

U.S. COMMISSION ON CIVIL RIGHTS

+ + + + +

BRIEFING **EDITED**

+ + + + +

INCREASING COMPLIANCE WITH
SECTION 7 OF THE NVRA

+ + + + +

FRIDAY, APRIL 19, 2013

+ + + + +

The Commission convened in Suite 1150 at
1331 Pennsylvania Avenue, Northwest, Washington, D.C.
at 9:35 a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

ROBERTA ACHTENBERG, Commissioner

TODD GAZIANO, Commissioner

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner

JENNIFER CRON HEPLER, Office of the General Counsel

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

STAFF PRESENT:

PAMELA DUNSTON, Chief, ASCD

BARBARA DELAVIEZ

LILLIAN DUNLAP

YASMIN ELHADY

ALFREDA GREENE

ELOISE PLATER

MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN

ALEC DEULL

TIM FAY

JOHN MARTIN

MARLENE SALLO

ALISON SOMIN

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

TABLE OF CONTENTS

3

I. Introductory Remarks by Chairman	3
II. Panel Discussion - State Government Officials and Litigators	7
- Gary O. Bartlett, Executive Director, North Carolina Board of Elections	
- Jason Torchinsky, Partner, Holtzman Vogel PLLC	
- Lisa Danetz, Senior Counsel, Dēmos	
Speakers Remarks and Questions from Commissioners	27
III. Adjourn Meeting	74

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

P R O C E E D I N G S

9:35 A.M.

I. INTRODUCTORY REMARKS BY CHAIRMAN

CHAIRMAN CASTRO: Welcome, everyone. I've got to get used to the new system. This is a temporary solution. We will have a formal solution to our microphone challenges, but I want to thank Pam Dunston for getting us some microphones that work. I appreciate that.

This meeting is coming to order. I'm Chair Marty Castro of the U.S. Commission on Civil Rights. I want to welcome you all to our briefing on the topic of "Increasing Compliance with Section 7 of the National Voter Registration Act," known as the NVRA. It is currently 9:35 a.m. on April 19th.

The purpose of this briefing is to focus our examination on the state of Section 7 compliance, and the efforts by both the Department of Justice and in public interest groups to ensure compliance with that section. I know that some Commissioners had wanted to amend our concept paper to include a parallel examination of Section 8 enforcement. However, when our topic was approved last year, after a discussion to expand that focus, we ultimately voted to only look at Section 7. I know that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Commissioner Kladney had previously encouraged us to
2 present a written proposal to amend this briefing,
3 but to my knowledge no such written proposal was ever
4 drafted or brought forth for a vote of the
5 Commission, so we are going to stick to the focus of
6 the concept paper which was Section 7.

7 That said, today's briefing has three
8 distinguished speakers who are going to provide us
9 with a diverse array of viewpoints on this topic.
10 During the briefing, each panelist will have 10
11 minutes to speak. After all the panelists have made
12 their presentations, Commissioners will then have an
13 opportunity to ask questions. I know that we have a
14 few of our conservative colleagues who are absent for
15 illness and otherwise, so I will allow Commissioner
16 Gaziano not to be overly picked on in terms of the
17 balance of questions. So I will try to do my best --

18 COMMISSIONER GAZIANO: Four times.

19 CHAIRMAN CASTRO: Some of your
20 Commissioners don't always ask a lot of questions.

21 COMMISSIONER YAKI: Mr. Chair, I would
22 just like to say for the record that when it was a 6-
23 2 majority of them versus me, during questioning time
24 I was not given extra time. In fact, there were
25 often many meetings when it was 6 to 1 of me and I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 waited my turn through the procession to ensure that
2 order was kept. I did not demand nor ask for
3 additional time simply because there is only one of
4 me because I felt I alone could handle it.

5 CHAIRMAN CASTRO: That's good. Well, I
6 am now chairman and I'm willing to give you a few
7 extra questions to make up for what happened last
8 time as well.

9 So our panelists, now that we're done
10 with our comedy routine up here, you're going to
11 notice that there's a system of warning lights. Just
12 like traffic lights when we're trying to drive in the
13 street, green means go. Yellow does not mean speed
14 up.

15 COMMISSIONER YAKI: It means keep on
16 going up to finish.

17 CHAIRMAN CASTRO: And red means you need
18 to stop. We will try to enforce those as best we can
19 to allow Commissioners to engage in questions.
20 Unfinished thoughts or additional comments can always
21 be integrated into your questioning and responses
22 with the Commissioners.

23 Also, as my Commissioners know, we'll
24 try to keep the questions concise to move this along.
25 And again, I know some questions do require multiple

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 parts and I will try to indulge those as best I can
2 to keep us on schedule. So with those bits of
3 housekeeping out of the way, I'd like to introduce
4 our panelists.

5 Our first panelist is Gary O. Bartlett,
6 Executive Director with the North Carolina State
7 Board of Elections. Our second panelist is Jason
8 Torchinsky, partner at Holtzman Vogel, PLLC. And our
9 third panelist is Lisa Danetz, senior counsel with
10 Dēmos.

11 I will now ask each of the panelists to
12 swear or affirm that the information that you're
13 about to provide us is true and correct to the best
14 of your knowledge and belief. Is that true?

15 (THE PANELISTS WERE SWORN.)

16 Thank you. Mr. Bartlett, you have the
17 floor. Please proceed.

18 II. PANEL DISCUSSION - STATE GOVERNMENT OFFICIALS
19 AND LITIGATORS

20 MR. BARTLETT: Thank you. I would like
21 to provide a little bit of information of what we
22 have experienced in North Carolina. The National
23 Voter Registration Act was implemented about the time
24 that I became Executive Director. At that point in
25 time, the biggest fear that the election officials

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 had was the do-it-yourself voter registration form,
2 but in all honesty, the do-it-yourself form has
3 worked well through the years. As it relates to
4 public assistance agency employees, they were worried
5 about their new role.

6 So what we did in 1995 was that we had a
7 teleconference with over 2,000 participants, both
8 employees of public agencies and election officials,
9 where we had a panel give presentations and we had
10 questions that were phoned in. We also had before
11 that event materials and frequently-asked questions
12 that were sent to everyone so that everyone had a
13 little bit of information to be briefed on before
14 they got there.

15 The end result by the end of the first
16 year, I believe we were something like tenth in the
17 nation as far as registrants. We thought that we
18 were on a great path. We were certainly one of the
19 first, if not the first in the South to be compliant.
20 And then I went on to other things, thought it was on
21 the auto pilot during the period. We had changes of
22 personnel at the State Board of Elections. In the
23 public assistance agencies, there were changes in
24 employment there. And we just failed to keep up with
25 what was going on. And then I got a call from Jo-

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Anne Chasnow, Project Vote. She said, Gary, there's
2 a group of advocates that would like to talk to you
3 before they send a letter with intent to sue. And I
4 said, well, let's talk to them. And got the phone
5 call. I asked them to give me the ability to fix it
6 before they would send such a letter and told them in
7 plain English that if they want me to have -- give me
8 the ability to make it work. They trusted me enough
9 that we never got the letter. And we think that we
10 have had a good, solid program from 2006 to present.

11 About the time that all this was taking
12 place, my father had a stroke and I was able, while I
13 was caring for him in the hospital, to sit down and
14 put together a plan. I came up with about an 11-
15 point plan, presented it to those who were intending
16 to sue, and they added two or three things. We
17 implemented it. It has worked very well.

18 The foundation of that plan is that we
19 needed to ensure that there was communication, not
20 only at the state level, but county level. There
21 were also monthly progress calls from the advocates
22 to ensure that they felt comfortable with us being on
23 track.

24 We also did some media education and had
25 some articles written about the importance of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 program. We did workshops and trained the trainer.
2 We had dedicated staff at the state level working
3 this issue and we also reached out to our County
4 Boards of Elections and asked that there be an
5 Elections Public Assistance Coordinator within those
6 offices that had multiple employees.

7 We also asked in the county government
8 offices in some areas -- all these agencies are
9 housed near or in the same building and we would get
10 a coordinator there. And then we would get an email
11 system so that it could be communicated and we would
12 also go to some of their conferences and assist and
13 answer any questions that they may have. And we also
14 did some random checks. This was not for gotcha. It
15 was sort of like a wellness check. How can we make
16 it better? What are some of your needs? And of
17 course, most would say that first the newness was a
18 problem. Second, this is an added responsibility
19 which I did not get paid for, nor do I have budget
20 resources that I can use. But we got through most of
21 that and the biggest problem that we had was
22 basically two thirds it was not a problem. It was
23 the law. They were going to follow the law and do
24 the best they can. There was another third where
25 half will do it sometimes, but the other half didn't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 do it at all because of philosophical differences.
2 But we were able to use county attorneys to impress
3 upon them that there was a need for them to comply
4 with the law.

5 And we tried to work it as a
6 partnership. I think the continuous communication is
7 very important. We have done something that was one
8 of the first, I think, in the United States. I might
9 be -- I'm not quite sure if we're the first, but we
10 were able to get pre-cleared by U.S. Justice an
11 electronic declination system which goes to the
12 county Boards of Elections. That has helped
13 tremendously with the paperwork and is very popular.

14 We need to go a step further in North
15 Carolina. Eventually, when the political climate
16 will allow it, it will have online voter registration
17 for these public agencies so that they can be more
18 automated.

19 One of the complexities about making
20 sure that we get everything right is that each agency
21 that we deal with have different levels of resources
22 and talent. And some are a paper system and to give
23 you an example, in North Carolina, the Employment
24 Security Commission was the state-designated choice.
25 They had a fully automated system and they had to go

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 back and be a paper system just for voter
2 registration.

3 And one thing that I would like to call
4 to your attention, North Carolina is currently in the
5 process of passing a photo voter registration bill.
6 And in that bill, they are going to designate a new
7 state agency for NVRA and that is senior citizens at
8 the county level. This is not a mandate, but any
9 senior citizen center that wants to be a part of this
10 program is welcome to do so.

11 I do thank you for the opportunity to
12 share a few things. Certainly since 2006 we have had
13 over 258,537 registrants. At least they have the
14 opportunity to participate in the franchise of voting
15 and to me, I think that the more we can have eligible
16 voters participating in the process the healthier our
17 country will be. Thank you.

18 CHAIRMAN CASTRO: Thank you, Mr.
19 Bartlett.

20 Mr. Torchinsky, you're next. Thank you.

21 MR. TORCHINSKY: Thank you to the
22 Commission and the Commissioners for holding a
23 hearing on enforcement of Section 7 of the NVRA. I'm
24 an attorney in private practice and I want to make
25 clear the views I express here today are mine and not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 those of my firm or any of my firm's clients. I'm
2 here in my personal capacity and not as a
3 representative of anybody else.

4 My overall view on the NVRA is that it
5 is an important and positive piece of legislation,
6 but the legislation needs to be viewed and enforced
7 as a whole package adopted by Congress. The
8 legislative scheme or the legislative negotiations
9 that led to the passage of the NVRA was carefully
10 agreed upon after negotiation in Congress within the
11 legislative branch and I feel like when particularly
12 federal agencies pick and choose which portions of
13 the statute they want to enforce or refrain from
14 enforcing they are not sort of respecting the will of
15 Congress when it passed the legislation in the first
16 place. So I feel like particularly at DOJ, and the
17 Inspector General's Report covered this, choosing
18 bits and pieces of which federal civil rights laws
19 you want to enforce based on policy preferences
20 rather than more even-handed enforcement of the law
21 is not the right way to go.

22 I do want to comment briefly on North
23 Carolina. My experience both from when I was within
24 the government and now outside the government is that
25 state employees generally want to do everything they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 can in order to comply with federal laws. And I
2 think compliance works best when it's done
3 cooperatively and not necessarily in the litigation
4 mode. I have both from within the government and
5 outside the government seen that state government
6 agencies tend to sort of take the tortoise approach
7 when faced with litigation where they kind of shut
8 down and they go into defensive mode and I'm not
9 always sure that that's the best way to get
10 cooperation from government officials.

11 But I want to address a few points in
12 turn. First, I want to take issue with what appears
13 to be the current enforcement priorities of the
14 Department of Justice which ignores parts of the NVRA
15 that are just as important as Section 7. I want to
16 take issue with reported gotcha methods of
17 enforcement being engaged in by Voting Section staff
18 and I believe that some of the scope of discovery
19 being pursued in these cases threatens some of the
20 privacy rights of individuals, although earlier this
21 month the portion of my testimony that I was going to
22 -- where I was going to discuss the government
23 seeking some personally-identifiable information in
24 Louisiana was actually withdrawn in front of the
25 District Court. So it was in my prepared testimony,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 but my testimony, to be honest, was prepared before
2 the government withdrew those document discovery
3 requests. So I'm going to temper my comments on that
4 point of it.

5 With respect to the uneven enforcement
6 of the NVRA, I want to turn to the Inspector General
7 Report and comment on it a little bit. Getting
8 people who are eligible to vote, but are not
9 registered on the voter rolls, is very important.
10 It's also important to remember that states have to
11 comply with the list maintenance requirements of
12 Section 8 of the NVRA. And it is enforcement of this
13 provision in combination with the Public Assistance
14 Agency registration requirements that enabled
15 Congress to pass the NVRA on the bipartisan basis
16 that it did.

17 As the recent Inspector General's Report
18 noted, there were essentially no enforcement actions
19 under the list maintenance provisions of the NVRA
20 during its first 10 years of existence. And while
21 some cases were brought between '04 and '08, it
22 appears the Justice Department has taken no further
23 actions to encourage any kind of meaningful
24 compliance with these requirements since then. In
25 fact, the last Section 8 action of the current

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 administration was dismissal of the enforcement
2 action against the State of Missouri which began way
3 back in 2005.

4 I also want to comment on the Inspector
5 General's Report, the comment allegedly made by a
6 senior official in the Civil Rights Division in the
7 fall of 2009 that the NVRA was not going to care
8 about -- or that DOJ was not going to care about
9 enforcement of Section 8 of the NVRA. Seems to me
10 that it's apparent from lack of publicly-reported
11 notice letters or information requests from states or
12 settlements or lawsuits in this area that the current
13 administration simply is not taking actions to
14 enforce Section 8.

15 CHAIRMAN CASTRO: Mr. Torchinsky, if I
16 could just say you've got about six minutes left.
17 The real focus is Section 7, if you can talk some
18 more about that. If you do talk about Section 8,
19 obviously, you have a right to do that, but it's not
20 really the topic of the concept paper so it may not
21 make it into the final report. So please, proceed.

22 COMMISSIONER GAZIANO: I'll be able to
23 connect it, I think. Thanks.

24 MR. TORCHINSKY: And I'm -- to be
25 honest, frankly, in preparation for this hearing, I'm

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 not even sure that I saw the concept paper that
2 you're referring to, so I have difficulty responding
3 to that.

4 I want to turn next to my second point
5 then and sort of criticize the Division's enforcement
6 techniques in the area. It appears from the Court
7 filings in the Louisiana case and from media reports
8 the Voting Section was using undercover investigators
9 to essentially troll through Public Assistance
10 Offices looking for evidence of noncompliance of
11 Section 7. When you think about Louisiana, this is a
12 state where 85 percent of eligible voters are
13 registered from across the state, and yet the
14 plaintiff that was brought forward by the private
15 litigants is an individual who was registered to vote
16 in 2008 and essentially the claim was hey, in these
17 couple of times where he showed up at the Public
18 Assistance Office in person, he wasn't offered an
19 additional opportunity to register again when he was
20 already registered.

21 The Rhode Island consent decree,
22 apparently negotiated between the state and the
23 Voting Section, also seemed to have gone kind of way
24 beyond the requirements of the NVRA.

25 In Louisiana, my criticism of that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 lawsuit is I feel like both the private litigants and
2 the Justice Department were really going after
3 technical violations that could have been resolved
4 sort of more readily without the need for continuing
5 and ongoing litigation, sparing the taxpayers of the
6 United States and the taxpayers of Louisiana the
7 expense and burden of the trial process that they
8 went through. And I also think that it's pretty
9 clear that a lot of the changes that DOJ was asking
10 for or that the private litigants were asking for
11 could have been resolved through discussion and
12 negotiation rather than turning to litigation.

13 With respect to Rhode Island, the notion
14 that the state is now required to fund, particularly
15 at a time of struggling state and local government
16 budgets, specially-trained Site Coordinators at every
17 Public Assistance Office and maintain detailed
18 records of every declination that go beyond the
19 minimum requirements of the statute, it really seems
20 to go well beyond what's needed to ensure enforcement
21 of the statute.

22 And finally, again, I'm going to temper
23 my criticism of the discovery in Louisiana because
24 the Justice Department has since backed off some of
25 those requests, but I think that in these cases where

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 litigants, whether they be DOJ or whether they be the
2 private litigants seeking personally-identifiable
3 information from government agencies, is really not
4 necessary at all for enforcement of the NVRA and I
5 have a real criticism of that. Any time that
6 information is released anywhere or stored anywhere,
7 it raises the possibility or the probability that
8 that information could be used in ways that it's not
9 supposed to be used.

10 So I think that courts in these cases
11 need to be very, very careful to limit discovery to
12 what's actually needed to prove the claims that are
13 being advanced in the cases, and that discovery that
14 goes beyond what's required to sort of minimally
15 prove your case is something that I think the Courts
16 should stay away from. And I think frankly, the
17 Justice Department and private litigants should stay
18 away from asking for it.

19 In summary, I believe the full, fair,
20 and even-handed enforcement of the NVRA is a good,
21 positive measure for the electorate at large.
22 However, I've got some serious concerns where the
23 Justice Department and private litigants seem to
24 favor enforcement of only a portion of the Act, to
25 essentially the near exclusion of other provisions of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the Act. I also believe that, like many other civil
2 rights concerns, the issues being [litigated] by
3 private plaintiffs and the Justice Department in some
4 of the more recent cases could have been settled in a
5 way more cooperative manner like what happened in
6 North Carolina. And I also criticize both private
7 litigants and DOJ that enter into -- and states that
8 agree to enter into these settlements, settlement
9 agreements that go beyond the requirements of the
10 statute. I think that's not the way the policy is
11 supposed to be made. Congress sets the policy.
12 Everybody should follow the policy that was made.

13 And again, just focusing back on the
14 information that's being sought during some of these
15 cases, I think it really needs to be carefully
16 limited. These agencies have so much personally-
17 identifiable information about public assistance
18 recipients and other voters that I think that
19 information needs to be carefully controlled to
20 prevent larger issues.

21 And again, thank you for the opportunity
22 to present this testimony today. And I look forward
23 to taking some questions.

24 CHAIRMAN CASTRO: Thank you, Mr.
25 Torchinsky.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Ms. Danetz, let me just say I know that
2 your family is currently on lockdown in Boston and we
3 know it's difficult for you to be here and I also
4 wanted to say our thoughts and prayers are with all
5 the people in Boston and the surrounding areas, given
6 what's happened in the last few days. So we really
7 appreciate your participation today and hope for the
8 best and the outcomes of everything.

9 MS. DANETZ: Thank you. It's been a bit
10 of a surreal morning.

11 So thank you, Chair Castro and other
12 Commissioners, for inviting me to participate in
13 today's panel. As you already know, I'm Lisa Danetz,
14 Senior Counsel with Dēmos. Dēmos is a nonpartisan
15 public policy organization that seeks an America
16 where everybody has an equal say in our democracy and
17 an equal chance in our economy. For the last, I
18 don't know, seven or eight years, I have worked
19 extensively on issues related to Section 7 of the
20 NVRA, both in terms of compliance work and policy,
21 and in both cooperative efforts as with North
22 Carolina and as part of litigation.

23 So as this Commission is no doubt aware, one
24 of the express purposes of the NVRA was to increase
25 the number of registered voters.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 And you can move to the next slide,
2 please.

3 It includes within its findings that
4 discriminatory and unfair registration laws and
5 procedures can have a direct and damaging effect on
6 voter participation in elections for federal office.
7 And Section 7 is one part of the attempt to address
8 that problem.

9 Next slide, please.

10 Unfortunately, the possibilities under
11 Section 7 were not maintained over the first 10 years
12 of its implementation. Although in the first years
13 that were reported, 2.6 million individuals submitted
14 voter registration applications at Public Assistance
15 Offices, in the first 10 years, that declined to
16 540,000. You can see the 80 percent decline on the
17 graph.

18 Next slide, please.

19 And so since that time, since 2006, and
20 as you can see from this chart, we and our partners
21 have been somewhat busy focusing on the compliance
22 issue. And you know, this chart shows the different
23 states where we've been working and you know, the
24 approach we have taken as we have found compliance
25 issues has really differed depending on the reception

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 we received from each state. So for instance, when
2 we first spoke to Mr. Bartlett in North Carolina and
3 it was clear that he was serious about fixing issues
4 there -- and I'll also say he was quite serious about
5 what would happen if we sent a notice letter --

6 (Laughter.)

7 We worked cooperatively. And you can
8 see from this list that there are states all over the
9 country where we work cooperatively with states that
10 are serious about fixing problems. In other states,
11 we don't have that luxury. Sometimes the threat of
12 litigation, or actual litigation, crystallizes
13 priorities, I like to think. We've completed
14 litigation in six states and we or our partners have
15 pending litigation in three others.

16 Next slide, please.

17 So what kind of problems do we see?
18 What kind of compliance problems? And I've listed
19 more in my written testimony, but I would say an
20 overview is that we see local offices that don't
21 provide voter registration opportunities at the time
22 they're supposed to. We see offices that don't have
23 voter registration applications on site. We
24 encounter lots of staff who are completely unaware of
25 the obligation to provide voter registration

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 services. And we find state agencies that don't have
2 systems in place to ensure implementation. There's
3 no staff training. There's no oversight. There's no
4 mechanism in place to ensure that voter registration
5 policies are being followed.

6 Next slide, please.

7 So I would say that, in terms of the
8 litigation we've conducted, in the lawsuits that have
9 been concluded, we've had favorable decisions in all
10 of them and we've achieved settlements, favorable
11 settlements in all of them. The settlement
12 agreements largely mirror the elements that I
13 submitted in my written testimony as to what produces
14 an effective institutionalized compliance plan. They
15 include strong monitoring, reporting, training, and
16 oversight provisions.

17 Next slide, please.

18 So what's happened since 2006? You can
19 see that in contrast to the earlier graph of the
20 first 10 years, there's been a turnaround in the
21 trendline and it will be interesting to see what
22 comes out in the upcoming EAC Report which will be
23 released at the end of June.

24 Next slide, thank you.

25 In the last EAC Report, if you look at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the top 10 performing states, seven of the 10 are
2 states where there was some kind of compliance
3 intervention. So there were lawsuits by either
4 private litigants or the Justice Department in Ohio,
5 Tennessee, Missouri. I think that's it on that list,
6 Ohio, Tennessee and Missouri. And then cooperative
7 work occurred in North Carolina, Colorado, and
8 Virginia. Illinois also had an intervention, I
9 think.

10 Next slide, please.

11 Just to show you some of the state
12 trendlines, I mean this is from data that we get
13 reported to us as a result of our cooperative work
14 and our settlements. In Ohio, in the almost three
15 and a half years the settlement agreement has been in
16 effect, the state has averaged close to 15,000 voter
17 registration applications submitted per month at
18 Public Assistance Offices. That's compared to 1,775
19 prior to the intervention. You can see the
20 trendline.

21 Next slide.

22 The same is true in Missouri.

23 Next slide.

24 North Carolina. And you can see here,
25 the arrow points to the approximate date of when we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 contacted Mr. Bartlett, and that state has kept its
2 numbers at about five and a half times the level pre-
3 intervention in the seven years since.

4 Next slide, please.

5 This is Mississippi. I don't have the
6 same kind of graph because this work is too recent,
7 but Mississippi instituted new procedures a little
8 less than two years ago. We have monthly data and
9 this shows the increase in monthly voter registration
10 submissions.

11 Next slide.

12 Just to be fair, I included graphs for
13 the Justice Department settlements, too. I can't
14 speak at length about what has happened in those
15 cases, but if you could just scroll through the next
16 few, you'll see that -- the next few slides, you'll
17 see the same trendlines. You have Arizona, Illinois,
18 and again, Rhode Island. And I took the Rhode Island
19 numbers from a press report. There's no -- I'm not
20 aware of a particular data source for this
21 information.

22 Next slide.

23 So overall, I would say the intervention
24 impact in terms of the work done by Dēmos and its
25 partners has led to close to two million additional

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 low-income citizens who have applied to register to
2 vote at Public Assistance Offices or through Public
3 Assistance Offices. And that's on top of what you
4 would have expected otherwise, based on the states'
5 numbers.

6 In my remaining time, I would simply
7 note that there's a large voter registration gap in
8 this country based on income. It's 19 to 20
9 percentage points. So our low-income citizens are
10 registered at about, I think it's around, 65 percent
11 while our more affluent citizens are registered at
12 about 85 percent. That difference in registration
13 translates into a difference in participation which
14 ultimately impacts our democratic decision making.
15 And I think Section 7 and adequate enforcement of
16 Section 7 is an important element to try to close
17 that gap.

18 Thank you so much.

19 CHAIRMAN CASTRO: Thank you, Ms. Danetz.

20 Commissioner Kladney, would you like to
21 have the first questioning since this is your concept
22 paper?

23 COMMISSIONER KLADNEY: Thank you, Mr.
24 Chairman.

25 CHAIRMAN CASTRO: You're welcome.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER KLADNEY: Mr. Bartlett,
2 thank you for your participation here today. I'm
3 interested in when you said you made unannounced,
4 random, in-person checks of your agencies, how was
5 that accomplished?

6 MR. BARTLETT: What we would do is that,
7 whenever there was a State Elections employee going
8 through a county, we would go and visit wherever the
9 public agencies were, to: number one, see if they had
10 voter registration applications, and number two, did
11 they have our little poster that we sent everyone
12 hanging up, if they had any questions, and how could
13 we be helpful. This was not a check to see how bad
14 you were doing, but it was sort of like a wellness
15 check. It worked out very well. We still do it, but
16 it's not as much as we once did because our numbers
17 have been consistent.

18 COMMISSIONER KLADNEY: And your
19 training, I think you said you had people in every
20 office that were trained in Section 7. I forget the
21 name of the person. Was that significantly difficult
22 to achieve?

23 MR. BARTLETT: What we have done is
24 trained the trainer at the state level. Every agency
25 we have met with, we have offered to do training, we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 have done videos. In fact, for mental health, we
2 have a mental health video that we've used. But we -
3 - the training is not enough and it's got to be
4 continuous because of the turnover.

5 The biggest -- if I had to state the
6 biggest success is continuous communication. We have
7 an email system set up so that any time that someone
8 needs something or asks a question, they go to
9 Veronica Degraffenreid in our office. And because we
10 have got that infrastructure set up at our level, it
11 is not the burden that it would be for another state
12 that was trying to get there.

13 COMMISSIONER KLADNEY: Thank you. Mr.
14 Torchinsky, I was wondering, your comments about --
15 am I being too loud? The microphone works really
16 well compared to our old ones.

17 I was interested in your comments about
18 Rhode Island and about the fact that the consent
19 decree was negotiated with the state and it was over
20 the top is I think -- if I can say that. That was
21 your thoughts.

22 MR. TORCHINSKY: Yes.

23 COMMISSIONER KLADNEY: They were
24 represented in the case, right?

25 MR. TORCHINSKY: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 COMMISSIONER KLADNEY: And the consent
2 decree had to be approved by the Judge?

3 MR. TORCHINSKY: Yes.

4 COMMISSIONER KLADNEY: And they could
5 have litigated if they wanted?

6 MR. TORCHINSKY: Correct.

7 COMMISSIONER KLADNEY: And they chose
8 not to?

9 MR. TORCHINSKY: Correct.

10 COMMISSIONER KLADNEY: So it wasn't like
11 they were a victim.

12 MR. TORCHINSKY: I feel like -- and
13 particularly in civil rights cases in general, and
14 particularly in the voting section, I think from the
15 perspective of the state government it is a lot
16 cheaper and a lot less expensive to just do whatever,
17 say yes to whatever DOJ asks than to go fight with
18 them. I represented a jurisdiction in a bailout
19 where DOJ asked for monitoring requirements that were
20 beyond the requirements of the minimal requirements
21 contained in the statute for post-bailout activity.
22 We talked about whether it made sense to go argue
23 with DOJ over it and frankly it was a whole lot
24 easier and a lot cheaper to just say okay, fine,
25 whatever you ask for because we want the bigger thing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 which in this case for Rhode Island was the
2 settlement of a lawsuit and in my client's case was
3 the bailout itself.

4 In a lot of these cases, it's just
5 easier to comply with whatever DOJ wants than to
6 fight with them about it from a cost benefit
7 perspective when you're representing a public agency
8 or a government. And I think that's probably what
9 happened in Rhode Island. It was a whole lot less
10 expensive overall to agree to something that's beyond
11 the requirements of the statute than it was to fight
12 with DOJ over something that they were asking for in
13 the course of a settlement.

14 COMMISSIONER KLADNEY: And the great
15 thing is, though, about America is that's up to the
16 client. They have the freedom to accept it or reject
17 it.

18 MR. TORCHINSKY: They do. But again, in
19 the civil rights area, particularly when you're
20 representing public agencies, there's a cost benefit
21 analysis that you have to do that essentially drives
22 your decision making when DOJ is there demanding
23 something that goes beyond what the statute requires.

24 COMMISSIONER KLADNEY: I have another
25 question -- when you were talking about -- my

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 impression from your comments was that generally
2 negotiations are not entered into prior to
3 litigation. That was the impression that I got. Is
4 that correct? My impression, is that correct?

5 MR. TORCHINSKY: You know, I think it's
6 difficult to generalize, but I think, often I think
7 there are public relations advantages to jumping
8 straight to the lawsuit that I think are often
9 overlooked by DOJ and by private litigants. And I
10 think negotiation and cooperation with state and
11 local governments is a whole lot better way to get
12 overall compliance with civil rights laws than
13 jumping straight into sort of litigation or
14 adversarial kinds of proceedings.

15 COMMISSIONER KLADNEY: I actually agree
16 that conversation is a good thing and I know -- I
17 think it's Dēmos that's litigating in my state. And
18 I know they had numerous meetings with the Secretary
19 of State, the Governor's Office, and things like that
20 to try and negotiate. So my experience is that they
21 do try to negotiate prior to litigation because it is
22 costly, is it not?

23 MR. TORCHINSKY: It is very costly.

24 COMMISSIONER KLADNEY: So it also saves
25 them money and time as well as the state's money and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 time, is that correct?

2 MR. TORCHINSKY: I think in these cases,
3 negotiated outcome is often way better than a
4 litigated outcome.

5 COMMISSIONER KLADNEY: Thank you.

6 CHAIRMAN CASTRO: The chair recognizes
7 Commissioner Gaziano.

8 COMMISSIONER GAZIANO: I'll have to try
9 to remember to keep my finger on this button. But
10 thank you all for your very good testimony. One of
11 the great benefits of serving on the Commission is
12 being forced to try to learn something and ending up
13 at least learning a fair amount, whether that's, you
14 know, that significant or not. And you've certainly
15 helped.

16 I do -- although respecting the focus of
17 this hearing on Section 7, I am going to try to ask a
18 Section 7-based question that does touch upon Mr.
19 Torchinsky's observation about the non-enforcement of
20 Section 8, assuming that we only really cared about
21 Section 7 or we cared about both. But I think we
22 can't ignore the 800-pound gorilla that is in the OIG
23 Report that confirms the evidence that this
24 Commission received in its New Black Panther
25 investigation, that the Voting Section and other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 deputies, the Deputy Assistant Attorney General
2 essentially sent very strong signals that the
3 Division did not want to enforce Section 8. Later,
4 they --

5 COMMISSIONER KLADNEY: Mr. Chairman,
6 excuse me, Commissioner Gaziano. Regarding trying to
7 bring up a discussion about Section 8, and I respect
8 your attempt to do so, when we talked about this
9 concept paper you and I had a discussion on the
10 record, and in that discussion I said I was more than
11 willing to amend my paper if you would make a
12 proposal, because I didn't know much about Section 8
13 at the time and I actually still don't and I'm not
14 prepared today to discuss it. I think it would be
15 unfair to get into that in light of the fact that I
16 had asked for a proposal, never received a proposal,
17 and now we're going to be talking about it? I would
18 ask the Chairman to --

19 COMMISSIONER GAZIANO: I would respect
20 the -- I didn't interrupt your questioning. Let me --
21 - give me a little latitude to connect the two,
22 please. But I also didn't understand the colloquy
23 exactly as you did. But I'm willing to respect that
24 the focus of this hearing is on Section 7. I just
25 don't think you can ignore the impact of Section 8,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 non-enforcement on Section 7. So let me finish.

2 The explanation that Julie Fernandes,
3 the Deputy Assistant Attorney General, gave for non-
4 enforcement was that it was more important to enforce
5 Section 7, limited resources, yadda, yadda, even
6 though the Voting Section had been expanded greatly
7 and that liberal groups were really demanding
8 enforcement of Section 7.

9 So here's my hypothetical and I'll ask
10 it particularly to Mr. Torchinsky and Ms. Danetz.
11 Assuming we're only focusing on Section 7 now, where
12 in some future administration would it be proper, you
13 think, for the Civil Rights Division to signal to all
14 its staff to institute a policy of dismissing Section
15 7 cases and announcing to the staff that right
16 wingers really wanted Section 8 compliance and that,
17 you know, they needed to concentrate on that. And
18 therefore all Section 7 enforcement would cease, and
19 to disseminate that broadly to the states and the
20 public. Do you all think that would be an
21 appropriate enforcement position for the Division to
22 take?

23 MR. TORCHINSKY: I do not. I think that
24 -- like I said at the beginning of my testimony, I
25 think the NVRA was a carefully negotiated compromise

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 that contained both the Public Assistance Agency
2 registration requirements as well as the Section 8
3 list maintenance requirements. And I think that
4 states overall have really fallen down on Section 8
5 compliance and obviously the Justice Department --
6 well, let me stick to the hypothetical.

7 Hypothetically, I think that would be a
8 very bad decision for any Justice Department no
9 matter which party is in control of the Justice
10 Department to essentially say we're only going to
11 enforce one particular provision of one particular
12 Civil Rights Act to the exclusion of other provisions
13 of that same Act. I think that's a mistake.

14 COMMISSIONER GAZIANO: Let's just take
15 my Section 7 hypothetical which is we're just not
16 going to enforce Section 7, not saying anything else.
17 We're not -- do you think that would be proper for
18 the administration, Ms. Danetz?

19 MS. DANETZ: I can't really speak about
20 how the Justice Department operates because I've
21 never worked there. I will say that it is the
22 perspective of Dēmos as well as many of our allies
23 that regardless of the impression, Section 7
24 enforcement has not been particularly active. There
25 have been helpful things that the Justice Department

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 has done, but it is not our view that they have been
2 particularly active on Section 7 enforcement. I
3 don't know how else to respond to your question.

4 COMMISSIONER GAZIANO: I think it's a
5 fairly straight-forward question. Do you think it
6 would be proper for the Division to publicly announce
7 that it was --

8 CHAIRMAN CASTRO: She answered your
9 question, Commissioner.

10 COMMISSIONER GAZIANO: Respectfully, I
11 don't think she did. She says she doesn't think they
12 have done very much. The question is do you think it
13 would be proper and helpful for the Division to
14 announce that it was dismissing Section 7 lawsuits
15 and it would not enforce Section 7? Would that be
16 helpful for the National Voter Registration Act
17 enforcement overall?

18 MS. DANETZ: I think I did answer that
19 by indicating since I have not worked in the Justice
20 Department and am not familiar with the way DOJ
21 policy works. I don't feel like I have the
22 competency to respond to that question.

23 CHAIRMAN CASTRO: She's answered your
24 question, Commissioner.

25 COMMISSIONER GAZIANO: I'll hopefully

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 have another opportunity to ask the witnesses another
2 question.

3 MR. TORCHINSKY: Can I just add one
4 other --

5 COMMISSIONER GAZIANO: Sure, go ahead.

6 MR. TORCHINSKY: I want to add in the
7 context of assessing Section 7, and this goes to my
8 testimony, to Ms. Danetz' testimony, and directly to
9 Commissioner Gaziano's question, I think when you're
10 looking at the trendlines that were up in the slide
11 show, both from '95 forward and through some recent
12 years, I think it's really important to look at
13 Section 7 in the context of the overall economy and
14 sort of public use of public assistance. I think
15 there's a -- I point particularly to a 2008 Heritage
16 study which showed, look, 1996 was the enactment of
17 welfare reform.

18 The economy was booming in the late
19 '90s. The number of people seeking -- new applicants
20 to public assistance programs was going down over
21 that time period. And then subsequently in 2008, we
22 obviously had the economic collapse and obviously
23 everybody is familiar with the news stories about the
24 number of people that are now seeking participation
25 in various public assistance programs having gone up

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 dramatically in the last five years. And I just
2 think that when you're presented with charts like
3 what Dēmos has presented here, to use that -- to look
4 at that chart and say oh, well, the filing of their
5 complaint or their initial contact is the causation
6 for those changes and numbers I think is important
7 for this Commission to consider when you're looking
8 at that which is you can't look at those numbers in a
9 vacuum. You have to look at these numbers in overall
10 context about what's going on with the economy and
11 public assistance or participation levels or the
12 levels of people seeking to participate in public
13 assistance programs in general.

14 So I just do want to criticize those
15 charts and say yes, they may make particular points
16 and they may show a particular change in numbers, but
17 just saying hey, this is when we contacted the state,
18 doesn't really say much about the overall economy or
19 give any context to, hey, Dēmos contacted them or DOJ
20 contacted them here and look, numbers have gone up.
21 I think that needs to be in the context of what's
22 going on overall in the economy, not just at Voter
23 Assistance Offices with respect to voter
24 registration.

25 COMMISSIONER KLADNEY: I don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 understand what you mean by context. I mean are you
2 just saying that normally it would go up and those
3 numbers would be the same regardless?

4 COMMISSIONER GAZIANO: If you don't
5 mind, I'll provide context in another question. He
6 can answer, but I was going to raise some of those
7 questions myself.

8 CHAIRMAN CASTRO: At this point, I'm
9 going to give the floor to Commissioner Yaki and
10 we'll come back to the other debate.

11 COMMISSIONER YAKI: Yes. Thank you very
12 much. First, to Ms. Danetz, I also want to add my
13 heartfelt thoughts on behalf of myself for the people
14 in Boston and for all of America. There are actually
15 people from the Bay Area who were injured in that
16 race. It's truly an international event and had
17 international repercussions.

18 The question that Commissioner Gaziano
19 was attempting to give to you, I think was a little
20 misleading and let me try and take another -- take a
21 different way of looking at it. By your very
22 presence here, in fact, by the presence of everyone
23 here, it is not simply up to the Justice Department
24 to deal with enforcement of Section 7, correct?

25 MS. DANETZ: No, there is a private

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 right of action as well.

2 COMMISSIONER YAKI: So -- and the fact
3 that this private right of action is taken by groups
4 such as yourselves and by groups representing other
5 organizations -- means that there are opportunities
6 for enforcement of this aside from the Justice
7 Department, correct?

8 MS. DANETZ: Yes.

9 COMMISSIONER YAKI: I just wanted to
10 clarify that because I wasn't quite sure what the
11 statement by my fellow Commissioner was leading to
12 other than trying to give an impression that this was
13 -- that there was going to be no enforcement of
14 Section 7 or Section 8 or what have you by the
15 Justice Department.

16 And by the way, taking a very small
17 quote of an overall report which pretty much refuted
18 the idea that there were political decision making
19 going on and a lot of the alleged allegations made by
20 the majority of this Commission of which I was not a
21 part of in the New Black Panther report.

22 So having put that to bed, let's get to
23 the actual briefing itself.

24 Mr. Bartlett, one of the little offhand
25 comments that you made intrigued me and I just wanted

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 to ask if you could elucidate on it a little bit
2 more. You talked about that when you were going
3 through this process that you encountered
4 philosophical differences. What were those
5 philosophical differences if you can spell it out a
6 little bit more?

7 MR. BARTLETT: The philosophical
8 differences is that they thought that the government
9 should not be taking the role of trying to get people
10 to register through these public assistance agencies
11 because they would think that they would have to
12 participate in voter registration in order to get
13 services in return. They thought that it was an
14 economic burden on their employees. I had at least
15 three different members of different County
16 Commissions say that we're not going to do it. And I
17 tried to impress upon them that it was the law, both
18 state and federal, and that it should be done. And
19 in two of those three counties, the County Attorney
20 helped mediate the impasse. In one county, basically
21 the Commissioner said no way. And I wrote a letter
22 to the Department of Justice. They made one phone
23 call and that was the end of that impasse.

24 So what we have tried to do is work
25 together as partners and do what our responsibilities

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 call for.

2 COMMISSIONER YAKI: Are these county
3 officials you're talking about, are they appointed or
4 elected?

5 MR. BARTLETT: Well, the County
6 Commission are elected.

7 COMMISSIONER YAKI: And I was going to
8 ask following up on that because that's what I was
9 trying to get at from Ms. Danetz, have you found a
10 difference in enforcement of 7, Section 7 at the
11 local level depending on whether officials are
12 appointed or elected or just career civil servants,
13 have you seen any difference in treatment of the
14 implementation of Section 7?

15 MS. DANETZ: I don't think that we've
16 done that kind of analysis. I will say that I have
17 certainly worked with both appointed and elected
18 officials, and elected officials of both major
19 parties, and have worked successfully with officials
20 from both parties, have had impasses with officials
21 from both parties. We have a lawsuit against my home
22 state of Massachusetts right now.

23 So I couldn't tell you about a
24 difference between elected and appointed because
25 generally we're dealing with both.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MR. TORCHINSKY: May I just comment on
2 that briefly? I think I'm actually the only person
3 in the panel that actually has worked in the Civil
4 Rights Division. And I think that like Mr. Bartlett
5 said, I think when you run into local officials,
6 whether they be elected or appointed who just flat
7 tell you that they just don't agree with the federal
8 law, that's one of the -- having been in the Civil
9 Rights Division for a little while, there are some --
10 most of the cases that the Civil Rights Division
11 does, how you act in those cases wouldn't vary based
12 on who's sitting in the White House.

13 And I think when you run into local
14 officials that flat tell you that they're not going
15 to comply with the federal law because they don't
16 agree with it, I think that's one of the situations
17 where I have seen the Justice Department act pretty
18 swiftly to communicate to those local officials that
19 their personal view on the statute is really not
20 relevant to what the statute actually says and
21 requires of them.

22 I have seen this not just in the voting
23 context, but in other civil rights enforcement areas,
24 too, where you run into local officials who say the
25 Federal Government has no business here and the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Justice Department has pretty universally said well,
2 yes, the statute says we do. I do want to say that
3 about local officials that I've run into.

4 CHAIRMAN CASTRO: Thank you. The Chair
5 recognizes Commissioner Achtenberg.

6 COMMISSIONER ACHTENBERG: Thank you, Mr.
7 Chairman.

8 Ms. Danetz, this question now has two
9 parts because I'd like you to address the assertion
10 by Mr. Torchinsky that the upward trajectory is
11 equally as explainable by the increase in
12 applications for public assistance as it is for the
13 implementation of good policy in terms of monitoring
14 training and oversight which is what appears to be
15 necessary if we are going to guarantee Section 7
16 compliance.

17 MS. DANETZ: A few things. The first is
18 that in the data that we received directly from the
19 states, we also have the data about essentially the
20 case load data. So when we make those graphs on that
21 data, the trendline line is in the same direction. I
22 didn't prepare those for these slides because quite
23 frankly that would have taken my data analysts a
24 very, very long time to put in that kind of data, but
25 if you do look at it by monthly covered transactions

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 (applications, renewals, and changes of address), you
2 get the same trendline.

3 I would also say that in the first 10
4 years, '95 -'96 to 2005 - 2006, the SNAP case load,
5 that's the food stamps case load, was significantly
6 higher in 2005-2006 than it was in '95-'96. So you
7 can't explain the downward trend by the booming
8 economy. There was a Heritage Foundation report, I
9 think it was in 2008 by Douglas Mulholland, I think
10 was his name, something like that.

11 COMMISSIONER GAZIANO: David Muhlhausen.

12 MS. DANETZ: That was then refuted by a
13 later paper by Alvarez and Nagler in terms of
14 methodology. I can't speak at much greater depth
15 about that, but I would say those would be the
16 responses.

17 COMMISSIONER ACHTENBERG: I have my
18 second part. Thank you very much.

19 So monitoring training, oversight,
20 consistency, expressing concern from the top and
21 throughout the bureaucracy, is what it takes to
22 achieve consistent compliance with Section 7. Is
23 that a fair summary of what needs to happen if a
24 state is going to become compliant?

25 MS. DANETZ: Yes. And I would add

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 essentially integrating the voter registration
2 procedures within existing agency processes so that
3 it's seamless and not an add-on. It's part of what
4 people do.

5 COMMISSIONER ACHTENBERG: Are you aware
6 of any states that at one time had good processes for
7 monitoring training, oversight, and integration, and
8 subsequently removed those processes or ceased to
9 undertake those processes? Are there any states that
10 had a good system and then for whatever reason no
11 longer have a good system?

12 MS. DANETZ: I think I would have to
13 think about that. There's nothing that comes to mind
14 directly. I will say that Michigan used to be a
15 leader and it revised some of its benefits processes
16 and voter registration applications plunged. And so
17 then we had to go and pay them a visit and we've been
18 helping them to improve their processes again.

19 COMMISSIONER ACHTENBERG: Do you have
20 any opinion about what that is attributable to?

21 MS. DANETZ: I think that when officials
22 are making decisions there are a couple of -- this is
23 speculative, but --

24 COMMISSIONER ACHTENBERG: I'm just
25 asking for your opinion.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. DANETZ: Okay, I think that
2 processes naturally change in various respects.
3 Sometimes it's because of budget. Sometimes it's
4 because of technological advance. And if voter
5 registration is not part of the high-level thinking
6 about how to modify processes, it can get neglected
7 and omitted. I mean I'm sure there are also places
8 where there is a desire to maybe de-emphasize voter
9 registration. I'm not entirely sure, but I think my
10 sense is that overall it falls off the radar screen
11 because people are not paying attention.

12 COMMISSIONER ACHTENBERG: Thank you.

13 CHAIRMAN CASTRO: I have a couple of
14 questions.

15 Mr. Bartlett, in your initial testimony,
16 you said, you referenced possibly going at some point
17 to online voter registration when the political
18 climate will allow it. Could you elaborate on what
19 that means?

20 MR. BARTLETT: I have met with Democrat
21 and Republican legislators beginning in 2006 to
22 possibly do online voter registration in North
23 Carolina and it has developed into a bill, but never
24 considered by a committee.

25 CHAIRMAN CASTRO: So what is the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 political -- is it that the Democrats and Republicans
2 don't want to have online voter registration, is that
3 what you're saying?

4 MR. BARTLETT: I don't think that it is
5 as much as don't want it. I think it's more of
6 everything that centers around the issue of voter
7 fraud or potential fraud that scares them into trying
8 something new or somebody trying to crash a database.
9 I think it is those types of things that captured
10 their attention.

11 CHAIRMAN CASTRO: Mr. Danetz, I know you
12 weren't handling the Illinois litigation, it was
13 Justice Department, but could you tell us a little
14 bit about the situation there and how it's improved,
15 if you know?

16 MS. DANETZ: So I can tell you that at
17 the end of the Bush administration, the Voting
18 Section entered into two memoranda of agreement with
19 different states, like pre-litigation settlements,
20 one of which was in Illinois. The term of that
21 agreement was two years and Illinois' numbers really
22 increased quite drastically. I can tell you that we
23 know less now because, after the expiration of the
24 settlement agreement, Illinois stopped doing some of
25 the procedures that were in the settlement agreement.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 It no longer does the same kind of reporting, so we
2 can't really assess where the state is now. And I'll
3 be interested, as I said, to see the EAC numbers that
4 come out.

5 CHAIRMAN CASTRO: Do you know why they
6 stopped?

7 MS. DANETZ: I think because the
8 settlement agreements expired.

9 CHAIRMAN CASTRO: Yes.

10 MS. DANETZ: I mean that's when they
11 stopped doing it. I don't really know. I don't have
12 firsthand knowledge of it.

13 CHAIRMAN CASTRO: Thank you.
14 Commissioner Gaziano?

15 COMMISSIONER GAZIANO: Thank you and I
16 will try to introduce into our record four sort of
17 studies in the series that two of the witnesses have
18 talked about, but just to finish off my concluding
19 thought that I didn't get out from the last panel
20 because of some of the cross talk, any time there is
21 a political incentive created for the next
22 administration not to enforce Section 7, I think
23 that's bad for Section 7. I think it's bad for the
24 NVRA. And you know, I think we can deal with the
25 public record and make our own Commissioner

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 conclusions.

2 But as for the studies, I really -- this
3 was the most interesting part of my kind of study
4 prep for this. There was the original Dēmos study
5 and if I remember January-February 2008, I'd ask the
6 Chairman if we could accept into the record of this
7 briefing these four documents.

8 CHAIRMAN CASTRO: I'll take it under
9 advisement.

10 COMMISSIONER GAZIANO: Under advisement?

11 CHAIRMAN CASTRO: I'll look at them more
12 closely.

13 COMMISSIONER GAZIANO: Normally, we
14 enter it in the record. Then there was the June 11
15 Heritage Foundation study and for the public record
16 that's my day job. So it was published by my very
17 respected colleague, David Muhlhausen. And he was
18 the lead author and Patrick Tyrrell.

19 MS. DANETZ: Sorry I butchered his name.

20 COMMISSIONER GAZIANO: No, no, that's
21 fine. Then there was the response by Dēmos and its
22 authors, Alvarez and Nagler. And then there was a
23 further reply and I think that's how social sciences
24 is best done with this sort of back and forth and
25 that is -- the title of that one is November 17,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 2009, "Welfare Reform and Public Assistance Voter
2 Registrations and Reply to the Critics."

3 And here's what I'd like to -- both you
4 and Mr. Torchinsky to evaluate. Obviously, NVRA
5 was passed in 1993. We have the 2.6 million people
6 in Public Assistance Offices registering. Then we
7 have, and I think the original Dēmos study just notes
8 the decline in absolute numbers, and with anecdotal
9 evidence suggests one of the possible reasons. In my
10 mind, that's not a social science study. That's the
11 suggestion for the need for a study. That's not a
12 regression analysis.

13 So my colleague at the Heritage
14 Foundation then tried to look at the factors to test
15 the Dēmos theory and others. And of course what he
16 found since the Dēmos study really looked at the
17 decline from '95-'96 on, he found a very significant
18 correlation with the decrease in public assistance
19 after President Clinton signed the historic welfare
20 reform -- his and your study then ends in 2008.
21 There was a very helpful exchange between the
22 authors of the Dēmos study. And Mr. Muhlhausen
23 acknowledged at least one of the critiques as a
24 limitation, not a critique of his study, but just an
25 unavailability of data. And I have no doubt that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 that's where the real regression analysis is and I
2 have no doubt, by the way, that the Bush
3 administration's enforcement of Section 7 and Dēmos'
4 participation with the Bush administration's
5 enforcement of Section 7 may have contributed. I
6 also think that the disastrous economic policies of
7 the Bush administration and causing the mortgage
8 meltdown and the further disastrous economic policies
9 of this administration might have contributed. But
10 there's one other factor that none of the studies
11 could study, as I understand it.

12 And I know, Mr. Torchinsky, you have
13 looked at least some of these. And that is when
14 talking to Mr. Muhlhausen at the Heritage Foundation,
15 he said that he couldn't test, or at least based on
16 his recollection, he couldn't test how many people in
17 the welfare offices in the period with the sharpest
18 decline were repeat people. So they registered first
19 when they first went on public assistance. There may
20 be a period where they fell off public assistance.
21 They came back on public assistance, but since they
22 had already registered to vote it was without
23 personally-identifiable information, very hard to
24 test. So you would expect, by the way, the effect of
25 the NVRA to be somewhat declining. Now the fact that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 it went up in '95-'96 might be that it was swamped by
2 the horrible economic consequences of two
3 administrations or could be your great litigation
4 efforts, the great Bush administration litigation
5 efforts, but without further regression analysis it
6 seems hard for me to draw much of a comparison.

7 What do you two think about that kind of
8 explanation? Let me begin with Mr. Torchinsky since
9 I know you did study the real study.

10 MR. TORCHINSKY: I think one of the
11 issues there and you're right, if there are a pool of
12 people who are recipients of public assistance and
13 every year you're registering a certain number of
14 them, unless there are an equal number of people
15 entering into new eligibility, the number of people
16 that you would register mainly every year wouldn't
17 necessarily go down. I mean it's kind of a logical
18 thing. If the pool has 80 gallons in it and you keep
19 taking gallons out of the pool because you're
20 registering people and you're not refilling the pool
21 of eligible people, the number of registrations would
22 necessarily go down.

23 I do think it's difficult to study that
24 without access to the personally-identifiable
25 information which I also have criticism of people

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 trying to go out and obtain. But I think that also
2 sort of ties into the whole notion of the Section 8
3 enforcement issues which is, one of the issues that
4 Dēmos and -- Ms. Danetz uses the phrase -- "its
5 allies" have criticized states that have gone on and
6 tried to do Section 8 compliance and do list
7 maintenance programs, has been the difficulty of
8 tracking all this personally-identifiable information
9 and making sure you're tracking the right person. So
10 I think there would be some difficulties in these
11 studies to see if you've got repeat people coming
12 into the system. The same problems that you have in
13 Section 8 enforcement with ensuring that you're
14 actually removing the right people, you'd have the
15 same tracking problem on the other side about
16 tracking the people that are entering into the
17 registration system and making sure you're not having
18 repeat people.

19 MS. DANETZ: So I have a number of
20 thoughts about what you've asked and I will say that
21 I was not able to really review the papers because I
22 couldn't find that Heritage paper on line and quite
23 frankly I wasn't aware of the 2009 reply.

24 COMMISSIONER GAZIANO: I'll report them
25 to the authorities.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 (Laughter.)

2 COMMISSIONER YAKI: You need the secret
3 Heritage code key.

4 MS. DANETZ: I keep trying to look.

5 COMMISSIONER YAKI: Hidden somewhere in
6 a basement.

7 MS. DANETZ: I think there are a couple
8 of thoughts that I have. The first is that my
9 recollection of the 2008 study was that it looked
10 only at TANF because that was the subject of welfare
11 reform. And the universe of public assistance
12 recipients engaging in applications, renewals, and
13 changes of address is significantly broader so you
14 also have SNAP and Medicaid, both of which are much
15 greater programs and neither of which would have gone
16 down as a result of welfare reform in the mid-'90s.

17 The second thing I would say is that if
18 you look at Ohio which is where at least we have the
19 most data because we've had the settlement agreements
20 since about Thanksgiving of 2009, we have seen stable
21 numbers over time. It may vary depending on the time
22 and the election cycle, but if that theory were true
23 that you might have a large number when people first
24 come in and then it tapers off because it's the same
25 people. We're not seeing that in our state data that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 comes in.

2 The third thing I would say is that the
3 low-income population is highly mobile and so even if
4 somebody has come into the system and is still
5 receiving benefits, they need to change their voter
6 registration at the time they change their address.
7 That's a time that voter registration is supposed to
8 be provided at the public assistance agency. So I
9 think that would tend to undercut that theory. I
10 think the last thing is that I don't know that
11 there's any sense that it's always the same people
12 coming in over and over again. So I think all of
13 those things would be where I would want to look
14 about why that theory might not be accurate.

15 COMMISSIONER GAZIANO: Well, thank you
16 very much and that's another reason I'd like the
17 actual scholars who have written these reports to
18 have them -- Mr. Muhlhausen did look at several
19 public assistance programs, but I don't know exactly
20 which ones and I think the important was his panel
21 regression analysis did find certain things
22 statistically significant, certain things like SNAP
23 not statistically significant and that's what I think
24 we should be asking other scholars to examine and try
25 to tease out these questions that both of us are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 going back and forth on.

2 CHAIRMAN CASTRO: We're going to go now
3 to Commissioner Kladney, followed by Commissioner
4 Yaki, and then Commissioner Achtenberg, and I presume
5 Commissioner Gaziano, you're going to want to
6 question after that?

7 COMMISSIONER GAZIANO: Possibly.

8 CHAIRMAN CASTRO: I'll write it down.

9 COMMISSIONER KLADNEY: Thank you, Mr.
10 Chairman.

11 Mr. Bartlett, the parties have been
12 asking questions back and forth about numbers and the
13 recession and things like that. What I noticed in
14 this one graph was in North Carolina the settlement
15 was reached in 2006, is that correct?

16 MR. BARTLETT: Correct.

17 COMMISSIONER KLADNEY: And by 2008, you
18 had increased registration 700 percent. They went
19 from like 12,000 to 80,000. Is that correct?

20 MR. BARTLETT: Correct.

21 COMMISSIONER KLADNEY: 2008 was when the
22 recession started, whether you know it or not. I'm
23 just making a statement.

24 (Laughter.)

25 Thank you. Mr. Torchinsky, and I thank

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 myself for getting that right, you state on page
2 three of your statement about Louisiana and you say
3 that based on apparent extensive investigation
4 carried out by the Department of Justice in Louisiana
5 it seems many of the changes the Department sought
6 could have been resolved through discussion,
7 negotiation, rather than litigation. So there was no
8 discussion and negotiation, is that correct?

9 MR. TORCHINSKY: I don't represent the
10 State of Louisiana and I don't represent the Justice
11 Department, so I can't necessarily comment on it, but
12 it didn't appear from any of the press reports that I
13 reviewed that such intensive discussions had actually
14 happened for litigation.

15 COMMISSIONER KLADNEY: So that's kind of
16 speculative.

17 MR. TORCHINSKY: It is somewhat
18 speculative, but based on the press reports, I didn't
19 see anything about negotiations.

20 COMMISSIONER KLADNEY: When you say that
21 most of the changes or a lot of the changes could
22 have been made by discussion, could have been
23 resolved through discussion, negotiation, which ones
24 couldn't, do you think from the press reports?

25 MR. TORCHINSKY: I'm not sure

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 specifically.

2 COMMISSIONER KLADNEY: Pardon?

3 MR. TORCHINSKY: I'm not sure
4 specifically.

5 COMMISSIONER KLADNEY: Okay, so there
6 still could have been litigation even if the
7 technical violations had been resolved?

8 MR. TORCHINSKY: It's possible, yes.

9 COMMISSIONER KLADNEY: Okay. And Ms.
10 Danetz, I need this for my own edification. Mr.
11 Torchinsky could probably answer this. Although in
12 the Public Assistance Offices Section 7 is
13 applicable, is that also like unemployment offices
14 and mental health offices and things like that?

15 MS. DANETZ: So the agencies that are
16 covered vary by state. So the statute spells out
17 certain mandatory agencies, so any office in the
18 state that provides public assistance must be
19 designated a voter registration agency. And any
20 office, I don't know that I can get the language
21 exactly right, but basically any state-funded --
22 basically, disability office.

23 MR. TORCHINSKY: I've got the statute.
24 It's in 42 U.S.C. 1973 GG-5. It's sub A, sub 2, sub
25 capital B, all offices in the state that provide

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 state-funded programs primarily engaged in providing
2 assistance and providing services to persons with
3 disabilities.

4 MS. DANETZ: Thank you.

5 COMMISSIONER KLADNEY: I was just
6 wondering because in my state, just for instance,
7 Child Protective Services is a county program, but
8 that wouldn't be covered. Is that correct?

9 MS. DANETZ: No, but if I could just
10 finish the answer. I stumbled because I always like
11 to have the statutory language exactly right. So in
12 addition, every state has what are called
13 discretionary voter registration agencies. Every
14 state has to designate some, at least one, if not
15 more, agency as a voter registration agency that is
16 not one of the two mandatory. So for instance, in
17 North Carolina, what is essentially the Unemployment
18 Office is a voter registration agency, but that is
19 not true in all states.

20 MR. TORCHINSKY: If you continue on in
21 the statute it says "Voter registration agencies
22 designated under paragraph A may include" and it says
23 "state or local government offices such as public
24 libraries, public schools, offices of city and county
25 clerks including marriage license bureaus, fishing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 and hunting license bureaus, government revenue
2 offices, unemployment compensation offices and
3 offices not described in sub B" which is the
4 disability offices.

5 COMMISSIONER KLADNEY: They only have to
6 pick one.

7 MS. DANETZ: Some states pick more, but
8 yes, there must be more than just the mandatory
9 agencies. I would say that as far as Child
10 Protective Services, I don't know offhand what are
11 the discretionary agencies in Nevada, but it's my
12 experience that that is not designated in most
13 states.

14 MR. TORCHINSKY: If you think about it
15 in that particular, in the case of that particular
16 agency, their clients really are kids under 18 who
17 aren't generally eligible to register to vote anyway.

18 COMMISSIONER KLADNEY: And all the
19 parents are taken the kids away from.

20 (Laughter.)

21 MR. TORCHINSKY: It's not a fun way to
22 deal with, but most of the -- the people that they're
23 providing services directly to are the kids who are
24 not eligible to register because of their age.

25 CHAIRMAN CASTRO: The Chair recognizes

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Commissioner Yaki.

2 COMMISSIONER YAKI: This is for Mr.
3 Bartlett. Whenever I see you I want to ask another
4 question about barbecuing in North Carolina, but I
5 resist.

6 In your experience -- and I want to get
7 away from the regression analyses and theories and
8 studies -- but in your own experience in what you
9 have done in North Carolina, do you believe that the
10 effort that you have done as a result of the NVRA has
11 resulted in increases in registration of people who
12 might otherwise not have registered to vote?

13 MR. BARTLETT: I believe so.

14 CHAIRMAN CASTRO: The Chair recognizes
15 Commissioner Achtenberg.

16 COMMISSIONER ACHTENBERG: This is for
17 Ms. Danetz. What was the number of cases that have
18 been litigated in the -- you put a chart up on the
19 wall and there were maybe a dozen cases that had been
20 concluded successfully through the Courts?

21 MS. DANETZ: So there are six
22 litigations that have concluded. There are three
23 that are pending. And there are about 11 states
24 where we have either worked cooperatively or are
25 working cooperatively.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 COMMISSIONER ACHTENBERG: And how many
2 settlement agreements have been reached that have
3 been court-supervised, essentially?

4 MS. DANETZ: All six of the concluded
5 litigations.

6 COMMISSIONER ACHTENBERG: And presumably
7 there was -- and those were all concluded with --
8 would you say favorably from your point of view?

9 MS. DANETZ: Absolutely. Each of those
10 settlement agreements included descriptions of
11 systems that needed to be put in place to ensure
12 ongoing compliance and we get regular data reporting
13 from each of those states.

14 COMMISSIONER ACHTENBERG: And I'm
15 assuming that there has to be asserted some factual
16 basis upon which that kind of court-supervised
17 agreement is based?

18 MS. DANETZ: Our groups have generally
19 not settled the cases with consent decrees, which
20 would require that kind of factual foundation.
21 Instead, what we have done is that in our settlement
22 agreements the Court has continuing jurisdiction to
23 enforce the terms of the settlement so that if
24 there's a breach of the settlement agreement we can
25 go back to the Court. And you know, in general,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 states don't like to admit in a Court document the
2 factual foundation that you're suggesting. And our
3 goal is to get them to an effective institutionalized
4 compliance plan. So if we can do that in this type
5 of settlement agreement, that's what we do.

6 COMMISSIONER ACHTENBERG: I guess the
7 point of the questions is that Judges wouldn't
8 typically involve themselves in issues that actually
9 are non-issues. By that I mean, isn't it typically
10 the case that there is a problem there that you are
11 attempting to solve?

12 MS. DANETZ: Absolutely, otherwise we
13 wouldn't have brought the litigation. And I would
14 say, I would say that although I'm reluctant to go
15 down this path, that you know, we have been awarded
16 attorney's fees which is the signal of prevailing
17 party status. And so that suggests that a Court
18 recognizes the problem.

19 COMMISSIONER ACHTENBERG: Thank you very
20 much. Now please, Mr. Torchinsky.

21 MR. TORCHINSKY: One of the questions
22 about your -- your question about whether there's
23 factual basis for litigation, that's actually one of
24 the issues pending on appeal in the Louisiana matter
25 in front of the 5th Circuit now, because the state is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 essentially asserting that the plaintiff was already
2 registered to vote and therefore wasn't harmed by the
3 fact that he wasn't offered in these other three
4 times that he showed up in the Voters Assistance
5 Offices and wasn't offered the forms, that he wasn't,
6 in fact, harmed. And then the other plaintiff is the
7 state NAACP organization which apparently, according
8 to, at least according to the court filings in the
9 5th Circuit, has never itself conducted any voter
10 registration drive and therefore wasn't actually
11 harmed by the alleged NVRA violations.

12 And there's also, in Louisiana, there's
13 also pending on appeal the technical question of the
14 notice letter that is required to be brought --
15 required to be sent before you can invoke the private
16 right of action provisions of the NVRA was, at least
17 according to the state, never sent. And it was
18 apparently an issue never really addressed by the
19 District Court Judge. So the factual basis for the
20 Louisiana lawsuit is actually pending on appeal in
21 the 5th Circuit right now.

22 COMMISSIONER KLADNEY: The first two
23 that you mention there really are standing issues,
24 are they not?

25 MR. TORCHINSKY: They are standing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 issues.

2 COMMISSIONER KLADNEY: They're not
3 factual issues. I mean they're factual issues in the
4 sense of standing.

5 MR. TORCHINSKY: Yes.

6 COMMISSIONER KLADNEY: But not in the
7 sense of the case, the direct case.

8 MR. TORCHINSKY: Well, I mean
9 essentially what Louisiana is saying hey look, this
10 guy wasn't harmed. He's not the proper plaintiff --

11 COMMISSIONER ACHTENBERG: These are
12 technical issues that they're testing the propriety.

13 MR. TORCHINSKY: And also the sort of
14 procedural, the alleged procedural defect of the lack
15 of the notice letter before the private litigation
16 was actually filed.

17 CHAIRMAN CASTRO: Commissioner Gaziano,
18 you have the floor.

19 COMMISSIONER GAZIANO: Thank you, by the
20 way, for that last response. I'm glad you got that
21 on the record. I did want to return to your, I
22 think, second point, Mr. Torchinsky, on the
23 settlements that go beyond what the state is agreeing
24 to pursue things that go beyond what the statutes
25 require. It seems to me there are three

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 possibilities whenever that occurs. One is that the
2 record is pretty clear, because you know, in
3 litigation you can make a remedy go, as you know from
4 a Justice Department attorney, somewhat beyond what
5 the statute requires if there's a strong finding of
6 illegal conduct. So one possibility is the record is
7 really clear and the state is agreeing to a sort of
8 remedy.

9 A second is that if bureaucrats are
10 going around the normal political and economic
11 considerations in their own jurisdiction and seeking
12 to sort of impose on their state their own sort of
13 pet bureaucratic interest.

14 And a third is even more worrisome and
15 that's that sort of collusive suit where there might
16 be even a partisan reason and not just a bureaucratic
17 reason to do so. What are your thoughts? The first
18 seems okay to me. The later two, without
19 particularly a litigation record if that's a
20 possibility, seem much more problematic.

21 MR. TORCHINSKY: I think looking at
22 civil rights cases over the number of years I've been
23 looking at civil rights cases, I think I've seen what
24 both sides would point to examples of all three of
25 the possibilities that you throw out there. In the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 really egregious behavior category, I have,
2 particularly when I was in Civil Rights Division, saw
3 some absolutely egregious behavior by state and local
4 officials where, in order to make sure that they did
5 actually fall into compliance, we imposed some pretty
6 onerous provisions on some of these jurisdictions,
7 often through settlement whether it was an education
8 case, whether it was a housing discrimination case,
9 whether it was a police department case, and the very
10 rare circumstance, voting case. You do see absolute
11 examples of that.

12 I mean one of the -- I'll just give an
13 example that's totally outside the voting context,
14 but there was a settlement with the State of
15 Mississippi over its juvenile facilities when I was
16 at the Justice Department in the Civil Rights
17 Division. And the conditions under which these
18 juveniles were being held were just -- deplorable
19 would probably be putting it lightly. And we imposed
20 some pretty strict conditions on the State of
21 Mississippi. I think that case is certainly
22 justified and I've seen it in the voting contexts and
23 I've seen it in other civil rights areas.

24 The pet interest issue, I had seen.
25 It's sort of like bureaucracies never stop growing.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 I have seen what I believe to be cases of that. The
2 collusive suits, I think while it's a threat, I don't
3 know that I have seen as many sort of examples where
4 I could point to that in the civil rights enforcement
5 context. But I think those are all serious
6 considerations when you're looking at civil rights
7 suits and settlements of them and trying to figure
8 out what interests led to particular provisions and
9 settlement agreements.

10 CHAIRMAN CASTRO: Do any Commissioners
11 have additional questions? Commissioner Yaki, go
12 ahead.

13 COMMISSIONER YAKI: I was sitting here
14 trying to figure out exactly where we just went
15 afield in terms of this hearing, but I'm going to ask
16 the same question I asked Commissioner Bartlett and
17 Mr. Torchinsky and Ms. Danetz. Do you believe and
18 just simply answer yes or no, seriously. I don't
19 want caveats. Do you believe that Section 7 has
20 assisted the right to vote for people in this
21 country?

22 MR. TORCHINSKY: I believe the NVRA has
23 done that. Yes, I do believe the NVRA has benefitted
24 the right to vote.

25 MS. DANETZ: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 COMMISSIONER YAKI: Okay.

2 COMMISSIONER KLADNEY: Mr. Torchinsky, I
3 have just one question myself and it's not yes or no.
4 When it comes to -- in your statement you talked
5 about the problems with keeping all the paperwork and
6 things like that and Mr. Bartlett seemed to think
7 that he is starting to conquer that with technology.
8 Do you believe that can occur as well, because I
9 noticed in the paperwork that they're required to
10 keep in Rhode Island, it's just a check box form with
11 a signature and obviously somebody has to tally it
12 and send it in somewhere. But if this technology
13 thing would come along, would your objections kind of
14 wane from those problems?

15 MR. TORCHINSKY: Technology can be
16 helpful in tracking and gathering data, obviously,
17 but technology also comes with both an acquisition
18 cost and a training cost in order to implement it
19 properly. So while technology can be beneficial,
20 it's only beneficial if it is both cost-effective and
21 well-implemented.

22 CHAIRMAN CASTRO: Any additional
23 questions from Commissioners?

24 COMMISSIONER ACHTENBERG: Actually, I
25 have one question.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRMAN CASTRO: Commissioner
2 Achtenberg and then Commissioner Yaki.

3 COMMISSIONER ACHTENBERG: Ms. Danetz,
4 how many lawsuits have your organization brought in
5 Section 7?

6 MS. DANETZ: We were involved -- we have
7 brought eight of them. We are not involved in the
8 private Louisiana lawsuit. But we have been co-
9 counsel in the remaining eight. The six that are
10 completed and the other two that are pending.

11 COMMISSIONER ACHTENBERG: And in the six
12 that have been completed, have you prevailed?

13 MS. DANETZ: Yes. There are favorable
14 settlement agreements in all of them and in all of
15 them the Court has retained enforcement jurisdiction
16 over the settlement agreement.

17 COMMISSIONER ACHTENBERG: So presumably
18 there was something wrong and now something is being
19 put in its place to correct the things that were
20 wrong. Is that correct?

21 MS. DANETZ: Yes, absolutely.

22 COMMISSIONER ACHTENBERG: Thank you very
23 much.

24 CHAIRMAN CASTRO: Commissioner Yaki?

25 COMMISSIONER YAKI: Just a quick

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 question to follow up. Ms. Danetz, I know you
2 haven't been involved in the litigation, but do you
3 have any information on the actual status right now
4 of the Louisiana litigation?

5 MS. DANETZ: Yes, thank you. So I would
6 say first of all that the agencies themselves are not
7 appealing. There was a -- the District Court had a
8 trial. The private litigants prevailed below. There
9 are multiple defendants, essentially the agencies and
10 the Secretary of State. The agencies are not
11 appealing the judgment and are, I believe,
12 implementing the various corrective provisions. The
13 Secretary has appealed and I think all three agencies
14 have certified compliance. But beyond that I don't
15 know much more. The briefing, I don't think has
16 occurred yet.

17 COMMISSIONER YAKI: Thank you.

18 CHAIRMAN CASTRO: Any additional
19 questions?

20 COMMISSIONER GAZIANO: Just state for
21 the record that I think we invited the state's
22 response, but because it's in litigation, they
23 reconsidered and probably on advice of counsel
24 decided to decline, which disappoints me a little bit
25 because, like Mr. Torchinsky, I was quite bothered by

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the reach of the discovery request and to the
2 personal identifiable information.

3 COMMISSIONER KLADNEY: But that was
4 dropped.

5 MS. DANETZ: That was in the Justice
6 Department case, not in the private case, so I could
7 be wrong.

8 COMMISSIONER GAZIANO: True, but I still
9 would have liked an opportunity to talk about that
10 request and how Louisiana successfully repulsed that
11 outrageous demand.

12 CHAIRMAN CASTRO: Any additional
13 questions?

14 COMMISSIONER YAKI: Strike the word
15 repulsed.

16 CHAIRMAN CASTRO: If not, this brings us
17 to the end of our program. I'd like to take the
18 opportunity to thank all of our panelists. I
19 appreciate, we all appreciate your participation and
20 the information that you shared with us is
21 tremendously helpful. I also want to personally
22 thank the Office of General Counsel of the Commission
23 in putting this together, especially Yasmin Elhady
24 whose real efforts in the last couple of months to
25 bring this briefing together have made it a success.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 I also want to thank all of our staff in
2 advance for the efforts that they're going to put
3 into putting this information into a briefing report
4 for our consideration at the Commission.

5 Lastly, the record for this briefing
6 report is going to remain open for 30 days. If
7 panelists or members of the public would like to
8 submit materials or comments they can mail them to
9 the U.S. Commission on Civil Rights, Office of the
10 General Counsel, 1331 Pennsylvania Avenue, N.W.,
11 Suite 1150, Washington, D.C. 20425. Or I would
12 recommend, just given the nature of the mail flow to
13 our offices because of security reasons, that you
14 email them to publiccomments@usccr.gov.

15 And also I will review and take under
16 advisement your request of those reports,
17 Commissioner Gaziano. If they are related to Section
18 7, the topic, then of course, we will include them,
19 but I do want to have the opportunity to ensure that
20 they are germane.

21 III. ADJOURN MEETING

22 CHAIRMAN CASTRO: It is now 11:06. This
23 briefing of the U.S. Commission on Civil Rights is
24 now adjourned.

25 Commissioners, we will start the meeting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 at 11:15, so you have a little bit of time. Thank
2 you.

3 (Whereupon, at 11:06 a.m., the briefing
4 was concluded.)

5

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com