

Joseph Kanefield 30b6 designee for the Office of the Secretary of State.

ARIZONA SUPERIOR COURT

PIMA COUNTY

DEMOCRATIC PARTY OF PIMA)
COUNTY,)
)
Plaintiff,)
)
vs.)
) No. C2007-2073
PIMA COUNTY BOARD OF)
SUPERVISORS, a body politic,)
)
Defendant.)
_____)

**DEPOSITION OF JOSEPH KANEFIELD
(Arizona Secretary of State
Rule 30(b)(6) designee)**

Phoenix, Arizona
April 11, 2008
9:06 a.m.

WANDA J. CURRY, RMR, CCR #50366 (AZ)
CALABRO REPORTING SERVICES, L.L.C.
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549 North Sixth Avenue

Tucson, Arizona 85705-8371

520.798.1808 800.538.5592

Fax: 520.620.0060

1

I N D E X

2

JOSEPH KANEFIELD

3

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1 BE IT REMEMBERED that the deposition of
2 JOSEPH KANEFIELD was taken at the office of the
3 Secretary of State, 1700 West Washington Street,
4 7th Floor, in the City of Phoenix, County of Maricopa,
5 State of Arizona, before WANDA J. CURRY, a Certified
6 Reporter, Certificate No. 50366, in and for the State
7 of Arizona, on the 27th day of November, 2007,
8 commencing at the hour of 9:06 a.m., on behalf of the
9 defendant in a certain cause now pending in the
10 Superior Court of Pima, State of Arizona.

11

12 APPEARANCES:

13 On behalf of the plaintiff:

14 RISNER & GRAHAM
15 William J. Risner, Esq.
16 100 North Stone Avenue, Suite 907
17 Tucson, Arizona 85701
18 520.622.7494

19

20 On behalf of the defendant:

21 OFFICE OF THE PIMA COUNTY ATTORNEY
22 Christopher Straub, Esq.
23 2100 Legal Services Building
24 32 North Stone Avenue
25 Tucson, Arizona 85701-1412
 520.740.5750

On behalf of the witness:

OFFICE OF THE ATTORNEY GENERAL
Tanja K. Shipman, Esq.
1275 West Washington Street
Phoenix, Arizona 85007
602.542.7993

Also present: John H. Moffatt
 Jim March

25

1 (Exhibits 1 through 6 were marked for
2 identification.)

3

4

JOSEPH KANEFIELD,

5 called as a witness herein, having been first duly
6 sworn, was examined and testified as follows:

7

8

EXAMINATION

9

BY MR. STRAUB:

10 Q. Would you please state your full name for the
11 record.

12 A. Joseph Kanefield.

13 Q. What is --

14 **MR. RISNER:** Mr. Straub, let me ask a couple
15 of questions before we get started, just to understand
16 the procedure.

17 You've listed 14 categories of things you
18 want to ask about.

19 **MR. STRAUB:** Yes.

20 **MR. RISNER:** So is it -- are you going to go
21 through, like, 1 to 14 and then I get to ask questions,
22 or are you going to do it, like, when you ask about
23 1, then I get to cross-examine on 1, or what's your --

24 **MR. STRAUB:** My preference was just to take
25 the deposition and then you cross-examine him.

1 **MR. RISNER:** Okay. So, then, however long
2 you take, I'll have at least that much time?

3 **MR. STRAUB:** I have no problem with that,
4 Mr. Risner, at all.

5 **MS. SHIPMAN:** There's a limit to the length
6 of the deposition, which is a maximum four hours.

7 **MR. STRAUB:** Yeah.

8 **MR. RISNER:** Okay. So that means you're not
9 going to take more than two?

10 **MR. STRAUB:** I hope not to.

11 **MR. RISNER:** Okay. Good.

12 **MR. STRAUB:** I have other things to do today
13 as well.

14 **MR. RISNER:** Well, I was just wondering.

15 **MR. STRAUB:** Okay.

16 **MR. RISNER:** Thanks.

17 **Q. BY MR. STRAUB:** And the record should reflect
18 that this deposition is taken pursuant to Rule 30(b)(6)
19 and that apparently the Secretary of State's Office has
20 designated you, Joe, to be their designated hitter for
21 today.

22 **A.** That's correct.

23 **Q.** Okay. And would you tell us what is your
24 current employment?

25 **A.** I am the State Election Director for the

1 Arizona Secretary of State's Office. I've been in this
2 position since January of 2004.

3 Q. What are your responsibilities?

4 A. I'm the director of the Election Services
5 Division. I oversee the division with responsibilities
6 that include certifying candidates for the ballot --
7 federal, state, legislative candidates -- campaign
8 finance enforcement, processing initiative and
9 referendum petitions, educating election officers,
10 overseeing the lobbyists' compliance and enforcement
11 program, certifying election equipment, and a whole
12 host of other responsibilities that I can't think of at
13 the moment.

14 Q. Whose decision was it that you should be the
15 person produced today to answer the questions in the
16 notice?

17 A. Secretary of State Jan Brewer.

18 Q. Just to get some foundation here, I want to
19 talk to you a little bit about -- get some general
20 background about you and some information about the
21 particular aspects of your job and the responsibilities
22 of your office.

23 What role do you play in drafting -- in the
24 drafting and the adoption of the Secretary of State's
25 Election Procedures Manual?

1 **MS. SHIPMAN:** Objection, that's beyond the
2 scope of this deposition.

3 Go ahead.

4 **THE WITNESS:** I'm very involved in the
5 process of drafting that manual. Pursuant to the law,
6 the manual is prepared by the Secretary of State. It
7 has to be coordinated with the county election
8 officials, ultimately approved by the Attorney General
9 and the Governor, and pre-cleared by the United States
10 Department of Justice.

11 I play a role in that process, oftentimes
12 drafting the language. Although the process includes
13 not just myself, but other staff here at the Secretary
14 of State's Office.

15 **Q. BY MR. STRAUB:** Is it safe to say that you're
16 familiar with the manual?

17 **A.** Yes.

18 **Q.** Is it also safe to say that you are familiar
19 with Title 16 of the Arizona Revised Statutes?

20 **A.** Yes.

21 **Q.** And other Arizona statutes governing
22 elections in the state of Arizona?

23 **A.** Yes, including the Arizona constitution.

24 **Q.** What role do you play in the approval or
25 certification of voting systems in Arizona?

1 **MS. SHIPMAN:** Objection, beyond the scope.

2 Go ahead.

3 **THE WITNESS:** The Secretary of State's Office
4 certifies voting equipment pursuant to state law. We
5 have a three-member committee that's appointed, also
6 pursuant to state law, that includes an expert in -- in
7 election -- what is it?

8 Let's read here.

9 **Q. BY MR. STRAUB:** For the record, you're
10 referring to the statutes, at this point, to supplement
11 your answer?

12 **A.** I'm referring to 16-442, which specifies that
13 "The Secretary of State shall appoint a committee of
14 three persons, to consist of a member of the
15 engineering college at one of the universities, a
16 member of the State Bar of Arizona and one person
17 familiar with voting processes in the state" --

18 **MS. SHIPMAN:** May I just ask -- I'm sorry.

19 May I just ask for clarification on the last
20 question? Was it "you," Joe Kanefield, or was it
21 "you," Secretary of State's Office?

22 **MR. STRAUB:** No. Joe Kanefield.

23 **MS. SHIPMAN:** Okay. My objection stands.

24 Go ahead.

25 **THE WITNESS:** I'm sorry, Mr. Straub. You

1 were asking me what role I play?

2 **Q. BY MR. STRAUB:** Yes.

3 What role do you, particularly, play in this
4 process, as the director of elections?

5 **A.** The process is under my jurisdiction within
6 the office. At times, I've sat as a member of this
7 committee. I do not currently sit on the committee. I
8 sat on the committee as an Assistant Attorney General
9 before I became the State Election Director on this
10 committee.

11 As this point, I do not sit on the
12 committee. The Assistant Election Director is the
13 representative from our offices that sits on the
14 committee and she is primarily tasked with organizing
15 this program, although all approvals go through me
16 before they're ultimately recommended to the Secretary
17 of State.

18 **Q.** Who's the particular person that sits on the
19 committee?

20 **A.** Kris Waite, the Assistant Election Director
21 for our office.

22 **Q.** Have you seen the notice of deposition
23 pursuant to which you are being deposed today?

24 **A.** Yes.

25 **Q.** Do you believe that you are prepared to

1 answer the questions related to each of the topics set
2 forth in the deposition notice?

3 **A.** Yes.

4 **Q.** Is there anyone else within the Secretary of
5 State's Office who would be more qualified than you are
6 to answer the questions related to the topics set forth
7 in the deposition notice, particularly the more
8 technical ones, either because they are more versed in
9 the relevant technologies or otherwise?

10 **MS. SHIPMAN:** Objection, form.

11 **THE WITNESS:** Mr. Straub, you asked for a
12 representative of our office to discuss these topics.

13 We met as a group and we made a recommendation to the
14 Secretary of State and she asked me to answer these
15 questions.

16 So the answer to your question is that this
17 office believes that I'm the person most capable of
18 answering the questions you've asked me to answer
19 today.

20 **Q. BY MR. STRAUB:** That includes the technical
21 questions?

22 **MS. SHIPMAN:** Objection to the form.

23 Go ahead.

24 **THE WITNESS:** I think I just answered your
25 question.

1 Q. BY MR. STRAUB: Do you think there's anyone
2 else in the state of Arizona who would be more
3 qualified than you are to answer the questions related
4 to the topics set forth in the deposition notice?

5 MS. SHIPMAN: Objection, form.

6 THE WITNESS: In the state of Arizona?

7 Q. BY MR. STRAUB: Yes.

8 MS. SHIPMAN: Objection, lack of foundation.

9 THE WITNESS: I -- I don't know how to answer
10 that question.

11 Q. BY MR. STRAUB: Do you know if there --

12 A. Is there someone else who's more qualified,
13 in the whole state, to answer these questions?

14 Q. Yes.

15 MS. SHIPMAN: Objection -- same objection.

16 THE WITNESS: It's quite possible. I can't
17 say for sure.

18 Q. BY MR. STRAUB: All right. Does your office
19 consider it important that the provisions of the
20 procedures manual be followed?

21 A. Yes.

22 Q. Okay. What role do you play in ensuring
23 compliance with the procedures manual?

24 MS. SHIPMAN: Objection.

25 Just for clarification, who's "you," the

1 Secretary of State's Office --

2 **MR. STRAUB:** Mr. Kanefield.

3 Again, these are foundational --

4 **MS. SHIPMAN:** Okay.

5 **MR. STRAUB:** -- questions as to his
6 qualifications to testify.

7 **MS. SHIPMAN:** Okay. It's just not clear in
8 your question.

9 Same objection, beyond the scope.

10 **THE WITNESS:** The manual's under the
11 authority of our office. If there are violations of
12 the manual that come to my attention, then I will take
13 whatever measures are necessary to bring whatever
14 jurisdiction into compliance.

15 **Q. BY MR. STRAUB:** Who else within your office
16 is involved in that process?

17 **MS. SHIPMAN:** Objection, form.

18 **THE WITNESS:** Well, I can name my whole staff
19 in the Election Services Division. We're all involved,
20 including the Secretary of State. Ultimately, final
21 authority rests with her.

22 **Q. BY MR. STRAUB:** How does your office
23 investigate -- do the investigation, reporting and
24 enforcement of the processes? Strike that.

25 How do the investigation, reporting and

Jim March and I toured many of the counties election Departments and have the reports.

Basically, we determined that that there was no adult supervision coming out of the SOS office and we were using the SoS procedures manual as a guide.

1 enforcement processes work when someone violates the
2 enforcement -- the manual's provisions?

3 **MS. SHIPMAN:** Objection, form.

4 **THE WITNESS:** Well, it -- it depends. If
5 someone -- if we determine that there's a lack of
6 compliance with the procedures manual, then the typical
7 process would be to notify the jurisdiction and ask the
8 jurisdiction to respond.

9 We're fortunate that we haven't received a
10 lot of those allegations of specific violations by our
11 jurisdictions.

12 Keep in mind that this procedures manual
13 primarily applies to the 15 county elections officers,
14 and, to some extent, the recorders. During the course
15 of this administration, they have done a decent job of
16 following the rules set forth in that procedures
17 manual -- at least, to our knowledge.

18 If it was ever brought to our attention that
19 someone or some jurisdiction was not in compliance,
20 then we would take measures to bring that jurisdiction
21 into compliance.

22 **Q. BY MR. STRAUB:** And what would those measures
23 be?

24 **A.** Well, we would notify them in writing and ask
25 them -- give them an opportunity to respond. If they

1 were still out of compliance, then we would probably
2 have to go to our counsel, the Attorney General's
3 Office.

4 **Q.** What familiarity or experience do you have
5 with providing security for electronic computer
6 systems?

7 **MS. SHIPMAN:** Objection, beyond the scope.

8 **THE WITNESS:** Well, I'm speaking on behalf of
9 the Office and --

10 **Q. BY MR. STRAUB:** I want you to answer that
11 both ways.

12 Let's just stop you. Why don't you just
13 answer it just personally, as to you. What experience
14 do you have for providing security for electronic
15 computer systems?

16 **MS. SHIPMAN:** Same objection.

17 **THE WITNESS:** My experience relates to my
18 role as the State Election Director in that I'm
19 obviously concerned with election security at all
20 levels in this state. It's our job to ensure that the
21 equipment is certified and only certified equipment is
22 used. Security is obviously a part of that process.

23 So, personally, I suppose the answer is that
24 I -- I am involved in that process to the extent this
25 office plays a significant role in certifying voting

1 equipment.

2 **Q. BY MR. STRAUB:** And what office -- what --
3 what familiarity and experience does the Office of the
4 Secretary of State have with respect to this?

5 **MS. SHIPMAN:** Objection, form.

6 **THE WITNESS:** We've been certifying voting
7 equipment for -- since, perhaps, the '80s. I don't
8 remember when that statute came into existence. So
9 this office, the -- the historical experience goes back
10 for several administrations.

11 **Q. BY MR. STRAUB:** Who on your staff would also
12 have familiarity with and experience with computer
13 security issues?

14 And if you can name some names, that would be
15 helpful.

16 **MS. SHIPMAN:** Just object to the form.

17 **THE WITNESS:** Yeah.

18 Well, Bill Maaske, our Chief Information
19 Officer, would have familiarity with that; Kris Waite,
20 the Assistant Election Director; Bill's staff -- I
21 can't name you all their names at the moment.

22 Mary Fontes is our office manager. She's
23 been very involved in the certification process.

24 **Q. BY MR. STRAUB:** Could you spell her last
25 name, please?

1 **A.** F-o-n-t-e-s.

2 **Q.** Thank you.

3 **A.** Those people. Primarily, Bill and Kris.

4 **Q.** Do you believe either Bill or Kris have more
5 experience with the technical nitty-gritty matters of
6 computer security than do you?

7 **A.** Than me?

8 **MS. SHIPMAN:** Objection to form.

9 **THE WITNESS:** Well, Bill is an IT person, so
10 he knows more about computers than I do.

11 **Q.** **BY MR. STRAUB:** What about Kris?

12 **A.** Kris is not an IT person. She's an elections
13 person. But she's been dealing in election equipment
14 certification for years, so she has a familiarity with
15 it. I'm not prepared to say better than mine, at the
16 moment, but she's very familiar with it.

17 **Q.** Suffice it to say on technical computer
18 issues, Bill would probably have more experience and
19 more knowledge than you do?

20 **MS. SHIPMAN:** Objection, form, beyond the
21 scope.

22 **THE WITNESS:** Bill is a computer person. So
23 I guess when it comes to the nitty-gritty of computers,
24 he probably has more knowledge than I do.

25 **Q.** **BY MR. STRAUB:** Are you aware that the

1 deposition notice sets forth several topics related to
2 computer security issues?

3 **A.** Yes. I have reviewed the topics, as I
4 mentioned.

5 **Q.** Let's go to those topics, now that some of
6 the foundational questions of your knowledge are out of
7 the way.

8 Are you familiar with the Diebold or Premier
9 electronic election system, commonly known as GEMS, and
10 what is used in Pima County?

11 **A.** Yes.

12 **Q.** Does "GEMS" stand for Global Election
13 Management System?

14 **A.** Yes.

15 **Q.** Do you know what I'm referring to when I
16 refer to the file extension on a computer file?

17 **A.** Yes.

18 **Q.** Are you aware that GEMS generates files with
19 file extensions of, quote, .mdb, end quote, and/or,
20 quote, .gbf, end quote?

21 **A.** Yes.

22 **Q.** Are those files commonly referred to as
23 databases or database files?

24 **A.** Yes.

25 **Q.** Do you know what functions or purposes are

1 performed or served by the GEMS database files?

2 **A.** The function of the GEMS database files is to
3 sort all the information about a single election needed
4 to print ballots, program voting equipment, receive and
5 tally results, and output those results in various
6 printed and electronic formats.

7 **Q.** You testified earlier that you were familiar
8 with a procedure that -- the procedures manual and with
9 Arizona's election statutes. Does that include
10 familiarity with A.R.S. § 16-445?

11 **A.** Yes.

12 **Q.** I'm going to hand you a copy of the statute.
13 That's Exhibit 1.

14 **MR. STRAUB:** Bill, I believe you're very
15 familiar with that.

16 **Q. BY MR. STRAUB:** I'm going to ask you first,
17 once you've had a chance to review that, if that
18 reflects the current version of the statute?

19 **A.** Yes, I believe it does.

20 **Q.** If it were reliably reported to your office
21 that an election official from an Arizona county was
22 releasing that county's GEMS databases to the public,
23 would your office treat that as a violation of 16-445?

24 **MS. SHIPMAN:** Objection, form.

25 **MR. STRAUB:** What's the form objection?

1 MS. SHIPMAN: It's ambiguous and it's an
2 incomplete hypothetical. There are multiple questions
3 there.

4 Go ahead.

5 THE WITNESS: No.

6 Q. BY MR. STRAUB: The answer is what?

7 A. No.

8 Q. Would you consider it a violation -- did you
9 understand the question?

10 A. Yes.

11 Q. Okay. Would you consider it a violation of
12 the Election Procedures Manual or any other Arizona law
13 or regulation?

14 MS. SHIPMAN: Same objection.

15 THE WITNESS: I would not consider it a
16 violation of 16-445 for a county to release database
17 files. 16-445 prohibits us from releasing them, the
18 files within our possession of the computer program
19 that's filed with our office.

20 To add to that, my understanding is the
21 question that you've just asked me, Mr. Straub, is a
22 legal issue in this case. So you're essentially asking
23 me for a legal opinion and I'm not prepared to tell you
24 that Pima County's release of this information violates
25 a statute or doesn't violate a statute.

The answer is what!

He knew this a year ago. As the depo goes on 16-445 is mentioned 16 times. For the most part, it the case.

THE WITNESS: "I would **not** consider it a violation of 16-445 for a county to release database files. 16-445 prohibits us from releasing them, the files within our possession of the computer program"

1 You asked me whether we believed the release
2 of the statute violates a -- the release of that
3 information violates a statute, and let me just clarify
4 my answer. It doesn't -- releasing the information
5 that we possess would violate the statute, but I'm not
6 prepared to state that releasing the information that
7 they possess violates the statute. I'll let the Court
8 decide that question.

9 Q. BY MR. STRAUB: Your office is charged with
10 interpreting the statutes, is it not?

11 A. The statutes that apply to us.

12 Q. The Secretary of State's Office -- the
13 Secretary of State is the chief election officer of the
14 state, is she not?

15 A. Yes, she is.

16 Q. Are you saying she has not rendered an
17 interpretation as to whether or not the release of
18 databases by a county would be in violation of 16-445?

19 A. I don't know if it would be appropriate for
20 her to render that opinion. I think it would be
21 appropriate for her to render an opinion whether the
22 release of that information by her office could be a
23 violation of 16-445.

24 Q. You've testified earlier that your office
25 considers it important that the election statutes in

1 the procedures manual be followed. Why would you not
2 be concerned about the county -- about a county

3 elections official releasing databases into the wild?

4 MS. SHIPMAN: Objection, form, beyond the
5 scope.

6 MR. RISNER: Form.

7 THE WITNESS: I've never said that. We're
8 very concerned about the county releasing those
9 databases.

10 Q. BY MR. STRAUB: You're concerned, but you're
11 not prepared to say that it would be, necessarily, a
12 violation of 445? (16-445)

13 A. Correct.

14 Q. Who in your office would be involved in
15 deciding how to respond if it were reliably reported to
16 you that an elections official from Arizona -- from an
17 Arizona county was releasing the county's GEMS
18 databases to the public?

19 MS. SHIPMAN: Objection, form.

20 THE WITNESS: I'm sorry. Could you repeat
21 that question?

22 Q. BY MR. STRAUB: Yeah.

23 Who in your office would be involved in
24 deciding how to respond if it were reliably reported to
25 you that an elections official from an Arizona county

1 was releasing **the GEMS database into the wild?**

2 **MS. SHIPMAN:** Same objection.

3 **MR. RISNER:** I object to the form.

4 **THE WITNESS:** The decision --

5 **MR. RISNER:** I object to the term "the **wild.**"

6 **MR. STRAUB:** Okay. To the public.

7 **MR. RISNER:** If you say to the public

8 record --

9 **MR. STRAUB:** I'll say to the public.

10 **MR. RISNER:** Yes.

11 **MR. STRAUB:** I'll rephrase the question.

12 That way, I'll address your objection.

13 **THE WITNESS:** If the concern was raised to
14 our office about releasing that information -- a county
15 releasing that information, the decision on how to
16 respond would ultimately rest with the Secretary of
17 State herself.

18 **Q. BY MR. STRAUB:** Was it a matter of concern to
19 you or to your office when you learned that Pima County
20 decided to release its GEMS database files for the 2006
21 general and primary elections and the May 2006
22 Transportation Authority Election to the public?

23 **MS. SHIPMAN:** Object to the form.

24 Are you asking him "you" individually or as a
25 representative of the Secretary of State's Office?

1 **MR. STRAUB:** It's to both.

2 **MS. SHIPMAN:** So he needs to respond as to
3 the Secretary of State's Office. You have not named
4 him individually so he will not respond individually.

5 **MR. STRAUB:** Fair enough.

6 **Q. BY MR. STRAUB:** Was it a concern to the
7 Secretary of State's Office?

8 **A.** Yes.

9 **Q.** Okay. Why was it a concern?

10 **A.** I think it's fair to say that our concerns
11 are reflected in the information that's been gathered
12 through the course of this lawsuit. I mean, as
13 ultimately determined by the judge himself, his order,
14 it's our understanding that the release of this
15 information **poses a security risk to future elections,**
16 that the more that it's released, the more potential
17 that it has to create a security breach in a future
18 election.

19 And our concern stems not just from the
20 Pima County perspective, but, of course, from the
21 statewide perspective. Because 12 counties use the
22 same system -- build their elections using the same
23 GEMS program, so the more information that Pima County
24 releases, the more potential it has to affect the
25 security of other elections in other counties.

1 **Q.** Has the Secretary of State's Office made a
2 determination as to what it will and will not do in
3 light of the release that Pima County made back in
4 January of this information?

5 **MS. SHIPMAN:** Objection. I'm just not sure
6 what the question is.

7 **THE WITNESS:** Let me answer that question
8 by -- I'll try to explain my answer.

9 The Pima County Board of Supervisors is not
10 under the jurisdiction of the Secretary of State.
11 Their decision to release that information is -- is a
12 decision that she -- there's nothing that she can do
13 about it. She can't order them to take it back or to
14 not release it. But they did it under their own powers
15 and authority.

16 Do we agree with the decision? No. But is
17 there anything we can do about it? At this point,
18 under the authority we have in this ad- -- the
19 Secretary of State has under state law, no.

20 **Q. BY MR. STRAUB:** Let me show you what's going
21 to be marked as Exhibit 2. Is this a current copy of
22 A.R.S. ° 16-444?

23 **A.** Yes.

24 **Q.** And directing your attention to 16-444(A)(4),
25 does that language describe the GEMS databases?

1 **A.** Yes.

2 **Q.** That's under the definition of "Computer
3 program"; is that correct?

4 **A.** Yes.

5 **Q.** I'm out of order on my exhibits here. My
6 next question, though, I'm going to direct you to
7 Exhibit No. 4. Do you recognize this as -- as being an
8 excerpt from the latest version of the procedures --
9 the Election Procedures Manual?

10 **A.** Yes.

11 **Q.** And when you say the "Election Procedures
12 Manual," that's the manual you developed pursuant to --
13 what is it -- 16-452?

14 **A.** That's correct.

15 Yes, this is -- this is page 86 of the
16 Arizona Secretary of State's Election Procedures Manual
17 dated October 2007, which is the most current version
18 of the manual.

19 **Q.** Let me ask you about that.

20 **MS. SHIPMAN:** So it's just page 86 and
21 page 87, just to clarify.

22 **MR. STRAUB:** Thank you for correcting the
23 record, Counsel.

24 **Q.** **BY MR. STRAUB:** When was this language -- I
25 take it whenever you make a change in the Secretary of

1 State's procedures manual, generally if it's affecting
2 elections, you're going to have to take that to the
3 Department of Justice, under the Voting Rights Act;
4 correct?

5 A. Yes. Under Section 5 of the Voting Rights
6 Act, it has to be pre-cleared by the Department of
7 Justice.

8 Q. So this could not have been in effect until
9 it was pre-cleared; is that correct?

10 A. That is correct.

11 Q. And just for our purposes here, too, when did
12 you finally receive pre-clearance on this revision?

13 Would it have been at the end of January of this year?

14 A. I'll have to get that date for you,
15 Mr. Straub. I don't have it in my head.

16 Actually, I do have it.

17 Q. All right.

18 A. It was pre-cleared by the United States
19 Department of Justice on January 31, 2008.

20 Q. Okay. Very good.

21 And are you referring to a copy of the --
22 your most recent copy of the manual?

23 A. I'm looking at the man- -- my copy of the
24 manual which contains the actual letter, pre-clearance
25 letter, from the Department of Justice, dated

1 January 31, 2008.

2 Q. Very good.

3 So until this thing was pre-cleared, it
4 really was not in effect; is that correct?

5 A. The previous version was in effect.

6 Q. Okay. Thank you for that segue.

7 I'm showing you Exhibit No. 5. I want you to
8 compare this to -- to No. 4, but just take a look at
9 No. 5 here first. And can you identify that as being
10 an excerpt of the Secretary of State's manual that
11 would have been in effect prior to Exhibit 4?

12 A. This is page 79 and 80 of the 2006 version of
13 the Arizona Secretary of State's Election Procedures
14 Manual.

15 Q. Okay. And now, are these -- is this the
16 corresponding section that is referred to in Exhibit 4
17 of the excerpts that I've given to you?

18 A. Yes.

19 Q. There was a change in language in the
20 paragraph underneath the title "Filing of Election" --
21 of -- excuse me, "Filing of Computer Election Programs
22 With Secretary of State"; is that correct?

23 A. Correct.

24 Q. Okay. Can you read the -- into the record
25 the old language -- I guess that would be from

1 Exhibit 5 -- for that -- that critical first
2 paragraph?

3 **MS. SHIPMAN:** Just the first paragraph?

4 **MR. STRAUB:** Yes.

5 **THE WITNESS:** "An election program is an
6 electronic file or files that contain information about
7 an election including those used by election management
8 software certified by the Secretary of State to lay out
9 ballots and program tabulating equipment (also known as
10 an election database)."

11 **Q. BY MR. STRAUB:** And what does that
12 corresponding language now read in the -- excuse me.
13 We're referring to Exhibit 4.

14 **A.** "An election program is an electronic file or
15 files that contain information about an election,
16 including all programs and documentation adequate to
17 process the ballots at an equivalent counting center,
18 and an electronic file or files used by election
19 management software certified by the Secretary of State
20 to lay out ballots and program tabulating equipment.
21 This includes election management software and
22 databases."

23 **Q.** I -- I notice in Exhibit 4, the newer
24 version, that there is a specific statutory reference
25 to A.R.S. § 16-444(A)(4) that is not present on page 79

1 of Exhibit 5.

2 A. That is correct.

3 Q. Okay. Can you tell me why the Secretary of
4 State made this particular change?

5 MS. SHIPMAN: Objection, beyond the scope.

6 But go ahead.

7 THE WITNESS: If I recall, it was a
8 clarifying change. I don't believe we thought that
9 that change was really a change at all. And it
10 referenced the statute where the definition of
11 "computer program" is placed. And it probably came to
12 our attention as a result of this lawsuit, to be quite
13 honest with you.

14 Q. BY MR. STRAUB: Okay. You've been -- your
15 office has been following our -- a lot of lawsuits
16 since last year?

17 A. Yes.

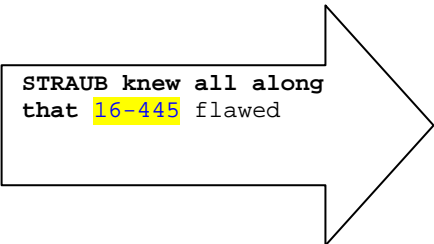
18 Q. Since last year?

19 A. Yes, we have.

20 Q. In fact, you had a conversation last year
21 with Karen Friar of our office regarding 16-445 and its
22 potential application, did you not?

23 A. It's possible. You'll have to remind me what
24 I said.

25 Q. Her recollection is that -- that you agreed



STRAUB knew all along
that 16-445 flawed

1 with her that 16-445 would require the county to keep
2 those databases confidential. Is that your
3 recollection?

4 **A.** I don't recall that conversation, to be
5 honest with you. I'm sure it -- I'm sure it took
6 place. Karen and I have talked quite a bit over the
7 last couple of years. And my brain is always fuzzy
8 going back that far, but I think my -- my thinking on
9 this early on was that it --

10 **MS. SHIPMAN:** I want to make it clear.
11 You're talking about yourself, individually?

12 **THE WITNESS:** Well, he's asking me about a
13 conversation.

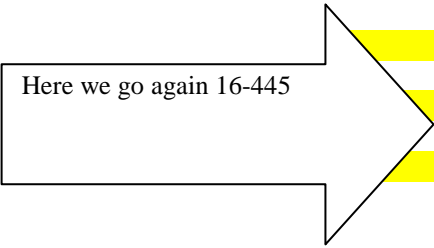
14 **MS. SHIPMAN:** I understand. I just want to
15 make that clear --

16 **THE WITNESS:** Yes.

17 **MS. SHIPMAN:** -- whether your response is on
18 that basis.

19 I'm not stopping you. I just want to make
20 sure.

21 **THE WITNESS:** I -- you know, I recall Karen
22 asking me about the -- the argument that Pima County
23 has offered in this case with respect to 16-445. To
24 the extent I agreed with her, it would have been a
25 quick response to her summary or asking me do I think



Here we go again 16-445

1 this is a good theory going forward, and it sounded
2 like a legitimate argument to make.

3 Was it the position of this office? No, if I
4 said it.

5 I -- I do recall talking to her, though more
6 globally, about my concerns and our concerns about the
7 releasing of this information and I do remember telling
8 her specifically that if it's not -- in the information
9 itself -- if the release of the information itself
10 wasn't governed by 16-445 with respect to the county,
11 then there very well may be a public policy argument
12 under the Arizona Supreme Court precedents with respect
13 to the release of that information under the public
14 records law, so....

15 **Q. BY MR. STRAUB:** And you've articulated
16 previously the concerns of this office. Would those be
17 the types of public policy arguments that you would be
18 concerned with that should have been made in the case
19 or that you, at that time you were --

20 **A.** Well, my understanding is that Pima County
21 has made that argument in this case, so -- and that's
22 exactly the concern. It's a -- it's a security
23 concern.

24 The Secretary of State is obviously very
25 concerned with any potential breach of security in the

1 elections system in the state, at all levels. It -- it
 2 was -- has always been our understanding that this
 3 could create a security breach. So whether the
 4 confidentiality or non-disclosure of that information
 5 is governed by 16-445 or just a general policy against
 6 disclosing information that could later be used to
 7 breach another election, either way, the concern is the
 8 same.

9 Q. And one thing I don't think we got in the --
 10 in your particular background as the witness testifying
 11 here today is that you are a lawyer --

12 A. Yes.

13 Q. -- is that correct?

14 And how many years of practice have you --

15 A. I've been licensed to practice in Arizona
 16 since 1994.

17 Q. Okay. So when you're citing to Karen Friar
 18 some Supreme Court precedent, you're speaking from your
 19 experience and your qualifications as a lawyer?

20 A. Yes.

21 And, you know, I should clarify this, because
 22 my conversations with Karen -- and I hope she's always
 23 understood this -- was lawyer to lawyer. You know, to
 24 the extent she was asking me questions in my capacity
 25 as State Election Director and for the position of this

I hope the Judge
 Miller doesn't buy
 this crap.

And, you know, I
 should clarify this,
 because my
 conversations with
 Karen -- and I hope
 she's always
 understood this --
"was lawyer to lawyer"

she was asking me these questions in my official capacity. Because if that was the case, then would have most definitely referred her to our counsel, because a lawyer for the county should not be asking me questions directly without going through my counsel.

1 office, she should have clarified that, if that was her
2 intent.

3 It has never been my understanding that when
4 she has asked me or run these issues by me that I
5 was -- that she was asking me these questions in my
6 official capacity. Because if that was the case, then
7 I would have most definitely referred her to our
8 counsel, because a lawyer for the county should not be
9 asking me questions directly without going through my
10 counsel.

11 MS. SHIPMAN: Let's go back to the 30(b)(6)
12 instead of asking him individual questions. I've given
13 you a lot of latitude in this.

14 Q. BY MR. STRAUB: Well, I have one more
15 question with respect to this issue, and that is that
16 in -- well, actually, I have two questions. One is as
17 State Election Director, you work with the attorneys in
18 various counties?

19 A. Yes.

20 Q. And you actually train them and they
21 actually -- Karen has actually worked with you in
22 training election officials, has she not?

23 A. That's correct.

24 Q. Are you saying it would have been wrong for
25 her to ask you that question, as the election director

1 of the state?

2 **MS. SHIPMAN:** That's the third question.

3 Objection, beyond the scope, beyond the
4 number of questions you stated you were going to ask,
5 certainly form.

6 **THE WITNESS:** Well, let me just say,
7 Mr. Straub, that I'm -- I'm very available. I'm always
8 willing to talk with anyone, from voters to
9 constituents to county attorneys to city attorneys to
10 election officials, from local election officials to
11 county election officials to state election officials
12 to federal and other state election officials.

13 **But if someone is questioning me to extract**
14 **an official policy statement of the Arizona Secretary**
15 **of State's Office, then they must understand that I do**
16 **not speak for the Arizona Secretary of State. The**
17 **Secretary of State speaks for the Secretary of State.**

18 Now, she may authorize me to speak on her
19 behalf, to take a position, at which time I will do so,
20 and I have done so on many occasions. **But if I'm**
21 **having a conversation with a colleague who's an**
22 **attorney who works election issues and is asking me a**
23 **legal question on a legal theory of a case, I'm happy**
24 **to discuss it with them, but in no way should that be**
25 **construed as an official position of this office. And**

1 I hope that -- that your office understands that.

2 Q. BY MR. STRAUB: Given the county's position,
3 however, in this litigation -- you're familiar with the
4 county's position in the litigation?

5 A. Yes, I am.

6 Q. And is it fair to say, based on the concerns
7 that you've articulated, that -- that the county's
8 decision to oppose the Democratic Party in this
9 particular litigation is something that is supported by
10 the Office of the Secretary of State?

11 A. We've not taken a position in this suit.
12 We've been asked to intervene.

13 So I think the answer to that question now
14 would be contrary to the position we've taken now in
15 response to three inquiries from your county. I've
16 told you we're concerned about the release of that
17 information.

18 Q. Fair enough.

19 But are you saying that the county's position
20 is consistent with the concerns that you have?

21 A. That is correct.

22 Q. And when I say "you," I mean the Secretary of
23 State in this context.

24 A. Correct.

25 Q. Very good.

11

A.

We've not taken a position in this suit. We've been asked to intervene.

So I think the answer to that question now would be contrary to the position we've taken now in response to three inquiries from your county. I've told you we're concerned about the release of that information.

1 You've already testified that "GEMS" stands
2 for Global Election Management System and you've also
3 testified that you were familiar with the databases
4 generated by GEMS and with the functions performed by
5 those databases.

6 So turning your attention back to Exhibit
7 No. 4, in particular the language that we've been
8 focusing on -- that's that paragraph underneath the
9 state -- the heading, "Filing of Computer Election
10 Programs With Secretary of State" -- when you're
11 looking at that passage where it says that the term,
12 quote, election program, end quote, then going on,
13 quote, includes election management software and
14 databases, end quote, it includes the Global
15 Management -- Global Election Management System
16 software and its databases; is that correct?

17 **MS. SHIPMAN:** Objection, form.

18 **THE WITNESS:** That is correct.

19 **Q. BY MR. STRAUB:** And as we've talked about
20 before, those databases take that form of a .mdb or
21 .gbf file; is that correct?

22 **A.** That's correct.

23 **Q.** And as I've already pointed out -- again
24 referring to Exhibit 4 -- you now have that specific
25 statutory reference to 16-444(A)(4) on page 86. Why is

1 that reference there?

2 **MS. SHIPMAN:** Objection, beyond the scope.

3 **THE WITNESS:** I think I mentioned earlier
4 that when we revised the manual -- as we do every
5 election cycle -- these are the kinds of things we look
6 for.

7 This manual has been inherited through
8 several administrations. One of my jobs is to make
9 sure it's -- it's precise. And to the extent that we
10 can reference statutes where particular statements or
11 interpretations are derived from, we do so. If it's
12 come to my attention that the statutory citation
13 doesn't appear there, then I will put it in, and I will
14 take -- take them out if they no longer apply.

15 And we've also added statutory citations to
16 every -- every -- pretty much every year they elect the
17 legislature, who's consistently amended these statutes
18 in Title 16. So that's one of the things that --
19 that's one of the reasons we've revised the manual
20 throughout.

21 **Q. BY MR. STRAUB:** Yeah, but the legislature
22 endeavors to legislate our knowledge away on a regular
23 basis, Mr. Kanefield.

24 **A.** No comment.

25 **MS. SHIPMAN:** There's no question.

1 **MR. STRAUB:** I know. It is appropriate to
2 have a moment of levity in a deposition.

3 **Q. BY MR. STRAUB:** All right. So we can
4 conclude from that reference, the statutory reference,
5 that this part of the manual is actually meant to
6 address or expand on -- or actually define the same
7 thing as 16-444(A)(4); is that correct, essentially?

8 **MS. SHIPMAN:** Objection, beyond the scope.

9 **THE WITNESS:** Yes.

10 **MR. STRAUB:** I would address the scope
11 objection. Just for the record, all of these relate to
12 deposition topic number 1.

13 **MS. SHIPMAN:** And --

14 **MR. STRAUB:** And so --

15 **MS. SHIPMAN:** -- I just want to put my
16 objection to that on the record.

17 I -- I do not agree with that statement.

18 "The functions or purposes that are performed or served
19 by the GEMS database files" does not relate at all to
20 the purpose and reason for changes in the Election
21 Procedures Manual.

22 **MR. STRAUB:** Oh, I could be on the wrong --

23 **MS. SHIPMAN:** Just for the record, I'm --

24 **MR. STRAUB:** I could be on the wrong topic.

25 I'm sorry.

1 **MS. SHIPMAN:** I -- I don't see that topic in
2 here. But please point me to the one --

3 **MR. STRAUB:** Yeah. It's deposition topic --
4 let's see -- it was 5 -- let me see.

5 Excuse me. For the record, it's deposition
6 topic number 4, "Whether A.R.S. § 16-444(A)(4)
7 describes electronic computer databases, including
8 those electronic computer files with file extensions of
9 '.mdb' and/or '.gbf,' generated by the GEMS system."

10 I believe the witness has already testified
11 to that at this point.

12 **MS. SHIPMAN:** Right, and my -- my same
13 objection. As to why things are left in or out of the
14 Election Procedures Manual is not part of the scope of
15 the database files, so that's my objection.

16 **MR. STRAUB:** Okay. All right.

17 **Q. BY MR. STRAUB:** Moving on, based on the
18 experience and familiarity that you have with the
19 computer election issues and with the GEMS system and
20 with the GEMS databases, do you believe that the
21 databases generated by GEMS should be disclosed to the
22 public?

23 **MS. SHIPMAN:** Objection to form.

24 **THE WITNESS:** No.

25 I think they should be available for

1 inspection by authorities, proper authorities, in the
2 event of an allegation of fraud.

3 Q. BY MR. STRAUB: Based on the experience and
4 familiarity that you have with computer security issues
5 and with the GEMS system and with the GEMS databases,
6 do you believe that the databases generated by GEMS
7 should have been disclosed to the public of
8 Pima County -- or by Pima County?

9 A. No.

10 Q. What -- again, you've already articulated
11 this, but -- again, if I have asked the question, I
12 apologize -- but, again, if you can elaborate, what
13 specific security risks, if any, might be associated
14 with a public disclosure of the GEMS databases?

15 A. I think I said this before, and we would just
16 simply reference the expert opinions offered in this
17 case and as to -- as found by the Court, the Court's
18 order, that the disclosure of this information could
19 lend itself to duplication of -- of valid programming
20 for future elections that could then be used to
21 possibly tamper with another election, and those are
22 our primary concerns.

23 I probably haven't articulated them as well
24 as the experts have in this case, but -- but we must
25 certainly agree with that proposition.

Their expert was Merle King of Georgia. His nick name is the cleaner.

Georgia uses Diebold DRE that are paperless.

They say that King has never met an Electronic Voting Machine he didn't like.

1 **Q.** Is this a matter that you folks have
2 discussed internally, like with Mr. Maaske, for
3 example, and Ms. Waite?

4 **A.** Yes.

5 You -- this -- just to clarify, again, this
6 is our understanding of the Rule 30(b)(6) deposition.
7 I'm speaking on behalf of the Office. These topics
8 that you said we were going to discuss today were well
9 vetted by all of us, so that we -- so that I am here
10 speaking based on the information and knowledge in this
11 office.

12 **MS. SHIPMAN:** Just for the record, that's --
13 that's the reason why I objected beyond the scope to
14 your foundational questions, since his -- his personal
15 experience has nothing to do with his ability to
16 testify as a 30(b)(6) witness.

17 **MR. STRAUB:** Well, my concern -- just for the
18 record -- with respect to that is that -- that the
19 Secretary has produced a witness capable of answering
20 the questions on the technical -- on the technical
21 bases.

22 **MS. SHIPMAN:** I understand. I understand.
23 But the person -- person's individual experience has
24 nothing to do with that.

25 **MR. STRAUB:** I think --

1 **MS. SHIPMAN:** Especially considering the
2 topics that you've pointed out.

3 **MR. STRAUB:** Yeah, I think the topics gave
4 you -- I hope we would agree that the notice of
5 deposition gave you fair knowledge of the topics I was
6 going to be talking about today.

7 **MS. SHIPMAN:** Yes, and we have prepared
8 adequately.

9 **Q. BY MR. STRAUB:** Would the security risks
10 you've just identified change depending on when the
11 files are disclosed?

12 **A.** I believe the security risks that are present
13 with disclosure to begin with certainly would not -- we
14 would never, under any circumstances, want that
15 information to be released before an election if the
16 election itself was final because then that information
17 might be used to potentially wreak havoc on the current
18 election.

19 But the concerns, as we understand them in
20 this case, by Pima County and the Court and also
21 reflected in our own concerns, is for future elections,
22 like counties that use the same system.

23 **Q.** Do you have a concern -- and by "you," I mean
24 your office --

25 **MS. SHIPMAN:** You're asking -- I'm assuming

1 you're always asking the Office from now on?

2 **MR. STRAUB:** I'll clarify when I'm not.

3 **MS. SHIPMAN:** Okay.

4 **Q. BY MR. STRAUB:** Do you have a concern about
5 releasing election databases, say, between the canvas
6 of a primary election and the upcoming general
7 election?

8 **A.** Yes.

9 **Q.** Could you tell us what that might be?

10 **A.** I -- the same concerns that I just mentioned
11 before, is that those databases, as we understand it,
12 could be used to mimic the election, the general
13 election, and, under a somewhat implausible set of
14 circumstances but possible set of circumstances, could
15 be used to interfere with the general election.

16 **Q.** Would you have an administrative concern such
17 that it -- if by releasing between a primary and a
18 general, it would require the election officials to
19 have to re-key the information or re-code information
20 in the databases, would there be sufficient time in
21 which to do that between the canvas of the primary
22 before -- to the time early voting starts on the
23 general?

24 **A.** No, we do not believe there would be
25 sufficient time. And we believe that any attempt to do

1 so would create more problems and more potential errors
2 in the election itself, so we would discourage that.

3 Q. Would these errors be such things as
4 mis-keying precincts and that sort of thing?

5 A. Yes.

6 Q. And what would the result of an error like
7 that be?

8 A. It would throw the general election results
9 into doubt.

10 Q. Do you think it would create potential
11 problems as the results are being -- are reported and
12 inconsistencies and just erroneous ballot counts now
13 that we believe those errors would be caught through
14 the post-election audit processes and other audit
15 procedures that we hope the county is engaged in?

16 A. But in our minds, that's -- the problem is
17 much larger than that. Because anytime there's any
18 error or issue associated with an election, that raises
19 great alarm among the public. And our job is to
20 preserve the integrity of the elections, to present --
21 to prevent these kinds of issues from arising so that
22 our elections are run orderly, uniformly, and without
23 errors or issues.

24 Q. Moving on to a somewhat different topic --
25 and, again, based on your familiarity with the GEMS

1 system -- can official ballots for an election be
2 printed by a person with access to both the GEMS
3 database files for that election and the GEMS
4 executable program?

5 **A.** Yes.

6 **Q.** I would refer you to Exhibit No. 6. It's a
7 letter that your office had sent to the chairman.

8 **MS. SHIPMAN:** Of the Board of Supervisors.

9 **MR. STRAUB:** If you need it, that's fine. Of
10 the Board of Supervisors.

11 Thank you, Counsel.

12 **MS. SHIPMAN:** All right.

13 **Q. BY MR. STRAUB:** Have you seen this letter?

14 **A.** Yes.

15 **Q.** And for the record, this is a letter dated
16 from your office to The Honorable Richard Elias,
17 Chairman, Pima County Board of Supervisors, on
18 March 17th of this year?

19 **A.** Yes.

20 **Q.** Could you please tell me what security risks
21 can be anticipated from -- or associated with
22 Pima County's past policy of providing representatives
23 of the organized political parties with official
24 ballots for use in testing of the vote tabulating
25 systems and software?

1 **A.** I think our concerns are obvious. Handing a
2 partisan elected -- a partisan person fairly has an
3 interest in the outcome of an election. Every ballot
4 style -- or most of the ballot styles in that election
5 create a potential for duplication of those ballots and
6 ultimately a breach of security, whether that is -- is
7 possible or has ever happened. Hopefully not.

8 But, like Pima County, our concern is -- is
9 to -- is to close any breach that's a potential
10 security breach that's identified to us. And when we
11 learned about this, obviously, we were concerned.

12 And as I have to note, that the Pima County
13 Administrator agrees with us and has made a
14 recommendation to -- to the Pima County Board of
15 Supervisors to end this practice. His report is dated
16 April 3rd, 2008, Mr. C. Huckelberry, for the reasons,
17 primarily, that I just stated: The security issues
18 associated with these -- having these ballots out
19 there.

20 **Q.** Is this a similar concern -- the security
21 issues that you're identifying, is this a similar
22 concern about the release of databases combined with --
23 well, let me ask you this. Are you aware that copies
24 of the GEMS software are available on the Internet?

25 **A.** Yes.

1 **Q.** So would your -- is your concern that -- I
2 think you previously testified that having databases
3 and GEMS, one could generate ballots. Are you -- is
4 this a similar concern that you're -- that you have
5 with what's been referred to as Exhibit No. --

6 **MS. SHIPMAN:** 7.

7 **MR. STRAUB:** 7?

8 **MR. RISNER:** 6.

9 **MR. STRAUB:** Thank you.

10 **THE WITNESS:** Yes.

11 **Q. BY MR. STRAUB:** And specifically, that
12 concern, again, is just the ability to have ballots,
13 unauthorized ballots, in the system; is that correct?

14 **A.** Correct.

15 **Q.** Let me ask the question just slightly
16 differently. Based on your familiarity with elections
17 security, what security risks would be associated with
18 providing the public with unlimited copies of official
19 ballots for an election prior to election day?

20 **A.** It -- this is a topic you noticed --

21 **Q.** Yes.

22 **A.** -- for the deposition.

23 **MS. SHIPMAN:** Yes.

24 **THE WITNESS:** And we were just unclear as to
25 what you were asking, to be honest. Are you asking if,

1 hypothetically, we just handed out thousands of blank
2 ballots to the public or are you referring to the early
3 ballot process? We just weren't sure.

4 **Q. BY MR. STRAUB:** Well, I -- my concern is
5 having unauthorized ballots out there --

6 **A.** Okay.

7 **Q.** -- and the next -- that's --

8 **A.** Yeah.

9 **Q.** -- that's along the same lines as the
10 questioning --

11 **A.** Yeah.

12 **Q.** -- that we're talking about here.

13 **A.** Okay. Then the concerns are the same as
14 giving blank ballots to the parties. It's the same
15 issue. Giving unauthorized ballots -- having
16 unauthorized ballots out in the public in large
17 quantities creates a potential for -- for fraud, for
18 duplication and other issues.

19 Again, that we -- we believe the physical
20 security procedures and practices in place will block a
21 lot of these efforts, but the -- the having those
22 ballots available, nevertheless, potentially
23 prevents -- presents the capability of something like
24 this happening.

25 So I think it's our job, as election

1 officials, to limit the risk of a possibility of a
2 security breach and keep such a breach from occurring.
3 There's no reason for -- to give a stack of blank
4 ballots to party officials to take home. There's
5 absolutely no reason to do that. If the county wants
6 to conduct a -- have the parties conduct their own
7 tests, then they can do it under the supervision of the
8 election authorities in the election office. There's
9 no reason to give anyone blank ballots before an
10 election who is not authorized to have them.

11 **Q.** Are you familiar enough with the GEMS system
12 and the databases to know whether information found in
13 the database files for past elections can be used to
14 predict the layout, rotation parameters, or other
15 confidential aspects of ballots for future elections?

16 **A.** Yes.

17 **Q.** And what would your opinion be with respect
18 to that? That it is?

19 **A.** Yes.

20 **Q.** Okay. If GEMS databases from past elections
21 were released to the public, what measures could be
22 taken to protect future elections from tampering?

23 If you know.

24 **A.** Well, the most effective measure would be to
25 use a different method so a possible -- a different

1 method to lay out the ballots in the future election.
2 This precludes the election official from copying
3 election data from one election to another. Because
4 copying data from one election to another is a common
5 practice and cuts down significantly on data entry from
6 one election to another, we believe that manually
7 re-entering all the data for each election could
8 increase the chances of error and have a negative
9 effect on election integrity.

10 **Q.** So clearly, to the extent that the release of
11 ballots may -- of databases may already have
12 compromised Pima County's system, you're saying that
13 you could correct that by simply re-keying some of the
14 information. But again, if you have to disclose that
15 database, it would require yet another re-keying of
16 information for the next election?

17 **A.** Well, whether it would require it or not, I
18 think, is a -- I think is subject to debate. And even
19 to limit the possibility of a breach based on the
20 release of that information, I -- would probably be the
21 most effective way of preventing it. But as I have
22 noted before, doing that itself arguably creates more
23 potential problems in a future election.

24 So there's a balancing here you have to -- as
25 to what benefit does the public get from reviewing this

1 information versus the potential to create problems in
2 future elections for the public as a whole. And
3 arguably, the latter is -- is much more of a concern,
4 about future integrity, that if the -- if the
5 individuals that want to see this information have
6 concerns about it, I think the Court's order to allow
7 them to view a limited number of files may not
8 necessarily have agreed with that.

9 We agreed with the Court's approach, to let
10 them -- have them come forward and show the Court what
11 the potential problem they saw with that information
12 was. And then at that point, I still believe -- we
13 still believe that the authorities should be the ones
14 reviewing this information.

15 So the Attorney General, for example, if
16 there's an allegation of fraud, should be working with
17 our office or your office or the Pima County Attorney's
18 office to investigate those issues because they're the
19 proper body to ascertain whether a fraud has occurred
20 on a process and to enforce the law and prosecute those
21 individuals rather than have outsiders do this only to
22 maybe satisfy them, themselves, that there was no
23 breach, but, at the same time, creating a much larger
24 problem for future elections and for the public as a
25 whole. We see that as much more problematic than

1 some -- a group or some particular individual's
2 interest in seeing -- or even a political party, for
3 that matter -- these files. So that is our concern.

4 Q. In your opinion, would it be possible to take
5 the remedial actions -- well....

6 I think I've already asked the question.

7 How would you characterize or describe the
8 physical security surrounding the election systems and
9 facilities in Arizona's various counties?

10 A. Okay. It's such a broad question, I think
11 the way we would answer that is to note that physical
12 security is obviously required by law and in the
13 procedures manual in various places. I think it should
14 be without question that the county election officials
15 are following those procedures. Things like ballots,
16 access to the GEMS server, to tabulation equipment,
17 other critical election components, are only to be
18 available to authorized individuals via password
19 protection.

20 The procedures manual goes into more detail
21 about this, but I think, again, from our perspective,
22 we believe that physical security of the elections in
23 the counties is intact. We have no reason to believe
24 otherwise.

25 Q. Would you agree that not all counties have

1 the same degree of physical security as -- as does
2 Pima County?

3 **A.** Yes. Not all counties have the resources of
4 Pima County.

5 **Q.** It's not like we have a lot of resources
6 right now, in this budget year.

7 **A.** Yeah, and the coun- -- I think it's important
8 to note that the counties vary vastly in size. So the
9 security measures necessary to secure an election in
10 Pima County may not necessarily be the same type as
11 they are in Greenlee County.

12 It doesn't mean that Greenlee County's
13 elections are any less secure than Pima County's
14 because Pima County does things differently. I think
15 it's important to note that.

16 **Q.** Is your office concerned with the lack of
17 security in any particular county or counties?

18 You don't have to mention which --

19 **A.** No. We have no reason to believe that the
20 counties aren't following the laws and procedures that
21 require physical security of all voting equipment and
22 processes.

23 **Q.** Have you -- in the course of the trial, are
24 you aware if there was a document, actually, that we
25 produced, that was produced by the Democratic Party,

1 which identified various lack-of-security measures in
2 the various counties? Have you seen or are you aware
3 of that document? It's called "Rural County Blues." I
4 believe it was prepared by Mr. March and Mr. Brakey,
5 and Mr. March being in the room right now with us.

6 **A.** I'm sure we've seen it. Mr. March and
7 Mr. Brakey have written a lot of stuff about elections
8 in this state.

9 **Q.** But you've not made an attempt to verify one
10 way or another whether their concerns were valid?

11 **A.** Well, they -- they've raised some concerns
12 that we've followed up on. Those individuals are --
13 are -- tend to focus on the technical side of
14 elections. They have raised issues about the vul- --
15 security vulnerability with electronic voting
16 equipment.

17 **A.** But we believe the state has addressed those
18 issues and that the counties have processes and
19 procedures in place to prevent the kind of breaches
20 that they have alleged have occurred.

21 **Q.** Do you believe that the release of databases
22 from the GEMS system in any one county poses a risk to
23 the election security of any other county in Arizona?

24 **A.** Yes. I mentioned that earlier.

25 **Q.** And why?

1 **A.** 12 of the counties, as I mentioned, use the
2 same systems, build their elections using the same
3 software, the same basic structure. So Pima County
4 releasing its information could then be used to
5 potentially build an election in another county, using
6 the same codes and layout, as we understand them.

7 Is it -- is it a major security
8 vulnerability? Probably not. Is it a potential?
9 Yes. I think we, as election officials, need to guard
10 against any potential of security vulnerability, to the
11 extent we can.

12 **Q.** What information is contained in the GEMS
13 database that is not contained in the election
14 information posted on the Secretary of State's website
15 following each election?

16 **A.** The election identifier, all the physical
17 ballot layout information, and I believe that's all.

18 **Q.** Do you know whether the SQL statements are
19 published?

20 **A.** The SQL statements?

21 **Q.** Yeah, in the database.

22 **A.** I -- I don't know. I'd have to find out. It
23 wasn't on your list of topics.

24 MS. SHIPMAN: No.

25 **Q.** BY MR. STRAUB: For the record, I would point

1 to topic number 14. And it says, "What information is
2 contained in the electronic computer databases,
3 including the electronic computer files with file
4 extensions of '.mdb' and/or '.gbf,' from the GEMS
5 system that is not contained in the election
6 information posted on the Secretary of State's website
7 following each election."

8 **A.** I answered that question.

9 **MS. SHIPMAN:** Yes.

10 **MR. STRAUB:** If I could have a moment with my
11 client, we might be done with our questions.

12 (Recess from 10:15 a.m. to 10:28 a.m.)

13

14 **EXAMINATION**

15 **BY MR. RISNER:**

16 **Q.** Mr. Kanefield, does this office have an
17 opinion on the security of the GEMS software in
18 general?

19 **A.** We've never made -- taken an official
20 position on that.

21 **Q.** Is this office aware of the reports published
22 by the California Secretary of State following their
23 "Top to Bottom Review," including the analysis of the
24 Diebold/GEMS source code?

25 **A.** Yes.

1 **Q.** Are you, the Secretary of State's Office,
2 aware of the investigation by the Attorney General of
3 Arizona that resulted in a report from iBeta?

4 **A.** Yes.

5 (Exhibit 7 marked for identification.)

6 **Q.** **BY MR. RISNER:** Incidentally, Mr. Kanefield,
7 could I see the sheet that you've been reading answers
8 from?

9 **MS. SHIPMAN:** Yes.

10 **THE WITNESS:** Sure.

11 **MR. RISNER:** You've just handed me two sheets
12 which, from time to time, you've read answers from.
13 I'd like to mark this also, if I could.

14 **MR. STRAUB:** I have no objection.

15 (Exhibit 8 marked for identification.)

16 **Q.** **BY MR. RISNER:** I'm showing you what we've
17 marked as Exhibit 8. What is that, sir? How was that
18 two-page document compiled?

19 **A.** What? Exhibit No. 8?

20 **Q.** Yes.

21 **A.** It's a summary of answers to the questions
22 about the topics that were presented to us in the
23 notice of deposition pursuant to Rule 30(b)(6) from the
24 Pima County Attorney's Office.

25 Because it's a Rule 30(b)(6) deposition, we

1 met as a group to discuss the questions or the topics
2 that were being deposed. Some of them touched on
3 technical issues, so we wanted to make sure that the
4 representative from our office -- me, myself, speaking
5 on behalf of the Office -- was answering those
6 questions consistently.

7 I don't believe I referenced every question.
8 The numbers on that sheet correspond to the topic
9 number set forth in the notice, but Mr. Straub didn't
10 necessarily ask the questions he -- as posed in the
11 deposition notice so they may or may not have come out
12 in my testimony earlier.

13 Q. Thank you. We'll probably get back to that
14 later.

15 And I'd like to ask you, we've marked this
16 iBeta report as Exhibit....

17 MS. SHIPMAN: 7.

18 MR. STRAUB: 7.

19 Q. BY MR. RISNER: On page 3, there's an
20 "Executive Summary" and there's a statement that says,
21 "During testing it was discovered that the GEMS
22 software exhibits fundamental security flaws that make
23 definitive validation of data impossible due to the
24 ease of data and log manipulation."

25 Would you agree that that's an accurate

1 statement about the GEMS software?

2 **A.** I'm not in a position to agree or disagree
3 with that statement. This is a report issued by iBeta,
4 which I'm assuming is a reputable company. I know that
5 they have done some work as an independent testing
6 authority.

7 So I would assume it's an accurate statement,
8 but I just am not in a position here today to speak on
9 behalf of the Office and wasn't --

10 **Q.** Okay.

11 **A.** -- wasn't notified that I was going to give
12 an opinion on this report coming into this deposition,
13 so....

14 **Q.** Well, your office got a copy of this?

15 **A.** Yes.

16 **Q.** And you earlier testified -- actually,
17 several times -- that this office is concerned about
18 any potential security risk that is disclosed to it?

19 **A.** Yes.

20 **Q.** And so if this was disclosed to your office
21 and they have an opinion that -- that there's a
22 fundamental security flaw that makes it difficult to
23 validate data because it's easy to manipulate data and
24 to erase things from the logs, isn't it --

25 **A.** It's -- it's possible. We are -- yes, we did

1 get this report. And we've seen many other reports
2 that have come to similar conclusions about not just
3 the equipment manufactured by Premier -- formerly known
4 as Diebold -- but other companies.

5 Q. Sure.

6 A. And, yes, these kinds of security issues are
7 of a concern to us, and always have been.

8 But what we have do is make sure that these
9 kinds of vulnerabilities are never exposed. And the
10 way that that's accomplished in Arizona is through
11 physical security procedures and practices to make sure
12 that individuals that have access to this equipment
13 aren't able to exploit these vulnerabilities that have
14 been identified in, like I said, not just this state
15 but many others. So this is no secret. These issues
16 have been known by not only our office but election
17 offices all over the country.

18 We -- we have no concerns about the equipment
19 itself. The equipment does what it's designed to do
20 very well. It accurately counts ballots. It expedites
21 the tabulation process significantly, which is what the
22 public wants. And our job, as elected officials, is to
23 make sure that these kinds of vulnerabilities are never
24 exploited, just like we've opined that the blank
25 ballots should never be released to the party officials

1 for the same reason. It's all, in our minds, very
2 consistent.

3 Q. Okay. If I understood what you just said,
4 you said that these vulnerabilities are well known and
5 that the key answer to maintaining security, given
6 these known vulnerabilities, is the physical security
7 of the election server computer itself; is that
8 correct?

9 A. All equipment. Not just the server. That's
10 one component. The ballots themselves, any critical
11 feature or component of the election process needs to
12 be secured.

13 Q. Okay.

14 A. For obvious reasons.

15 Q. On the iBeta report, under "Executive
16 Summary," there's an ultimate notation in the last
17 paragraph -- I'll read this.

18 "The basis of the investigation is that there
19 are log entries that point to tampering - but it is far
20 easier to remove evidence of tampering from the logs
21 than to actually tamper with the vote totals in the
22 access database that the GEMS software uses. So it
23 does not follow that someone with the knowledge to
24 manipulate the GEMS data would neglect to alter the log
25 file to remove the evidence of the manipulation."

1 MS. SHIPMAN: No -- is that a question?

2 THE WITNESS: Yeah.

3 Sorry.

4 MR. RISNER: Yeah, there is a question.

5 MS. SHIPMAN: Okay.

6 Q. BY MR. RISNER: I understand what he's saying
7 is -- this guy -- or iBeta is saying, look, it's so
8 easy to erase the tracks of what you've done that we
9 think even though we find evidence that might -- one
10 might conclude there was tampering, there probably
11 wasn't, because anybody that had sufficient skill to
12 tamper with it would have covered his tracks.

13 Isn't that kind of what he's saying?

14 MS. SHIPMAN: Objection, form, beyond the
15 scope.

16 THE WITNESS: I -- yeah, I think that's what
17 he's saying.

18 Q. BY MR. RISNER: Okay. So let me ask you
19 this: If, as we agree at this point, that the software
20 has lots of security problems and can easily be
21 manipulated by someone with access to the machine, who
22 checks to see if that operator has done that -- or the
23 persons who have access to the machine, who checks to
24 see if they've manipulated data and if they have, in
25 fact, exploited these vulnerabilities?

1 **MS. SHIPMAN:** Objection, form.

2 **THE WITNESS:** Well, if -- I mentioned this
3 earlier, that if there's an allegation of fraud, then
4 that should be brought to the attention of the proper
5 authorities.

6 And as I understand it, your client,
7 Mr. Risner, was made -- made those fraudulent
8 allegations and those were brought to the attention of
9 the Attorney General, who did conduct an extensive
10 investigation, including contracting with this company
11 out of Colorado in addition to other discovery and
12 questioning and everything else, and at the end of the
13 day, it was just -- it was determined that there was no
14 fraudulent -- fraud committed on the elections.

15 So in our minds, the process works. And
16 that's how the process should work.

17 **Q. BY MR. RISNER:** Okay. Well, Mr. Kanefield,
18 let me just correct you for a moment. My clients never
19 made allegations of fraud. And the testing that was
20 done was contrary to the testing that my clients
21 suggested ought to be done. And my clients do not
22 believe that the -- neither the testing nor the results
23 was accurate.

24 My clients brought certain facts to the
25 attention -- that were suggested to the

1 Attorney General to check, but they didn't do it in the
2 way we wanted, nor have we made those allegations.

3 But the point that I'm -- I'm just correcting
4 what you said. There's no question.

5 MR. STRAUB: Yeah, I move to strike
6 Mr. Risner's testimony.

7 Q. BY MR. RISNER: My question is who checks to
8 see if this "easy" manipulation has occurred by
9 insiders?

10 MS. SHIPMAN: Objection, form.

11 THE WITNESS: I think I've answered that
12 question.

13 Q. BY MR. RISNER: Okay.

14 A. It would be the authorities.

15 Q. Right.

16 But for someone to make an allegation of
17 fraud, don't they need evidence of the fraud and
18 indications of that?

19 A. Yes.

20 Q. And how can they gain that evidence or how
21 can they gain indications if they can't look at the
22 database?

23 A. Well, we have the ballots themselves.

24 MS. SHIPMAN: Objection. I just want to
25 object to the form, beyond the scope.

1 Go ahead.

2 **THE WITNESS:** We now have, in the state, the
3 post-election audit procedure of the paper ballots. So
4 for every precinct that's been sampled where those
5 ballots have been counted by hand, is bi-partisan or
6 under the authority of election officials, has
7 established that the machines were not manipulated and,
8 in fact, worked exactly the way they were designed.

9 So if there was an unacceptable variance,
10 then to me, that might be grounds for investigation of
11 fraud.

12 **Q. BY MR. RISNER:** Okay.

13 **A.** But simply a hunch or a suspicion or a
14 concern because of a hypothetical vulnerability, to me,
15 is -- it would be bad policy for a full scale
16 investigation to be conducted of every election
17 database whenever some group or person makes such
18 allegations without any basis.

19 **Q.** Okay. So let -- I think I'll need -- since
20 your answers sometimes are quite rangy, I'll need to go
21 back and look at these points.

22 First, can we clearly establish that your
23 office never has gone in and examined a database to see
24 if there's been any fraud or manipulation?

25 **A.** Our office doesn't have the authority, under

1 law, to do such an examination. Our -- the extent our
2 office has oversight over a potential fraud
3 investigation would be pursuant to the statute we
4 discussed earlier, where a copy of the election
5 software and database structure is filed with our
6 office. And at that point, we would make that
7 available to the Attorney General. That's one of the
8 reasons it has to be kept confidential.

9 So are we going in and are we examining
10 county databases and computer programs? We don't have
11 the authority to do that. I mean, the Secretary of
12 State's authority is prescribed by law, as set forth in
13 the constitution, and she's been given oversight over a
14 number of election-related activities, including logic
15 and accuracy testing and other related issues.

16 But when it comes to the administration of
17 the elections at the county level, what you're talking
18 about, if you're -- if you're alleging that we should
19 have been doing this and haven't, then you're wrong.
20 We just simply don't have the authority to do that.

21 If we were provided that authority, then, of
22 course, we would do that. But we think that the
23 process works and that if those allegations are made,
24 then those with authority -- including the County
25 Attorney, Attorney General -- can undertake such a

1 review, as was done by the Attorney General at your
2 request.

3 Q. Are you aware of any county in Arizona that
4 has ever conducted a post-election examination of the
5 database for evidence of fraud or manipulation?

6 A. I am not aware, other than what's occurred in
7 Pima County.

8 But that doesn't mean it hasn't happened.
9 It's just that I'm not aware.

10 Q. Okay. So the result, then, is that the
11 Secretary of State, because it has no authority to,
12 does not examine and has never examined an election
13 database after an election in any county in Arizona;
14 correct?

15 A. That is correct.

16 MS. SHIPMAN: Object to form.

17 THE WITNESS: Sorry.

18 Q. BY MR. RISNER: And you're not aware of any
19 county that has ever examined the database after an
20 election in Arizona; correct?

21 MS. SHIPMAN: Objection, form.

22 THE WITNESS: Yes, but I have to answer that
23 question, again, just because we're not aware doesn't
24 mean they haven't. They're not required to report any
25 such examination to us.

1 And we would assume that they audit their own
2 processes from time to time, as any good government
3 body would do.

4 **Q. BY MR. RISNER:** How many counties in Arizona
5 use the Diebold equipment?

6 **A.** 12.

7 **Q.** And of those 12 counties, how many have an
8 employee of the county that prepares the ballot for the
9 election?

10 **MS. SHIPMAN:** Objection, beyond the scope.

11 **THE WITNESS:** First, just so we both
12 understand, Diebold is now Premier.

13 **Q. BY MR. RISNER:** Okay.

14 **A.** You know that, I'm sure.

15 I don't know what percentage of those
16 counties have an in-house person that does the ballot
17 layout. I'm pretty sure that Pima County does it
18 itself. Coconino County does it itself. Yavapai
19 County does it themselves.

20 After that, I don't -- I don't know --

21 **Q.** Okay.

22 **A.** -- to be honest with you.

23 **Q.** So you've named three counties.

24 **A.** Yes.

25 **Q.** So you could be off a county or two, but it's

1 something like nine counties, then, would rely on -- is
2 it Bill Broyle (sic) that they rely on as a private
3 company?

4 **MS. SHIPMAN:** Objection, form, beyond the
5 scope.

6 **THE WITNESS:** That is our understanding,
7 yes. Bill and Cindy Doyle do this work for several of
8 the counties.

9 **Q. BY MR. RISNER:** And --

10 **A.** -- yes.

11 **Q.** -- what's the name of their company?

12 **A.** I don't recall at this moment.

13 **Q.** But they have a private election company
14 here -- is it in Glendale?

15 **A.** I think they're based out of Flagstaff.

16 **Q.** And it seems to me that it's unlikely that
17 those counties, if they don't have the technical
18 expertise to put the ballot together, would not have
19 the technical expertise to examine a database to see
20 what happened with the election.

21 **MS. SHIPMAN:** Objection to form.

22 **Q. BY MR. RISNER:** Do you agree with that?

23 **MS. SHIPMAN:** Objection to form, beyond the
24 scope.

25 **THE WITNESS:** Well, I think that's a pretty

1 broad question. Because whether that county has the
2 capability in-house of doing such things, that issue
3 is, in our mind, not the point, you know, because they
4 can always contract with someone else with expertise to
5 do that on their behalf and still be under the
6 authority of the county.

7 So if you're asking me do they have someone
8 in-house who's an IT person that can conduct that kind
9 of investigation, well, probably not. In some of the
10 smaller counties, they simply don't have the resources.
11 A lot of times, their IT person does more than just
12 elections, you know. Like the larger counties, they
13 could have an IT staff or department.

14 So again, just because they don't have
15 someone in-house does not mean they're not capable of
16 doing that. It just means that they would have to go
17 outside of the county to obtain that expertise.

18 **Q.** BY MR. RISNER: And, of course, you're not
19 aware of any county ever doing that?

20 **A.** That's the third --

21 **MS. SHIPMAN:** Objection, beyond the scope.

22 **THE WITNESS:** That's the third time you've
23 asked me that question.

24 **MS. SHIPMAN:** Yeah.

25 **Q.** BY MR. RISNER: Yeah.

1 **A.** And I'll answer it the same way.

2 Just because I'm not aware of it doesn't mean
3 this hasn't occurred. They're not required to report
4 those kind of reviews to us.

5 And I'm assuming, again, as any good company
6 would do, they're required to make these audit checks
7 from time to time. And the magnitude and expense of
8 that will, of course, vary, depending on the county and
9 the resources.

10 **Q.** Do you know anything about this company
11 that -- Bill Broyle (sic), and do you --

12 **A.** Doyle.

13 **Q.** Oh.

14 **A.** D-o-y-l-e.

15 **Q.** Okay. Bill Doyle?

16 **A.** Uh-huh.

17 **Q.** And it's Cindy Lou?

18 **A.** Cindy Doyle. They're married.

19 **Q.** Okay. Have you ever been out to their
20 company?

21 **MS. SHIPMAN:** Objection, beyond the scope.

22 **THE WITNESS:** No.

23 **Q.** **BY MR. RISNER:** And do you --

24 **MR. STRAUB:** I'd like to be certain here.

25 Are you saying this is also related to the issues --

1 the questions in the deposition -- the notice of
2 deposition questions with respect to other counties and
3 security of other counties? Is that your position,
4 Bill, that your question is related to --

5 MR. RISNER: It's related to several things.
6 Certainly it's related to that.

7 MS. SHIPMAN: I object. It's not related to
8 the physical security of the counties, in my opinion.

9 I'm going to sustain my objection.

10 Q. BY MR. RISNER: Have you ever been out to
11 their company?

12 A. No.

13 Q. Do you have any idea how many employees they
14 have?

15 MS. SHIPMAN: This line of questioning is --
16 I'm objecting to beyond the scope and form.

17 Go ahead.

18 Q. BY MR. RISNER: Do you have any idea who
19 those people are?

20 A. My understanding is that Bill and Cindy Doyle
21 worked election administration at one time in the '80s,
22 maybe even into the '90s, and at some point in that
23 time, they left government service, one; number two,
24 they have had -- have helped the counties do contract
25 work with elections.

1 Our office does not have dealings with them.
2 We deal only with the counties. And to the extent a
3 county contracts with those individuals or anyone else,
4 we assume the county takes full responsibility for the
5 actions of its contractors, as it does its employees.
6 But we do not deal directly with those two
7 individuals.

8 **Q.** Do you have any idea how that private company
9 transmits the ballot information that they contract
10 with -- perhaps piles of information that they perhaps
11 contract with nine counties?

12 **MS. SHIPMAN:** Same objection.

13 **THE WITNESS:** I don't know that.

14 **Q. BY MR. RISNER:** I -- I think in your
15 testimony earlier, a number of times, you said your
16 office has security concerns about all aspects?

17 **A.** That is correct.

18 **Q.** Is it not a security concern that a private
19 company of unknown quantity or quality is sending
20 information to nine counties that, as far as you know,
21 no one checks on or knows what's in it?

22 **MS. SHIPMAN:** Objection, form.

23 **MR. STRAUB:** Object to form. It's beyond the
24 scope at this point.

25 **THE WITNESS:** It most certainly is a concern

1 of our office.

2 Q. BY MR. RISNER: And furthermore, they're
3 doing it with software that you and others agree is
4 easy to manipulate, easy to cheat with, and easy to
5 cover your tracks with.

6 MS. SHIPMAN: Objection, form.

7 Q. BY MR. RISNER: Correct?

8 A. I've never answered -- I've never put it that
9 way, Mr. Risner. I think I said it earlier that the
10 vulnerabilities identified with the Diebold equipment,
11 as well as a lot of other election equipment and
12 computers in general, has long been established. But
13 those vulnerabilities, like any other system, can be
14 blocked and protected through proper practices and
15 procedures which we believe are in place in Arizona.

16 So I don't think it's fair to say that we
17 believe that this equipment can be easily attacked or
18 has -- has issues in the manner in which we use the
19 equipment in Arizona.

20 Q. You said earlier that you have followed the
21 lawsuit of Pima County.

22 A. Yes, sir.

23 Q. Have you seen the David Jefferson affidavit?

24 I'll ask you questions about it, but I think
25 it's important for you to have it.

1 (Exhibit 9 marked for identification.)

2 Q. BY MR. RISNER: You can take as much time as
3 you want. We've got plenty of time here.

4 A. You want me to read the entire --

5 Q. Yeah, why don't you? It would probably be
6 good for you.

7 MR. STRAUB: I move to strike that last
8 comment.

9 MS. SHIPMAN: The last statement, as --

10 MR. RISNER: What I meant was I believe this
11 information is viable and useful to agencies such as
12 the Secretary of State. It's a thoughtful declaration
13 by a technical expert who has advised five consecutive
14 Secretaries of State in the state of California.

15 MS. SHIPMAN: Same objection.

16 THE WITNESS: Okay.

17 MS. SHIPMAN: Let me just ask you a question
18 about this that I wasn't clear on before. Has this
19 been submitted to the Court?

20 MR. RISNER: Yes.

21 MS. SHIPMAN: And a judge has used this in
22 making a determination so far?

23 MR. RISNER: No.

24 MS. SHIPMAN: Okay.

25 MR. RISNER: It's post.

1 **MS. SHIPMAN:** I just want to make sure.

2 (Off-the-record discussion.)

3 **Q. BY MR. RISNER:** Has your office advised, in
4 any way, any of the 12 Arizona counties that use the
5 Diebold GEMS software system of security
6 vulnerabilities in that system?

7 **A.** I think it's fair to say that the counties
8 are equally aware of the concerns that have been raised
9 by many about security issues with this equipment as we
10 are.

11 **Q.** And the answer to the question, sir?

12 The question is -- and I'll repeat it -- has
13 the Secretary of State advised any of the 12 counties
14 that use the Diebold system of any security problems or
15 vulnerabilities of that system?

16 **A.** We've advised the counties about allegations
17 of security vulnerabilities and concerns raised and
18 we've advised the counties to follow the specific
19 practices and procedures to address those security
20 issues to make sure that they are never exploited in
21 their respective jurisdictions.

22 **Q.** So these are allegations relating to the
23 Diebold system?

24 **A.** I said before, there's allegations related to
25 all equipment.

1 Q. My question right now is the Diebold system.

2 A. Yes.

3 Q. When did you do that and how did you advise
4 them?

5 A. I can't tell you specifically. We've --
6 these allegations have been leveled against this
7 equipment since before I started with this office and
8 they've been constant and ongoing in the four-plus
9 years that I have been here.

10 When these issues come up, we -- we meet
11 frequently with the counties, with at least two --
12 sometimes up to four times a year. These issues are
13 discussed. They're vetted during the drafting of the
14 procedures manual, when the language itself is -- is
15 proposed to the counties. I'm in frequent email
16 communication. And I'd have to go back and see, you
17 know, if -- whether I may have communicated some of
18 these issues to them.

19 I'm just telling you, based upon the
20 four-plus years I have been State Election Director,
21 that these issues have come up quite frequently --

22 Q. Okay.

23 A. -- with the counties and they're very well
24 aware, including the 12 counties that use the Premier
25 voting system.

1 **Q.** But let me ask you, what are these
2 allegations that you're very familiar with?

3 **A.** They're exactly as set forth in the affidavit
4 you just handed me, that -- that individuals believe
5 and groups believe that this equipment has
6 vulnerabilities, that those with access to the
7 equipment can manipulate the election results or the
8 manner in which ballots are tabulated.

9 **Q.** So at trial in this case, Dixie Mundy -- you
10 know Dixie, don't you?

11 **A.** Yes. Yes, I do.

12 **Q.** She testified that she wasn't aware of any
13 security issues related to Diebold, and if there had
14 been any security issues, she's certain that
15 Jan Brewer, the Secretary of State, would have told
16 her.

17 So if I understand your -- your testimony is
18 that you believe that the security vulnerabilities of
19 the Diebold system have, in fact, been transmitted from
20 your office to the various counties who use that
21 equipment?

22 **MS. SHIPMAN:** Object to form.

23 **THE WITNESS:** I think what she's testifying
24 is that we never said that their equipment is insecure
25 and unusable. The answer is no. Obviously this

1 equipment has been certified at the national level and
2 the state level. It's been used safely and securely,
3 and in this state, for many election cycles.

4 And, no, we don't believe the equipment's
5 insecure. So, no, we haven't told Pima County or any
6 other counties that there are security problems
7 associated with their equipment.

8 What we've told them is that allegations of
9 security vulnerabilities have been made, and, as I said
10 before, that we must be diligent about following our
11 processes and procedures for physical security and
12 access to that equipment to make sure that those
13 vulnerabilities are never exploited.

14 We believe we've done that successfully in
15 this state.

16 **Q.** BY MR. RISNER: Does the Secretary of State,
17 county by county, examine the physical security of its
18 election computers?

19 **A.** Well, we're not tasked with that
20 responsibility of actually physically examining and
21 auditing the security. That -- those security
22 requirements are set forth, again, in state law and in
23 our procedures. We have to presume that the counties
24 are following those practices and extend the -- to the
25 extent that they're following the laws that obligate

1 them to do certain things, we assume that they do those
2 things and that their internal processes and checks
3 make sure that they're in compliance.

4 **Q.** So the answer is no?

5 **MS. SHIPMAN:** Objection, form.

6 **THE WITNESS:** Well, you asked me this
7 question and so did Mr. Straub. I don't know how many
8 times I can answer the same question.

9 Are we tasked by law with going and
10 physically inspecting the security of the equipment?
11 The answer is no.

12 I mean --

13 **Q. BY MR. RISNER:** Okay.

14 **A.** -- I have answered it several times. The
15 Secretary of State's responsibilities are as prescribed
16 by law, established in the Arizona constitution. That
17 means that the legislature has to give her specific
18 responsibilities and she can't assume anything other
19 than what's tasked with her. And the counties would
20 probably not be okay with us doing that unless we're
21 specifically tasked with that under law.

22 **Q.** All right. I wasn't trying to make this
23 office defensive. I was just trying to get a clear
24 answer that you don't do it, not that you're required
25 to do it and you're failing in your obligations. I

1 just --

2 **A.** I understand, and --

3 MS. SHIPMAN: Object to form.

4 THE WITNESS: -- and I don't mean to sound
5 defensive, by any stretch.

6 **Q.** BY MR. RISNER: Okay.

7 **A.** The question has just been asked of me three
8 or four different ways and I have to explain why it is
9 that we don't do these things.

10 **Q.** Okay.

11 **A.** And that we would certainly do them if we
12 were tasked with doing them under law, as we do with
13 every other obligation that we have under law.

14 **Q.** Okay. So let me focus on something else. I
15 have asked you about the vulnerabilities of the GEMS
16 software system and you agree that the software has
17 major vulnerabilities in terms of manipulating data,
18 erasing stuff, that kind of thing; isn't that correct?

19 MS. SHIPMAN: Objection, form.

20 THE WITNESS: That's not correct.

21 **Q.** BY MR. RISNER: Oh, okay.

22 **A.** That's not correct and I don't think it's
23 fair for you to characterize the position of our office
24 as having great concern with security vulnerabilities
25 of the election equipment here. We're --

1 Q. Well, does your office agree that the GEMS
2 software exhibits fundamental --

3 MS. SHIPMAN: Let him finish his answer,
4 please.

5 MR. RISNER: What?

6 MS. SHIPMAN: Let him finish his answer.

7 Q. BY MR. RISNER: Oh, sure. Go ahead.

8 MS. SHIPMAN: If you have more to say. It
9 just seemed you were cut off in mid-sentence.

10 THE WITNESS: Well, I've told you we're aware
11 of the allegations of security vulnerabilities that
12 exist and that -- and that our job, as the Secretary of
13 State, and the job of election officials throughout the
14 state, is to make sure that any potential security
15 vulnerability is not exploited, as in any system.
16 That's why we have locks on doors, guards in buildings.
17 It's the same concept.

18 So it's our job to make sure, yes, that there
19 are -- there's issues. There's the potential for
20 someone to exploit this software and -- but our job is
21 to make sure that that never happens. We believe we
22 are accomplishing that here in Arizona.

23 Q. BY MR. RISNER: Mr. Kanefield, you said you
24 were aware of allegations. My question is does this
25 office believe that it's true that the GEMS software

1 exhibits fundamental security flaws?

2 **A.** I --

3 **MS. SHIPMAN:** Object to form.

4 **THE WITNESS:** I'm not sure we agree with that
5 characterization. I think that that language is
6 somewhat inflammatory. I think that what -- what we
7 believe that report is saying is that someone with
8 knowledge and access can -- can hack into this system
9 and change results. That's not debated. It's never
10 been debated.

11 Is that a massive security vulnerability?

12 No, I don't think so. I don't think that that's a fair
13 characterization. I think that -- I would be surprised
14 if any computer scientist worth that person's weight in
15 salt couldn't hack into a computer system, if they had
16 enough time and access.

17 But our job is to make sure that that person
18 with the evil motive and unauthorized access never gets
19 access to that equipment.

20 **Q. BY MR. RISNER:** Okay. All right. And the
21 way that you accomplish your job is simply to write a
22 book? You never check to see if the procedures, in
23 fact, are there to prevent physical access; correct?

24 **MR. STRAUB:** I'm going to object. It's
25 argumentative.

1 **MS. SHIPMAN:** Object to form.

2 **THE WITNESS:** I don't think I can answer that
3 question any better than I answered it --

4 **Q. BY MR. RISNER:** All right.

5 **A.** -- before.

6 **Q.** I would agree with that.

7 Now, the -- the concern that you talked
8 repeatedly about, concerns relating to the release of
9 databases from Pima County, tell me, what are the
10 elements? What are the parts that make up that, that
11 cause you to come to that conclusion? What is it that
12 you're concerned about?

13 **A.** Well, I think I said so earlier. And our
14 concerns come directly from the findings of the Court
15 and the expert testimony offered in this case.

16 **Q.** Okay. Just one moment. Which experts are
17 you speaking of?

18 **A.** The -- the experts cited by the Court in its
19 ruling dated --

20 **Q.** Okay.

21 **A.** -- December 18th of 2007.

22 **Q.** Okay. Now, are you aware that -- well,
23 which -- which sections of the ruling are you speaking
24 about?

25 **A.** The -- the findings of the facts.

1 Q. Yes.

2 A. Which ones are there?

3 Q. Mr. Kanefield, are you aware that the
4 plaintiff has pending motions and objections to certain
5 of the findings of the facts and conclusions of law
6 that the judge made?

7 A. I believe that's why we're here today. I'm
8 aware.

9 Q. Okay. One of the objections that the
10 plaintiff had made was to the judge's reference to a
11 final .mdb database. Are you aware of that?

12 A. Yes.

13 Q. And are you aware that Pima County has agreed
14 with us that there is no security risk in releasing the
15 entire iteration of the data in one election if the
16 final database is released?

17 MR. STRAUB: I'm going to object to that
18 question because it states the County's position and we
19 have the testimony statements of Mr. Moffatt --

20 THE WITNESS: That's not my understanding of
21 Pima County's position.

22 Q. BY MR. RISNER: What's your understanding of
23 it?

24 A. That they've objected to any release of any
25 of this information and they've only done so over the

1 findings of the Court.

2 Q. Sure.

3 But I believe that Pima County has taken the
4 position that once the final .mdb file is released,
5 that there's no security risk in releasing the entire
6 series because the only thing that should change would
7 be the votes within that series. Are you aware of
8 that?

9 MR. STRAUB: Same objection.

10 THE WITNESS: Again, perhaps I'm wrong, but
11 my understanding is that's not the position of
12 Pima County.

13 MR. STRAUB: Also lack of foundation.

14 Q. BY MR. RISNER: Okay. That's fine.

15 Let me get back to -- I'm trying to figure
16 out the other concerns that you have about the database
17 being released.

18 So let's identify what are these concerns.
19 And I think you've said there's something in there that
20 the judge said. So where is it?

21 A. Well, let me --

22 MS. SHIPMAN: Objection, form.

23 THE WITNESS: Let me just tell you what our
24 concerns are.

25 Q. BY MR. RISNER: Yeah.

1 **A.** And I'm certain you disagree with us and your
2 client disagrees with us, but I'm going to tell you
3 what they are.

4 They were -- the testimony that was provided
5 in this case and the findings of the Court were that
6 the release of this information could be used to
7 generate databases for other elections for any county
8 that uses the system and that could potentially create
9 a security breach.

10 Now, you may or may not agree with that, but
11 we believe that to be true. And as I mentioned
12 earlier, any potential security breach is of concern to
13 us. So we just don't believe that releasing that
14 information -- whatever benefit may come of releasing
15 it to the individuals that want to look at it is far
16 outweighed by the potential risk that it creates to the
17 future integrity of the election administration in the
18 state of Arizona.

19 **Q.** How could it be used to generate databases
20 for other elections?

21 **A.** Again, our understanding is that it -- they
22 could take the files as they have been generated for
23 prior elections and use them as an architectural
24 blueprint to create other elections based on the
25 coding, ballot positioning and everything else.

1 Q. Okay. You said that they could use --

2 A. Some of them.

3 Q. They could take the past files and use them
4 as architectural?

5 A. Blueprints.

6 Q. To do what?

7 A. To create -- to mimic another election, a
8 future election.

9 Q. What do you mean, to "mimic" an election?

10 A. I mean to create -- to build a database for a
11 future election that -- that could then be replaced --
12 or replace the actual database and thereby manipulate
13 the outcome of the election.

14 Q. Build a database?

15 MS. SHIPMAN: Objection.

16 Read the testimony back.

17 THE WITNESS: Sure.

18 MS. SHIPMAN: If you want to write it down in
19 your notebook, you can just have it read back and then
20 you can write it down.

21 MR. RISNER: Would you, please.

22 (The record was read as follows:

23 THE WITNESS: Again, our understanding is
24 that it -- they could take the files as they have been
25 generated for prior elections and use them as an

1 architectural blueprint to create other elections,
2 based on the coding, ballot positioning and everything
3 else.)

4 Q. BY MR. RISNER: What do you mean, "replace
5 the actual database"?

6 A. We believe that information found in past
7 election database files could be used to predict the
8 layout, rotation parameters, or other confidential
9 aspects of ballots for future elections.

10 Q. Okay. And then you -- you were again reading
11 from your prepared answers?

12 A. Yes, I am.

13 Q. And what number is that?

14 A. Number 9.

15 Q. Okay. Thank you. I think that perhaps would
16 be useful.

17 Number 9, that sentence that you read, "to
18 predict the layout," what do you mean, "predict the
19 layout"?

20 A. The ballot layout.

21 Q. Okay. Now, you understand that -- that
22 ballots actually, something like 90 days before
23 elections, are actually mailed to people in Arizona;
24 correct?

25 A. To those that request early ballots.

1 **Q.** Yeah. And that Pima County uses something
2 like 1600 different ballot layouts?

3 **MS. SHIPMAN:** Objection, form.

4 **Q.** **BY MR. RISNER:** Does that sound about right?

5 **A.** Yes.

6 **Q.** Okay. So you're saying that someone that has
7 a past election database could predict the layout of a
8 new election; right?

9 **A.** Yes.

10 **Q.** Uh-huh. And so they, of course, would be --
11 they wouldn't be predicting candidates. At what point
12 would they be doing this prediction?

13 **A.** I couldn't say.

14 **MS. SHIPMAN:** Object to form.

15 **THE WITNESS:** I couldn't say.

16 **Q.** **BY MR. RISNER:** Okay. Let's say that someone
17 is -- you know, reasonably wanted do that. You might
18 as well wait until -- until they get a copy of the
19 actual ballots, don't you think?

20 **MS. SHIPMAN:** Objection, form, beyond the
21 scope.

22 **THE WITNESS:** Well --

23 **Q.** **BY MR. RISNER:** I mean, actual ballots are
24 mailed up to three months before the election; isn't
25 that true?

1 **A.** They're mailed 33 days -- or soon to be
2 26 days before. You can request a ballot --

3 **Q.** Okay.

4 **A.** -- up to 93 days before an election.

5 **Q.** But don't they mail them within five days?
6 They're required to mail them thereafter?

7 **A.** No. Early balloting doesn't begin in the
8 state until 33 days before the election. Although,
9 like I mentioned, legislation is pending that will make
10 that 26 days.

11 **Q.** Okay.

12 **A.** So even though you may have requested an
13 early ballot 93 days out, you're not going to get that
14 ballot until no less than 33 days before the election,
15 at this point.

16 **Q.** Okay. The month before the election, real
17 ballots are out?

18 **A.** (No oral response.)

19 **MS. SHIPMAN:** Yes?

20 **Q.** **BY MR. RISNER:** Okay?

21 **A.** Yes.

22 **Q.** So predicting the layout -- what's "layout"?
23 Is "layout" where it says, on this page, you got these
24 candidates and these candidates, and then the names of
25 those candidates?

1 **A.** I think the term's self-explanatory, but,
2 yes.

3 **Q.** So it's not like a big secret, then, in any
4 election?

5 **A.** Right.

6 **Q.** And "rotation parameters," what does that
7 mean?

8 **A.** Well, in Arizona, the law requires that the
9 candidate names be rotated on the ballot by county --

10 **Q.** Yes. So --

11 **A.** -- and by precincts.

12 **Q.** Okay. So actually any of those ballots that
13 are mailed out a month beforehand have the rotation for
14 each precinct; correct?

15 **MS. SHIPMAN:** Objection, form.

16 **THE WITNESS:** Well, it --

17 **MR. STRAUB:** Object to foundation.

18 **THE WITNESS:** Well, an individual would get
19 the ballot associated with that person's precinct in
20 that unique ballot style.

21 **Q.** **BY MR. RISNER:** Yeah.

22 **A.** So if you're asking the question could that
23 individual use that ballot to then duplicate ballots
24 for that particular precinct, well, yes.

25 Does that pose a risk? Yes. Is that the

1 policy of the state? Yes.

2 Q. Well, no --

3 A. To allow this kind of balloting to occur?

4 Yeah, that's the law. We allow early balloting to
5 occur, risks and all.

6 Q. Yes, but what I'm saying is that in that
7 precinct a month before the election, the person will
8 have the layout and they'll have the -- the rotation?

9 A. For that precinct, correct.

10 Q. Yeah. And the rotation is going to be
11 different for all the precincts --

12 A. Right.

13 Q. -- right?

14 A. Yes. And the ballot's going to be different.

15 Q. Right. 1600 of these. Okay.

16 A. It's a lot easier to figure that key out if
17 you've got the database files than it is to try to get
18 a ballot from 1600 people that have requested early
19 ballots.

20 Q. Well, sure.

21 But the ballot rotation and the way that the
22 rotation occurs is public information, isn't it?

23 A. Yes.

24 MS. SHIPMAN: Objection to form.

25 Q. BY MR. RISNER: And have you ever seen the

1 GEMS manual? It has a whole section on Pima County
2 rotation. Are you aware of that?

3 **MS. SHIPMAN:** Objection, beyond the scope.

4 **THE WITNESS:** Sure, I have seen it.

5 **MR. RISNER:** Well, let me mark this as an
6 exhibit.

7 **MR. STRAUB:** Could I see a copy?

8 **MR. RISNER:** Yeah, sure.

9 (Exhibit 10 marked for identification.)

10 **MS. SHIPMAN:** Could you establish what this
11 exhibit is and then ask a question about it?

12 **MR. RISNER:** Yeah.

13 **MS. SHIPMAN:** Okay.

14 **MR. RISNER:** I didn't copy the first page of
15 this thing, but this comes from -- it's the GEMS 1.11
16 User's Guide, Revision 9.0, September 23, 2002.

17 **MS. SHIPMAN:** Is that the operative GEMS
18 user's manual for this system that was in place at that
19 time in Pima County?

20 **MR. RISNER:** No. Pima County now uses
21 1.18.24. So this is not a copy of the exact user's
22 guide, yeah. So I have -- I will be drawing an
23 inference --

24 **MS. SHIPMAN:** Okay.

25 **MR. RISNER:** -- that this isn't top secret

1 stuff.

2 **MS. SHIPMAN:** Thank you for the
3 clarification.

4 (Exhibit 11 marked for identification.)

5 **MS. SHIPMAN:** Do you have a copy of that for
6 me?

7 **MR. RISNER:** Yeah.

8 **MS. SHIPMAN:** Thank you.

9 **Q. BY MR. RISNER:** I just had that marked as 11.
10 You haven't seen that, Mr. Kanefield.

11 So rotation parameters, that just refers to,
12 again, a precinct, if it's Smith, Jones and Wilson,
13 that in one precinct, Smith's on top, in another, Jones
14 is on top, and then the next one, Wilson's on top;
15 correct?

16 **A.** Right.

17 **Q.** And, in fact, the rotation is required by
18 A.R.S.; right?

19 **A.** Correct.

20 **Q.** Okay. And the political parties receive,
21 months before the election, as to candidates, for
22 instance, in Pima County, copies of all 1600 types of
23 ballots that are going to be on that election so that
24 they'll -- they can verify rotation or anything else
25 they want to verify; isn't that correct?

1 **MS. SHIPMAN:** Objection, form.

2 **MR. STRAUB:** Objection, foundation.

3 **THE WITNESS:** I don't know if they receive
4 the exact form that the ballot is going to be in once
5 it's printed. I do know that they're provided with the
6 information so that they can double-check the spelling
7 of the candidates' names and things like that.

8 **Q. BY MR. RISNER:** Okay.

9 **A.** So that kind of information.

10 **Q.** Okay. In your sentence here, it says "other
11 confidential aspects." So what are the "other
12 confidential aspects" in this answer that you read in
13 number 9 off your sheet?

14 **A.** I think it would be information like the
15 positioning of the races on the ballot and the manner
16 in which the scanning machines are going to read the
17 ballot. And there may be other points, too, that I
18 just -- I just don't remember at the moment.

19 **Q.** Okay. Now, you know, I have handed you
20 Exhibit 11. And these -- they're various codes -- were
21 used for -- for candidates. But the computer person
22 who writes the election can change the codes each time,
23 can he not?

24 **MR. STRAUB:** I'm going to object to
25 foundation.

1 **THE WITNESS:** I would assume that would be
2 the case.

3 **MS. SHIPMAN:** I'm going to object to the
4 foundation of Exhibit 11, too.

5 **MR. STRAUB:** Yes. Join.

6 **MR. RISNER:** Well, I might point out that
7 Exhibit 11 has previously been marked and identified in
8 Thomas W. Ryan's deposition and was a document prepared
9 by him.

10 **MS. SHIPMAN:** Okay. That will be helpful.

11 **MR. STRAUB:** I still have the same
12 foundational objection, though, regardless. That was
13 certainly authenticated based on his knowledge, but the
14 question is if you're questioning Mr. Kanefield about
15 this document, you still need to provide foundation, if
16 you have questions from this document, as to his
17 knowledge and understanding of what this document is.

18 **Q. BY MR. RISNER:** Yeah.

19 Do you know how those election codes or
20 candidate codes are determined within the GEMS system?

21 **MS. SHIPMAN:** Objection, beyond the scope.

22 **THE WITNESS:** I do not, personally, no.

23 **Q. BY MR. RISNER:** Yeah. Why do you -- do you
24 think, then, that's a security problem, knowing what
25 they were in the past?

1 **MR. STRAUB:** Object to foundation.

2 **THE WITNESS:** It's possible.

3 **Q. BY MR. RISNER:** Yeah, but you have no idea
4 because you don't know how it works; right?

5 **MS. SHIPMAN:** Objection --

6 **THE WITNESS:** I wouldn't, personally.

7 **MS. SHIPMAN:** -- beyond the scope, form.

8 **THE WITNESS:** I wasn't prepared to come and
9 answer these specific kinds of questions here,
10 Mr. Risner.

11 **Q. BY MR. RISNER:** Okay. So what other concerns
12 do you have about the release of databases other than
13 what -- what was in your response to number 9, which
14 you amplified on?

15 **MS. SHIPMAN:** And his previous response to
16 your question.

17 **THE WITNESS:** Yeah, I don't think I have
18 anything more to add to what I've said before about the
19 general concerns of this office as to the release of
20 that information.

21 **Q. BY MR. RISNER:** And then what this concern
22 would be -- and if I've got it right -- is that someone
23 could look at, as you say, past election databases and
24 predict the layout, the rotation parameters.

25 And then what would they do once they did

1 that? If they were successful in doing what you say
2 can be done, what would they do next?

3 **MS. SHIPMAN:** Objection, form.

4 **Q. BY MR. RISNER:** And I think you said,
5 "replace the actual database." Is that what you said?

6 **A.** As I understand it. That -- again, I would
7 just refer back to the testimony already offered in
8 this case --

9 **Q.** Okay.

10 **A.** -- by experts with more knowledge about these
11 security issues than myself.

12 **Q.** Okay. I don't understand what you mean by
13 "replace the actual database." I mean, I -- when I
14 hear you say that, I think of somebody that would sneak
15 in, in the middle of the night, and erase the county's
16 database and, pwuu, (audibly indicating), put their own
17 in.

18 What do you mean by "replace the actual
19 database"?

20 **A.** I don't know how she's going to put that
21 letter or that word --

22 **MS. SHIPMAN:** Whoo.

23 **THE WITNESS:** -- in the transcript.

24 **Q. BY MR. RISNER:** That was a computer sound.

25 **A. Mr. Risner,** again, you're asking me some

1 pretty specific questions. I think what -- what we've
2 been asked to testify here today about, I provided that
3 testimony. The materials that we have, we've cited,
4 and the expert testimony already offered in this case.

5 I'm not prepared to go on record to give you
6 any more details other than what's already in the
7 record in this case. I understand that you and your
8 clients disagree with those issues and you've offered
9 testimony to the contrary, but all I can do is tell you
10 that the concerns raised in this case, we believe. And
11 our job is to prevent any kind of future breach. And
12 to the extent that those concerns exist and are
13 possible, then deal with them.

14 Q. Sure.

15 But, Mr. Kanefield, my client, the
16 Pima County Democratic Party, agrees with iBeta and
17 Mr. Jefferson and others that there are major security
18 risks with the software.

19 A. Understood.

20 Q. And we're aware that you don't check it
21 because it's not your authority -- not that you should,
22 but you don't do it -- and that no one independently
23 does it.

24 I and our political party believe it's our
25 obligation to monitor the election and to check it. So

1 that's a huge security problem that no one's checking
2 and we want to check it. And you, the Secretary of
3 State, is testifying that you have concerns about a
4 little, little, little, little teeny thing. And so I
5 need to find out just what it is in that little teeny
6 thing that you have that concerns this release. So
7 that's what I'm asking you for.

8 You say someone could replace it, but you
9 don't know what that means; right?

10 **MS. SHIPMAN:** Objection, form.

11 **Q. BY MR. RISNER:** Replace the database?

12 Or if you do, tell me what you mean.

13 **MR. STRAUB:** I'm going to join with the
14 objection.

15 **THE WITNESS:** Well, we disagree with your
16 assertion that these are "teeny" concerns.

17 **Q. BY MR. RISNER:** Okay.

18 **A.** Any potential breach is a concern. And I
19 think it's been well established -- hypothetically,
20 perhaps, somewhat implausibly -- that someone with this
21 information, with this knowledge, and with access to
22 use it, could wreak havoc on a future election.

23 **Q.** How?

24 **A.** I -- I think by replacing the information, by
25 getting it into the system.

1 Now, like I said before, we -- we hope that
2 the security that we have in place would prevent that
3 from happening.

4 **Q.** What does that mean to get it into the
5 system? I don't understand. Tell me.

6 **A.** I think maybe it's a, as we understand it --
7 well, these issues that your client has raised, that
8 these kind of -- isn't this -- how is this any
9 different than what you're alleging could happen with
10 this software?

11 That's what I don't understand, your
12 question. My understanding is that you believe that
13 there are vulnerabilities that exist that could be
14 exploited by someone with knowledge. We believe that
15 to be the case, too. So I don't understand your
16 question.

17 **Q.** Okay. I'll explain it for you. And we --
18 what the Pima County Democratic Party has done is we've
19 been concerned about the physical security of the
20 computer. That concern that we have is identical to
21 your concern. You're concerned about the physical
22 security of that computer. You don't check on it, but
23 we've checked on it, but it's a major concern of yours
24 and you have rules relating to it.

25 **MR. STRAUB:** Is there a question before the

1 witness?

2 **MS. SHIPMAN:** There's none. He's just
3 explaining.

4 **MR. RISNER:** I'm explaining.

5 **Q. BY MR. RISNER:** Pima County purports to have
6 the same concern. And in response, probably, to your
7 rules and to our efforts, they have an election
8 computer that is secure from outside access. That
9 means no modem access, cables or viewing. It's in a
10 locked cabinet. We've got cameras, everything. So
11 Pima County believes that their machine is secure.

12 Mr. Jefferson, our expert, says the only true
13 security is to keep that machine secure, because
14 there's holes and other problems. So no one has so far
15 been able to testify -- not Mr. Moffatt or any other
16 expert -- as to how anyone can insert material into
17 this secure computer. That's the hard one.

18 So when you talk about what someone could do
19 in a future election, that they could replace the
20 database, that's why -- one of the reasons I'm asking
21 about -- that question is just like how did it -- how
22 can you get into this Fort Knox we're making in the
23 middle?

24 Our problem -- and what I'm going to question
25 you about for the heart of this matter -- is there are

1 people that have access to it -- insiders, Bill Doyle's
2 group -- in the sense of they insert the material
3 that's in here. Who checks on what they insert? Who
4 checks on what happens?

5 You say, well, only if there's allegations.
6 But there can only be allegations if there's
7 information, if someone examines what's on the inside.
8 But that's not your agency's job. You don't examine.

9 So the -- my question, then, what I'm trying
10 to get at, is all of these concerns, what they relate
11 to, I'm trying to identify exactly what it is that
12 you're concerned about and what you're talking about.
13 If -- if it's the fantasy that someone can run out and
14 print ballots, then I want to know -- I really -- I'm
15 going to ask you about those mechanisms. How do they
16 do it? How does this stuff work?

17 That -- that's -- that's -- that's where we
18 are. That's where we're coming from. And so, you
19 know, if -- so let me get back to this again.

20 When you talk about someone might replace a
21 database, what are you saying? How do they do it and
22 what is it they're replacing?

23 **A.** I --

24 **MS. SHIPMAN:** I just want to make an
25 objection to the -- your interpretation of prior

1 testimony and your explanation of why you're asking
2 these questions.

3 **MR. RISNER:** Okay.

4 **MR. STRAUB:** I'll join that objection.

5 **THE WITNESS:** It's -- it's our understanding
6 that it is possible. Implausible, but possible.

7 **Q. BY MR. RISNER:** To do what?

8 **A.** To use this information to exploit a future
9 election.

10 **Q.** How?

11 **A.** I continue to cite to the expert testimony
12 and the findings of the Court itself. Whether you
13 agree with that or not, it doesn't matter. It's what
14 we think. And we have these concerns. They've been
15 brought to our attention and we believe that there is a
16 security risk -- as does Pima County -- in releasing
17 this information. There's nothing that you can tell
18 me, Mr. Risner, to convince me otherwise.

19 **Q.** I --

20 **A.** You can ask the question a thousand ways.

21 **Q.** It's a hypothetical.

22 **A.** It's implausible, yet it exists. And whether
23 you agree or not, it doesn't matter.

24 **Q.** Sure.

25 But what I do need to know is if the

1 Secretary of State has an opinion, whether or not it's
2 based on fact, and what those facts are.

3 So how does this office believe that a
4 database can be replaced?

5 **MS. SHIPMAN:** Objection, form.

6 **Q. BY MR. RISNER:** We're talking about there
7 are -- this isn't religion. This is software,
8 machines, physical things, an election that has
9 processes. How?

10 **A.** It would have to be done by an individual
11 with access.

12 **Q.** To what?

13 **A.** To the -- to the GEMS database.

14 **Q.** Okay. So someone would have to have access
15 to the computer server --

16 **A.** Yes.

17 **Q.** -- correct?

18 **A.** Yes.

19 **Q.** Yeah.

20 And are you aware of any possible mechanism
21 as to how anyone on the outside -- the Democratic
22 Party, anyone else -- can have access to Pima County's
23 election, sir?

24 **A.** There should --

25 **MS. SHIPMAN:** Objection, beyond the scope.

1 Go ahead.

2 **THE WITNESS:** There should be no access, if
3 procedures are followed.

4 **Q. BY MR. RISNER:** And it isn't just
5 Pima County. Isn't it true that every county should
6 have their election computer so that no one on the
7 outside could have access to it?

8 **MS. SHIPMAN:** Objection, form.

9 **THE WITNESS:** Absolutely.

10 **Q. BY MR. RISNER:** And are you aware that the
11 GEMS software is available, including on the Internet?

12 **MS. SHIPMAN:** Objection, form.

13 **THE WITNESS:** The question has been asked
14 already and I answered yes.

15 **Q. BY MR. RISNER:** And are you aware that there
16 are databases that are -- have been provided from other
17 jurisdictions, not just from Pima County?

18 **MS. SHIPMAN:** Objection, beyond the scope,
19 and form.

20 **THE WITNESS:** I know from this --

21 **MR. STRAUB:** Object to form. The question is
22 wrong. Pima County has not provided databases, on the
23 Internet or otherwise.

24 **THE WITNESS:** I know Alaska has released this
25 information, from learning that from this case.

1 Q. BY MR. RISNER: So what additional risks
2 would there be?

3 In other words, if the databases are in
4 existence, you would agree there's already a risk?
5 It's there; correct?

6 MS. SHIPMAN: Objection, form.

7 MR. STRAUB: Object to foundation.

8 THE WITNESS: I think you've just stated it
9 as an incremental problem, and that's our
10 understanding, is that the more it's released, the more
11 information is released, the more of a threat that is
12 posed. The more information that is in the hands of
13 those with knowledge and ability and potential access,
14 the more they can potentially exploit security
15 vulnerabilities in an election system.

16 Q. BY MR. RISNER: All right. But no one has
17 access except insiders; correct?

18 MS. SHIPMAN: Objection, form.

19 THE WITNESS: That is true.

20 But isn't the whole point of election
21 security to prevent anybody without access from
22 obtaining access and wouldn't the intent of that
23 someone with a fraudulent motive be to try to bypass
24 those mechanisms and isn't that the point of security
25 in general?

1 So I -- I guess I don't understand what
2 you're getting at. That is, yes, the security
3 procedures are in place to prevent physical access from
4 those without authorization. They should do that.

5 But if the allegations that are constantly
6 circulating out there by activists and others, if those
7 are true, then there are -- there are individuals that
8 are constantly trying to exploit vulnerabilities and
9 bypass those security mechanisms. So I think we, as
10 election officials, have to do whatever we can to
11 prevent any such exploitations from ever happening.

12 **Q. BY MR. RISNER:** But you understand that in
13 Arizona, political parties have a role to monitor the
14 accuracy of elections?

15 **MS. SHIPMAN:** Objection, form.

16 **THE WITNESS:** I believe they have a role
17 under law to do that. I don't believe that the law
18 extends to them the right to analyze and inspect this
19 particular kind of information.

20 **MS. SHIPMAN:** How much longer do you intend
21 to take?

22 **MR. RISNER:** Oh, maybe three hours.

23 **MS. SHIPMAN:** Do you have a real prediction?

24 **MR. RISNER:** Oh, probably another hour or so.

25 **MS. SHIPMAN:** Another hour?

1 **MR. RISNER:** Yeah. I mean, I -- it's in the
2 public's interest that I use the time if I can think of
3 the questions. That's kind of the way I'm looking at
4 it.

5 **MS. SHIPMAN:** You don't -- your client isn't
6 the public.

7 **MR. RISNER:** My client is -- its obligation
8 is assisting and serving the Democratic Party --

9 **THE WITNESS:** Serving the --

10 **MR. RISNER:** -- which serves the public as a
11 political party.

12 **MS. SHIPMAN:** Right.

13 **Q. BY MR. RISNER:** You said something in
14 response to, Mr. Kanefield, to questions from
15 Mr. Straub, which was that official ballots could be
16 printed. How could someone print official ballots?

17 **A.** I think anybody with a good printer and the
18 right paper stock could print ballots.

19 **Q.** Okay. And what would they need to print
20 ballots?

21 **MS. SHIPMAN:** Objection, form.

22 **THE WITNESS:** That information is beyond the
23 scope of my expertise.

24 **Q. BY MR. RISNER:** Well, let me ask you this:
25 How would obtaining past election databases enable one

1 to print official ballots in the future?

2 **MS. SHIPMAN:** Objection, beyond the scope.

3 **THE WITNESS:** Well, they'd have the layout
4 for the ballot. And as has been pretty clearly
5 established, I think, in this case, is that the
6 election officials themselves use the past databases to
7 build future elections to minimize the possibilities of
8 any errors.

9 So they have those databases. They have the
10 codes for the races and everything else. They could
11 simply customize the ballot for the upcoming election,
12 based on the public information available, and generate
13 a duplicate ballot.

14 **Q. BY MR. RISNER:** But they change the -- they
15 should be changing the codes each election, shouldn't
16 they? A new election is new codes?

17 **MR. STRAUB:** Objection, argumentative.

18 **THE WITNESS:** The election itself has new
19 codes, but we're talking about codes to each -- as I
20 understand it -- each race, each candidate. Everybody
21 is coded with a specific code and the names and races
22 are simply plugged into those codes for future
23 elections.

24 Now, this gets a little bit beyond the scope
25 of my expertise. It's beyond what I was prepared to

1 come talk about today. But I'm giving the best answer
2 I can, as I understand it.

3 Q. BY MR. RISNER: But you did talk about it.
4 You said official ballots could be printed?

5 A. I did.

6 MS. SHIPMAN: Objection --

7 Q. BY MR. RISNER: So talk --

8 MS. SHIPMAN: -- beyond the scope.

9 Q. BY MR. RISNER: -- talk about it.

10 MS. SHIPMAN: Form.

11 Q. BY MR. RISNER: But the codes aren't on the
12 ballots, are they?

13 A. They're not on the ballots themselves, no.

14 Q. So if the codes aren't on the ballots
15 themselves, how can someone, using past election data,
16 know what the codes are?

17 A. If they're using the database files, so they
18 would have the codes embedded in the files, as I
19 understand it.

20 Q. But the codes change? They can put any codes
21 in they want to, can't they?

22 MS. SHIPMAN: Objection --

23 MR. STRAUB: Object to foundation.

24 MS. SHIPMAN: -- form.

25 THE WITNESS: Again, you're getting beyond --

1 into technical issues that are beyond the scope of my
2 expertise. But my understanding is that those codes
3 don't change as they apply to a specific ballot.

4 **Q. BY MR. RISNER:** Oh, so --

5 **A.** And we might be talking about different
6 things. I'm not sure.

7 **Q.** Just to be real clear, the Secretary of State
8 is not saying that -- or are you -- that by getting
9 past election data, one would know what the codes were
10 in a future election? Are you saying that?

11 **A.** I -- I think we're saying that.

12 **Q.** Yeah. Okay.

13 Then -- then my next thing is, then, how do
14 you think that? What is -- what do you base it on that
15 you believe that knowing past codes would tell you what
16 the codes are going to be the next time?

17 **MS. SHIPMAN:** Objection, form.

18 **THE WITNESS:** Well, as I already said, the
19 counties don't rebuild the ballot based on every
20 election, for reasons we discussed previously. So I
21 think it's fairly predictable that the -- and, again,
22 the more of these databases you have, the more you're
23 going to be able to predict how the ballot's going to
24 be built for a future election, so....

25 **Q. BY MR. RISNER:** Okay. Is it not a simple

1 matter to change the coding each election?

2 **A.** It's not a simple matter, and I talked about
3 this at length earlier, that changing the coding itself
4 prevents potential issues, including just typos, for
5 lack of a better term. I mean, one small change, if
6 it -- you can -- that's just wrong because someone was
7 tired or whatever, is going to cause a lot more
8 problems in a future election than being able to rely
9 on the structure that was built in prior elections.

10 So, yeah, it could be changed, yeah, each
11 election cycle, but that brings with it more risk to
12 the integrity of future elections than any benefit that
13 we perceive of disclosing information so someone could
14 take a look because they want to do an audit.

15 **Q.** Tell me what one of these codes are.

16 **MS. SHIPMAN:** Objection, beyond the scope,
17 form.

18 **THE WITNESS:** I couldn't tell you.

19 **Q. BY MR. RISNER:** Yeah.

20 **A.** We don't code ballots here at the Secretary
21 of State's Office.

22 **Q.** Okay. So you've never seen the codes;
23 correct?

24 **MS. SHIPMAN:** Objection, form.

25 **THE WITNESS:** I'm sure I have, Mr. Risner, at

1 some point. But, remember, we're not in the business
2 of building ballots and printing ballots.

3 Q. BY MR. RISNER: Okay.

4 A. That's a county obligation.

5 Q. I'm just trying to find out your level of
6 expertise.

7 MS. SHIPMAN: Objection, misstates --

8 Q. BY MR. RISNER: So the Secretary of State
9 doesn't use the codes and can't tell us what these
10 codes are?

11 MS. SHIPMAN: Objection, form.

12 THE WITNESS: Well, I don't know.

13 MS. SHIPMAN: Beyond the scope.

14 Sorry.

15 THE WITNESS: I don't know if that's true.

16 You know, we have to interface with that system because
17 the results are transmitted to us. So we do have a
18 pretty good technical understanding of the manner in
19 which the ballots are built, it's just beyond the scope
20 of my knowledge at this point.

21 Q. BY MR. RISNER: All right. Are you -- is it
22 the position of this office that the codes cannot be
23 changed each election?

24 A. They certainly can be changed, but the
25 position of this office is that it's not advised. It's

1 ill-advised to do that.

2 Q. It's ill-advised to change the codes?

3 A. Yeah.

4 Q. You believe that they should keep the same
5 codes each time?

6 A. Well, we believe that -- that the ballot --
7 building the ballots based on previous elections is a
8 good practice to prevent potential problems that are
9 inherent in restructuring anything from -- from anew.
10 So --

11 Q. Okay. Let's -- let's talk about a ballot
12 that has, you know, Jon Kyle and Peterson running for
13 the U.S. senate. Now, for the next election, the
14 candidates are going to be different for the U.S.
15 senate or state representative or state senator; right?

16 A. Right.

17 Q. Now, what code -- isn't it true that there
18 are codes for candidates; correct?

19 A. As I understand it --

20 MS. SHIPMAN: Objection, beyond the scope.

21 THE WITNESS: As I understand it, yes.

22 Q. BY MR. RISNER: Yet the candidates will
23 change, will they not?

24 A. But there's also codes for races, as I
25 understand it, so -- and the ballot positioning and

1 everything else, isn't that the concern? I mean -- I
2 shouldn't say that is the concern.

3 Yeah, you can change the names. You know who
4 those names are going to be in the upcoming election.

5 Q. Sure.

6 A. If the -- the big risk is being able to build
7 the ballot itself electronically, creating a database
8 or mimicking a database for a future election in an
9 effort to potentially exploit that election.

10 Q. Okay. With what?

11 A. The race codes.

12 Q. What are "race codes"? What are those codes
13 like?

14 MS. SHIPMAN: Objection, beyond the scope.

15 THE WITNESS: Again, I wasn't prepared to
16 come here and answer --

17 Q. BY MR. RISNER: Okay.

18 A. -- questions to that level of --

19 Q. Okay.

20 A. -- technical difficulty.

21 MS. SHIPMAN: You weren't asked to.

22 Q. BY MR. RISNER: Okay. Well, but isn't it the
23 essence of what you're saying? The whole point, if I
24 understand it -- this is significant -- is that if you
25 release old databases, you can predict things in new

1 elections and make ballots. And what you can predict
2 are these codes?

3 But the codes, you're not prepared to talk
4 about? You don't know what the codes are that you're
5 concerned that we could predict; right?

6 **MS. SHIPMAN:** Objection, beyond the scope,
7 and form.

8 **Q. BY MR. RISNER:** Isn't that what you're
9 saying?

10 **A.** That's not what I'm saying.

11 **MR. STRAUB:** Objection to form.

12 **Q. BY MR. RISNER:** What are you saying?

13 **A.** I don't understand your question.

14 **MS. SHIPMAN:** It's too vague.

15 **Q. BY MR. RISNER:** You don't know how races are
16 coded, didn't you say?

17 **MS. SHIPMAN:** Objection to form.

18 **Q. BY MR. RISNER:** I thought that's what you --

19 **A.** This office knows how those races are coded.

20 We could only provide one person today to testify.

21 It's me.

22 **Q.** Okay.

23 **A.** If you want that level of information, you're
24 going to have to call somebody else.

25 **MS. SHIPMAN:** Request another 30(b)(6).

1 THE WITNESS: We're not a party to this
2 lawsuit, Mr. Risner.

3 **Q.** BY MR. RISNER: Did you talk to someone about
4 how races were coded?

5 MS. SHIPMAN: Objection, beyond the scope.

6 **Q.** BY MR. RISNER: In preparing for this
7 deposition today, did you consult with someone in your
8 office about how GEMS codes races?

9 **A.** I did, generally speaking, and because we
10 were provided with topics that were going to be
11 covered.

12 But in no way did we get into that level of
13 detail. You know --

14 **Q.** Who did you talk to?

15 **A.** I talked to Bill Maaske, our CIO; I talked to
16 Kris Waite, our Assistant Election Director;
17 Kevin Tyne, the Deputy Secretary of State; Craig
18 Stender, who is our coordinator under the Help America
19 Vote Act; Mary Fontes, who is our office manager.

20 We have discussed these issues, but I -- I'm
21 sorry that I'm not able to answer these very detailed
22 questions. That doesn't mean our office doesn't have
23 the specific knowledge. It's just that we were asked
24 to come here to discuss very general topics, and I
25 believe we have satisfied that request.

1 **MR. STRAUB:** Bill, can we take a break?

2 **MR. RISNER:** Sure.

3 **MR. STRAUB:** In private.

4 Note the time.

5 (A conference ensued between Mr. Straub and
6 Mr. Risner outside the deposition room from 11:57 a.m.
7 to 11:59 a.m.)

8 **MS. SHIPMAN:** I just want to know what you
9 guys talked about out there.

10 **MR. RISNER:** Yes. Mr. Straub was concerned
11 that pursuant to 30(b)(6), the Secretary hadn't
12 provided a knowledgeable witness. And I responded that
13 a knowledgeable witness would be harmful to his case
14 because he's trying to sell a bunch of bull manure and
15 it would benefit us if we -- you know, anyone
16 knowledgeable would agree with the position that we're
17 taking. But that I thought that, you know, that
18 they're answering as best they can, because this office
19 doesn't know up from down.

20 **MS. SHIPMAN:** Do you agree with that?

21 **MR. STRAUB:** I agree with the
22 characterization of the conversation, but I think it's
23 inappropriate being shared on the record.

24 I also think that -- I do share my concerns
25 that I stated at the beginning of the -- of the

1 deposition and why the foundational questions I did
2 were to ensure that the witness was indeed responsive
3 to the 30(b)(6) request. And I -- I do have those
4 concerns because of the particularity which I think the
5 technical staff that the Secretary of State does have
6 would actually assist my case, and that's what my
7 concern was.

8 I don't know that either of the parties
9 benefit by not having a witness -- even when given fair
10 notice on the technical issues -- who is not able to
11 answer those questions. That's what my concern is.

12 **MR. MARCH:** And may I comment?

13 **MS. SHIPMAN:** No. No, actually, you may not
14 comment.

15 **MR. MARCH:** We're off the record.

16 **MR. RISNER:** You may not comment.

17 **MS. SHIPMAN:** You may not comment.

18 There -- I just -- and my response to your
19 comment on that issue is that these questions are very
20 specific. They do not ask technical questions. And
21 we've provided -- we've done exactly what is required
22 under Rule 30(b)(6) to comply with your 30(b)(6), and
23 we have.

24 I think the special technical questions are
25 way beyond the scope of this 30(b)(6) notice and we

1 weren't required -- if you wanted that kind of
2 information, then you should have asked those specific
3 questions.

4 I'm completely comfortable with Mr. Kanefield
5 as a witness. He is more than adequately prepared and
6 he's answering questions that are way beyond the
7 scope. So we are cooperating as best we can here.

8 **MR. RISNER:** Well, you know, I would point
9 out that issue number 2 says "the security risks."

10 **MS. SHIPMAN:** Uh-huh.

11 **MR. RISNER:** And so I would associate it with
12 public disclosure of computer databases.

13 And I think it's fair, too, if the topic for
14 the Secretary of State are security risks, that those
15 risks be identified in particular and not merely with
16 conclusions. And so my questions about the
17 particularity of the risks relate to that topic matter.

18 **MS. SHIPMAN:** I just want to -- in response
19 to that point, we have identified the security risks
20 and we have identified them with particularity. You
21 are asking where and why and how particular codes are
22 used, which is a level that is not required by this
23 deposition notice.

24 **Q. BY MR. RISNER:** Number 9, if I could read
25 that, says, "Whether information found in the

1 electronic computer database files for past elections
2 can be used to predict the layout, rotational
3 parameters, or other confidential aspects of ballots
4 for future elections."

5 **A.** So --

6 **MS. SHIPMAN:** That's a yes or no question.
7 It's been answered.

8 **Q. BY MR. RISNER:** Well, one can always ask what
9 is the basis of the response, whether it's based on
10 facts and particularities or anything else. And "other
11 confidential aspects of ballots," that precisely is the
12 kind of information that I was just asking.

13 **MS. SHIPMAN:** I disagree with you completely.
14 That was not what you were asking about. You were
15 asking specifically whether we knew what a certain code
16 was for an election and where it was placed in the
17 computer database. That has nothing to do with this
18 topic number 9 that you've identified.

19 **MR. RISNER:** Well, it's my understanding that
20 the "other confidential aspects of ballots" was, in
21 fact, the -- the coding, because we asked questions
22 about the layout of the ballots, the 1600 that are sent
23 out. We asked about rotation parameters. Rotation is
24 established by -- by statute. Rotation is described
25 in --

1 **MS. SHIPMAN:** But you --

2 **MR. RISNER:** -- in the GEMS manual and
3 rotation is by statute.

4 So the "other confidential aspects," as I
5 understand it, is how the races are coded and
6 candidates are coded.

7 **MS. SHIPMAN:** Well, perhaps that would -- if
8 that was your understanding, that should have been what
9 was included in this 30(b) (6) notice, which you didn't
10 issue but was issued by Pima County. If that was their
11 understanding, they should have said that, because
12 "confidential aspects" is what we determine as
13 confidential aspects when we look at this question.

14 **MR. RISNER:** Okay.

15 **MS. SHIPMAN:** And we have answered that
16 response as to what we consider confidential aspects.
17 If you want to know the particularities of coding and
18 where certain things -- how codes originate, how
19 they're formed, the basis of the numbers in a database,
20 then you should have asked that question in the
21 deposition notice.

22 **MR. RISNER:** I didn't write the notice.

23 **MS. SHIPMAN:** Well, so don't use it as the
24 basis for your questions.

25 **MR. RISNER:** Well, the reason I'm using it is

1 because I don't believe that there are confidential
2 aspects.

3 **MS. SHIPMAN:** I understand that you don't
4 believe a lot of things that are said in this
5 deposition, but there is no reason to question the
6 preparedness of this witness because he is not giving
7 you the specifics that were in your mind when you read
8 this deposition request.

9 **MR. RISNER:** I have not done that.

10 **MS. SHIPMAN:** Yes, you have.

11 **MR. STRAUB:** You have.

12 **MS. SHIPMAN:** You just did, when you asked
13 him all the coding questions.

14 **MR. RISNER:** Well, of course, I'm asking
15 about the coding questions.

16 **MS. SHIPMAN:** Well, of course, you can ask
17 the questions, but do not be upset that we don't know
18 all the specifics that you're asking about because you
19 interpreted the term "confidential aspects" to mean
20 coding.

21 **MR. RISNER:** I'm not upset.

22 **MS. SHIPMAN:** Yes, you are.

23 **MR. RISNER:** I'm confident that this office
24 doesn't know, because he didn't use that in this case.

25 **MS. SHIPMAN:** It's not that this office

1 doesn't know. It was not -- and please stop
2 mischaracterizing what I have said to you.

3 **MR. RISNER:** Well --

4 **MR. STRAUB:** We could make a record in
5 respect to this, but in the interests of time, I would
6 suggest that we go forward with the deposition

7 **MS. SHIPMAN:** I would completely agree.

8 **Q. BY MR. RISNER:** Yes.

9 What's your understanding, on behalf of this
10 offices, what "other confidential aspects of ballots for
11 future elections" refers to in number 9?

12 **MS. SHIPMAN:** Objection to form.

13 **THE WITNESS:** I have already answered that
14 question.

15 **Q. BY MR. RISNER:** Okay. And then in your
16 prepared answers to -- and I'm in Exhibit 8. You say
17 that "We believe that information found in past
18 election database files could be used to predict the
19 layouts, rotation parameters, or other confidential
20 aspects of ballots for future elections."

21 What "other confidential aspects" were you
22 referring to?

23 **MS. SHIPMAN:** Objection to form.

24 **THE WITNESS:** I already answered that
25 question.

1 **MR. MARCH:** Bill?

2 **Q. BY MR. KANEFIELD:** Mr. Kanefield, you were
3 asked questions relating to A.R.S. ° 16-442.

4 **MS. SHIPMAN:** Objection to form.

5 It's my -- well, my objection --

6 **MR. STRAUB:** 442 or 443?

7 **MS. SHIPMAN:** 443, that wasn't one that
8 was --

9 **MR. RISNER:** Yeah, sure.

10 **Q. BY MR. RISNER:** What kind of testing did the
11 committee perform?

12 **MR. STRAUB:** I'm going to object that this is
13 way beyond the scope.

14 **MS. SHIPMAN:** I join in that objection.

15 **THE WITNESS:** Testing of a particular piece
16 of equipment?

17 **Q. BY MR. RISNER:** Yeah.

18 **MS. SHIPMAN:** Are you referring to
19 subsection A, where it -- could you point out
20 specifically where you're pointing to in the record
21 is -- in this statute is?

22 **MR. RISNER:** Well, what I'm doing is at the
23 beginning of -- yeah, at the beginning of the
24 examination of Mr. Kanefield --

25 **MS. SHIPMAN:** The state procedures manual.

1 **MR. RISNER:** -- counsel for Pima County read
2 from and identified 16-442 and had Mr. Kanefield
3 describe the three-member committee and who these
4 people are in the committee and talk about the
5 testing.

6 So B, section B, is what my question relates
7 to, and I'm asking him what kind of testing
8 the committee performed.

9 **MR. STRAUB:** And I'm objecting that this is
10 way beyond the scope.

11 **MS. SHIPMAN:** I join that objection.

12 **THE WITNESS:** The testing process that we
13 undertake in 16-442(A) is established in our procedures
14 manual.

15 **MS. SHIPMAN:** He's asking about B.

16 **THE WITNESS:** Well, and subsection B says how
17 we test them and when the -- the condition of
18 certification in Arizona is based on approval from a
19 laboratory that's been accredited pursuant to the Help
20 America Vote Act.

21 **Q. BY MR. RISNER:** And how does Arizona
22 determine that there has been federal certification of
23 the components used in the state?

24 **MS. SHIPMAN:** Objection, beyond the scope,
25 and form.

1 **MR. STRAUB:** I would join that.

2 **THE WITNESS:** The vendor is required to
3 produce justifi- -- evidence, documentation, that that
4 testing has been performed. The procedure is set forth
5 in our procedures manual.

6 **Q. BY MR. RISNER:** And did you testify that
7 the -- I believe that the release of past databases in
8 Pima County would pose a risk to another county in
9 their future election?

10 **A.** I believe I testified that it could pose a
11 risk.

12 **Q.** Yeah. And the nature of that risk is based
13 on what specific fact?

14 **A.** The facts identified by the experts and the
15 Court in this case.

16 **Q.** Which are what?

17 **A.** The record speaks for itself.

18 **Q.** Well, have you read the transcript from this
19 trial?

20 **A.** I've read the Court's decision, but I've not
21 read the transcript of the trial.

22 **Q.** Well, you know, you were talking before, I
23 think, about how someone would take a database in that
24 county and use it to lay out one from the next
25 election. How would that apply to a different county?

1 **MS. SHIPMAN:** Objection, form.

2 **THE WITNESS:** Again, this has all been vetted
3 in their case by experts. We have no reason to doubt
4 the opinions of those experts and the findings of the
5 Court.

6 **Q. BY MR. RISNER:** So, then, what you -- what is
7 your source of knowledge of what the experts have
8 testified to in this case?

9 **A.** The Court's opinion and the expert testimony
10 offered in that case.

11 **Q.** Okay. "The Court's opinion"? You're
12 referring to its ruling; correct?

13 **A.** And the opinion of Pima County itself.

14 **Q.** In what form?

15 **A.** In the findings and recommendations of the
16 county administrator.

17 **Q.** And what document is it that you're referring
18 to?

19 **A.** Well, there's two documents. He issued
20 proposed findings late last year, 2007, and he issued a
21 final recommendation, as I mentioned earlier, on
22 April 3rd, 2008.

23 **Q.** So is there something in Mr. Huckelberry's
24 April 3rd document that you are relying on?

25 **A.** I'm not relying on anything, Mr. Risner.

1 You've asked me this question several times, as did
2 Mr. Straub: Do we have concerns with the release of
3 this information?

4 And I've answered the question yes and I have
5 told you why.

6 **Q.** Now I'm asking a different question. What do
7 you have concerns -- that you have concerns is
8 conclusionary. What I want to know is what are the
9 factors that have caused you to arrive at that
10 concern? What is it about past Pima County election
11 databases that would impact the security of future
12 elections in other counties?

13 **MS. SHIPMAN:** Objection to the classi- -- the
14 characterization as the concerns being "conclusionary"
15 and to form.

16 **MR. STRAUB:** I'll join that objection.

17 **THE WITNESS:** At this point in this
18 deposition, I'm going to have to refer you back to the
19 answers that I already gave. I don't think the
20 question you're asking me right now is any different
21 than questions that I have already been asked and I
22 don't wish to recharacterize my answer in any different
23 way.

24 **Q. BY MR. RISNER:** Would you agree with your
25 attorney that -- or just would you agree that the term

1 "concern" is not a conclusion?

2 **MS. SHIPMAN:** Objection, form.

3 **THE WITNESS:** Yeah, I agree with my attorney.

4 **Q. BY MR. RISNER:** My notes reflect during the
5 questioning by Mr. Straub that you said that the
6 Secretary of State had determined that you were the
7 best person in the Office to answer technical
8 questions. Was that your response?

9 **MS. SHIPMAN:** Objection, form.

10 **THE WITNESS:** To answer the questions posed
11 in the notice of deposition.

12 **Q. BY MR. RISNER:** And I believe that you also
13 testified that the Secretary of State's Office had
14 experience in certifying election equipment?

15 **A. Yes.**

16 **Q. So what have you all done in that process
17 that has -- what has your experience been?**

18 **A. We've certified a great number of election
19 equipment under this process set forth in 16-442 during
20 the course of this administration.**

21 **Q. Well, what does it entail doing?**

22 **A. It entails a process of the vendor applying
23 for certification, presenting the equipment to this
24 three-member committee that I've described previously,
25 as set forth in 16-442(A), having a physical**

1 demonstration of the equipment to this committee, the
2 committee reviewing the reports of the independent
3 testing authorities that have previously reviewed the
4 equipment, reviewing any public comment, if there is
5 any, and ultimately making a recommendation to the
6 Secretary of State as to whether or not to certify that
7 equipment.

8 **Q. Do they do any independent examination?**

9 A. They do a physical inspection of the
10 equipment. And during the course of the
11 demonstration -- one of the members of the committee is
12 Dr. William Lewis, who is a professor of engineering at
13 Arizona State University. I believe he formerly was
14 the Chief Information Officer for Arizona State
15 University. So he's very much an expert in this area
16 of technical -- in terms of the technical aspects of
17 certifying equipment. To the extent he can perform
18 tests on the equipment, he will do that during the
19 course of the certification.

20 Obviously -- I'm sorry, during the course of
21 the demonstration.

22 Obviously, there's some aspects which we
23 aren't able to do ourselves. So as prescribed by the
24 legislature within this statute, the process is -- does
25 focus **a great deal of reliance on the independent**

1 testing authorities as certified by the Federal
2 Elections Assistance Commission.

3 Q. Does the committee write a report that would
4 set out what they have done in testing each of the
5 equipment?

6 MS. SHIPMAN: Objection, beyond the scope.

7 THE WITNESS: The committee generates a brief
8 report that is in the form of a recommendation to the
9 Secretary of State.

10 Q. BY MR. RISNER: The Diebold or Premier
11 equipment that Pima County used was certified by Wyle
12 and Ciber Labs, both of which have -- were subsequently
13 deprived of the ability to certify equipment because
14 they kept inaccurate records and had done a lousy job.

15 MS. SHIPMAN: Objection -- excuse me.

16 Q. BY MR. RISNER: Are you aware of that?

17 MS. SHIPMAN: Objection, form.

18 MR. STRAUB: Objection, foundation.

19 MS. SHIPMAN: Go ahead.

20 MR. STRAUB: This whole line of questioning
21 is not relevant to the issues in the 30(b)(6) notice or
22 beyond the scope nor is it relevant to any issue in the
23 trial.

24 Furthermore, object to the form of the
25 question in terms of assuming facts that are not in

1 evidence. Because this is essentially a trial
2 transcript. I believe there has to be that evidence,
3 and I don't believe that has been provided.

4 **MS. SHIPMAN:** I would join the objection.

5 **THE WITNESS:** What was your question again?

6 **Q. BY MR. RISNER:** Yeah.

7 **Are you aware that Ciber and Wyle Labs, that**
8 **had certified the equipment used in Pima County, were**
9 **subsequently deprived of the -- decertified as an**
10 **independent lab, that they could no longer certify**
11 **equipment because of the inadequacy of their testing of**
12 **the very equipment that we use?**

13 **MR. STRAUB:** Same objections.

14 **MS. SHIPMAN:** Join the same objections.

15 **THE WITNESS:** I'm aware that EAC had some
16 concerns. I don't remember the extent to which they
17 acted on those. I believe you said they "decertified."

18 **Q. BY MR. RISNER:** Yeah.

19 **A.** I'm not sure what the proper term is for what
20 they do to suspend their ability to do testing --

21 **Q.** Yeah.

22 **A.** -- under the -- under the accreditation of
23 the EAC. At the time that they were performing these
24 tests for -- on this equipment, my understanding is
25 they did the proper certification and accreditation and

1 nothing has ever been called to our attention that
2 anything they did during the course of reviewing the
3 equipment that you mentioned was, in any way,
4 compromised.

5 Q. Well, isn't it true that it was the very
6 certification process for our equipment that was
7 determined to be inadequate, which resulted in their
8 not being able to certify the software in the future?

9 MS. SHIPMAN: Same objections, beyond the
10 scope and it's not relevant.

11 MR. STRAUB: Join that.

12 THE WITNESS: Mr. Risner, I'm not sure
13 what -- I know there's an issue with the EAC, but I'm
14 not sure that your characterization is accurate. It
15 may be. But I'd have to go back and look at the point
16 letters from the EAC to Ciber and Wyle and see how this
17 matter was ultimately resolved, because I -- it was my
18 understanding that it has been -- that those issues,
19 whatever issues were raised, have been addressed. They
20 may not have been.

21 Q. BY MR. RISNER: You recognize, do you not,
22 that there's a difference between computer programs and
23 databases?

24 MR. STRAUB: Object to foundation.

25 THE WITNESS: Generally speaking, yes.

1 **Q. BY MR. RISNER:** And looking at Exhibit 4 --
2 would you take a look at Exhibit 4? And the first
3 paragraph talks about "an election program"?

4 **A.** Yes.

5 **Q.** Would you agree with that?

6 **A.** Yes.

7 **Q.** And would you agree that the term "election
8 program" is not contained in A.R.S. § 16-444?

9 **A.** That's correct.

10 **Q.** Has the Secretary of State's Office made any
11 proposals or directives as to how to deal with the
12 security risks inherent in the Diebold software?

13 **MS. SHIPMAN:** Objection, form.

14 **Q. BY MR. RISNER:** The GEMS software?

15 **A.** As I have mentioned before, we've addressed
16 these allegations of security vulnerabilities by
17 promulgating procedures that require intense physical
18 security of the equipment itself.

19 I should add, Mr. Risner, that the
20 procedures, the security procedures in the procedures
21 manual, were added by this administration as a result
22 of many of these reports and studies and allegations
23 that have been raised over the past years since this
24 administration has been in office.

25 **Q.** Institution of required hand audits has been

1 a major and significant advance in the security of
2 computer-counted elections; would you agree?

3 **A.** It -- it definitely has increased the
4 auditing capabilities and provides an additional check
5 to assure that the machines are working properly and
6 that no one has indeed tampered with them.

7 **Q.** And were you -- did you follow the process of
8 that bill through the legislature when it was first
9 passed?

10 **A.** Yes.

11 **Q.** Would you agree that the Pima County
12 Democratic Party, through the efforts of Tom Ryan and
13 Ted Downing, played a constructive role in getting that
14 passed through the legislature?

15 **MR. STRAUB:** Objection as not relevant

16 **MS. SHIPMAN:** This is beyond the scope, form.

17 **THE WITNESS:** I know they were involved. I
18 know they testified. But I can't speak to the extent
19 of their involvement.

20 **Q. BY MR. RISNER:** Okay.

21 **A.** Obviously the bill was drafted by a senator,
22 presumably reviewed by the legislative counsel, and to
23 the extent they take credit for drafting it, I'm not
24 sure if that's accurate or not.

25 **Q.** What else is in the response to the

1 deposition issue number 1, relating to "The function of
2 the GEMS database files"?

3 MS. SHIPMAN: Are you referring to that --

4 MR. RISNER: Exhibit 8.

5 MS. SHIPMAN: That's good enough for me.
6 Want a copy of the deposition notice?

7 MR. RISNER: I've got it.

8 MR. STRAUB: I'll look over your shoulder
9 here.

10 Q. BY MR. RISNER: With a database, once the
11 election is completed, isn't it true that one can
12 examine that database to see if there have been changes
13 in it that should not have occurred?

14 MS. SHIPMAN: Objection -- go ahead. I'm
15 sorry.

16 Objection, beyond the scope, form.

17 THE WITNESS: I believe that to be true.

18 Q. BY MR. RISNER: So it would be a very
19 important collection of data if one wanted to examine
20 whether or not there had been fraud in an election?

21 MS. SHIPMAN: Objection --

22 Q. BY MR. RISNER: Correct?

23 MS. SHIPMAN: Same objections.

24 THE WITNESS: Yes.

25 Q. BY MR. RISNER: And part of it is because it

1 contains the history of that election, from its setup
2 to the final vote counts; correct?

3 **MS. SHIPMAN:** Same objections.

4 **THE WITNESS:** That is my understanding.

5 **MR. STRAUB:** Object to foundation.

6 **Q. BY MR. RISNER:** And what one would want to
7 look at is to see if, for instance, the order and
8 rotation remained fixed throughout the entire election
9 process; correct?

10 **MS. SHIPMAN:** Same objection.

11 **THE WITNESS:** Correct.

12 **Q. BY MR. RISNER:** And one would want to see if
13 the queries had been altered throughout the election
14 process; correct?

15 **MS. SHIPMAN:** Same objections.

16 **THE WITNESS:** I suppose that would be the
17 case.

18 **Q. BY MR. RISNER:** So would you then agree that
19 a major function of the database is the ability to
20 analyze it after the election and to be able to see how
21 those numbers came about, when they were entered, and
22 what was done throughout the entire election process?

23 **MS. SHIPMAN:** Objection, form.

24 **THE WITNESS:** That would be the case if there
25 had been an allegation of some kind of fraud or

1 **wrongdoing with the election.**

2 **Q. BY MR. RISNER:** Right.

3 Or if one wanted to examine it to see if
4 there had been computer glitches or problems that were
5 unrelated to the fraud; wouldn't that also be correct?

6 **MS. SHIPMAN:** Objection, form.

7 **THE WITNESS:** Yes.

8 **Q. BY MR. RISNER:** Yes.

9 Are you aware that the GEMS database uses the
10 Microsoft "Jet" engine?

11 **MS. SHIPMAN:** Objection, beyond the scope.

12 **THE WITNESS:** Yes.

13 **Q. BY MR. RISNER:** And are you familiar with the
14 various limitations of that engine and the ability for
15 there to be errors through the data input process?

16 **MR. STRAUB:** Objection, foundation.

17 **MS. SHIPMAN:** Objection, beyond the scope,
18 and form.

19 **THE WITNESS:** If I recall, that was one of
20 the findings of the Court. I'd have to refer back to
21 what the Court determined.

22 **Q. BY MR. RISNER:** So in addition, then, to
23 examining for -- for fraud, an examination of the
24 database later would aid in determining whether or not
25 there had been non-malicious errors simply because of

1 weaknesses in the software system; correct?

2 MR. STRAUB: Objection, argumentative.

3 MS. SHIPMAN: Objection, form.

4 THE WITNESS: Yes, assuming the examination
5 is being done by those authorized to do so.

6 Q. BY MR. RISNER: Well, what difference does it
7 make if the examination is done by someone authorized
8 to do so?

9 A. Well, because of the issues we've already
10 discussed, that that -- while that information could be
11 used to ascertain whether there had been some kind of a
12 fraud or error, unintentional or not, it also could be
13 used to potentially create security issues in other
14 elections.

15 So, yes, it's useful information and it can
16 be -- it should be used for that purpose, but it should
17 only be examined by those authorized to do so.

18 Q. Okay. And those authorized -- you've
19 previously testified that your office is not authorized
20 unless there is a specific allegation of fraud?

21 MS. SHIPMAN: Objection, form.

22 THE WITNESS: Yes, I believe that's the case.
23 And that's in looking at the manner in which the
24 process is established in 16-444.

25 Q. BY MR. RISNER: All right.

1 **A.** 445. (16-445)

2 **Q.** Yes.

3 Would you agree that the Attorney General has
4 not done such an examination of any election database,
5 that you're aware of?

6 **MS. SHIPMAN:** Objection, beyond the scope,
7 and form.

8 **MR. STRAUB:** I join that objection.

9 **THE WITNESS:** My understanding is the
10 Attorney General did make that kind of examination --
11 but maybe I'm mistaken --

12 **Q.** **BY MR. RISNER:** Well --

13 **A.** -- with respect to the RTA election in
14 2006.

15 I may be wrong. Maybe it was a more limited
16 examination.

17 **Q.** Yes. The iBeta report indicates that it
18 looked at one .gbf file.

19 **A.** I don't know.

20 **Q.** Are you aware otherwise of what they looked
21 at, beyond what would be in the iBeta report?

22 **MS. SHIPMAN:** Objection, form, and beyond the
23 scope.

24 **MR. STRAUB:** Object to foundation.

25 **THE WITNESS:** It's just that the

1 Attorney General advised us about this study, this
2 review or investigation. No information was provided
3 to us until they presented a draft of the final report.

4 Q. BY MR. RISNER: Okay.

5 A. So it was sent to us the day before it was
6 released.

7 Q. So those authorized includes who? Who --
8 who's authorized to examine the database?

9 A. The election officials themselves.

10 Q. Okay. So --

11 A. And the Attorney General, in the event of an
12 allegation of fraud.

13 Q. And, incidentally, when you -- you were just
14 talking about 16-445. So let me ask about that.

15 What does each "state, county, school
16 district, special district, city or town election,"
17 10 days before the election, send your office?

18 MS. SHIPMAN: Objection, beyond the scope.

19 MR. STRAUB: Join.

20 THE WITNESS: They send us a copy of the
21 computer program for the election.

22 Q. BY MR. RISNER: Okay. So if -- let's say
23 a -- one of those enumerated jurisdictions sends --
24 uses GEMS. And they use GEMS and they develop and fill
25 out a ballot layout. What do you expect them to send?

1 **A.** Both --

2 **MS. SHIPMAN:** Objection, beyond the scope.
3 Go ahead.

4 **THE WITNESS:** Both in GEMS and to the extent
5 the election ballot has been generated.

6 **Q.** **BY MR. RISNER:** Okay. So you expect them to
7 send the executable or the -- what do they send?

8 **A.** What they're required to send is established
9 in the procedures manual.

10 **Q.** What section?

11 **A.** On page 86.

12 **Q.** What section?

13 I think, unfortunately, I have got a
14 different version.

15 **MS. SHIPMAN:** It's Exhibit --

16 **THE WITNESS:** Which I think is Exhibit --

17 **MR. STRAUB:** Exhibit 4.

18 **THE WITNESS:** -- 4.

19 **MR. STRAUB:** Yeah.

20 **Q.** **BY MR. RISNER:** Okay. So what is it that
21 they would send?

22 **MS. SHIPMAN:** Same objections.

23 **THE WITNESS:** Well, what I mentioned. What
24 they would send is described in the first paragraph on
25 page 86 of the procedures manual, marked as Exhibit 4,

1 under the heading, "Filing of Computer Election
2 Programs With Secretary of State."

3 Q. BY MR. RISNER: Okay. Well, that first
4 paragraph refers to "an election program." So you
5 believe that -- and what this office believes that they
6 would file is a copy of -- for instance, let's say they
7 use 1.18.24. They send you that program; is that
8 correct?

9 MS. SHIPMAN: Objection, form, and beyond the
10 scope.

11 THE WITNESS: They send that program and the
12 database that's laid out for that particular election.

13 Q. BY MR. RISNER: Okay. And then do you expect
14 them, thereafter, to send, from that point on, from the
15 10 days before the election, everything that happens
16 until the final .mdb? Do they ever send that?

17 MS. SHIPMAN: Same objections.

18 THE WITNESS: They're only required to send
19 us what's prescribed in that statute.

20 Q. BY MR. RISNER: Okay. So there's been -- I
21 believe in this case it's established that the
22 Democratic Party now has 308 databases from three
23 elections. So presume this: Of the -- I don't have
24 the exact numbers. I would presume that if that 308 is
25 in three elections, that one was just a special

1 election and that it -- it may not be equal. In other
2 words, we may not simply be able to divide by three.

3 But let's, just for purposes of our election
4 question, assume a hundred databases in each election.
5 Then what they send you is the first one; would that be
6 correct?

7 MS. SHIPMAN: Object -- same objections.

8 THE WITNESS: I believe that's correct.

9 Q. BY MR. RISNER: Yes. So all the rest of the
10 stuff that goes on is not sent to the Secretary of
11 State?

12 MR. STRAUB: I'm going to object.
13 Objection. It goes to the form.

14 If I could interject, in fact, I think there
15 are two times, at least, that things are sent to the
16 Secretary of State.

17 Are you talking, Mr. Risner, about prior to
18 the commencement of the election? Maybe I didn't hear
19 the question, where it says the times. Obviously they
20 send the material after -- during the -- or after the
21 election is concluded, as I understand; right?

22 THE WITNESS: Well, I mean, the results are
23 transmitted --

24 MR. STRAUB: Okay.

25 THE WITNESS: -- to us. We aggregate those

1 results. Ultimately those will be reflected in the
2 official canvas.

3 I don't believe that a computer program is
4 filed after the election by any jurisdiction. I think
5 this statute only requires that it be filed 10 days
6 before.

7 **MR. STRAUB:** Okay. But what --

8 **MR. RISNER:** So --

9 **MR. STRAUB:** But what is filed is usually a
10 database file? Isn't that what you folks get?

11 **THE WITNESS:** Yes.

12 **MR. STRAUB:** Okay. And when I say -- okay.
13 Let's get clarification.

14 In both cases, the before and after, you get
15 results, don't you, in the database file?

16 **THE WITNESS:** I believe so.

17 What's filed beforehand is -- is the
18 database, the program database for the election and
19 stuff. Obviously there's no votes tallied in there
20 yet.

21 **Q. BY MR. RISNER:** Right.

22 **A.** Because it's before the election.

23 But as we understand the statute, that we
24 have to have that information. Just receiving the GEMS
25 program itself would be useless in a subsequent

1 investigation of a fraud allegation. We have to have
2 this -- the whole election, as it's structured, and the
3 election management software and database have to be
4 filed by each jurisdiction ahead of time and held in
5 escrow, to be used only in the case of fraud
6 allegations.

7 Q. BY MR. RISNER: Okay. So Pima County --
8 let's say Pima County has -- we use 1600 ballot forms.
9 That, in essence, is the layout for that election;
10 correct?

11 A. Correct.

12 MS. SHIPMAN: Just a minute. Let me pose my
13 objection that it's beyond the scope and form.

14 Q. BY MR. RISNER: And then as they've built
15 that election, the -- that layout is sent to the
16 Secretary of State.

17 But none of the information afterwards --
18 that would include all of the queries, all of the
19 backups and all of the subsidiary .gbf or whatever is
20 formed -- is never sent to the Secretary of State,
21 pursuant to your requirements?

22 MS. SHIPMAN: Same objections.

23 THE WITNESS: Pursuant to the statute.

24 Q. BY MR. RISNER: Is that right?

25 A. Yes.

1 Q. Is that correct?

2 A. That's correct.

3 Q. You know, I need to apologize, but I -- I was
4 going to ask you something that you may have -- I may
5 have asked you before, but I -- you used the term --

6 MS. SHIPMAN: You'll apologize this time?

7 MR. RISNER: Huh?

8 MS. SHIPMAN: You're going to apologize this
9 time?

10 MR. RISNER: Yes.

11 MS. SHIPMAN: Why this time?

12 Go ahead. That's rhetorical.

13 Q. BY MR. RISNER: You've used, again, the term
14 "mimic" an election, and I -- I -- you know, I -- I --
15 I've seen animals that can, like, change colors and
16 mimic their background, you know. I've seen that kind
17 of stuff. And I just don't understand that term in an
18 election context.

19 MR. STRAUB: I believe it's been asked and
20 answered.

21 Q. BY MR. RISNER: What do you mean by that?

22 MS. SHIPMAN: Object to form.

23 THE WITNESS: It's a lay term that I use
24 personally to describe this, as I understand it.
25 Perhaps it's not the best term to describe security

1 vulnerability. "Duplicate" may be a better term. But
2 there's just no magic to that word other than it's
3 simply a word in Joe Kanefield's vocabulary.

4 **Q. BY MR. RISNER:** Incidentally, in this case,
5 did anyone ever give you the declarations from
6 Thomas W. Ryan and Thomas P. Ryan?

7 **A.** I believe we were provided the declaration of
8 Tom Ryan from Pima County.

9 **Q.** Yes.

10 **MS. SHIPMAN:** Is there more than one?

11 **MR. RISNER:** There's two Tom Ryans.

12 **MS. SHIPMAN:** All right.

13 **MR. RISNER:** Yeah, Tom W. and Tom P.

14 **MS. SHIPMAN:** All right.

15 **THE WITNESS:** That's really confusing.

16 **Q. BY MR. RISNER:** So I don't want to burden the
17 record by marking this as an exhibit, but I think you
18 ought to have it -- he's a lawyer computer expert -- to
19 the extent that it's useful to your agency.

20 **A.** This is the Tom Ryan from Ohio?

21 **Q.** Yeah.

22 **A.** And then there one's that -- our Tom Ryan.

23 **MR. STRAUB:** Mr. Risner, I note that the time
24 is now about seven minutes to 1:00. You've spent well
25 over two hours questioning the witness. I just want to

1 reserve some time out of the four hours to ask some
2 questions on re-direct of the witness.

3 MR. RISNER: Okay.

4 MR. STRAUB: And at 1:06, we are at
5 four hours.

6 MS. SHIPMAN: By my calculation, that's being
7 generous. At a quarter after 1:00 -- that is,
8 accounting for all the breaks -- is four hours.

9 MR. STRAUB: I would concur with that.

10 MR. RISNER: Well, I think it's probably
11 1:20, but --

12 MR. STRAUB: I'm sorry?

13 MS. SHIPMAN: You'll have to account for that
14 five minutes, if it's worth it to you.

15 MR. RISNER: If I could just have a moment.

16 (Recess from 12:52 p.m. to 12:53 p.m.)

17 MR. RISNER: I think I'm done.

18 MR. STRAUB: Very good.

19

20 EXAMINATION (Further)

21 BY MR. STRAUB:

22 Q. Mr. Kanefield, I have a few questions for
23 you.

24 Mr. Risner questioned you about how -- I
25 think it's nine counties used Phil and Cindy Doyle's

1 firm for setting up ballots.

2 MS. SHIPMAN: Objection, form.

3 THE WITNESS: I didn't know the exact number,
4 but I think it's probably around that number.

5 Q. BY MR. STRAUB: Yeah, I don't want to put
6 words in your mouth, but it's -- it's a substantial
7 number of the 12 Diebold counties that rely on this
8 firm; would that be correct?

9 A. I believe that to be the case.

10 Q. And if -- is it the Secretary's concern that
11 anyone having access to those databases for those
12 counties not have substantial information about how the
13 elections are set up for the other remaining counties
14 that use this company?

15 A. Yes.

16 Q. And is it also the Secretary's concern that
17 information potentially released by Pima County could
18 also affect or subject elections in those counties,
19 those other counties that use the Diebold equipment,
20 subject them to a potential risk?

21 A. Yes.

22 Q. I think we may have read that Pima County no
23 longer uses modem transmission from the precinct
24 optical counters back to the central tabulators. Do
25 you know if the other counties continue to use the

1 modem?

2 A. I believe they do.

3 MS. SHIPMAN: Object to form.

4 Go ahead.

5 THE WITNESS: I believe they do.


6 Q. BY MR. STRAUB: And Mr. Risner asked you --
7 you know, I think he made some response in terms of
8 ability to -- to access the -- the central count server
9 as a risk. Is it also true, though, that if one could
10 access merely memory cards or access a modem
11 transmission, that there would be a risk to the
12 security of elections?

13 MS. SHIPMAN: Same objections.

14 THE WITNESS: Memory cards, yes. Modem
15 transmissions, possibly. I guess it depends on the
16 modem connection itself.

17 I think it's important to note that the
18 transmission of election results from a precinct via
19 modem to the election headquarters -- which is
20 apparently no longer being done in Pima County -- that
21 the memory card itself remains attached and that there
22 is a separate audit of the report generated by the
23 precinct counter already required.

24 So while I understand that this was done in
25 the name of security, I'm not -- we're not sure what --



1 how that really prevents anything, because there's
2 already an audit that occurs, and, if anything, would
3 slow down the results of the election that the public
4 so desperately wants on election night.

5 Q. BY MR. STRAUB: Do you know whether the
6 database also is a -- do you know whether the database
7 contains the modem numbers for the precinct machines
8 and also contains inscriptions?

9 A. I believe that's the case.

10 Q. In referring to Exhibit 4, Mr. Risner
11 referred you to the paragraph, again, immediately under
12 the heading "Filing of Computer Election Programs With
13 Secretary of State." And he noted in his question to
14 you that the first sentence starts with the words "an
15 election program" and compared that to the language in
16 16-444, which is the definition of "computer program."

17 Can you tell me whether or not does the
18 Secretary of State, in this context, reads these to be
19 typically the same?

20 A. Yes.

21 Q. You indicated in response to Mr. Risner's
22 questions that it might be important to examine the
23 contents of the database to see if there was anything
24 that occurred -- anomalous that occurred during the
25 course of the election. I believe you've responded

1 numerous times that there are other monitoring
2 interests as well, but are you aware that one can alter
3 a database in such a way that it changes not -- in
4 other words, how -- here's what I'm trying to get at.

5 Does the Secretary of State view the
6 monitoring of databases as a really effective means of
7 auditing an election?

8 **MS. SHIPMAN:** Object to form.

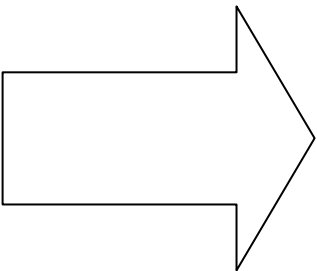
9 **Q. BY MR. STRAUB:** If you know.

10 **A.** Well, I don't know. I'm not prepared to make
11 an official statement on behalf of the Office with
12 respect to that question, I -- I think, other than to
13 say that the auditing mechanisms that are in place
14 right now and the security measures, we believe to be
15 more than adequate when it comes to protecting the
16 election integrity and security of the election
17 process.

18 **Q.** Do you think having the ability to randomly
19 sample and audit the actual ballot cards from all of
20 these machines is an effective tool to ensure against
21 election fraud?

22 **A.** Yes.

23 **Q.** All right. And just to be certain, you
24 answered a question from Mr. Risner about 16-445. I
25 guess that's the statute that requires the various



1 jurisdictions, the various counties, to forward to you
2 the programs and databases. And the best way that you
3 answered it is it requires programs and databases to be
4 sent to the Secretary of State's Office prior to an
5 election.

6 And again, I just want to be certain that in
7 the GEMS world, databases would include those files
8 with the .mdb and/or .gbf extensions?

9 A. Yes.

10 Q. In this regard, I think, from talking to
11 Mr. Moffatt, my question to you may have implied a -- I
12 may have made a mistake.

13 What is required to be sent to you is what
14 you would approve after the logic and accuracy tests
15 that precede the election and the county starting to
16 send ballots to the voters; correct?

17 A. Yes.

18 Q. And that part of the database contains all of
19 the information that sets up an election?

20 A. Yes.

21 Q. What you get back after the election is the
22 election results, and not the whole database system; am
23 I correct in that?

24 A. That's my understanding.

25 Q. Okay. It was my mistake and I appreciate you

1 clarifying it.

2 Would political parties have anything to gain
3 by understanding the internal workings of an election
4 system if they had an agenda or an objective to affect
5 that election?

6 **MS. SHIPMAN:** Objection, beyond the scope,
7 and form.

8 **THE WITNESS:** Well, I think --

9 **MR. RISNER:** I might say that the
10 Democratic Party has an agenda to affect all elections
11 favorably where the Democratic Party has candidates.
12 So we do have an agenda for a favored outcome.

13 **THE WITNESS:** I think that was probably what
14 I was going to say. I mean, political parties, by
15 definition, are advocacy groups with a set agenda to
16 advocate the election of individuals affiliated with
17 that party.

18 **Q. BY MR. STRAUB:** But the question was
19 really -- obviously, we all have an interest in
20 influencing the electoral process, but our methods
21 should pursue a legal manner in which to do so --

22 **A.** Yes.

23 **Q.** -- and not a fraudulent one.

24 But is there still an incentive for
25 persons -- to guard against persons who have interest

1 in actually affecting the outcome of the election,
2 at least with respect to those?

3 **MS. SHIPMAN:** Same objections.

4 **THE WITNESS:** I think I would cite to the
5 last paragraph of Secretary of State Brewer's letter to
6 Chairman --

7 **Q. BY MR. STRAUB:** Elias?

8 **A.** -- Elias dated March 17, 2008, which is
9 marked as Exhibit 6, where she notes that political
10 parties do indeed play a very important, critical and
11 instrumental -- I'm not reading exactly, but I'm
12 summarizing what I think she was saying -- an
13 instrumental role in the election process as carefully
14 defined by statute, but that -- but there is --
15 obviously there's a limit to that, because these
16 individuals do have an agenda, do wish the election
17 outcome to be determined in a certain way, and for
18 obvious reasons, the ability for those individuals to
19 access certain sensitive components in the process
20 needs to be eliminated.

21 **Q.** If I could just have one moment.

22 Oh, earlier in your testimony -- I think it
23 was in response to somewhere when Mr. Risner was
24 talking to you about Exhibit 7, the iBeta report -- you
25 had responded that there are vulnerabilities in the

1 system, and that, therefore, you need to have physical
2 security of all components of the electoral process.

3 Am I stating your testimony correctly?

4 **A.** Yes.

5 **Q.** Now, would that also include access,
6 unlimited access, to election databases?

7 **A.** Yes.

8 **MR. STRAUB:** Thank you. I have no further
9 questions of this witness.

10

11 **EXAMINATION (Further)**

12 **BY MR. RISNER:**

13 **Q.** Yeah, I've got a couple here.

14 You were asked about a memory card. And how
15 would there be any increase in risk to a memory card
16 from access to past election data?

17 **A.** Well, as I understand it, it would be the
18 same risk that we've discussed previously, which is
19 those cards are programmed off of the same GEMS
20 database that the ballots and everything else are and
21 if someone had the ability to program one of those
22 memory cards, predicting a future ballot layout, was
23 able to -- to get that card into an official system,
24 presumably they then could potentially, obviously,
25 raise a security issue.

1 Q. Well, you -- you have procedures on how
2 they're supposed to protect memory cards, and that's
3 extremely important; right?

4 A. Yes.

5 Q. And the -- but I don't understand, again,
6 precisely knowing -- you understand that we're not
7 talking about access to any data during the election.
8 So by a political party having access to data from a
9 past election, how does that increase any risk dealing
10 with a memory card?

11 MS. SHIPMAN: Objection, form.

12 THE WITNESS: I don't think the memory cards
13 create as much of a risk because the memory card would,
14 by definition only, be associated with a specific
15 precinct.

16 But I think the same analysis would come into
17 play in terms of using the data from a past election to
18 create the potential to then manipulate a card that we
19 introduced into a precinct in a future election.

20 Q. BY MR. RISNER: "A future election"? You
21 mean, like, say, you got one in 2008, it would help you
22 in 2010?

23 A. You could use the information -- again, I
24 keep going back to the Court findings that these
25 databases could be used to build, to mimic, duplicate,

He is very wrong. The card could be used as a gateway key to the central tabulator. See Clip from HBO Hacking Democracy.

That the biggest reason Pima doesn't use Phone Modem.

Election night Phone Modems go on at 7:00 PM.

At 8PM the ARS states that when the first Election Summary report is exposed to be printed.

An insider with a card the coded correctly could launch a script.

1 however you want to describe it, a future election.

2 And those with access to the GEMS software could then
3 use that information to program memory cards.

4 Of course, they would have to be introduced
5 into the machines themselves, which should never happen
6 and not be able to happen, but that would be a
7 possi- -- theoretically a possibility.

8 Q. Are you aware of any historical incidents in
9 the United States where a political party has printed
10 fake ballots and tried to insert them into a computer
11 system?

12 MS. SHIPMAN: Objection --

13 MR. STRAUB: Objection, it's beyond the
14 scope --

15 MS. SHIPMAN: -- form.

16 MR. STRAUB: -- of cross or re-direct or
17 whatever.

18 THE WITNESS: I'm not aware.

19 MS. SHIPMAN: Just beyond the scope of this
20 deposition.

21 Q. BY MR. RISNER: And the -- well, you know the
22 question about an incentive for a political party to do
23 something? Political parties go on year after year,
24 don't they?

25 A. Yes.

1 Well, let me qualify that.

2 Q. So far? If they don't --

3 MS. SHIPMAN: Objection to form.

4 THE WITNESS: As a matter of fact, we had
5 four political parties recognized in 2000 that no
6 longer exist.

7 Q. BY MR. RISNER: All right.

8 A. So they don't continue in perpetuity. They
9 have to --

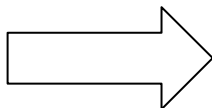
10 Q. You're right. The Whigs are gone.

11 A. The Democratic Party and the Republican Party
12 have enjoyed a continued recognized status on the
13 ballot and official state recognition as a result of
14 the vote counts in the elections in the past.

15 Q. And would you agree that the incentive for
16 them to have a good reputation is more important than
17 any particular election?

18 MS. SHIPMAN: Objection, beyond the scope.

19 THE WITNESS: I hope I've not said anything
20 to lead you or anyone else to the belief that we have
21 any mistrust of parties or believe that the
22 representatives of our state recognize parties that are
23 in any way acting with -- with an agenda that's
24 anything but sincere. And I'm -- and if I said
25 anything to that effect, I hope you understand that



1 that should never have been said.

2 We, very clearly, said that we believe the
3 political parties have a very important role to play in
4 the election process and we are in no way accusing them
5 of some kind of a -- of a criminal agenda to manipulate
6 elections. We don't believe that's the case.

7 It's simply a matter of closing off any
8 potential vulnerability that might exist in having
9 unauthorized individuals -- even though they're
10 political party representatives -- have access to
11 sensitive information. We don't think it's a good
12 policy. We don't think it's the policy reflected in
13 the laws of this state. We would -- and we would
14 advocate against that.

15 **MR. RISNER:** I don't think I have any further
16 questions.

17 I can tell you that our political party in
18 Pima County very much would like for the Secretary of
19 State to be more involved and to work with the
20 Secretary to deal with what are, in fact, real security
21 risks and not imaginary risks designed to cover past
22 misdeeds.

23 **MR. STRAUB:** Object, and move to strike that
24 as not a question.

25 **MS. SHIPMAN:** Exactly.

1 **MR. RISNER:** That's all.

2 **THE WITNESS:** Is he under oath?

3 **MR. STRAUB:** No.

4 And at this point, you don't care; right?

5 **MS. SHIPMAN:** Yeah.

6 **MR. STRAUB:** Thank you all very much. Thank
7 you for making this facility available to us. Thank
8 you very much.

9 (Off-the-record discussion.)

10 **MR. STRAUB:** Ms. Chapman has raised the issue
11 of reading and signing the deposition. Here's my issue
12 with respect to this, is that Judge Miller wanted this
13 deposition filed with him no later than Friday, the
14 18th.

15 **MS. SHIPMAN:** Okay.

16 **MR. STRAUB:** And I -- if it can be
17 accomplished -- I don't know, you know -- quickly and
18 Madam Court Reporter can get a copy to your client or
19 not -- but I won't insist on signature.

20 I don't know if Mr. Risner will insist on it
21 or not.

22 **MS. SHIPMAN:** Just so long as we have the
23 understanding that it has been filed without our having
24 reviewed it --

25 **MR. STRAUB:** Yeah.

1 MS. SHIPMAN: -- or mailed any corrections.

2 MR. STRAUB: I think we're off the record

3 now.

4 (1:13 p.m.)

5

6

JOSEPH KANEFIELD

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1 STATE OF ARIZONA)
) ss.
2 COUNTY OF MARICOPA)

3 C E R T I F I C A T E

4 BE IT KNOWN that the foregoing deposition was
5 taken before me, WANDA J. CURRY, a Certified Court
6 Reporter, Certificate No. 50366, in and for the State
7 of Arizona; that the witness before testifying was duly
8 sworn by me to testify to the whole truth; that the
9 questions propounded by counsel and the answers of the
10 witness thereto were duly taken down by me in shorthand
11 and thereafter reduced to computer print under my
12 direction; that pursuant to request, notification was
13 provided that the deposition was available for review
14 and signature; that the foregoing pages are a true and
15 correct transcript of all proceedings had upon the
16 taking of said deposition, all done to the best of my
17 skill and ability.

18 I FURTHER CERTIFY that I am not related to
19 nor employed by any of the parties hereto, and have no
20 interest in the outcome.

21 DATED at Phoenix, Arizona, this 17th day of
22 April, 2008.

23

24 _____
Wanda J. Curry
Certified Court Reporter
Certificate No. 50366
25

16-445. Filing of computer election programs with secretary of state

A. For any state, county, school district, special district, city or town election, including primary elections, utilizing vote tabulating devices as provided in this article, there shall be filed with the secretary of state at least ten days before the date of the election a copy of each computer program for each election. The secretary of state shall hold all computer program software filed pursuant to this section in escrow for three years. The secretary of state shall securely destroy the software filed pursuant to this section on the expiration of the three year period.

B. A copy of any subsequent revision of the computer program shall be filed in the same manner within forty-eight hours following the revision.

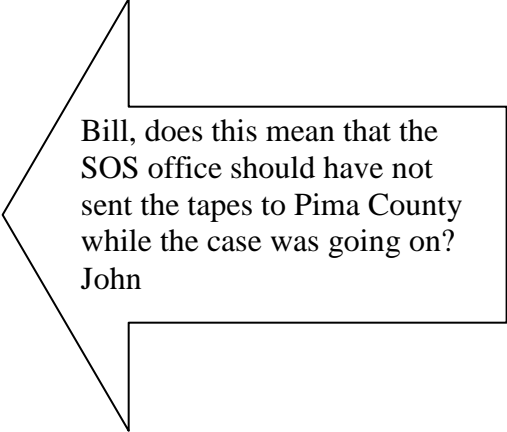
C. Any tape or disc used in the programming or operation of a vote tabulating device upon which votes are counted and any tape used in compiling vote totals shall be kept

under lock and seal, and if there is a retally of votes, the officer entrusted with the tapes or discs shall submit his affidavit stating that they are the tapes or discs, or both, used in the election and have not been altered.

D. All materials submitted to the secretary of state shall be used by the secretary of state or attorney general to preclude fraud or any unlawful act under the laws of this title and title 19 **and shall not be disclosed or used for any other purpose.**

E. Each program tape or disc or any other material submitted to the secretary of state shall be returned to the county, city or town within six months after the close of the election for which it was submitted except:

1. When a court ordered recount is pending.
2. When a restraining order is in effect.
- 3. When any other legal action is pending.**



Bill, does this mean that the SOS office should have not sent the tapes to Pima County while the case was going on?
John

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA
NO. C2007-2073
MOTION FOR ATTORNEYS' FEES**

Assigned to:
Hon. Michael O. Miller

Pursuant to A.R.S. § 39-121.02(B), the plaintiff moves the court for an order awarding attorneys' fees and other legal costs reasonably incurred in this public records case.

Attached to this motion are declarations by William J. Risner and S. Leonard Scheff, and a summary of contemporary time records. Copies of the original time sheets will be turned over to Defendant.

I. Attorneys' Fees Pursuant to A.R.S. § 39-121.02.

The reported cases in Arizona discuss attorneys' fees in Public Records cases under the version of the statute that required a court to find that the public custodian "acted in bad faith or in an arbitrary or capricious manner." In 2006 the Legislature re-wrote the attorneys' fees provision of A.R.S. § 39-121.02 which now reads as follows: A.R.S. § 39-121.02(B)

B. The court may award attorney fees and other legal costs that are reasonably incurred in any action under this article if the person seeking public records has substantially prevailed.

Nothing in this paragraph shall limit the rights of any party to recover attorney fees pursuant to § 12 341.01, subsection C, or attorney fees, expenses and double damages pursuant to § 12- 349.

The new standard requires that the plaintiff have "substantially prevailed." Since the court has determined that the election data sought by Pima County's largest political party were public records, a large portion of which are now in Plaintiff's possession it is quite clear that the plaintiff substantially prevailed in this lawsuit.

The Federal Freedom of Information Act (FOIA: 5 U.S.C. § 552(a)(4)(E)) uses the same "substantially prevailed" term and has been the subject of many cases interpreting the term since the 1974 amendment that added that criteria to the FOIA statute. In *Church of Scientology of California v. U. S. Postal Service*, 700 F.2d 486, 490 (9th Cir. 1983) the circuit court ruled that in determining whether a plaintiff had substantially prevailed the district court should determine: "(1) whether the Church's suit was reasonably necessary to obtain the information; and (2) whether the suit had a substantial causative effect on the release of the documents in question."

The federal case of *Crooker v. United States Parole Commission*, 776 F.2d 366, 367 (1st Cir. 1985) provides a good summary of the federal legislative history of FOIA. The original senate bill had contained specific criteria for attorney's fees that were later eliminated from the bill but, nonetheless, were deemed useful in evaluating factors to use in discretionary attorney's fees awards.

The Senate criteria referred to are those that had been included in the Senate version of what has become § 552(a)(4)(E). The conference substitute eliminated the criteria from the statute, but the conference report on the bill indicates that Congress nevertheless intended courts to consider such factors in exercising their discretion on the issue of attorney's fees.

S.Conf.Rep. No. 1200, 93d Cong., 2d Sess., *reprinted in* 1974 U.S. Code Cong. & Ad.News 6267, 6285. *See Crooker v. United States Department of Justice*, 632 F.2d at 922; *Blue v. Bureau of Prisons*, 570 F.2d at 533; *Cuneo v. Rumsfeld*, 553 F.2d 1360, 1364 (D.C. Cir. 1977).

These four factors, which we consider separately below, are: (1) the benefit of the public, if any, derived from the case; (2) the commercial benefit from the complainant; (3) the nature of the complainant's interest in the records sought; and (4) whether the government's withholding of the records had a reasonable basis in law.

Education/Instruction, 649 F.2d at 7; *Crooker v. United States Department of Justice*, 632 F.2d at 922. As we note *infra*, these are not airtight, independently indispensable prerequisites. While neither exclusive nor binding on this court in its evaluation of the Arizona statute the enumerated federal factors provide a useful framework for analysis.

1. Benefit to the Public. Few issues are more important to our democratic system than accurate and transparent elections. Our social compact is dependent on acceptance of majority decisions. The provision of election data that confirms the accuracy of elections is important as would be data that reveals misconduct. The mere fact that data will be disclosed will no doubt serve as a significant deterrent to election fraud.

2. There is no commercial benefit to the plaintiff. This lawsuit has been a major effort for the Pima County Democratic Party. The plaintiff political party has acted in its role as a protector of the voting process as provided in a multitude of election statutes in Arizona.

3. The plaintiff's request for election data was the result of its several year effort to improve election security through both physical security and auditing procedures. The ultimate beneficiaries of this effort are the people of Arizona and every political party. The plaintiff asserts that the government itself is a significant beneficiary of enhanced public confidence in the election process.

4. The government's withholding of these public records did not have a reasonable basis in law. For example, the County argued that these records were not public records when they met every definition of public records. As the court itself noted, Bryan Crane did not retain election data as a "hobby." Nonetheless, the County never conceded, not even in closing argument, that these were public records.

II. Attorney Fees, Expenses and Double Damages Pursuant to A.R.S. § 12-349.

One of the changes made by the Legislature in its 2006 changes to A.R.S. § 39.121.02(B) was to specifically note that "nothing in this paragraph shall limit the rights of any party to recover... attorney fees, expenses and double damages pursuant to § 12-349." **§ 12-349. Unjustified actions; attorney fees, expenses and double damages; exceptions; definitions.**

A. Except as otherwise provided by and not inconsistent with another statute, in any civil action commenced or appealed in a court of record in this state, the court shall assess reasonable attorney fees, expenses and, at the court's discretion, double damages

of not to exceed five thousand dollars against an attorney or party, including state and political subdivisions of this state, if the attorney or party does any of the following:

1. Brings or defends a claim without substantial justification.
2. Brings or defends a claim solely or primarily for delay or harassment.
3. Unreasonably expands or delays the proceeding.
4. Engages in abuse of discovery.

B. The court may allocate the payment of attorney fees among the offending attorneys or parties, jointly or severally, and may assess separate amounts against an offending attorney or party.

C. Attorney fees shall not be assessed if after filing an action a voluntary dismissal is filed for any claim or defense within a reasonable time after the attorney or party filing the dismissal knew or reasonably should have known that the claim or defense was without substantial justification.

D. This section does not apply to the adjudication of civil traffic violations or any proceedings brought by this state pursuant to title 13.

E. Notwithstanding any other law, this state and political subdivisions of this state may be awarded attorney fees pursuant to this section.

F. In this section, “without substantial justification” means that the claim or defense constitutes harassment, is groundless and is not made in good faith. Added by Laws 1985, Ch. 225, § 1. Amended by Laws 1986, Ch. 360, § 2.

The plaintiff asserts that the defendant has defended this claim without substantial justification, has unreasonably expanded or delayed the proceeding and has defended the claim primarily for delay or harassment. Pursuant to A.R.S. § 12-349(A) the provisions of that statute are applicable “if the attorney or party does any” of those enumerated things.

It is apparent that this case has been defended by the County without substantial justification. The defendant’s refusal to concede that the election data is a public record is a good example of a defense without substantial justification.

The central defense was based neither on law nor facts but instead on slander and innuendo. Mr. Denker examined their “expert” flown in from Georgia in the following terms:

BY MR. DENKER:

Q. Professor King, yesterday we were talking about computer security, election security issues with respect to election software. Would you say, generally, that it is important

or critical for elections officials to maintain strict security both physical and software computer security?

A. It's extremely important.

Q. Now, I believe some of the reasons that we had talked about related to related to issues such as being able to use information in the database, not just to steal votes or to change votes, but simply to sow chaos. Is that - -

A. I believe that was the testimony yesterday.

Q. And I think Bryan Crane testified to that. I think you said it was mayhem or something to do with that. In Pima County today, if you wanted to sow that type of chaos, if you wanted to make it appear that precincts had been misassigned, or whatever these various possibilities are, what would you need in order to sow that type of chaos in Pima County. (Testimony of Bench Trial, December 7, 2007: 2:11-25; 3:1-2) In spite of the centrality of the "chaos and mayhem" defense, absolutely no evidence was introduced that the plaintiff or anyone in the country harbored such an intent. The above quoted testimony was not taken out of context. Such nonsense was central to the County's defense. The best person to sum up the Board of Supervisors' defense is Tad Denker who made their final argument doing just that. In Mr. Denker's own words:

But when we've got what's probably the most serious risk is this idea of mayhem and chaos. I believe Dr. King used the idea of chaos and Mr. Crane said, well, you know, said there's mayhem.

The fact of the matter is there are people out there who have an interest in discrediting the system. They have an interest in discrediting the administration. They have an interest in discrediting the electoral system. They have an interest in discrediting particular vendors. And this job is possible but what it requires the GEMS executable and then it requires one of two things: It requires the insider or the mdb file from the target jurisdiction. There's plenty of testimony in this case that what we've got GEMS executable files in the wild. So the question is, are they going to get an insider or are they going to get an mdb file from this jurisdiction? That's the question. And that's what's on the line right now. They get this mdb file, all the pieces they need to put together an attack that will help to discredit our system. And whether that means our local system or the system nationally, that is serious risk, and that is what is at stake.

(Transcript of Bench Trial, December 7, 2007: 144:20-25; 145:1-13)

It is profoundly unfair to the plaintiff political party to incur hundreds of thousands of dollars of fees and expenses only to ultimately be confronted with slander and delusions. Our law provides a remedy for this sort of defense and the remedy is A.R.S. § 12-349 which our Legislature has wisely made a specific provision of the public records laws through A.R.S. § 39-121.021(B).

The plaintiff respectfully requests that the court approve reasonable fees incurred on its behalf as it has sought to obtain public records wrongfully withheld from it.
RESPECTFULLY SUBMITTED this ____ day of April, 2008.

RISNER & GRAHAM

William J. Risner
Attorney for Plaintiff