

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GARLAND FAVORITO, MARK SAWYER,)
RICARDO DAVIS, AL HERMAN,)
FRIEDA SMITH, KATHRYN WEITZEL,)
ADAM SHAPIRO, and CATHIE)
CALABRO,)

Plaintiffs,)

vs.) CIVIL ACTION FILE
) 2006CV119719

CATHY COX, Secretary of State,)
SONNY PERDUE, Governor of the)
State of Georgia, GEORGIA)
STATE ELECTION BOARD,)

Defendants.)

DEPOSITION OF
MICHAEL BARNES

Taken on behalf of the Plaintiffs
Friday, June 22, 2007

2:05 p.m.

At the office of the
Center for Election Systems
Kennesaw State University
Kennesaw, Georgia

Sharon J. Ruschell, RMR, CRR, CCR No. B-1179
Certified Court Reporter

SHARON J. RUSCHELL, RMR, CRR
CERTIFIED COURT REPORTER
803 ROCKY RIDGE COURT
CANTON, GEORGIA 30114
(770) 704-5445

1 APPEARANCES OF COUNSEL:

2
3

On behalf of the Plaintiffs:

4
5

WALKER CHANDLER, ESQ.
15 West Jackson Street
P.O. Box 7
Zebulon, Georgia 30295
(770) 567-3882

6
7
8

9 On behalf of the Defendants:

10

STEFAN RITTER, ESQ.
Office of the Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 656-7298
(404) 657-9932 (fax)

11
12
13

14 Also Present:

15

GARLAND FAVORITO
MARK SAWYER

16
17
18
19

- - -

20

21 (Pursuant to Article 8.B of the Rules & Regulations of
the Board of Court Reporting of the Judicial Council of
22 Georgia, a disclosure form was submitted to all
parties/counsel for signature and attachment to the original
23 transcript in this matter.)

24
25

INDEX TO EXHIBITS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT	DESCRIPTION	PAGE
B	E-mails between Mr. Garland and Mr. Barnes dated 2-6-02 re Audit Trail Requirement for Georgia Electronic Voting Machines	11
C	E-mails between Mr. Garland and Mr. Barnes dated 2-6-02 and 2-7-02 re Audit Trail Requirement for Georgia Electronic Voting	14

P R O C E E D I N G S

- - -

1
2
3 MR. CHANDLER: This is the deposition of
4 Michael Barnes. It's being taken in Civil
5 Action Number 2006CV119719, Favorito, et al.
6 versus Perdue, et al.

7 This is being taken for the purposes of
8 discovery, use at trial and any other purposes
9 and things permitted by the Civil Practice Act.
10 Shall we reserve all objections except as to the
11 form of the question and the responsiveness of
12 the answer?

13 MR. RITTER: That suits me fine.

14 MR. CHANDLER: And do you wish to reserve
15 the right of signature?

16 MR. RITTER: We do. Thank you.

- - -

17
18 MICHAEL BARNES,

19 having been first duly sworn, was examined and testified as
20 follows:

EXAMINATION

21
22 BY MR. CHANDLER:

23 Q. Please state your name.

24 A. First name's Michael. Last name's Barnes.

25 Q. Where do you live, Mr. Barnes?

1 A. 1133 Pinehurst Drive, Smyrna, Georgia.

2 Q. How long have you worked for the State of Georgia?

3 A. I have worked for the State of Georgia since
4 August 1998.

5 Q. Where did you start working for the State of
6 Georgia?

7 A. Started working in Augusta in '98 with the
8 Secretary of State's office, served as a special assistant
9 to the Secretary of State, came to Kennesaw State in June
10 2005 where I now hold the position of assistant director for
11 Center of Election Systems.

12 Q. What was your title in the year 2001?

13 A. In 2001 I was with the Secretary of State's office
14 and I was an assistant director for the State Elections
15 Division.

16 Q. As such what were your functions that have to do
17 with this lawsuit?

18 A. In 2001?

19 Q. Yes.

20 A. In 2001 I was assigned to the elections division
21 and was project manager for the pilot project of voting
22 equipment that was being piloted in the state, the DRE
23 equipment that was being piloted at that time.

24 Q. Did you issue any requests for proposals?

25 A. I personally did not but the Secretary of State's

1 office did work with GTA, Georgia Technology Authority, to
2 develop an RFP that was issued that was sent out and asked
3 for requests from various vendors.

4 Q. Can you remember how many vendors replied, how
5 many separate vendor companies replied and made offers to
6 fit within the parameters that that set forth?

7 A. I believe the total number of responses the State
8 received in regards to the RFP were seven.

9 Q. Who reviewed and approved the RFP?

10 A. The RFP was drafted by the elections office, the
11 Secretary of State's office with help from Georgia
12 Technology Authority to make sure we maintained the
13 parameters of any normal RFP. I'm trying to remember the
14 gentleman's name at GTA that was the point person. I can't
15 recall his name at the moment.

16 MR. FAVORITO: Larry Singer.

17 THE WITNESS: Larry Singer was the director
18 of GTA but he was not the point person.

19 BY MR. CHANDLER:

20 Q. Do you remember the seven companies, the name of
21 the seven companies or the equipment that they were
22 offering? Like Diebold was one selected.

23 A. Diebold Election Systems was one of the companies
24 that issued a response. ES&S, which is short for Election
25 Systems and Software, was a company. Hart InterCivic was a

1 company. Diversified Dynamics was a company. Shoup Voting
2 Equipment was a company. VoteHere was a company. I feel
3 like I'm missing one. That's six. I'm just trying to
4 remember.

5 Q. That's fine, sir. Now, of those, who narrowed it
6 down -- who or what committee narrowed it down to the ones
7 that were deemed acceptable by the State of Georgia?

8 A. As part of the evaluation process following the
9 rules of GTA for any such procurement like this an
10 evaluation committee was established. I can't recall all
11 members of the evaluation committee but the evaluation
12 committee met as a whole and reviewed all RFP's with a
13 guideline of things to be looking for within the RFP,
14 looking for responses to certain questions issued in the
15 RFP, and then the committee as a whole would determine
16 whether that vendor moved forward or was eliminated from the
17 competition.

18 Q. How many vendors were left after the first few
19 rounds? In other words, was there a point at which there
20 were two companies left or there were three companies left?

21 A. Yes. Basically there were certain points in the
22 evaluation where you started out with all the groups and
23 then they were whittled down.

24 The criteria that the evaluation group had was
25 that if a vendor failed to meet a requirement then they were

1 immediately eliminated; did not matter what that requirement
2 was. If the committee deemed them as not meeting the
3 requirement, they were removed from further review.

4 Q. One of those requirements, if I'm not mistaken,
5 was federal certification; is that correct?

6 A. That is correct.

7 Q. Now, how many companies survived all requirements?

8 A. There were three companies that survived all
9 requirements.

10 Q. And they were --

11 A. They were Diebold Election Systems, Election
12 Systems and Software, and Hart InterCivic.

13 Q. Did the machines or systems offered by any of
14 those companies provide a paper record at the time of voting
15 that would be essentially produced by the machine, which
16 piece of paper could be put in a ballot box?

17 A. Just for clarification, did any one of those
18 vendors at the time that the voter was at the voting unit
19 produce a piece of paper at the time of voting?

20 Q. Yes, sir.

21 A. No, no one of those three vendors -- in fact, no
22 one of the seven vendors produced a piece of paper at the
23 time of voting.

24 Q. All right. Would you agree with me that the
25 voting machines of all seven vendors were essentially adding

1 machines? Would you agree with my characterization that all
2 of the machines are essentially adding machines, adding up
3 the totals of the people who used the machine?

4 A. I don't know if I can agree, just say that they
5 are adding machines. These particular pieces of systems and
6 hardware had gone through a certification process on the
7 federal and state level, meaning that they adhered to the
8 standards as required for voting equipment. So I would have
9 to say that they were deemed as voting equipment.

10 Q. Do you remember the standards that were required
11 by state law on the evaluation of the systems that were
12 going to be used?

13 A. My recollection is that the systems by route of
14 what was required in the RFP outlined that the systems had
15 to obtain federal qualification or federal certification
16 under the then existing rules, voting standards, whatever
17 those were, whatever the existing was at the time of the
18 RFP, and that the system also -- the requirement was that it
19 had to be a system that was not a first generation. It
20 couldn't be just produced. It had to have some elections
21 experience, meaning it had been used in some other
22 jurisdiction, no matter how big or small.

23 And then the systems had to have acquired at some
24 point in time a certification from the State for use. And
25 all systems that were issued or submitted to the State in

1 the RFP had met those requirements as set out by the RFP.

2 Q. Do you recall having any e-mail interchanges with
3 one of the plaintiffs in this case, Garland Favorito?

4 A. I do not recall, no, sir.

5 Q. Do you recall any citizen input prior to the
6 implementation of this system?

7 A. I remember as part of the 2001 pilot program there
8 was a 21st Century Voting Commission that had 15 or 17
9 members that were appointed by members of the House, members
10 of the Senate. Secretary of State had appointments to the
11 board. I can't remember what the whole composition of the
12 group was.

13 But they had public meetings throughout the state
14 where members of the public would -- there was always an
15 open point in the meeting where members of the public could
16 address the group and talk about whatever they wanted to
17 talk about.

18 And I remember the last meeting of that group
19 being in Savannah in December 2001 where this was just after
20 the pilot project had completed and this was an evaluation
21 of the project in December, and I do remember public
22 comments being made at that meeting but in regards to -- and
23 I'm certain letters were received by citizens during the
24 process but I can't recall any specific comments or any
25 individual letters.

1 Q. I'm going to hand you something marked Exhibit B
2 and ask if you recognize Exhibit B -- I believe this would
3 be -- that would be page 1 of Exhibit B and I believe this
4 is followed by pages 2 and 3 and 4 -- and ask you if you
5 recognize these as being copies of any e-mail interchanges.

6 MR. RITTER: These are actually highlighted
7 copies; at least the first page is.

8 MR. CHANDLER: Yes, the first page is
9 highlighted.

10 Let the record reflect that Mr. Mark Sawyer
11 has entered the room. He is also a plaintiff
12 but he will not be asking questions today.

13 THE WITNESS: Again repeat the question.

14 BY MR. CHANDLER:

15 Q. I was just asking if you recognize this e-mail
16 interchange --

17 A. Yes.

18 Q. -- that these purport to represent.

19 A. Yes.

20 Q. Would you agree that those would appear to have
21 represented an e-mail interchange between you and
22 Mr. Favorito that took place as set forth on the dates
23 therein?

24 A. Yes.

25 Q. And I'm not asking you to swear that that happened

1 just that way but you recognize this.

2 A. Yes.

3 Q. Do you doubt the validity of this record?

4 A. I do not.

5 Q. All right. Tell me about -- in some of your
6 e-mails did you ever refer Garland or any other inquiring
7 people to Professor Brian Williams? Brit. Excuse me.

8 A. Yes.

9 Q. What was his legal title or his legal relationship
10 to the acquisition process?

11 A. At the time he was under contract with the
12 Secretary of State's office to serve as the State's
13 certification testing agent. His job was on contract with
14 the Secretary of State's office that if any voting system
15 was submitted to the State for certification, he was the
16 individual that would outline the tests that those systems
17 would have to be tested on.

18 And then Dr. Williams would then submit a report
19 of finding to the Secretary of State's office for the
20 Secretary of State to review and to make her determination
21 of whether to certify or not certify the system for use.

22 Q. Sir, I should have asked this before but what is
23 your educational background?

24 A. Educational background, I have a bachelor of arts
25 from the University of Georgia in political science in 1996.

1 I have a master's in public administration from Georgia
2 State University in 2002.

3 Q. Do you yourself have any computer training of any
4 sort?

5 A. Any accredited computer training from any
6 accredited university or so forth?

7 Q. Yes.

8 A. I do not.

9 Q. Who are the computer engineers upon which reliance
10 was placed during the selection process of the current
11 machines?

12 A. During the evaluation process of the machines?

13 Q. Yes.

14 A. After the RFP's had been presented out and
15 vendors -- in response to the RFP's; is that what you're
16 asking?

17 Q. Yes. On whom did y'all's division or subdivision
18 of the Secretary of State's office rely for expert computer
19 advice?

20 A. The Secretary of State's office itself has an
21 information technology department and the head of that
22 department is a Mr. Brett Bramer, and I believe he still
23 serves in that capacity today under the current
24 administration. He was the person that our Secretary of
25 State's office always went to with any computer type

1 questions and so forth.

2 When the Secretary of State's office began
3 working, you know, looking at moving toward new voting
4 equipment aspects, they always went to Dr. Williams with any
5 questions about systems, about current setups or what the
6 federal government may be doing because of his work with the
7 federal government through NASED and also the ITA's,
8 independent testing authorities that were in place.

9 Q. Was there a direct contract between the Secretary
10 of State's office and Britain Williams?

11 A. I believe at the time he was under contract as the
12 State's certification tester.

13 Q. When we say under contract, does that mean -- to
14 the best of your knowledge, was he paid like on a monthly
15 basis for his expertise?

16 A. I do not know what the contractual obligation was
17 between the two.

18 Q. That's fine. And he was not, therefore, in any
19 way an employee of the State of Georgia, to the best of your
20 knowledge.

21 A. To the best of my knowledge, I don't know.

22 Q. I'm going to ask you -- I'll hand you C -- it's
23 been marked Exhibit C consisting of another three pages --
24 and ask if it would also appear to be -- there is some
25 highlighting on there but I'm not referring to any

1 highlighting, but does that also appear to be part of some
2 e-mail interchanges between you and Mr. Favorito?

3 A. It does.

4 Q. Do you have any doubt -- as we sit here today do
5 you have any doubts but that that is part of an interchange?

6 A. I can't say that I do. I don't.

7 Q. Did you have contact with any other civic
8 organization like the League of Women Voters or Common Cause
9 that expressed any concerns about having basically paperless
10 voting?

11 A. You know, during the whole pilot process I know
12 that we had interaction with the League of Women Voters as
13 an interested party. However, I do not recall them giving
14 any questions of concern about potential systems that the
15 State was looking at.

16 Q. Was one of the criterion for the acquisition of
17 the machines that they have some ability to audit the
18 machine's performances other than just accepting the idea
19 that the machine is working properly? I'm sorry. That's
20 not a good question.

21 Do the machines provide any kind of written
22 report -- I'm talking about the small machines that an
23 individual voter uses. Does it provide any kind of a
24 tabbed-out written report about what votes were entered on
25 that machine on that day, that election day?

1 A. The voting machines currently in use --

2 Q. Yes.

3 A. -- or all the voting machines that were looked at?

4 Q. No, the ones currently in use.

5 A. The voting machine currently in use produces
6 record of the vote totals, which comes from the tallying of
7 all the votes recorded on that unit that day.

8 So it produces a printout -- it produces two
9 printouts during the voting process. The first printout is
10 done at the morning when the polls are opened and the
11 printout is used to verify the system is at a starting point
12 of zero, showing no vote totals for any candidates in any
13 races.

14 At the end of the day the first operation when the
15 election has ended on the equipment is a total printout from
16 that machine that shows how the count now stands. It shows
17 the total number of ballots cast on the unit and then it
18 shows total number of votes recorded for each individual
19 candidate in each individual race.

20 Q. And is that a printed piece of paper that comes
21 out of that machine?

22 A. That is a printed piece of paper that comes out of
23 that machine.

24 Q. So the machine has in it a printer in the machine
25 itself.

1 A. The machine has a thermal printer on board with a
2 roll of paper inside of it.

3 Q. Were there any civic organizations that were under
4 any direct or indirect contract or obligation or even
5 voluntary relationship with the Secretary of State's office
6 to provide voter education in the year 2002?

7 A. Yes. There were two that I can recall. I can't
8 think of what their names were, but the Secretary of State's
9 office did contract with two nongovernmental entities. I
10 cannot remember what their names were.

11 But the Secretary of State's office also had its
12 own voter educational program. The Secretary of State's
13 office had what were called VEC's, voter education
14 coordinators. The state was divided into 13 regions and
15 there was one individual assigned to each one of those
16 regions and their job was to go to any public meeting that
17 would have them to show equipment, to answer any questions
18 that might be had by the public, to educate the public on
19 the new system, how it operates, what to expect when they
20 entered the polls.

21 There was a public service campaign done by the
22 Secretary of State's office where a 30-second commercial was
23 developed and aired on TV during the November campaign cycle
24 of 2002.

25 And I believe there was a voter education video

1 developed, about a five to seven minute video that was
2 developed and could be made available to anyone that
3 requested one if the request came to the Secretary of
4 State's office.

5 Q. As I understand it, the voting equipment now
6 currently in use can only be audited based on the piece of
7 paper that the internal thermal printer prints out at the
8 end of the voting day; is that correct?

9 A. Explain audited.

10 Q. I'll give an example. If 800 people voted for
11 candidate A using a particular machine and 700 voted for his
12 opponent, candidate B, and that's what they actually
13 intended to do, at the end of the day whatever the piece of
14 paper that comes out of the back of the machine is the only
15 thing that can be audited -- is that correct -- the only
16 thing that can be referred to to determine how many people
17 voted for candidate A and candidate B?

18 A. The voting unit will produce at the end of the day
19 a paper tape that indicates vote totals for each individual
20 candidate and each individual race. It'll also show a total
21 number of ballots cast.

22 The information that the machine has captured
23 during the day is also recorded onto a PCMCIA card, a media
24 device, a memory card. That memory card is removed from the
25 touch screen at the end of the day and then it is

1 uploaded -- the data that is on that memory card is uploaded
2 into a computer called GEMS, which is a part of the voting
3 system.

4 And then GEMS gathers the data from that card and
5 then basically tallies the vote again separate from the
6 touch screen to produce a vote total for that particular
7 machine in that particular precinct.

8 Q. Would it be fair to say that a vote entry made on
9 the touch screen has to pass through a software process
10 before it is entered on the PCMCIA card?

11 A. The way that the voting system is set up is that
12 the voting system is a combination of hardware equipment,
13 which is the touch screen, and software equipment, which is
14 a program that resides on the touch screen, those two
15 entities themselves incorporated into the voting unit
16 itself.

17 And then these systems are then tested on a
18 federal and state level to verify that those components
19 working together receive information put in by a voter,
20 record information as attendant to the voter and then
21 produce a result reflecting the voter's intent in casting
22 their ballot.

23 Q. And this certification is carried out prior to the
24 actual day of voting; is this correct?

25 A. The qualification is the first part of the

1 process, which is on a federal level, where testing is done
2 to verify that the system working as a whole works as
3 intended, as a voting device.

4 Once that testing is completed, then if a vendor
5 wants to sell that product in the state of Georgia, they
6 have to produce that software product not from the vendor to
7 the State but have the version that was verified and tested
8 on the federal level by the testing labs, have the testing
9 lab then submit to the State a copy of that qualified
10 software program, and then hardware is provided by the
11 vendor to the State qualifying -- State certifying
12 institution.

13 And then the firmware tested on the federal level
14 or software tested on the federal level is loaded to the
15 hardware component provided by the vendor.

16 It is then tested on the state level to make sure
17 that the system works and is in correlation with what is
18 required of it by the official code of Georgia and any SEB
19 or SOS rules that are in force in regards to equipment
20 certification for voting purposes.

21 Once those tests are completed a certification
22 report is submitted to the Secretary of State's office for
23 her review -- for his or her review, whoever the Secretary
24 of State may be. Then they have the final say on whether
25 the system should be certified for use or not.

1 If certified, then the system is installed in a
2 county or jurisdiction, whoever may be obtaining the system.
3 Once installed at the local jurisdiction level the State of
4 Georgia has someone go out and do an acceptance test of that
5 equipment and the acceptance test is used to verify that the
6 hardware and software components making up the voting system
7 are of the proper version and working capacity that has been
8 shown to be qualified at federal and state level, and that's
9 called an acceptance test to verify that they're using what
10 has been tested.

11 Then prior to each individual election each local
12 jurisdiction has to go through a testing process where they
13 take the ballot information that will be used for the
14 upcoming election and load that information onto the voting
15 units, all the voting units that will be used and then go
16 through a test process where entries are entered into the
17 system and the system records those entries and then
18 produces a result.

19 The entries that are placed into the system are a
20 known commodity so a known result is expected from the
21 system. If the system does not meet that known answer, the
22 system is not cleared for use in an upcoming election.

23 Q. Did the elections division assure the legislators
24 that were involved in the selection process that the
25 machines that were being implemented had appropriate audit

1 trails?

2 A. I can't speak to what may have been asserted to
3 members of the legislature. I didn't have direct
4 communication with members of the legislature.

5 Q. All right. Do you agree or not with the idea that
6 vote fraud could be hidden in the software, let's say like
7 maybe called a Trojan that doesn't come into play until
8 after the first 50 votes have been cast or the first 300
9 votes have been cast on a given machine?

10 A. Based on my understanding of the tests that all
11 voting systems are required to pass on a federal level prior
12 to a state even seeing them, I do not agree with that
13 statement.

14 Q. Is it your division or your agency -- is it your
15 opinion that the protections that the Georgia voters have in
16 that regard are based on the necessity that the voters of
17 Georgia trust your division to carry out its functions
18 properly?

19 MR. RITTER: To be clear, you're talking
20 about his former division, the Secretary of
21 State's office.

22 MR. CHANDLER: I'm talking about the
23 Secretary of State's office and this office of
24 election science or whatever we call this
25 office.

1 MR. RITTER: Both this office now and where
2 he was formerly.

3 BY MR. CHANDLER:

4 Q. I'm talking about now currently. Are you saying
5 that the voters of Georgia have to rely entirely on this
6 office for the integrity of the software that's used in the
7 machines?

8 A. I would say that the voters of Georgia and that
9 the State of Georgia being a republic in which people are
10 elected to serve as representatives of the people, to then
11 develop rules and guidelines for every phase of governmental
12 involvement, I would say that the center here works under
13 those rules and guidelines as specified by the official code
14 of Georgia as the elections code, by the SEB rules that
15 apply to our office in any way, shape or form are always
16 followed and adhered to at all costs in order to provide the
17 most reliable system of voting that can be provided to the
18 citizens of Georgia.

19 Q. Did you read the 21st Century Voting Commission
20 Report?

21 A. I haven't read it in the last six years but I do
22 remember reading it at one point in time, yes.

23 Q. Do you remember that commission report
24 recommending that whatever system you chose should have a
25 capability of producing an independent paper audit trail of

1 every ballot cast?

2 A. I can't remember those specific words but I
3 remember that the system -- the report saying that the
4 system would have -- that whatever was chosen would have a
5 way of an audit process.

6 Q. Do you think that -- as I understand it now, the
7 State's position is that there are two ways that we audit.
8 One is by the PCMIS -- whatever that little card is -- and
9 the second is by the little paper tape that the internal
10 printer prints out and those are the only ways that these
11 machines can be audited. Is that correct?

12 A. Those are currently the ways that the system
13 tabulates votes.

14 Q. All right. Can you explain why a paper ballot
15 audit trail recommendation was left out of that RFP?

16 A. No, I can't speak to why something would have been
17 included and why it would not have been included.

18 Q. All right. But you did say that all seven systems
19 that were offered and were considered initially, that none
20 of the seven had any ability to produce a paper ballot at
21 the time.

22 A. To my recollection, at the time when the State was
23 involved in looking at systems and considering moving toward
24 a new system, whatever it may be, that vendors at the time
25 were not producing a system that printed out something at

1 the time of vote for each individual voter.

2 Q. Do you know if there are any such systems
3 available now?

4 A. Based on my understanding, yes, there are, that
5 there are some systems.

6 Q. Could you name say two of those systems?

7 A. I believe Diebold has developed a system that with
8 each ballot cast produces a record of the information
9 recorded at that time.

10 Q. Is that what I call the rollup?

11 A. Which it's my understanding it's basically
12 reel-to-reel. The paper flows from one reel to the next.

13 Q. Is that the system that was used in what's called
14 the pilot project that was just run recently?

15 A. The pilot project run in November 2006?

16 Q. Yes, sir.

17 A. Yes, that system.

18 Q. Are you familiar with the report that has been --
19 the evaluation of that?

20 A. I know one has been issued but I have not read
21 that report. I'm not familiar with that one.

22 Q. All right. You don't know why a paper audit trail
23 other than the internal was left out of that RFP; is that
24 correct?

25 A. I do not know why that was or was not a

1 requirement of the RFP.

2 Q. Were concerns about that brought to your attention
3 by Mr. Favorito prior to the selection?

4 A. Well, looking at the exhibits that you've handed
5 to me earlier and based on the dates that I see here, it
6 looks like that there was an e-mail communication between he
7 and I about his concern at that point in time. Do I recall
8 it and remember the day and the time? No, I don't.

9 Q. Do you recall any efforts on your part to forward
10 those or similar concerns to the selection committee?

11 A. As part of my job at the time is that anything
12 that came I was to report back to the committee in regards
13 to here is what we are hearing from the public. You are
14 aware of these things so you may make your decision that you
15 feel is best for those that you represent.

16 Q. Ultimately who made the decision about which
17 machine to acquire?

18 A. The evaluation committee that was appointed
19 reviewed all proposals, then made a recommendation to both
20 the head of GTA, who was Mr. Larry Singer at the time, and
21 to the Secretary of State, Miss Cathy Cox at the time, and
22 then the final decision was the Secretary of State's in
23 conjunction with the director of GTA. Any procurement of
24 that nature had to have approval from GTA as well as the
25 agency that would be expending funds to acquire that

1 product.

2 Q. Do you recall any lobbying efforts that went on on
3 behalf of any of the vendors?

4 A. My recollection of the evaluation process is that
5 there was no lobbying, direct lobbying efforts that I was
6 made aware of that was made to members of the evaluation
7 committee.

8 Q. Did you yourself participate, for example, in any
9 luncheons with representatives of vendors?

10 A. No.

11 Q. Do you know of anybody else who may have
12 participated in informal meetings with representatives of
13 vendors?

14 A. I have no knowledge.

15 Q. Do you remember specifically taking any action
16 relative to the memos that were sent to you by Garland
17 Favorito?

18 A. I can't remember a specific action but I would
19 imagine that, as was the normal protocol, that anything like
20 this was responded on and was also added to comments, public
21 comments that were made available to those that would be
22 making the final decision.

23 Q. Did the machines -- did the TrueVote and Avante
24 machines have any kind of an independent audit trail
25 capability? The machines offered back then that we were

1 talking about, did they have any capabilities that were
2 different than the audit capabilities of the Diebold
3 machines?

4 A. I don't believe that TrueVote or Avante was one of
5 the vendors that I initially submitted to the RFP.

6 Q. Do you recall receiving this e-mail that's marked
7 C where Mr. Favorito explained that Dr. Williams had
8 verbally confirmed that the electronic voting machines
9 currently had no external audit trails?

10 A. State the question again.

11 Q. Do you recall receiving e-mail C from Mr. Favorito
12 explaining that Dr. Williams had verbally confirmed that the
13 electronic voting machines had no external audit trails?

14 A. If you're asking if I remember getting this
15 e-mail, today I do not remember it, but you did provide me
16 an exhibit that shows it coming in to what was then my
17 e-mail address when I worked for the Secretary of State's
18 office.

19 But however, anything like this that came in when
20 it was public comment being provided on the process would
21 have been provided to those that would have been making the
22 decision.

23 Q. Did you take any specific actions with any of the
24 e-mails that Mr. Favorito sent you?

25 A. Define specific actions.

1 Q. Like forwarding that e-mail directly to the
2 evaluating committee or members thereof.

3 A. To be honest, I don't recall. I imagine that as
4 in process that the normal protocol was to provide any
5 comments to members of the evaluation committee from public
6 comment during the phase. But in specific, since I don't
7 recall the e-mail specifically, I can't say that I can
8 recall a specific forwarding or action.

9 Q. It would appear from an e-mail, Exhibit B, that
10 you have replied that the areas of system manipulation that
11 Mr. Favorito mentions in his e-mail are thoroughly protected
12 against in the federally certified systems. Does that
13 appear to be what you responded at that time?

14 A. That appears to be how I responded, yes.

15 Q. And do you still feel that that is accurate, that
16 the system manipulations that he was concerned about and he
17 brought to y'all's attention are still protected by the
18 federal certification systems?

19 A. I do.

20 Q. Are you familiar with any of the following
21 reports? First there's the Princeton University report
22 Security Analysis of Diebold AccuVote-TS Voting Machines of
23 September 13th of '06. Are you familiar with that report?

24 A. I've heard of it but I have not read it.

25 Q. How about the Johns Hopkins Analysis of Electronic

1 Voting System Report; have you read it?

2 A. I have heard of that one but I have not read it,
3 no.

4 Q. Are you familiar with the California Secretary of
5 State Staff Investigation of Diebold Election Systems?

6 A. Again, I've heard of the report but I have not
7 read it.

8 Q. Have you read the decertification and withdrawal
9 of approval that was issued by the California Secretary of
10 State with reference to Diebold machines?

11 A. That one -- I think I've heard of that one but I
12 can't confirm that I've heard of that one. I know I haven't
13 read it.

14 Q. Are you familiar with the Ohio Secretary of
15 State's DRE Technical Security Assessment Report that was
16 written in November of '03 or something around that time?

17 A. That one doesn't ring a bell.

18 Q. How about any assessments, risk assessment reports
19 from the State of Maryland; are you familiar with any of
20 those?

21 A. I remember hearing of that one but again, have I
22 read the report thoroughly? No.

23 Q. How about the Nevada Electronic Systems Services
24 Division, the Diebold Voting Machine Security Reports; have
25 you heard about any of that?

1 A. I'm sure I've heard of it but I again haven't read
2 that report so I wouldn't know if any of those reports --
3 since I haven't read them -- I've heard of them -- I would
4 not be able to say that the report or what's contained in
5 the report is a matching of the system in the State of
6 Georgia in regards to hardware and software that the State
7 system uses and also any procedures or processes that may be
8 established in the State here for protection of the voting
9 equipment, testing of the voting equipment that may or may
10 not exist in those locations.

11 Q. Are you familiar with the situation where people
12 were able to obtain programmable cards that would have
13 allowed -- I think they were originally made as like debit
14 cards that could be programmed and used in Diebold machines
15 to initiate voting.

16 A. State that one again.

17 Q. Are you familiar with any potential voting risks
18 involved with people obtaining programmable cards that would
19 allow them to access the voting machines on election day?

20 A. Obtaining the card on election day from another
21 source besides --

22 Q. Or bringing a card in that was preprogrammed to be
23 used?

24 A. I am not aware of any situations like that
25 occurring.

1 Q. I believe that in order to cast a vote a person
2 needs to have almost like a hotel key card.

3 A. A voter access card.

4 Q. A voter access card and put it in the machine.

5 A. Yes.

6 Q. Are you familiar with any circumstances where
7 voter access cards have been obtained off the Internet?

8 A. The only one I am aware of is one that happened
9 earlier this year with a county in Georgia that had gotten
10 rid of some office furniture and contained in that office
11 furniture turned out to be some voter access cards that had
12 been used for training purposes.

13 And when the person that purchased the wholesale
14 office furniture opened the drawers and found that, he then,
15 not knowing what they were, put them up on eBay, I believe,
16 and then when the State was made aware of that they
17 proceeded in action to retrieve those cards.

18 And I believe the county has been fined for lack
19 of proper protection of their voting equipment.

20 Q. All right. Are there any ways that you know of
21 that vandals can tamper with a machine just to erase the
22 votes that have been on a machine, for example, through the
23 use of a voter access card or heavy magnet or static
24 electricity or anything of that sort?

25 A. Not that I'm aware of, no.

1 Q. If you're not familiar, if you haven't read any of
2 these reports that I've discussed, how can you feel
3 confident that the federally certified systems adequately
4 protect the people of Georgia and their voting?

5 A. Again, what I would point to in response to that
6 is that the system in Georgia is not just the voting unit
7 itself but it's also the procedures that are developed
8 around that process, the testing procedures that begin on
9 the federal level, then come to the state level, then go to
10 the jurisdictional level for making sure that the system
11 itself is ready for use come election day and how the
12 jurisdiction doesn't just test the equipment once. They
13 test it prior to each individual election.

14 And then also the services that we provide here at
15 Kennesaw State in regards to if a county has any question
16 during their testing or have any type of concern of the
17 system, we have the ability to go to the county and look at
18 the system to do some inspection to verify that the system
19 is working as designed.

20 So I feel like my confidence in the system and
21 that the State of Georgia is providing a best system of use
22 that is reliable and secure to the system is not solely
23 bound in software testing but also under the reliability of
24 procedures in the elections process that are used to protect
25 the equipment, not only on election day but also the other

1 364 days of the year.

2 Q. Do you think it would be better if the machines
3 used could spit out a ballot at the time that a voter votes,
4 which ballot would only be used in the event of a recount or
5 an audit of the functioning of that machine and the report
6 that that machine accumulates at the end of the day?

7 A. I think anything -- you know, any policy developed
8 by any elections division or any Secretary of State in
9 regards to what a system should have as its requirements is
10 of the purview of that entity to make that decision on what
11 they feel is best for use.

12 And as a person who works for Kennesaw State in
13 the Center for Election Systems, our goal is to make sure
14 whatever system that the State of Georgia decides to use,
15 that that system is properly cared for and maintained and
16 set up for use in each individual election; it can be used
17 to its greatest ability.

18 What the system should have or should not have,
19 again, it's going to be based on those that are going to be
20 wanting to purchase it and use it for future use.

21 Q. Would it be a fair statement for me to say that
22 Kennesaw State's office here is the sole gatekeeper that
23 protects the people of Georgia from potential electronic
24 vote fraud?

25 A. I would not say we're the sole protector. I will

1 say we are a vital link in the chain because there is more
2 than -- because more is done than just what we do.

3 Q. Yes, sir.

4 A. Because each local jurisdiction has purviewed
5 their own equipment.

6 Q. Am I not correct in saying that the local
7 jurisdictions, they only do the little test at the beginning
8 of the election and then they pull the paper out at the end
9 of the election, the paper and the TBSM chips; is that
10 correct? Those are -- the only things they do is they do
11 the little test at the first and then they pull the results
12 out at the last.

13 A. Well, they do more than just those things. I
14 mean, that's part of the process as a whole in conducting an
15 election, but they are also the ones that have to follow the
16 guidelines and rules set up by the State Election Board in
17 regards to maintenance of the equipment and protection of
18 the equipment which, if not done, you know, makes any voting
19 system open to --

20 Q. Tampering.

21 A. -- open to potential issue. So they do more than
22 just pull the cards out and look at the tapes because -- I'd
23 say the biggest level is at the county level.

24 We at the state level or Kennesaw State work with
25 to make sure that the component before the county ever sees

1 it is in working order, and then on election days themselves
2 we conduct what the State classifies as parallel monitoring
3 process where we randomly select databases from election
4 day, create memory cards from randomly selected precincts,
5 install them into identical voting units that we house here
6 at Kennesaw State, and then we go through a script process
7 where we vote a particular script where it's videotaped
8 through the whole process, and that's done during election
9 hours where as counties are conducting an election we're in
10 simulation conducting an election ourselves with a known
11 result.

12 And that's not only done where one voter votes;
13 another one's reading the vote. You have one person
14 reading, one person voting and another person videotaping,
15 and those tests have always come out and showed that what is
16 put in by the voter is recorded and identified by the system
17 when it produces its result.

18 So you know, there are a lot of protection
19 elements developed so I wouldn't say that Kennesaw was the
20 sole provider of the protection.

21 Q. All right, sir. Did any of the Kennesaw State
22 people work on site precincts or in the counties on election
23 days?

24 A. On election days we are here at the center before
25 the polls open. We're here routinely at 5:30 in the

1 morning, six o'clock to be here if a county runs into a
2 problem to provide any technical assistance we can via the
3 phone.

4 If we need to make an emergency trip out to a
5 county, you know, if a server goes down on election day, we
6 maintain backup servers here that have been tested and can
7 be taken out in a moment's notice to facilitate that county
8 conducting their election. So we go when called if need be,
9 but our normal practice is to be here to provide assistance
10 with counties during the day.

11 Q. If a KSU worker or member of your group shows up
12 at a precinct, are they required to take the poll worker
13 oath at that precinct?

14 A. A KSU representative would not be working as a
15 poll worker at the precinct. We would only go to a precinct
16 if the county elections director asked us to go and to serve
17 in a technical process. If that was done, then we would
18 take oaths or whatever that the county elections officer
19 deemed necessary.

20 Q. Is there any part of the software system provided
21 by Diebold -- is any of that proprietary in nature such that
22 an independent organization that wanted to monitor what KSU
23 does or monitor how the equipment works could themselves
24 conduct tests on that software? In other words, is there
25 any forbidden software that an independent person under the

1 Freedom of Information Act couldn't look at?

2 A. I don't know. I don't know what would classify
3 under protection versus not protection so I'll just say I
4 don't know.

5 Q. Is there any audit process that's used to evaluate
6 the effectiveness of hardware and software testing?

7 MR. RITTER: I'm sorry to interrupt. For
8 clarification purposes, you said there was an
9 audit process. You mean something different
10 than a certification process or -- maybe you
11 could define what you mean by that because I'm
12 not clear.

13 BY MR. CHANDLER:

14 Q. Is there a post-election audit process that makes
15 sure all the things function the way it's supposed to?

16 A. As part of the parallel monitoring that we conduct
17 we also prior to the election randomly select counties and
18 then randomly select precincts in those counties and ask
19 that they provide a copy of the tapes that the individual
20 machines produce on election night.

21 Then when the State is in receipt of the certified
22 election returns on the GEMS CD, we would take those GEMS
23 CD's and load them into a GEMS computer here at the center
24 and we will reproduce every individual ballot image for that
25 particular precinct or that particular machine in that

1 precinct, and then we will hand count -- without knowing
2 what the totals that the tape shows, we will hand count a
3 specific race on that ballot and then take that hand count
4 and compare it against the tallies of the individual
5 machines that were produced on election night to provide
6 some test verification that the system recorded the votes as
7 the machine in the precinct recorded it.

8 And I believe we've been doing that in state and
9 federal elections or statewide federal state elections since
10 2004, I believe, and in doing that we have never come across
11 a situation where those numbers did not match.

12 Q. When a person -- are there any precincts that use
13 only one machine?

14 A. No. To my knowledge, there's no precinct in the
15 state that's using one machine. I believe it's a
16 requirement from the State that you have at least two
17 machines in every voting location.

18 Q. And when a voter signs up to vote and is given a
19 card is he basically free to vote on either or any machine
20 that comes available?

21 A. That voter once they're issued a voter access card
22 has the ability to use any of the machines in that location.

23 Q. So it's therefore not possible to connect a given
24 voter with a given machine and therefore a given order in
25 which votes were cast on that machine.

1 A. That's correct.

2 Q. Are the images -- you said that y'all were able to
3 recreate the images that were offered to the voter?

4 A. What we do is we print out from the CD the system
5 once the ballots are loaded back in -- once the data
6 information is loaded back into GEMS in post election it
7 will replicate the ballot using an optical scan format. It
8 basically puts the voters' votes onto a filled-out optical
9 scan ballot and we print out that filled-out optical scan
10 ballot.

11 Q. But the images -- are the images that are
12 recreated on your machines, are they things that have been
13 verified by the voters or are they just created by the
14 software?

15 A. The touch screen captures the images, captures the
16 action of the voter, and that vote is tallied by that
17 machine through a tally tape process at the end. It gives
18 you total number of votes cast, total number of votes for an
19 individual candidate in each race.

20 And that information is also transferred to the
21 memory card through data, basically ups and downs. And that
22 data is transferred over to GEMS where GEMS starts off with
23 a zero total and then those ups and downs, those yesses and
24 nos are transferred over to that.

25 Those yesses and nos and ups or downs are then

1 placed onto individual optical scan ballots for each
2 individual ballot that has been cast, and then GEMS
3 replicates -- prints out one of those filled-out optical
4 scan ballots for each individual ballot that it has then
5 received from the touch screen unit.

6 Q. Then I guess it would be appropriate to say that
7 it's recreating ballots based on the tallies that it's been
8 given, this GEMS recreation of ballots. For example, if 800
9 votes went to candidate A, it produces these imaged ballots
10 that show 800 votes for candidate A; is that correct?

11 A. That's correct.

12 Q. Because it's not, for example, a JPG image of what
13 the voter did. It's just really a recreation based on the
14 tallies.

15 A. It takes the data collected from the touch screen
16 and places that data onto blank optical scan ballots, one
17 ballot for each individual ballot cast.

18 Q. Okay. I guess that's about it.

19 - - -

20 (Deposition concluded at 3:15 p.m.)

21 - - -

22

23

24

25

C E R T I F I C A T E

STATE OF GEORGIA:

COUNTY OF CHEROKEE:

I hereby certify that the foregoing transcript was taken down as stated in the caption, that the witness was first duly sworn, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing transcript is a true and correct record of the evidence given, and I further certify that I am not a relative or counsel to the parties in this case, am not in the regular employ of counsel for any of said parties, nor am I in anywise interested in the result of said case.

Disclosure pursuant to OCGA 9-11-28(d): The party taking this deposition will receive the original and one copy based on our standard and customary per page charges. Copies to other parties will likewise be furnished at our standard and customary per page charges. Applicable incidental expenses of production may be charged to any party.

This, the 25th day of June, 2007.

Sharon J. Ruschell, RMR, CRR, CCR B-1179

My Commission Expires 2-19-2008