROCEEDINGS TELLING THOSE  
22 COUNTY OFFICIALS WHAT THEY NEED TO DO.

23           SUBPARAGRAPH 10 OF THAT SAME STATUTE FOR THE STATE  
24 ELECTION BOARD, THEN SAYS THAT THE STATE ELECTION BOARD ALSO  
25 HAS THE DUTY TO TAKE SUCH OTHER ACTION CONSISTENT WITH THE LAW



1 AS THE BOARD MAY DETERMINE TO BE CONDUCIVE TO THE FAIR, LEGAL,  
2 ORDERLY CONDUCT OF PRIMARIES AND ELECTIONS, AND AS WE ALLEGED  
3 IN OUR COMPLAINT, THE FULTON COUNTY DIRECTOR OF REGISTRATION  
4 AND ELECTION TESTIFIED RECENTLY AS FOLLOWS, PRETTY MUCH  
5 SUMMARIZING WHAT THE BOARD'S RESPONSIBILITY IS, THAT'S SLIDE  
6 39, WHERE HE SAYS THE STATE ELECTION BOARD HAS THE ULTIMATE  
7 AUTHORITY OVER THE BOARDS, THE FULTON COUNTY BOARD OF  
8 REGISTRATION AND ELECTIONS. ULTIMATE AUTHORITY OVER THAT BOARD  
9 IS WHAT WE HAVE THE HEAD OF THE FULTON COUNTY ELECTIONS BOARD  
10 SAYING.

11 NOW, LET ME TURN TO HOW THE ELEVENTH CIRCUIT HAS  
12 INTERPRETED THIS. IN YOUR NOTEBOOK AT TAB 9 IS THE ELEVENTH  
13 CIRCUIT'S OPINION IN GRIZZLE VERSUS KEMP WHICH IS AT 634 F.3D  
14 1314. IN GRIZZLE THE PLAINTIFFS WERE CHALLENGING PROVISIONS IN  
15 THE GEORGIA ELECTION CODE THAT PRECLUDED CERTAIN PEOPLE FROM  
16 SERVING AS MEMBERS OF LOCAL SCHOOL BOARDS. THAT'S PRETTY  
17 GRANULAR WHEN WE'RE GETTING DOWN TO LOCAL SCHOOL BOARDS IN THE  
18 STATE ELECTION CODE.

19 THE PLAINTIFFS NAMED THE SECRETARY OF STATE AS THE  
20 DEFENDANT IN THAT CASE, AND THE SECRETARY OF STATE ARGUED I'M  
21 NOT THE PROPER PARTY FOR THIS. I DON'T REALLY HAVE THE POWER  
22 OVER THESE STATE ELECTION BOARDS. THE SECRETARY OF STATE  
23 ARGUED THAT HE COULD NOT DIRECTLY QUALIFY OR CHALLENGE  
24 CANDIDATES FOR LOCAL BOARDS OF EDUCATION, AND HE COULDN'T EVEN  
25 CERTIFY THE RESULTS OF THOSE ELECTIONS.

1           THE ELEVENTH CIRCUIT DISAGREED, AND AT PAGE 1326 THE  
2   ELEVENTH CIRCUIT STATES, AND IT'S SLIDE 30, THE SECRETARY OF  
3   STATE, THIS IS KIND OF A SUMMARY STATEMENT, THE SECRETARY OF  
4   STATE HAS THE DUTY AND THE POWER TO ENFORCE THE STATE'S  
5   ELECTION CODE. BUT EARLIER IN ITS OPINION, THE ELEVENTH  
6   CIRCUIT REALLY FLESHED OUT WHAT DOES THAT MEAN, WHAT DOES IT  
7   MEAN WHEN YOU HAVE THE DUTY AND THE POWER TO ENFORCE THE  
8   GEORGIA ELECTION CODE, WHAT DOES THAT MEAN WHEN THE ACTION  
9   BEING CHALLENGED HERE IS NOW DOWN AT THE STATE SCHOOL BOARD  
10  LEVEL.

11           AND SO WHAT THE COURT SAID ABOUT THAT AT PAGE 1319  
12  WHICH IS SLIDE 31, AND I THINK THAT THIS IS SO KEY, IT SAYS  
13  ALTHOUGH THE SECRETARY OF STATE CANNOT DIRECTLY QUALIFY OR  
14  CHALLENGE CANDIDATES FOR LOCAL BOARDS OF EDUCATION OR CERTIFY  
15  THE RESULTS OF THOSE ELECTIONS, AS A MEMBER AND THE CHAIRPERSON  
16  OF STATE ELECTION BOARD HE HAS BOTH THE POWER AND THE DUTY TO  
17  ENSURE THAT THE ENTITIES CHARGED WITH THOSE RESPONSIBILITIES  
18  COMPLY WITH GEORGIA'S ELECTION CODE IN CARRYING OUT THEIR  
19  TASKS.

20           YOUR HONOR, THIS ABSOLUTELY BLOWS OUT OF THE WATER  
21  ANY NOTION THAT THE SECRETARY OF STATE DOES NOT HAVE THE POWER  
22  TO TELL COUNTY ELECTIONS OFFICIALS WHAT THEY NEED TO DO. NOT  
23  ONLY DOES HE HAVE THE POWER, HE HAS THE RESPONSIBILITY TO DO  
24  IT, AND THAT IS JUST A KEY RULING IN TERMS OF WHETHER ALL THESE  
25  OTHER COUNTY ELECTION OFFICIALS NEED TO BE BROUGHT INTO THIS

1 CASE.

2 AND CONSISTENT WITH THIS IDEA OF WHETHER THE GEORGIA  
3 SECRETARY OF STATE IS THE PERSON TO BE ENFORCING THE GEORGIA  
4 ELECTION CODE, I MEAN THIS COURT RECOGNIZED THE SAME THING IN  
5 THE DEMOCRATIC PARTY OF GEORGIA VERSUS CRITTENDEN CASE. IN A  
6 FOOTNOTE THE COURT SAID THE SECRETARY OF STATE IS A DEFENDANT  
7 IN THIS ACTION AND IS THE STATE OFFICIAL CHARGED WITH ENFORCING  
8 THE ELECTION LAWS.

9 JUDGE TOTENBERG SAID THE SAME THING IN COMMON CAUSE  
10 GEORGIA VERSUS KEMP, 347 F.SUPP.3D 1270, AND JUST DEMONSTRATING  
11 HOW MUCH POWER THE SECRETARY OF STATE HAS OVER BEING ABLE TO  
12 TELL THOSE COUNTY OFFICIALS WHAT TO DO, IN THE LAST SEVEN  
13 MONTHS, AS I'M SURE THIS COURT IS VERY, VERY WELL AWARE,  
14 NORTHERN DISTRICT OF GEORGIA JUDGES HAVE ENTERED ORDERS AGAINST  
15 THE SECRETARY OF STATE ORDERING THE SECRETARY OF STATE TO  
16 DIRECT COUNTY OFFICIALS AS TO WHAT THEY NEED TO DO.

17 THOSE CASES ARE MARTIN VERSUS KEMP, 341 F.SUPP.3D  
18 1326; GEORGIA COALITION FOR THE PEOPLE'S AGENDA VERSUS KEMP,  
19 347 F.SUPP.3D 1251; AND COMMON CAUSE GEORGIA VERSUS KEMP, 347  
20 F.SUPP.3D 1270. THESE ARE ALSO IN YOUR NOTEBOOK, YOUR HONOR,  
21 AT TABS 3, 8 AND 11.

22 NOW, THESE CASES WHEN YOU READ THEM ALSO SHOW ACTIONS  
23 THAT THE SECRETARY OF STATE HAS TAKEN TO DIRECT COUNTY ELECTION  
24 OFFICIALS AS TO WHAT TO DO. IN THE GEORGIA COALITION FOR  
25 PEOPLE'S AGENDA VERSUS KEMP CASE, FOR EXAMPLE, JUDGE ROSS WENT

1 THROUGH AT LENGTH A MEMO THAT THE SECRETARY OF STATE HAD SENT  
2 DIRECTING COUNTY OFFICIALS IN TERMS OF WHAT THEY NEEDED TO DO  
3 WHEN PEOPLE CAME TO THE POLLS, AND THEY HAD BEEN FLAGGED AS  
4 NONCITIZENS THROUGH THE EXACT MATCH POLICY.

5 EVEN THE EXACT MATCH POLICY WHICH WE HAVEN'T REALLY  
6 TALKED ABOUT BECAUSE I DIDN'T THINK THERE WAS ANY ISSUE ABOUT  
7 MOOTNESS, BUT EVEN THE EXACT MATCH POLICY PROVES THE POINT.  
8 THE EXACT MATCH POLICY IS A SECRETARY OF STATE POLICY. IT'S  
9 DIFFERENT FROM THE MATCH STATUTE, RIGHT? IT'S THE SECRETARY OF  
10 STATE'S INTERPRETATION OF IT, AND THE SECRETARY OF STATE HAS  
11 ISSUED THIS POLICY THAT ALL THE COUNTIES HAVE TO FOLLOW. IT'S  
12 NOT OPTIONAL FOR THEM TO FOLLOW, AND, YOU KNOW, THAT POLICY  
13 SHOWS WHAT THE SECRETARY OF STATE CAN BE DOING.

14 NOW, LET'S TAKE A LOOK AT WHAT THE SECRETARY OF STATE  
15 HIMSELF HAS SAID ABOUT HIS POWERS. WE'VE ALLEGED IN PARAGRAPH  
16 55 OF OUR COMPLAINT ABOUT THE SECRETARY OF STATE WEBSITE AND  
17 HOW HE DESCRIBES HIS RESPONSIBILITIES, AND RIGHT HERE, THIS IS  
18 A PROVISION FROM THE SECRETARY OF STATE'S WEBSITE, THE  
19 HIGHLIGHTED LANGUAGE THERE IT SAYS THE SECRETARY OF STATE IS  
20 ACCOUNTABLE FOR ENFORCING STATE ELECTION LAWS.

21 SO IF YOU TIE THAT BACK TO WHAT THE ELEVENTH CIRCUIT  
22 HAS SAID WHAT DOES THAT MEAN, IT MEANS THAT WHEN THOSE STATE  
23 ELECTION LAWS ARE DIRECTING LOCAL OFFICIALS TO DO X, Y AND Z,  
24 THE BUCK STOPS AT THE SECRETARY OF STATE TO SAY THAT THEY NEED  
25 TO DO THAT, AND SO YOU DON'T NEED TO JOIN ELECTIONS OFFICIALS

1 FROM 159 COUNTIES WHEN THE GUY WHO CAN DO ALL THAT IS ALREADY A  
2 NAMED DEFENDANT, PARTICULARLY IN COMBINATION WITH MEMBERS OF  
3 THE STATE ELECTION BOARD.

4 SO, YOUR HONOR, WITH THAT LAW PARTICULARLY THAT  
5 ELEVENTH CIRCUIT CASE AND SEEING WHAT OTHER NORTHERN DISTRICT  
6 OF GEORGIA COURTS HAVE SAID AND WHAT THE SECRETARY OF STATE HAS  
7 SAID, IT'S NOT ACCURATE THAT HE DOESN'T HAVE CONTROL. HE  
8 DOES. HE NOT ONLY CONTROLS HE HAS THE RESPONSIBILITY TO  
9 CONTROL WHAT THOSE COUNTY OFFICIALS ARE DOING.

10 SO LET'S NOW TAKE A LOOK AT THE DEFENDANT'S STATEMENT  
11 THAT THE SECRETARY OF STATE DOES NOT MANAGE ELECTIONS, AND I  
12 WANT TO POINT TO THE COURT A GEORGIA ATTORNEY GENERAL OPINION  
13 WHICH IS IN YOUR NOTEBOOK AT PAGE 22. THIS IS AN OPINION THAT  
14 THE GEORGIA ATTORNEY GENERAL ISSUED IN 2005 WHEN HE WAS BEING  
15 ASKED WHAT IS THE RELATIONSHIP BETWEEN THE DUTIES OF THE  
16 SECRETARY OF STATE AND THE DUTIES OF THE STATE ELECTION BOARD,  
17 AND IF YOU GO TO THE HIGHLIGHTED LANGUAGE IN THE COPY THAT WE  
18 GAVE YOU, IT'S AT PAGE 3, THE SECOND SENTENCE, WHAT IT SAYS  
19 HERE, AND THIS IS A QUOTE, THERE'S EMPHASIS IN THIS BUT THAT'S  
20 EMPHASIS IN THE ORIGINAL, JUST AS A MATTER OF SHEAR VOLUME AND  
21 SCOPE, IT IS CLEAR THAT UNDER BOTH THE CONSTITUTION AND THE  
22 LAWS OF THE STATE, THE SECRETARY IS THE, EMPHASIS IN THE  
23 ORIGINAL, STATE OFFICIAL WITH THE POWER, DUTY AND AUTHORITY TO  
24 MANAGE THE STATE'S ELECTORAL SYSTEM.

25 AND JUST TO PUT A PUNCTUATION POINT ON THE ATTORNEY

1 GENERAL'S VIEW OF THE BREADTH OF THE SECRETARY OF STATE'S  
2 POWERS, THE ATTORNEY GENERAL GOES ON RIGHT AFTER THAT, SLIDE  
3 28, TO SAY NO OTHER STATE OFFICIAL OR ENTITY IS ASSIGNED THE  
4 RANGE OF RESPONSIBILITIES GIVEN TO THE SECRETARY OF STATE IN  
5 THE AREA OF ELECTIONS.

6 SO ONCE AGAIN IT'S SIMPLY NOT ACCURATE WHEN THE  
7 DEFENDANTS TELL THE COURT THAT THE SECRETARY OF STATE DOESN'T  
8 MANAGE. THE GEORGIA ATTORNEY GENERAL HAS SAID WHAT THE  
9 SECRETARY OF STATE DOES. THE SECRETARY OF STATE IS REQUIRED TO  
10 DO.

11 SO LET'S TAKE A LOOK AT ANOTHER STATEMENT BY THE  
12 DEFENDANTS THAT THE SECRETARY OF STATE DOES NOT OVERSEE  
13 ELECTIONS. LET'S GO BACK TO THAT SECRETARY OF STATE WEBSITE  
14 THAT WE QUOTED IN PARAGRAPH 55 OF OUR COMPLAINT, SLIDE 34, AND  
15 IF YOU LOOK AT THAT SECOND ENTRY, THE SECRETARY OF STATE SAYS  
16 THE ELECTIONS DIVISION OF THE SECRETARY OF STATE'S OFFICE  
17 ORGANIZES AND OVERSEES ALL ELECTION ACTIVITY, INCLUDING VOTER  
18 REGISTRATION, MUNICIPAL, STATE, COUNTY AND FEDERAL ELECTIONS.

19 THERE'S ANOTHER THING THAT THE DEFENDANTS HAVE TOLD  
20 THE COURT THAT THE SECRETARY OF STATE DOESN'T DO. THE  
21 SECRETARY OF STATE HIMSELF SAYS THIS IS WHAT I DO, I OVERSEE  
22 ELECTIONS. I NOT ONLY OVERSEE ELECTIONS, I GO DOWN TO THE  
23 MUNICIPALITIES. THAT'S MY JOB.

24 ALL RIGHT. THE LAST ONE, THE SECRETARY OF STATE SAYS  
25 I DON'T ADMINISTER ELECTIONS. WELL, THAT'S NOT WHAT THE

1 SECRETARY OF STATE TOLD JUDGE ROSS IN THE GEORGIA COALITION FOR  
2 THE PEOPLE'S AGENDA VERSUS KEMP CASE, WHICH IS AT TAB 8 OF THE  
3 COURT'S NOTEBOOK. IN GEORGIA COALITION AT PAGE 1259, JUDGE  
4 ROSS IS SUMMARIZING AN ARGUMENT MADE BY THE SECRETARY OF STATE  
5 AS THE DEFENDANT IN THAT CASE, AND SLIDE 35, AND THIS IS  
6 QUOTING JUDGE ROSS, SAME DEFENDANT, THE SECRETARY OF STATE WAS  
7 THE DEFENDANT, ASSERTS THAT PLAINTIFFS' LAST MINUTE CHALLENGE  
8 PREJUDICES DEFENDANT WHO MUST ADMINISTER AND SUPERVISE THE  
9 ELECTIONS. THIS IS THE SECRETARY OF STATE'S POSITION.

10 THE SECRETARY OF STATE WAS SAYING THIS IN THE CONTEXT  
11 OF A LATCHES ARGUMENT. THE SECRETARY OF STATE WAS SAYING OH,  
12 THIS ARGUMENT SHOULD HAVE BEEN MADE BEFORE, AND YOU KNOW WHAT,  
13 I'VE GOT SO MUCH TO DO, I HAVE TO ADMINISTER AND SUPERVISE THE  
14 ELECTIONS, AND THAT'S THE SECRETARY OF STATE'S SAYING THAT  
15 HIMSELF.

16 SO EVERY ONE OF THE POWERS THAT THE DEFENDANTS HAVE  
17 TOLD YOU THAT THE SECRETARY OF STATE AND THE STATE ELECTION  
18 BOARD DON'T HAVE, THEY HAVE. THEY HAVE IT EITHER THROUGH THE  
19 ELEVENTH CIRCUIT HAS SAID THEY HAVE IT. THEY HAVE IT BECAUSE  
20 THE ATTORNEY GENERAL SAID THEY HAVE IT, OR THEY HAVE IT BECAUSE  
21 THEY SAID THEY HAVE IT.

22 YOU DON'T NEED TO HAVE COUNTY ELECTIONS OFFICIALS  
23 FROM 159 DIFFERENT COUNTIES BEFORE THIS COURT. IT'S NOT  
24 NECESSARY BECAUSE THE BUCK STOPS AT THE DEFENDANTS THAT WE'VE  
25 NAMED, AND ONE OTHER THING I WANT TO POINT OUT THAT THE

1 DEFENDANTS ARGUED TODAY. I WAS ACTUALLY GOING TO WAIT UNTIL  
2 FAILURE TO TRAIN, WHICH IS THE SECRETARY OF STATE SAYING THAT  
3 THE SECRETARY OF STATE DOESN'T TRAIN POLL WORKERS AT THAT  
4 LEVEL.

5 THE DEFENDANTS DO ACKNOWLEDGE THAT THE SECRETARY OF  
6 STATE HAS THE OBLIGATION TO TRAIN REGISTRARS AND  
7 SUPERINTENDENTS, AND THEN THAT THE CODE TALKS ABOUT HOW THE  
8 REGISTRARS AND SUPERINTENDENTS TURN AROUND AND TRAIN THE POLL  
9 WORKERS, AND IN THEIR BRIEF, BECAUSE THE DEFENDANTS SAY, AND  
10 I'M QUOTING FROM THE OPENING BRIEF AT 17, DEFENDANTS TRAIN ONLY  
11 ELECTION SUPERINTENDENTS AND REGISTRARS.

12 BUT LET'S TAKE A LOOK AGAIN AT THE SECRETARY OF STATE  
13 WEBSITE, THIS SLIDE THAT'S RIGHT UP IN FRONT OF YOU, THIS IS  
14 FROM THE SECRETARY OF STATE, AND LOOK IT'S ENTITLED POLL WORKER  
15 TRAINING RESOURCES, AND IF YOU LOOK DOWN FURTHER, IT'S GOT A  
16 GEORGIA POLL WORKER TRAINING MANUAL, QUALIFICATIONS TO BE A  
17 POLL WORKER, POLL WORKER TRAINING CERTIFICATE, POLL WORKER  
18 TRAINING TIPS, AND, YOUR HONOR, IF YOU LOOKED AT THOSE MORE,  
19 YOU'D SEE THINGS THAT THIS GETS AS GRANULAR AS TELLING POLL  
20 WORKERS THEY SHOULD SMILE AT VOTERS WHEN THEY WALK INTO THE  
21 POLLS.

22 IT'S JUST NOT ACCURATE TO SAY IT, AND, AGAIN, IF YOU  
23 LOOK AT THE GEORGIA COALITION CASE THAT JUDGE ROSS HAD, JUDGE  
24 ROSS ACTUALLY CRITICIZES THE SECRETARY OF STATE FOR THE FAILURE  
25 TO TRAIN, AND SHE GOES ON TO SAY IN THAT CASE AND THAT FAILURE



1 TO TRAIN, SECRETARY OF STATE, YOUR FAILURE TO TRAIN RESULTED IN  
2 POLL WORKERS NOT DOING THE RIGHT THING. THERE IS, IN FACT, A  
3 DIRECT LINK.

4 AND I MIGHT BE SKIPPING AROUND HERE A LITTLE BIT, BUT  
5 I KNOW THE COURT LOOKED LIKE IT WAS INTERESTED IN THE COMMENT  
6 BY THE DEFENDANTS THAT THERE'S NOT RESPONDEAT SUPERIOR  
7 LIABILITY UNDER SECTION 1983, THAT IS CORRECT, THERE IS NOT,  
8 BUT WHAT WE HAVE IN THIS CASE IS NOT RESPONDEAT SUPERIOR. WE  
9 ARE NOT -- WE ARE SAYING THAT THE SECRETARY OF STATE HIMSELF  
10 AND THAT OFFICE HAS FAILED TO TRAIN POLL WORKERS, AND WE ALSO  
11 HAVE JUDGE ROSS NOT ONLY MAKING IT CLEAR IN HER OPINION THAT  
12 THE SECRETARY OF STATE DOES THAT.

13 IN FACT, ONE OF THE THINGS SHE TALKS ABOUT IN THAT  
14 CASE IS THIS SAME POLL WORKER MANUAL. SHE SAYS IT'S WRONG.  
15 THAT'S PART OF THE PROBLEM, AS IS A DIRECTIVE SENT OUT BY THE  
16 SECRETARY OF STATE'S OFFICE, AND SHE GOES ON TO SAY IN THAT  
17 CASE, AT PAGE 1268, AND THE CITE ON THAT IS 347 F.SUPP.3D  
18 1251. IT IS IN THE COURT'S NOTEBOOK AT TAB 8. THERE HAS BEEN  
19 A LACK OF TRAINING OF ELECTIONS OFFICIALS FOR VERIFYING  
20 CITIZENSHIP AT THE POLLS, ALL OF WHICH COULD LEAD TO THESE  
21 INDIVIDUALS NOT BEING ABLE TO CAST A VOTE IN THE UPCOMING  
22 ELECTION.

23 SO THERE IS THIS DIRECT LINK ON THAT, AND I KNOW I'VE  
24 KIND OF SHIFTED FROM JOINDER TO THE FAILURE TO TRAIN, BUT WHILE  
25 WE WERE ON THE SUBJECT, I THOUGHT I WOULD LINK THAT UP.

1 THE COURT: NO PROBLEM.

2 MS. TANIS: ALL RIGHT. SO I HOPE I HAVE ANSWERED  
3 YOUR ORIGINAL QUESTION TO ME ABOUT THE POWERS OF THE SECRETARY  
4 OF STATE. IF I HAVEN'T, I KNOW YOU'LL ASK ME, BUT IN ANY  
5 EVENT, SO I WANT TO THEN TALK ABOUT WHAT IS THE RELIEF THAT WE  
6 HAVE REQUESTED, AND WHETHER THIS RELIEF FALLS WITHIN THOSE  
7 BROAD POWERS THAT THE NAMED DEFENDANTS HAVE.

8 SO IN TAB 21 WE'RE KIND OF CHART HAPPY ON THIS  
9 THINKING THAT MAYBE IT WOULD OF HELP TO THE COURT.

10 THE COURT: I'M GOING TO READ EVERY WORD IN THERE.

11 MS. TANIS: YOUR HONOR, THIS ONE IS REALLY EXCITING  
12 BECAUSE WHAT THIS CHART DOES IS IT LINKS OUR CLAIMS FOR RELIEF,  
13 AND IT THEN PROVIDES THE STATUTORY PROVISIONS THAT WOULD PERMIT  
14 THAT, AND SOME OF IT GETS PRETTY IN THE WEEDS.

15 THE COURT: THAT IS IMPORTANT.

16 MS. TANIS: SO I THOUGHT JUDGING --

17 THE COURT: YOU'RE RIGHT.

18 MS. TANIS: ALL RIGHT. SO WE'VE DONE THAT. NOW,  
19 AGAIN, WHAT IT DOESN'T HAVE, HOWEVER, AND I DON'T WANT THE  
20 COURT TO LOSE SIGHT OF IT, WE DON'T QUOTE CASE LAW. SO YOU'RE  
21 NOT GOING TO HAVE THAT SAME QUOTE FROM GRIZZLE VERSUS KEMP, BUT  
22 WE DO GO THROUGH THAT. I'M CERTAINLY NOT GOING TO WALK YOU  
23 THREW IT.

24 BUT IN ANY EVENT, IT SEEMS THAT THE DEFENDANTS'  
25 JOINDER MOTION IS PROBABLY -- WHEN TALKING ABOUT WHETHER YOU

1 HAVE TO JOIN ALL THESE COUNTY ELECTIONS OFFICIALS IS PROBABLY  
2 GEARED AT PARAGRAPHS 11 AND 12 OF OUR PRAYER FOR RELIEF, BUT I  
3 WANT TO TALK ABOUT WHAT THE LEAD-IN LANGUAGE IS TO THOSE  
4 PRAYERS FOR RELIEF, AND THE LEAD-IN LANGUAGE ON PARAGRAPH 11 OF  
5 THE PRAYER FOR RELIEF, WHICH IS AT PAGE 87 OF OUR AMENDED  
6 COMPLAINT, LIMITS THE REQUESTED RELIEF TO THINGS THAT FOR THE  
7 REASONS I'VE ALREADY TALKED ABOUT ARE WELL WITHIN THE POWERS OF  
8 THE NAMED DEFENDANTS HERE.

9 SO WE ASK THE COURT TO ENJOIN THE DEFENDANTS TO  
10 OVERSEE ELECTIONS, WHICH YOU CAN SEE THE SECRETARY OF STATE  
11 SAYS YEP, I'M THE GUY WHO DOES THAT, BY ENFORCING UNIFORM  
12 STANDARDS AND PROCESSES THAT, AND THEN WE'VE GOT ALL OF OUR  
13 SUBPARAGRAPHS, BUT WE CAN ALREADY SEE THAT UNDER 21-2-31-1 THE  
14 STATE ELECTION BOARD AND ITS MEMBERS ARE ACTUALLY CHARGED WITH  
15 CREATING REGULATIONS AND RULES FOR COUNTY ELECTIONS OFFICIALS,  
16 AND THE SECRETARY OF STATE AND THE STATE ELECTION BOARD ARE  
17 CHARGED WITH ENFORCING THOSE RULES. SO THE RELIEF THAT WE'RE  
18 REQUESTING DOES FALL WELL WITHIN THEIR POWERS.

19 I THINK THE OTHER SECTION THERE IS PARAGRAPH 12 IS A  
20 REQUEST FOR RELIEF. IT ASKS THE COURT TO ENJOIN DEFENDANTS TO  
21 ENSURE EACH COUNTY CONDUCTS EFFICIENT, JUST AND FAIR ELECTIONS,  
22 AND, AGAIN, THAT IS RIGHT WITHIN THE LANGUAGE OF 21-2-31 FOR  
23 THE ELECTION BOARD, AND, OF COURSE, WE'VE GOT THE SECRETARY OF  
24 STATE ALSO SAYING THAT HE'S GOT THOSE RESPONSIBILITIES.

25 SO THE RELIEF THAT WE'VE REQUESTED IS ACTUALLY RIGHT

1 IN THE WHEELHOUSE OF WHAT THESE NAMED DEFENDANTS DO. THERE  
2 SIMPLY ISN'T ANY REASON FOR THIS COURT TO JOIN ALL OF THESE  
3 OTHER COUNTY ELECTIONS OFFICIALS TO SAY NOTHING OF HOW  
4 CUMBERSOME THAT WOULD MAKE THIS LAWSUIT.

5 I'D ALSO SAY, YOUR HONOR, AND I KNOW THE COURT HAS  
6 ASKED ME QUESTIONS ABOUT OKAY, THAT'S ALL WELL AND GOOD, BUT  
7 LET'S GET MORE CONCRETE, HOW DO I ACTUALLY GO ABOUT FASHIONING  
8 THIS RELIEF, YOU KNOW, THAT'S WHAT I'M GOING TO BE STUCK WITH  
9 DOING, AND I WOULD SAY ON THAT, YOUR HONOR, WE'RE DYING TO GET  
10 SOME DISCOVERY IN THIS CASE, AND THERE IS GOING TO BE A LOT OF  
11 BACK AND FORTH ON THOSE ISSUES.

12 I AM CONFIDENT THAT AS THIS CASE PROGRESSES, WE WILL  
13 BE ABLE TO CRYSTALLIZE WHAT THESE ISSUES ARE, AND HOW THAT  
14 RELIEF WOULD NEED TO BE PHRASED WILL BE A NORMAL OUTGROWTH OF  
15 THAT PROCESS, BUT RIGHT NOW AT THIS STAGE IT'S DIFFICULT TO BE  
16 ABLE TO SAY THAT WHEN WE DON'T HAVE THE DISCOVERY ON THE  
17 UNDERLYING CLAIMS THAT ARE DRIVING THAT RELIEF, BUT CERTAINLY  
18 WHATEVER RELIEF THE COURT IS GOING TO PROVIDE HAS TO BE RELIEF  
19 THAT IS TAILORED TO THOSE NAMED DEFENDANTS. THERE JUST SIMPLY  
20 ISN'T ANY REASON TO BRING IN ALL OF THOSE COUNTY OFFICIALS.

21 ANY OTHER QUESTIONS ON JOINDER, YOUR HONOR? OKAY.  
22 I'M NOT EVEN SURE I NEED TO SAY ANYTHING ELSE ON THIS BECAUSE I  
23 THINK ON STANDING, I THINK WE'VE ADDRESSED THOSE ISSUES, AND I  
24 THINK BECAUSE THE STANDING ARGUMENT SEEMED TO BE SO TIED TO HB  
25 316 THAT THEY SHOULDN'T HAVE ANY BEARING ON IT.

1                   THANK YOU, YOUR HONOR.

2                   THE COURT:   THANK YOU.   HOW MUCH TIME DO THEY HAVE  
3 TIME FOR REBUTTAL, IF THEY WANT REBUTTAL?

4                   THE CLERK:   15 MINUTES.

5                   MR. TYSON:   THANK YOU, YOUR HONOR.   JUST A COUPLE OF  
6 POINTS FOR ME, AND I'LL LET MR. BELINFANTE COVERS HIS AREA, AS  
7 WELL.   I KNOW WE HAD A DISCUSSION ABOUT STANDING.   OBVIOUSLY  
8 THE ISSUES RELATED TO STANDING WITH HOUSE BILL 316 REALLY GO TO  
9 THE DUTY TO MAINTAIN STANDING THROUGHOUT THE LAWSUIT WHICH IS  
10 REALLY A MOOTNESS QUESTION.

11                  THE LARGER STANDING QUESTION WE TALKED ABOUT  
12 ORIGINALLY WERE AT THE TIME OF THE COMPLAINT IF THERE A WASN'T  
13 SUFFICIENT CONCRETE INJURY, WASN'T TRACEABLE, REDRESSABLE AS WE  
14 COVERED IN OUR BRIEFS.   I JUST WANTED TO MAKE SURE WE WERE  
15 DISTINGUISHING THOSE TWO PIECES.

16                  REGARDING THE NATIONAL VOTER REGISTRATION ACT, THE  
17 LIST MAINTENANCE PIECE, THE PLAINTIFFS HAVE NOT CHALLENGED THE  
18 CONSTITUTIONALITY OF THE NVRA PROVISION THAT REQUIRES LIST  
19 MAINTENANCE.   THEY OBVIOUSLY TAKE AN ISSUE WITH HOW GEORGIA IS  
20 CONDUCTING THAT LIST MAINTENANCE, BUT IF THEIR CONCERN IS THAT  
21 THE PROCESS THAT'S ACTUALLY OUTLINED IN THE NVRA AND UPHELD BY  
22 THE SUPREME COURT UNDER A CHALLENGE UNDER THAT PROVISION ON THE  
23 INTERPRETATION PIECE IS UNCONSTITUTIONAL, THEY NEED TO  
24 CHALLENGE THAT FEDERAL STATUTE AS WELL, NOT JUST GEORGIA'S  
25 IMPLEMENTATION OF IT.   SO THAT'S ONE OF THOSE PIECES AS FAR AS

1 HOW THEY'RE LOOKING AT THAT.

2 THE COURT: THEIR ARGUMENT IS THE COURT HAS TO  
3 DETERMINE THE REASONABLENESS OF WHAT'S BEING DONE, AND THAT HAS  
4 NOT BEEN DETERMINED ACCORDING TO THE PLAINTIFFS.

5 MR. TYSON: CORRECT. AND ALTHOUGH THE PLAINTIFFS  
6 REFERENCE THE FIRST AMENDMENT ISSUES THERE, THEIR CLAIM HERE IS  
7 LIMITED TO THE FOURTEENTH AMENDMENT CLAIM ONLY AS FAR AS  
8 NOTICE. SO THAT'S ANOTHER CONSIDERATION AS THE COURT IS  
9 LOOKING AT THOSE QUESTIONS RELATED TO THE NVRA.

10 THANK YOU, YOUR HONOR.

11 THE COURT: THANK YOU.

12 MR. BELINFANTE: YOUR HONOR, I WILL TRY TO NOT BE THE  
13 ONLY ATTORNEY THAT TAKES UP MY ENTIRE TIME LEFT.

14 THE COURT: I'M GOING TO TELL YOU LIKE I DID THE REST  
15 OF THEM DO WHAT YOU NEED TO DO.

16 MR. BELINFANTE: UNDERSTOOD. LET ME START WITH JUST  
17 SOME GENERAL THOUGHTS. I THINK WHAT YOU'VE SEEN IN THE TWO  
18 ARGUMENTS ARE TWO LEVELS KIND OF GOING FORWARD. WHAT WE'VE  
19 PRESENTED TO YOU IS BASED ON THE SPECIFIC ALLEGATIONS IN THE  
20 COMPLAINT, WHETHER IT DEALS WITH ABSENTEE BALLOTS, VOTER  
21 MACHINES, PROVISIONAL BALLOTS, HOW THE NEW LAW EITHER CHANGES  
22 THOSE, OR HOW THOSE ARE DECISIONS THAT ARE MADE AT THE LOCAL  
23 LEVEL.

24 AND IF YOU THINK ABOUT THE QUESTION OF, YOU KNOW,  
25 THIS CHART HERE TO OVERSEE CONTROL, ET CETERA, THAT'S ALL AT

1 THE GENERAL LEVEL. IF THE SPECIFIC ALLEGATION IS AND PARAGRAPH  
2 163 IS THAT JUST AN EXAMPLE THAT'S REPEATED THROUGHOUT, WHEN IT  
3 TALKS ABOUT FAILING TO FURNISH COUNTIES AND PRECINCTS WITH  
4 SUFFICIENT TOOLS FOR VOTING, PRESUMING THAT MEANS NUMBER OF  
5 PROVISIONAL BALLOTS AND WHAT NOT, WHAT DOES THAT ENTAIL? IT  
6 GOES TO THE QUESTION THAT YOUR HONOR ASKED ABOUT WHAT DOES THAT  
7 MEAN FROM THE SECRETARY OF STATE'S OFFICE TO THE LOCAL  
8 REGISTRAR.

9 IF THERE'S A THOUSAND VOTERS IN THE COUNTY, THEY NEED  
10 TO HAVE A THOUSAND BALLOTS OR 1200 PROVISIONAL BALLOTS, WHEN  
11 EVERYONE KNOWS EVERYONE IS NOT VOTING ON A PROVISIONAL BALLOT.  
12 THAT'S WHY IT CAN'T BE DECIDED AT THIS LEVEL OF GENERALITY THAT  
13 THE PLAINTIFFS ARE LOOKING AT. YOU NEED TO LOOK, YOUR HONOR,  
14 AT SPECIFICALLY WHAT THEY'RE ALLEGING IN THE ADDENDUM CLAUSES,  
15 AND WHAT THEY'RE ALLEGING ARE THE SPECIFIC VIOLATIONS. THAT'S  
16 THE DIFFERENCE WHEN YOU LOOK AT THE QUESTION OF WHAT'S THE  
17 SECRETARY'S POWER VERSUS THE POWER OF THE LOCAL GOVERNMENTS AND  
18 THE LOCAL BOARD OF REGISTRARS.

19 ON THE QUESTION OF MOOTNESS, THE ISSUE REALLY I THINK  
20 INVOLVING PARTICULARLY THE VOTING MACHINES THEMSELVES, THIS IS  
21 ONE THAT THE MACHINES HAVE TO BE CERTIFIED BY THE UNITED STATES  
22 ELECTION COMMISSION OR ELECTION ASSISTANCE COMMISSION. SO THE  
23 QUESTION OF WHETHER THE NEW MACHINES WILL COMPLY WITH FEDERAL  
24 LAW, YOU DON'T GET THERE BECAUSE TO COMPLY WITH STATE LAW THEY  
25 HAVE TO BE APPROVED BY A FEDERAL ENTITY ANYWAY.

1 THE COURT: THE ARGUMENT WAS MADE THAT THE MOOTNESS  
2 HERE DOES NOT APPLY BECAUSE THE ACT HAS NOT BEEN COMPLETED.  
3 UNLIKE IN UNITED STATES VERSUS GEORGIA, COUNSEL HAS ARGUED  
4 THOSE MACHINES MAY NEVER BE USED IN A SENSE IF CERTAIN  
5 CONTINGENCIES ARE NOT MET.

6 MR. BELINFANTE: THE CONTINGENCIES THEY'VE  
7 IDENTIFIED, ONE WAS APPROPRIATIONS. THE MONEY HAS BEEN  
8 APPROPRIATED. THE RFP HAS BEEN ISSUED. YES, IS IT CONCEIVABLE  
9 THAT -- I CAN'T COME UP WITH A SITUATION WHY THEY WOULD NOT BE,  
10 BUT THAT SPEAKS AGAIN TO RIPENESS IN TERMS OF WHAT YOU LOOK AT  
11 IN AN ATTACK ON FUTURE MACHINES.

12 BUT IF YOU'RE LOOKING AT THE QUESTION OF THE CURRENT  
13 MACHINES AS THEY ARTICULATED FOR MUNICIPAL ELECTIONS IN 2019, I  
14 WOULD URGE THE COURT SIMPLY TO LOOK AT PAGE 8 OF THEIR BRIEF.  
15 BECAUSE THERE WHERE THEY TO ATTEMPT TO JUSTIFY THEIR STANDING,  
16 THEY SAY EACH PLAINTIFF ALLEGES THAT IN CONNECTION WITH THE  
17 2020 ELECTIONS IT WILL DIVERT RESOURCES FROM ITS OTHER  
18 ACTIVITIES TO COUNTERACT DEFENDANTS' WRONGDOING.

19 SO THEY CAN'T GET AROUND STANDING AND ASSOCIATIONAL  
20 STANDING BY CITING TO THE 2020 ELECTION, AND THEN SAY HANG ON A  
21 SECOND, WE'RE ALSO LOOKING AT MACHINES FOR THE 2019 ELECTION,  
22 TOO. THAT'S NOT WHAT THEY'RE ARGUING, AND SO THAT'S WHY FROM  
23 THE MACHINE STANDPOINT, THE CASE IS EITHER MOOT IN TERMS OF THE  
24 OLD MACHINES, OR IT'S NOT RIPE IN TERMS OF THE NEW MACHINES.

25 AND A KEY DIFFERENCE BETWEEN THIS AND I BELIEVE IT



1 WAS THE FINDLEY DECISION, THE DEPARTMENT OF VETERANS AFFAIRS  
2 FEDERAL CASE THAT THEY CITE. FROM MY QUICK READ OF THAT CASE,  
3 IT INVOLVED JUST THE AGENCY ACTING ON ITS OWN TO COME UP WITH A  
4 RULE. IT WAS NOT AS IN U.S. V GEORGIA WHERE THERE WAS A  
5 VOLUNTARY CESSATION PARTICULARLY BY A LEGISLATIVE BODY SIGNED  
6 BY THE GOVERNOR, AND THAT'S WHAT MEETS THE STANDARD OF MOOTNESS  
7 FROM THERE.

8 I THINK PART OF IT, PERHAPS THE BIGGEST AREA WHERE  
9 THE COURT COULD RULE AND DISMISS THE CLAIMS IS ON THE FAILURE  
10 TO TRAIN AND FAILURE TO ADMINISTER. THERE'S NO CONTENTION THAT  
11 THE 2018 ELECTION STANDING ALONE IS AN INSUFFICIENT BASIS FOR A  
12 FAILURE TO TRAIN OR FAILURE TO ADMINISTER ARGUMENT. THE  
13 CONTENTIONS WERE THAT YES, THE SECRETARY CAN CONTROL, MANAGE,  
14 OVERSEE, ET CETERA, THAT MAY ONE ELEMENT, BUT IF THE ELEVENTH  
15 CIRCUIT AND THE SUPREME COURT'S DECISION WHICH SAY THAT THE  
16 STATE HAS TO BE ON SUFFICIENT NOTICE OF ONGOING PROBLEMS AND  
17 THEN TURN A BLIND EYE TO HAVE THAT LEVEL OF DELIBERATE  
18 INDIFFERENCE, YOU CAN'T HAVE THAT OFF OF ONE ELECTION, AND YOU  
19 CERTAINLY CAN'T HAVE IT OFF OF ONE ELECTION WHEN THERE IS A  
20 LEGISLATIVE RESPONSE THAT COMES IN IN A THOROUGH AND A HOLISTIC  
21 MANNER.

22 SO THE QUESTION THEN IS WHAT IS LEFT OF THE  
23 COMPLAINT, AND IT'S THOSE THINGS THAT HAVE BEEN ARGUED AGAINST  
24 THE STATE ITSELF AS OPPOSED TO WHAT THE COUNTIES ARE DOING  
25 BECAUSE THE FAILURE TO TRAIN IS GONE, AND WE'VE SEEN A LOT

1 WEBSITES. WE'VE SEEN BRIEFS, BUT THE QUESTION IS ON  
2 SPECIFICALLY WHAT DOES THE LAW OF GEORGIA SAY, AND IF THE  
3 SECRETARY WANTS TO GO ON HIS VOLITION AND HAVE INFORMATION  
4 AVAILABLE FOR POLL WORKERS, THAT'S NOT A BASIS OF LIABILITY.  
5 THAT'S SOMETHING THEY'RE GOING AHEAD AND DOING ON THEIR OWN  
6 THAT THEY'RE NOT REQUIRED TO DO.

7           LIABILITY ATTACHES WHEN THERE IS A LEGAL OBLIGATION  
8 TO DO SOMETHING, AND SOMEONE IS NOT DOING IT OR SHOWING A  
9 DELIBERATE INDIFFERENCE TO THAT LEGAL OBLIGATION, AND THAT'S  
10 WHERE THE FACT THAT THE STATUTES COME IN, AND PARTICULARLY THE  
11 NEW STATUTE IN 316 AND THE NEW STATUTE IN 392 THAT REQUIRES AN  
12 ANNUAL CERTIFICATION OF VOTER SECURITY. THIS IS NOT JUST THE  
13 SECRETARY AGREES HE'S GOING TO DO SOMETHING. THE GENERAL  
14 ASSEMBLY HAS COMPELLED THE SECRETARY TO PROMULGATE REGULATIONS,  
15 AND THE FAILSAFE IS THAT THEY HAVE TO CERTIFY THAT THE VOTER  
16 DATA HAS BEEN SECURED.

17           AGAIN IT ADDRESSES ON THE SPECIFIC LEVEL OF  
18 ADDRESSING THE CONCERNS IN THE COMPLAINT AS THEY'VE BEEN  
19 ARTICULATED AS OPPOSED TO GENERAL QUESTIONS OF WHAT'S THE  
20 AUTHORITY OVERALL VERSUS THOSE THAT ARE SPECIFICALLY ENUMERATED  
21 IN THE COMPLAINT, AND UNLESS THE COURT HAS ANY OTHER QUESTIONS,  
22 I'LL --

23           THE COURT: THANK YOU, SIR. WELL, LET ME COMMEND ALL  
24 YOU ALL, YOUR BRIEFS WERE OUTSTANDING, AND YOUR ARGUMENTS WERE  
25 OUTSTANDING, AND YOU ALL ARE MAKING IT DIFFICULT FOR THE

1 COURT.

2 THE DEFENDANTS AT ONE POINT IN TIME WHEN YOU ALL  
3 ASKED TO CONTINUE THIS CASE INDICATED YOU WANTED TO FURTHER  
4 BRIEF. DOES THE PLAINTIFFS WANT TO GIVE ANY FURTHER BRIEFING  
5 ON THIS?

6 MS. LAWRENCE: ONLY IF THE COURT WOULD LIKE FURTHER  
7 BRIEFING, YOUR HONOR, OR OF COURSE IF THE DEFENDANTS WILL BE  
8 BRIEFING.

9 THE COURT: WELL, TO BE HONEST WITH YOU ALL, I THINK  
10 I CAN MAKE A DECISION, BUT I WANT TO BE FAIR TO EVERYBODY. IF  
11 ANYBODY THINKS THEY NEED TO TELL ME ANYTHING ELSE, I'M WILLING  
12 TO HEAR IT. IF NOT, I'LL START WORKING TOWARDS ISSUING AN  
13 ORDER.

14 MS. LAWRENCE: AND, YOUR HONOR, PLAINTIFFS' POSITION  
15 IS THAT TIME IS OF THE ESSENCE AS WE ARE WORKING VERY HARD TO  
16 GET RELIEF QUICKLY FOR UPCOMING ELECTIONS.

17 THE COURT: WELL, SO YOU ALL DON'T NEED TO BRIEF?

18 MS. LAWRENCE: CORRECT, WE WOULD ASK THE COURT TO  
19 MOVE FORWARD AS QUICKLY AS POSSIBLE. WE'RE EAGER TO GET TO  
20 DISCOVERY.

21 THE COURT: DO THE DEFENDANTS WISH TO BRIEF?

22 MR. BELINFANTE: YOUR HONOR, I THINK IT BEHOOVES US.  
23 I MEAN THE ARGUMENTS HAVE BEEN HELPFUL, THE NOTEBOOKS HAVE BEEN  
24 HIM, BUT THERE'S A LOT CASE THAT ARE NOT BEING TALKED ABOUT  
25 THAT WERE NOT BRIEFED BEFORE, AND IN A LOT OF WAYS THE ARGUMENT

1 HAS CHANGED BECAUSE OF THE PASSAGE OF 316 AND 392.

2 WE THINK IT WOULD BE HELPFUL TO THE COURT. WE HAD  
3 PROPOSED AN EXPEDITED BRIEFING SCHEDULE. WE HAD PROPOSED  
4 POSTPONING THIS HEARING BUT THAT'S HAPPENED. WE'RE NOT SEEKING  
5 ANOTHER HEARING, AND WE WOULD STICK TO AN EXPEDITED BRIEFING  
6 SCHEDULE IF THAT'S SOMETHING THE COURT WOULD ENTERTAIN.

7 THE COURT: I'LL ALLOW YOU TO SUBMIT BRIEFS SEVEN  
8 DAYS FROM TODAY WHICH WILL BE NEXT MONDAY.

9 MS. LAWRENCE: AND, YOUR HONOR, WE WOULD SIMPLY ASK  
10 MAY WE GO AHEAD AND BEGIN OUR DISCOVERY WHILE THIS BRIEFING  
11 GOES ON?

12 THE COURT: WELL, USUALLY, MS. LAWRENCE, AS YOU KNOW  
13 DISCOVERY DOESN'T START UNTIL I ISSUE AN ORDER ON THE MOTION TO  
14 DISMISS, AND EVEN IF I DIDN'T ALLOW ANY BRIEFING, DISCOVERY  
15 WOULD NOT START UNTIL I ISSUE AN ORDER ON THE MOTION TO  
16 DISMISS.

17 MS. LAWRENCE: UNLESS THE JUDGE DIRECTS OTHERWISE.

18 THE COURT: WELL, YOU ASKED ME THAT. I THINK I KNOW  
19 WHAT THE DEFENSE IS GOING TO SAY THAT IF I DISMISSED IT THEN  
20 THE DISCOVERY WOULD BE JUST A WASTE OF TIME.

21 MR. BELINFANTE: YOUR HONOR, THESE ARE PUBLIC DOLLARS  
22 AT WORK, AND IF WE'RE GOING TO GET INTO DISCOVERY BASED ON  
23 WHAT'S AT ISSUE IN THE COMPLAINT, THEN WE THINK IT'S BEST TO GO  
24 AHEAD AND HAVE A RULING.

25 THE COURT: WELL, AGAIN, THE COURT IS OBVIOUSLY GOING

1 TO ISSUE A RULING ON THE MOTION TO DISMISS, BUT USUALLY AS YOU  
2 KNOW IF YOU THE PRACTICE IN THIS CIRCUIT, IN THIS DISTRICT, WE  
3 HAVE THE HEARING FOR A MOTION TO DISMISS OR ENTERTAIN THE  
4 MOTION TO DISMISS, WE DON'T START DISCOVERY UNTIL AFTER THE  
5 COURT ISSUES A RULING OF THE MOTION TO DISMISS.

6 I ASSURE YOU I WILL MOVE AS FAST AS I CAN, BUT I HAVE  
7 TO BE FAIR. YOU ALL HAVE ALREADY GIVEN ME -- I WON'T BE  
8 WATCHING THE SPORTS FOR A WHILE, BUT IT'S AN IMPORTANT MATTER.  
9 I WANT EVERYBODY -- HOWEVER I RULE YOU MAY NOT AGREE WITH THE  
10 RULING, BUT AT LEAST I WANT YOU TO KNOW I GAVE YOU A FAIR SHOT  
11 TO TELL ME WHAT YOU WANTED TO TELL ME. SO IF YOU WANT TO ISSUE  
12 A BRIEF, YOU CAN, BUT I NEED ALL BRIEFS THAT'S GOING TO BE  
13 SUBMITTED TO BY FIVE O'CLOCK NEXT MONDAY. THANK YOU, ALL.

14 MR. BELINFANTE: THANK YOU.

15 MS. LAWRENCE: THANK YOU.

16 (PROCEEDINGS CONCLUDED.)

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C-E-R-T-I-F-I-C-A-T-E

3

4 UNITED STATES OF AMERICA

5 NORTHERN DISTRICT OF GEORGIA

6

7

I, ANDRE G. ASHLEY, DO HEREBY CERTIFY THAT I AM A

8

U.S. DISTRICT REPORTER FOR THE NORTHERN DISTRICT OF GEORGIA,

9

THAT I REPORTED THE FOREGOING AND THE SAME IS A TRUE AND

10

ACCURATE TRANSCRIPTION OF MY MACHINE SHORTHAND NOTES AS TAKEN

11

AFORESAID.

12

IN TESTIMONY WHEREOF I HAVE HEREUNTO SET MY HAND ON

13

THIS 1ST DAY OF MAY, 2019.

14

15

16

17

18

S/ ANDRE G. ASHLEY

19

ANDRE G. ASHLEY

20

OFFICIAL COURT REPORTER

NORTHERN DISTRICT OF GEORGIA

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