IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA STATE CONFERENCE) OF THE NAACP, et al.,) Plaintiffs,) v.) PATRICK LLOYD MCCRORY, in his official) capacity as the Governor of North Carolina, et) al.,) Defendants.)	**Case No.: 1:13-CV-658**
LEAGUE OF WOMEN VOTERS OF) NORTH CAROLINA, et al.,) Plaintiffs,) v.) THE STATE OF NORTH CAROLINA, et al.,) Defendants.)	**Case No.: 1:13-CV-660**
UNITED STATES OF AMERICA,) Plaintiff,) v.) THE STATE OF NORTH CAROLINA, et al.,) Defendants.)	**Case No.: 1:13-CV-861**

**BRIEF IN SUPPORT OF MOTION TO STRIKE BRIAN NEESBY'S
TESTIMONY REGARDING MAIL-VERIFICATION FAILURE RATES AMONG
PREREGISTRANTS AND TO EXCLUDE DEFENDANTS' EXHIBIT BN-3**

I.   INTRODUCTION

The Duke Intervenor-Plaintiffs ("Plaintiffs") respectfully request that the Court strike Brian Neesby's trial testimony regarding his analysis of mail-verification failure rates among preregistrants, *see* 7/29/15 PM Trial Tr. 82:14 - 85:20; 7/30/15 Trial Tr. 28:10 - 35:21,[1] and exclude the demonstrative exhibit (Defendants' Exhibit BN-3) related to that testimony. Mr. Neesby was not disclosed or qualified as an expert witness, yet his testimony at trial establishes that the analysis at issue could only have been performed by an expert. Moreover, Mr. Neesby's analysis was not disclosed to Plaintiffs prior to Mr. Neesby's testimony near the end of the trial. For each of these reasons, Mr. Neesby's testimony regarding his analysis of mail-verification failure rates among preregistrants should be stricken and Defendants' Exhibit BN-3 should be excluded.

II.   FACTS

Expert reports and disclosures in this case were due on February 12, 2015, ECF No. 228 (amending ECF No. 214); rebuttal expert reports were due on March 16, 2015, ECF No. 241 (amending ECF No. 228); and surrebuttal expert reports were due on March 24, 2015, *id*.[2] Written discovery closed on March 24, 2015, *id*., except to the extent necessary to resolve issues in dispute as of that date, for which discovery was extended to

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[1] Because certified transcripts are not yet available for the proceedings in this matter on July 29-30, 2015, the citations herein are to the uncertified rough draft version of the transcript.

[2] Unless otherwise noted, all citations to the record in this case are citations to the docket for Case No. 1:13-CV-00660-TDS-JEP.

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April 17, 2015, ECF No. 251. The deadline for expert depositions was April 10, 2015. ECF No. 254 (amending ECF No. 214).

On June 6, 2015, Defendants produced a report from the State Board of Elections ("SBOE") regarding mail-verification failure rates for same-day registration ("SDR") and non-SDR voters during the 2012 election cycle, *see* DX 16, and they also produced the data used to create that report.[3] Mr. Neesby was deposed in connection with that report on July 18, 2015, but, unsurprisingly, there was no discussion of preregistration at that deposition, *see generally* Ex. A, 7/18/15 Dep. of Brian Neesby; as Mr. Neesby acknowledged at trial, DX 16 does not mention preregistration, and he had not even completed his analysis of mail-verification rates among preregistrants at the time of the deposition, *see* 7/30/15 Trial Tr. 29:23-25, 30:24 - 31:13.

On July 29, 2015, during his direct examination, Mr. Neesby stated—for the first time—that he had done an analysis of mail-verification failure rates among preregistrants. 7/29/15 PM Trial Tr. 82:14-22. Defendants' Exhibit BN-3, a demonstrative exhibit summarizing Mr. Neesby's findings, was provided to Plaintiffs for the first time. 7/29/15 PM Trial Tr. 82:25 - 83:1; 7/30/15 Trial Tr. 30:24 - 31:13.

Mr. Neesby also explained during his testimony that he does data analytics work. 7/30/15 Trial Tr. 26:13-15, 28:7-9. This work, according to Mr. Neesby, involves the use of different types of code to connect data together. 7/30/15 Trial Tr. 26:16 - 27:1. Mr. Neesby explained that he writes the code, which can be pages and pages long; that he

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[3] This was the second 2012 SBOE SDR and non-SDR mail-verification-rate report produced in this case, the first of which was prepared prior to the instant litigation and produced before the close of discovery. *See* PX 68, PX 68A.

learned how to do data analytics through years of work at Toyota; and that this work is not something that a person could pick up in a few hours. 7/30/15 Trial Tr. 27:2 - 28:6. Mr. Neesby said that his analyses in this case, including the analysis resulting in Defendants' Exhibit BN-3, were the product of data analytics work, and that there were tens of millions of records in the tables used to create Exhibit BN-3. 7/30/15 Trial Tr. 28:7- 29:22. At no point was Mr. Neesby disclosed or qualified as an expert witness in this case. *See* 7/29/15 PM Trial Tr. 84:9.

III. ARGUMENT

A. The Evidence at Issue Is Improper Expert Testimony

Mr. Neesby's testimony regarding mail-verification failure rates among preregistrants is clearly expert testimony offered by a witness not disclosed or qualified as an expert and it must be stricken. Under Federal Rule of Evidence 702, a witness provides expert testimony where his testimony is "based on scientific, technical, or other specialized knowledge that will assist the trier of fact in reaching a decision on an issue." *Nat'l R.R. Passenger Corp. v. Railway Express, LLC*, 268 F.R.D. 211, 214 (D. Md. 2014) (citation omitted); Fed. R. Evid. 701(c), 702(a); *see also* Fed. R. Evid. 701, advisory committee's note (2000) ("[L]ay testimony results from a process of reasoning familiar in everyday life, while expert testimony results from a process of reasoning which can be mastered only by specialists in the field.") (citation and quotations omitted). Mr. Neesby's testimony regarding his analysis of mail-verification failure rates among preregistrants plainly falls into this category. As set forth above, Mr. Neesby's analysis required the use of skills developed over years, including the writing of source code, to

draw conclusions from tens of millions of records. Because testimony regarding such analysis can only permissibly be offered by a witness disclosed and qualified under Rule 702, Mr. Neesby's testimony is not admissible.

B.   The Evidence at Issue Was Disclosed Too Late

Mr. Neesby's testimony regarding his analysis of mail-verification failure rates among preregistrants and Defendants' Exhibit BN-3 should also be excluded because they were not disclosed in a timely fashion. Under Federal Rule of Civil Procedure 26(a)(2), a party must disclose all witnesses who may provide expert testimony at trial and state the subject matter about which the witness is expected to present evidence at the time and in the sequence that the court orders. The "basic purpose" of this rule is to "prevent[] surprise and prejudice to the opposing party." *See S. States Rack & Fixture, Inc. v. Sherwin-Williams Co.*, 318 F.3d 592, 596 (4th Cir. 2003); *see also Saudi v. Northrop Grumman Corp.*, 427 F.3d 271, 278 (4th Cir. 2005) ("Rule 26 disclosures are often the centerpiece of discovery in litigation that uses expert witnesses. A party that fails to provide these disclosures unfairly inhibits its opponent's ability to properly prepare . . . ."); *Musser v. Gentiva Health Servs.*, 356 F.3d 751, 757-58 (7th Cir. 2004) (disclosure of expert witnesses is necessary to "allow[] a party to properly prepare for trial[,]" by taking measures "that are not applicable to fact witnesses, such as attempting to disqualify the expert testimony [], retaining rebuttal experts, and holding additional depositions to retrieve the information not available because of the absence of a report").[4]

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[4] Federal Rule of Evidence 701 was amended in 2000 specifically to prevent parties from evading the expert witness disclosure requirement in Rule 26(a)(2). The Advisory

Here, as explained, Mr. Neesby has never been disclosed as an expert witness.

Where a party fails to comply with Rule 26(a), Rule 37(c)(1) provides that the untimely disclosed witness or information should be excluded "unless the failure [to disclose] was substantially justified or is harmless." In making this assessment, courts in the Fourth Circuit generally weigh the following five factors: "(1) the surprise to the party against whom the evidence would be offered; (2) the ability of that party to cure the surprise; (3) the extent to which allowing the evidence would disrupt the trial; (4) the importance of the evidence; and (5) the non-disclosing party's explanation for its failure to disclose the evidence." *Wilkins v. Montgomery*, 751 F.3d 214, 222 (4th Cir. 2014) (citation and quotations omitted). The burden of establishing substantial justification or harmlessness lies with the nondisclosing party. *Id.* (citation omitted).

In this case, all of the relevant factors weigh in favor of striking the testimony at issue and excluding Defendants' Exhibit BN-3. The surprise to Plaintiffs is exceptional: they did not learn of Mr. Neesby's analysis until his testimony near the end of trial. The timing of this disclosure—the day before rebuttal evidence was presented—left Plaintiffs with no time meaningfully to respond to it (without a major disruption in the trial schedule). In addition, the evidence at issue is significant to the challenge to the repeal of

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Committee's Note explains that the purpose of the amendment was to "ensure[] that a party will not evade the expert witness disclosure requirements set forth in Fed. R. Civ. P. 26 . . . by simply calling an expert witness in the guise of a layperson." Fed. R. Evid. 701, advisory committee's note (2000). Further, it cautions that "the Court should be vigilant to preclude manipulative conduct designed to thwart the expert disclosure and discovery process." *Id.* (quoting Joseph, *Emerging Expert Issues Under the 1993 Disclosure Amendments to the Federal Rules of Civil Procedure*, 164 F.R.D. 97, 108 (1996)).

preregistration, as Defendants have provided almost no evidence to justify that change in the law. And, perhaps most significantly, Defendants have not offered—and cannot offer—any explanation for their late disclosure. The testimony and exhibit at issue should thus be excluded as untimely expert evidence.

Further, this evidence should be stricken even if the Court finds that it does not constitute expert evidence. Courts routinely prohibit parties from introducing material and testimony at trial when that material and testimony were not timely disclosed to opposing parties during the discovery period. *See, e.g., Firehouse Rest. Grp., Inc. v. Scurmont LLC*, No. WDQ-07-1294, 2011 WL 3555704, at *3 (D.S.C. Aug. 11, 2011) (excluding late productions as "untimely and prejudicial" when they were produced four months after close of discovery); *Reaves v. Ragin*, 2011 WL 2579755, at *5 (D. Md. June 23, 2011) (excluding late disclosed witnesses from testifying because "Rule 37 does not allow counsel to 'simply fail[] to comply with [a discovery] schedule'") (modifications in original) (footnote omitted); *see also Bowling v. Hasbro, Inc.*, No. 05-229S, 2007 WL 3274328, at *2 (D.R.I. Nov. 5, 2007) ("Opening the doors of discovery to new theories and new evidence at this late stage of the proceedings would unfairly prejudice and harm [opposing party] . . . . [S]upplemental discovery material that is provided much too close to trial may be excluded. At this point in the proceedings, discovery has long been closed, the summary judgment stage has passed, and trial is just around the corner.") (internal citations and quotations omitted). Where, as here, the evidence at issue is disclosed *during the testimony* of the last defense witness, and involves the analysis of tens of millions of records, exclusion is surely warranted.

IV.   CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court enter an order striking Mr. Neesby's testimony regarding mail-verification failure rates among preregistrants and excluding Defendants' Exhibit BN-3 from the trial record.

Dated: August 10, 2015   Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2015, I served a copy of the foregoing **BRIEF IN SUPPORT OF MOTION TO STRIKE BRIAN NEESBY'S TESTIMONY REGARDING MAIL-VERIFICATION FAILURE RATES AMONG PREREGISTRANTS AND TO EXCLUDE DEFENDANTS' EXHIBIT BN-3** by filing a copy thereof in the above-captioned 1:13-cv-660 action, which will send a Notice of Electronic Filing to all parties with an e-mail address of record who have appeared and consented to electronic service in the above-captioned litigation.

/s/ *Edwin M. Speas, Jr.*
Edwin M. Speas, Jr.

Exhibit A

to

Duke Intervenor-Plaintiffs' Motion to Strike Brian Neesby's Testimony Regarding Mail-Verification Failure Rates Among Preregistrants and To Exclude Defendants' Exhibit BN-3

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA STATE CONFERENCE)
OF THE NAACP,)
et al.,)
)
            Plaintiffs,)
)
      vs.)   Case No: 1:13-CV-658
)
PATRICK LLOYD MCCRORY, in his)
official capacity as the)
Governor of North Carolina,)
et al.,)
)
            Defendants.)

_____)
)
LEAGUE OF WOMEN VOTERS OF)
NORTH CAROLINA, et al.,)
)
            Plaintiffs,)
)
      vs.)   Case No: 1:13-CV-660
)
THE STATE OF NORTH CAROLINA,)
et al.,)
)
            Defendants.)

_____)
)
UNITED STATES OF AMERICA,)
)
            Plaintiff,)
)
      vs.)   Case No: 1:13-CV-861
)
THE STATE OF NORTH CAROLINA,)
et al.,)
)
            Defendants.)

_____)

TRIAL DEPOSITION OF
BRIAN NEESBY

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TRIAL DEPOSITION OF

BRIAN NEESBY

_____

4:11 P.M.

SATURDAY, JULY 18, 2015

_____

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1 (Pages 1 to 4)

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BRIAN NEESBY,
having been first duly sworn or affirmed by the
Certified Shorthand Reporter and Notary Public
to tell the truth, the whole truth and nothing
but the truth, testified as follows:
EXAMINATION
BY MS. RIGGS:
Q. Good afternoon, Mr. Neesby.
A. Good afternoon.
Q. We're here to talk about the May 2015 State
   Board mail verification analysis.
A. Right.
Q. When did you start work on this report?
A. I actually don't remember the exact date I
   started. I don't know. It was this year, this
   calendar year, after January sometime.
Q. Do you remember before -- had you started it
   before your last deposition?
A. I think so, but I don't remember.
Q. When did you complete it?
A. Basically the date of this report would be
   roughly the completion date. So the report
   dated May 19th, I'm not sure that's accurate,
   but that sounds about right.
Q. And Ms. Strach talked about you, Veronica

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Degraffenreid and possibly Mr. LiVecchi working
on this. Can you explain how you and
Ms. Degraffenreid split the workload.
A. Sure. Part one is mostly Mrs. Degraffenreid,
   which ends on -- page 1 through 3 basically is
   her analysis. I did help on some of the charts
   on page 3. And then page 4 through 6 is my
   analysis. That's where the data starts and
   ends.
Q. Did Ms. Degraffenreid help you with the data on
   pages 4 through 6?
A. No.
Q. Did Mr. Burris play any role in the collection
   of this data?
A. No.
Q. Why not?
A. Because I have direct access to SEIMS.
Q. Did Mr. Burris help with the data collection in
   the 2013 report?
A. Yes. I shouldn't say that. As far as my
   understanding, IT provided that report, and it
   could have been Mr. Burris, but the IT
   department provided that to Degraffenreid.
   Obviously I wasn't part of the board at that
   time.

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2 (Pages 5 to 8)

1   Q. Provided the data to Ms. Degraffenreid?
2   A. Right. And queried tables together to provide
3   that data.
4   Q. Did you speak with Mr. Burris about how he did
5   that back in 2013?
6   A. No. I could tell from the table structure how
7   he probably did that, but that wasn't part of
8   my analysis. My analysis was the second
9   analysis.
10   Q. Did you ask anyone at the State Board of
11   Elections to check your work on this report?
12   A. The second part?
13   Q. Yes.
14   A. I asked about assumptions about how certain
15   things worked. I didn't have people check my
16   data analytics as far as the algorithms that I
17   used, but as far as the assumptions that I was
18   making and what constitutes a failure or a
19   success in the mail verification process I did.
20   Q. Who did you have -- who did you check your
21   assumptions with on that?
22   A. So Veronica was one of them where -- she didn't
23   do any of the data analytics, but I said, does
24   your understanding of the mail verification
25   process agree with me, and then I also talked

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1   to various people in IT about how does it work
2   within the system and what constitutes a
3   failure.
4   Q. Which people in IT did you talk to?
5   A. The only ones is James Lell.
6   MR. STRACH: L-E-L-L.
7   BY MS. RIGGS:
8   Q. I want to -- did you participate in any of the
9   drafting of this report?
10   A. I checked the statistics. I rewrote a few
11   sentences probably. So the data side is me and
12   then, you know -- do you want any more
13   information on that?
14   Q. So first, all of the numbers reflected in this
15   report accurately reflect the numbers that
16   resulted from your analysis?
17   A. The second section, and the first section is
18   Ronnie's mostly.
19   Q. Did you do any checking of her --
20   A. I did.
21   Q. -- data analytics?
22   A. I did. And that's where I think we mentioned
23   this earlier, but we removed duplicates and
24   that sort of thing.
25   MR. FARR: Excuse me, Brian, can you

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1   speak up a little for me.
2   THE WITNESS: Sure.
3   BY MS. RIGGS:
4   Q. And then you said you rewrote some sentences.
5   A. I couldn't tell you where I rewrote sentences.
6   Q. Well, I want to understand. In the second
7   paragraph, you're talking about how the 2013
8   report -- the analysis in the 2013 report used
9   proxy indicators. I want to understand what --
10   A. Could you point me to that paragraph.
11   Q. The second paragraph on the first page. I'm
12   sorry if I was unclear. On the first page.
13   A. Okay. Second paragraph. What's your question?
14   Q. The second sentence talking about the analysis
15   in the 2013 report used proxy indicators.
16   What did you mean? I mean, is that
17   correct?
18   A. It is.
19   Q. What did you mean by proxy indicators?
20   A. So Ronnie used status and reason codes. This
21   is registration status and registration status
22   reason code which come to the voter
23   registration table within SEIMS.
24   And these in some instances may be good
25   proxies. These are -- they're a proxy for

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1   whether mail verification succeeded or failed.
2   They're not showing the actual log of the mail
3   verification process.
4   Q. I'm sorry. Not showing the what?
5   A. Actual log of the mail verification process.
6   So they didn't examine the log of here's a
7   particular voter. And there is a log within
8   SEIMS of every step in the mail verification
9   process. So Step 1 would be send out mail
10   verifications; Step 2 would be, you know, mail
11   verification came back Undeliverable; Step 3 --
12   and so there are several steps.
13   So there wasn't an analysis of the log.
14   There was just simply the reason codes that may
15   be a result of that process. So that's why
16   there are proxies for the real thing.
17   Q. And I'm going to ask you how the 2015 analysis
18   is different later. I just wanted to talk
19   first about that.
20   I want to talk now about Footnote 1 on
21   page 2.
22   A. Yes.
23   Q. Is it -- are the alleged 2013 inaccuracies
24   solely because of the duplicates that you've
25   mentioned?

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3 (Pages 9 to 12)

MR. STRACH: Objection to form.

Go ahead, you can answer.

THE WITNESS: Could you state your question again.

BY MS. RIGGS:

Q. It says:

"The data used for these periods in the 2013 report was inaccurate and contained duplicates."

So you're saying duplicates was one source of inaccuracy, right?

A. In the 2013 report, it was.

Q. Okay. There's an "and" there and so I want to know what the other --

A. I didn't write this footnote, but the -- I don't know. So it may just simply be referring to the fact that we're still using proxy indicators. That's my guess.

Q. How many duplicates were there?

A. There weren't -- I don't know. I can't remember, but the main issue with -- I think this footnote was just for clarity that there were duplicates.

The main reason -- so I know, for instance, in some of them it was 60 duplicates,

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some of them it was 400 duplicates in some of the periods.

The main reason for updating the snapshot to the 2013 is if you'll notice that the 11/3 registration period, which is the last shaded row, our snapshot is 1/7, just a couple months later, but then in January 1st our snapshot is 2/6 which is actually afterwards.

So we have noticed that a lot of the mail verification processes didn't complete, and so that was the idea of let's look at also what the mail verification process would be, what the status is now taking a later snapshot.

And what happened was she already had the snapshot at the time so she took a look at it and she is updating her analysis. I just saw that there were almost duplicates and helped her remove those.

Q. I'm going to get back to the second part of that.

So you have no analysis showing how many duplicates were included within the 2013 analysis, the chart on page 2?

A. No. And I would say it's not a significant -- I don't think that's where the inaccuracies

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lie.

Q. Okay.

A. I mean, there is some duplication.

Q. So then where --

A. I think it's just a footnote clarifying that there were some duplicates.

Q. Okay. Not a huge source in inaccuracy.

A. No. Remember, the issues with this first chart was the fact that, number one, it didn't allow the mail verification process to complete, which is the last shaded row especially, for the November general election.

And then the second problem was that although it's a -- the second thing is that it then -- we always felt like we needed to move beyond proxy indicators to get to actually looking at the log itself in the mail verification process. So those are -- all we were saying here.

And then kind of the third thing that we did, which you'll see later, is we said, well, let's look at this but let's look at whether they voted or not because Ronnie's report never -- the question it was trying to answer was did the initial mail verification

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process succeed or fail. It didn't take into account whether they voted, and that's a different question that we thought was worthy of discovering.

Q. So as a data analytics gentleman --

A. Gentleman, that's my title, yeah.

Q. You'd agree with me, though, that saying data is inaccurate is different than saying there hasn't been enough time -- what you're saying in the first point that there hasn't been enough time for verification to run, right?

A. I'm confused. Of course, it's a different statement.

Q. So this footnote says the data are inaccurate, and I want to understand these data reflect the SEIMS snapshots --

A. The data's inaccurate in a couple of ways. So once again, this isn't the majority of my analysis. This is Ronnie.

The first chart is to explain what was previously done. The second and third charts are really saying let's look at those who voted, and that's the big change.

A footnote was said, okay, there was some inaccuracies we had to remove as well,

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1 which was duplication.	1 Q. In this data set here?
2 Q. Those were the only inaccuracies in this data	2 A. No.
3 that you had to deal with, inaccuracies?	3 Q. Okay. So then I want to talk now about the
4 A. Comparing Chart 1 to Chart 2, that would be the	4 decision to use the 3/22/2013 snapshot.
5 difference and the fact that we're filtering	5 Whose idea was that?
6 for voters, which is an important thing, right,	6 A. So originally I believe it was Ronnie's, and
7 that makes the difference.	7 the reason for that was to determine in the
8 Q. But does it make the data inaccurate?	8 general election whether we -- because we felt
9 A. Let me explain. And then if you're talking --	9 that period was too short, whether there was
10 Q. Well, it's a yes-or-no question.	10 another failures that came back afterwards, and
11 A. Does what make the data inaccurate?	11 so that's the reason that was done.
12 Q. The filtering for voters later.	12 Q. Okay. Why didn't you use the 3/22/2013
13 A. It makes it answer a different question, but	13 snapshot for all the periods?
14 I'm not saying -- so this footnote says, if you	14 A. It's because that was a preexisting snapshot.
15 read it, the exception -- where is it. "The	15 So we didn't take -- there's no snapshot of the
16 data used for these periods in the 2013 report	16 whole database on 3/22. We take snapshots in
17 was inaccurate and contained duplicates."	17 the beginning of the calendar year. We also
18 Once again, I did not write the	18 take snapshots during general elections and
19 sentence.	19 maybe primary elections.
20 Q. You checked it, though, right?	20 So this was a preexisting snapshot on
21 A. I did. And so what you would say is the data	21 several tables that IT had put together and had
22 is still a proxy and therefore not accurate.	22 only SDR registrants on it. So she was able to
23 Now, we don't correct that on page 2.	23 use that preexisting snapshot to update her
24 We go to page 4 through 6 to correct that	24 analysis, but that snapshot did not exist for
25 inaccuracy, but the footnote is just stating	25 non-SDR.
17	19
1 the obvious thing that this is inaccurate	1 Q. Did any snapshot closer to the 3/22 date exist
2 proxies, there was also duplicates, and so	2 for the non-SDR registrants?
3 that's all it's about. I think you're making	3 A. 2/6 is probably as close as you get, which is
4 it a bit of a big deal.	4 the snapshots used.
5 Q. You didn't -- so the proxies and the duplicates	5 Q. What would be the first date that it would be
6 that you said weren't a significant source of	6 possible to use the same snapshot for all
7 inaccuracy, those are the sources of the	7 periods?
8 inaccuracies described in Footnote --	8 A. Using this analysis, which, again, is still
9 A. So inaccuracies --	9 using proxies. So I'd rather rely on the new
10 Q. Let me finish. Those are the sources of the	10 analysis.
11 inaccuracies described in Footnote 1?	11 You have to wait until whenever we took
12 A. State that one more time just so I have you	12 a snapshot of the database, which I don't know
13 clear.	13 when that would be, but I would assume you
14 Q. I'm trying to understand what the source of	14 would take one at a general election for sure,
15 inaccuracies described in Footnote 1. So we	15 so the next general election, and you might
16 have duplicates.	16 take one at a primary election. So those tend
17 A. Uh-huh.	17 to be -- the three rules are beginning of the
18 Q. And you're saying the fact that there were	18 year, primary elections sometimes and general
19 proxies used instead of the actual log is a	19 election almost always.
20 source of inaccuracy in the data used for the	20 Q. Was there a primary election on 3/22?
21 SDR periods?	21 A. Not that I'm aware of, but there might have
22 A. It would be a source of inaccuracy.	22 been.
23 Q. The voter logs weren't used for the non-SDR	23 Q. Was there a primary election on
24 periods, were they?	24 February 2nd -- I mean February 6th?
25 A. In my analysis they were.	25 A. No.
18	20

5 (Pages 17 to 20)

Q. So why were there snapshots of these days?

A. So once again, a request is made so they pulled certain tables but not an entire database snapshot was created at that time.

So those tables were exported at that moment in time and saved as an Excel spreadsheet and that's why they had access to them. Once again, it's a difference between a table snapshot, which is taking some of the data of a particular table or a query of several tables and take an entire snapshot of an entire database, which is what you would need to do.

MR. FARR: Brian, excuse me. Would you let her -- if we were having a conversation at home, it would be fine, but it's hard on Denise.

MS. RIGGS: It's making Denise's life a little harder.

BY MS. RIGGS:

Q. Did you ask anyone to see when the first snapshot would be available that would have been -- had SDR and non-SDR registrations in it?

A. I did not. This was Ronnie's thing, but I did

21

not ask.

Q. Okay. You compared same-day registrants and non-same-day registrants --

A. I do.

Q. -- later in your analysis, right?

A. Right.

Q. Again, please wait until I'm done.

A. Okay. Sorry.

Q. We'll talk about later. Did you use the same date snapshot for your comparison?

A. As which date? The answer would be no.

Q. So --

A. But depends what date you're talking about, but no.

Q. So in your analysis, which we'll get to, you didn't use the same date snapshot for same-day and non-same-day?

A. No, I didn't use any of these dates.

Do you want me to go into --

Q. No. That helps.

Do you think it's preferable to use the same snapshot if you're comparing same-day and non-same-day return rates?

A. It is preferable if you have them available to you to use the latest snapshot you have

22

available. And if you want to get into that, we can talk about it.

Q. But it would also be preferable, then, to use the same-day?

A. Uh-huh, if you had it available. The -- could I clarify that to one extent?

Q. Sure.

A. So the problem you have with using proxies is you want to get as close enough to election that allows the initial mail verification to complete but not too far away that you have this intervening mail verification process. And so it's kind of this game you play of trying to get close enough but not quite too far out.

So if you had the choice of using the same snapshot that was too far out versus using different snapshots that were close, you would still choose different snapshots that were close. So I think that's a clarification.

Q. So how do you decide what's too close, as you've indicated the January 2013 was, versus not too far away?

A. This is why I went through a second analysis because you can't make that perfect assessment

23

using -- you know, using any particular snapshot because for one particular person's mail verification, it might be just right on the money, but for a second person it might not be.

And so the way to do it is to look at the mail verification logs, which is my second analysis which is therefore more accurate.

Q. Okay. So we get -- you said not too far away for intervening mail verifications.

A. Right.

Q. Can you explain what you mean by intervening mail verifications.

A. Sure. There's five forms of mail verification. One is the initial mail verification. You have voter change verification of NCOA.

Q. Is voter change NCOA?

A. No. They're different mail verification processes. Sorry, I cut you off there.

And so then you have admin mailing and then I think there's one more.

Only the initial mail verification process is the statutorily prescribed process that we are examining here that has to do with -- actually, it's the only gatekeeper for

24

1   why you can get denied. Every other mail
2   verification process can make you go inactive,
3   but only the initial mail verification can be a
4   gatekeeping function to stop you from voting.
5   So this is the particular gatekeeper function
6   that we're analyzing.
7   Q. Explain to me what the voter change mail
8   verification is.
9   A. Sure. Let's say I'm a previously registered
10   voter and I then make an amendment. I change
11   my party or I -- particularly I change my
12   address. Then that's a voter change -- voter
13   initiated change and that kicks off a mail
14   verification to verify that address.
15   One clarification. I'm not sure party
16   change would do that, but definitely an address
17   change would do that.
18 Q. How might a voter go about doing that?
19 A. They fill out a form.
20 Q. What form is that?
21 A. I'm not really sure. It's a -- I would assume
22   a voter change form, but that's not my area.
23 Q. If a -- if a voter goes to vote -- so regular
24   non-SDR registration.
25 A. Right.

25

1   A. Filters for voting, those who voted. My
2   apologies.
3   Q. So I think I understood Ms. Strach on the first
4   column Total New Registrations. Not the first
5   column. I'm sorry. It's actually the second
6   column. That the period of 4/19 to 4/05 (sic)
7   is not included in what should be a broader
8   timeframe including that of 4/14 to 7/17; is
9   that correct?
10 A. I believe that's what Ronnie said and --
11 Q. Ms. Strach.
12 A. No. Ronnie is the first one to do this report.
13   I believe Ms. Strach is reporting that
14   accurately. And that's because the data is
15   derived differently. And so -- so for the
16   shaded one, the 4/19 through 5/5, you're
17   looking at a different table to determine if
18   they're a SDR registrant. So I believe she's
19   correct.
20 Q. So that 18,017 is totally separate from the
21   number above, the 82,833?
22 A. I believe, but I couldn't be sure since this is
23   Ronnie's analysis that that would not be
24   included, but once again, I did not do that
25   analysis.

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1   Q. If a voter goes to vote and changes his or her
2   address at election day or early voting but
3   changes his or her address when interacting
4   with the poll worker during voting, that sets
5   off the new -- the second category of mail
6   verification?
7   A. If you're asking does a voter who changes their
8   address any time, including election day or
9   one-stop, does it make an -- initiate a voter
10   change verification mailing?
11 Q. Yes.
12 A. It does.
13 Q. Table -- the second table on page 3?
14 A. Yes.
15 Q. This is another chart that Ms. Degraffenreid
16   did or did you do this one?
17 A. This is a chart that simply combines the chart
18   you see above and filters for verification. So
19   I think I did the data and LiVecchi just made
20   it a chart. So I might have created the
21   original chart and he might have put colors
22   into it.
23 Q. When you say filters for verification --
24 A. Did I say that?
25 Q. Yes.

26

1   Q. So I misunderstood you. You combined -- how
2   did you produce this data, then?
3   A. So my analysis, once again, was the second
4   analysis. IT provided query -- well, for the
5   unshaded regions, which is the non-SDR, IT
6   provided a simple export of a table called
7   Voter Registration from SEIMS and filtered for
8   specific dates and provide that to
9   Ms. Degraffenreid.
10   For the shaded regions, she -- IT, in
11   order to provide all the information necessary,
12   had to combine several tables together,
13   provided that to Ms. Degraffenreid. Because
14   those were combined separate tables, that's
15   where the duplicates happened.
16   And I'm sorry, what was your specific
17   question?
18 Q. My question was about this chart. I understood
19   you saying that you provided the data and
20   Mr. LiVecchi combined -- produced the actual
21   chart.
22 A. Okay, okay. My -- so this data, what I did and
23   what Ronnie did, Ronnie provided the data that
24   you see where it's the Undeliverable Rate.
25   So the first chart was Ronnie and then

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7 (Pages 25 to 28)

1   I just helped filter out the duplicates, if
2   that makes sense. So she -- she did the chart,
3   and then I was like, okay, there's still
4   duplicates and I helped pull that out. It was
5   first her work, but I helped manage it.
6   Then after that, that data set already
7   had indicators of voter history and whether
8   they voted, and I simply filtered that pivot
9   table to see if they voted, and so I got the
10   percentages here. I didn't create any of the
11   data sets that this is relying on.
12   So that was IT, they gave that data set
13   to Ronnie and I'm simply using that same data
14   set and then pivoting -- using a pivot table
15   and simply filtering for those that voted. So
16   then I came up with this -- something somewhat
17   similar to this chart that was then kind of
18   colored and changed.
19   Q. So anything with a voted in parentheses in the
20   column, that was your pivot part, right?
21   A. It was a filter.
22   Q. Okay. So you used the data that
23   Ms. Degraffenreid -- when we say Ronnie and
24   Ms. Degraffenreid, those are the same people,
25   right?

                                              29

1   A. They are.
2   Q. So you used the data that she provided to you
3   on this?
4   A. Right. It goes from IT to Mrs. Degraffenreid
5   to a spreadsheet that I just filtered and made
6   sure there weren't duplicates.
7   Q. Okay. Now, I want to understand when these --
8   looking at the headline -- looking at the top
9   where there's (Voted) in parentheses, I want to
10   understand which election we're talking about
11   that these folks voted in.
12   So let's -- the 94,975, are those
13   people who voted in the primary election?
14   A. It is my recollection that they voted -- that
15   everyone up into the primary election, that's
16   talking about the primary election, and after
17   that is talking about the general election, if
18   that makes sense. So Rows 1, 2 and 3 are
19   talking about the primary. Rows 4 and 5 are
20   talking about the general, but, once again,
21   that is my recollection.
22   Q. And then the next column Total Undeliverable
23   (Voted), is that a -- multiplying the
24   undeliverable rate by the total new
25   registrations or is that a separate filter?

                                              30

1   A. So this is the same pivot that Ronnie did. Her
2   proxies -- and you can see it in page 2, on the
3   top of page 2, but when she says undeliverable,
4   what she's saying is that they had a status and
5   reason code, which are two different fields,
6   where the status was denied, the reason code is
7   verification returned undeliverable or the
8   status was inactive and the reason code was
9   confirmation not returned or confirmation
10   returned undeliverable. So those combinations
11   of fields, that's what undeliverable means.
12   Q. I understand. I want to know how we got to
13   this number 552.
14   A. So taking that spreadsheet -- so each of these
15   were individual spreadsheets, 1/1 through 4/13,
16   you then filter for those reason codes and
17   status codes and whether they voted and you get
18   552. If you filter for just whether they
19   voted, you get 94,975.
20   Q. Okay. And that's the same thing you did for
21   each of these. You took the 82,000 -- so I'm
22   in the second row now. You took the 82,833 and
23   you filtered for whether they had met that
24   verified -- the verified proxies and then you
25   filtered if they -- to see if they voted and

                                              31

1   you got 138?
2   A. Yes.
3   Q. And it's the same thing you did for each row
4   there?
5   A. Yes.
6   Q. All right. So now what I want to do is go on
7   to your analysis, starting on page 4. And I
8   want to better understand how -- you said you
9   did a five-part analysis -- five-party inquiry.
10   Do you see that in the second
11   paragraph?
12   A. I do.
13   Q. The part I want to understand more is the third
14   part of the inquiry, subsequently failed their
15   initial mail verification.
16   Is there a column in the snapshots that
17   says failed or not failed verification?
18   A. Okay. A snapshot -- so there's kind of a
19   misunderstanding of how it works. Like I said,
20   you're looking at the mail verification logs
21   and each row in that log represents a step.
22   And so those logs are done in batches, and so
23   you're looking at the initial mail verification
24   batch and saying did that entire batch -- what
25   was the end result, did it succeed or did it

                                              32

8 (Pages 29 to 32)

fail.

And so what I did was look at whether there was a status code that meant success or a status code that meant it did not succeed.

Q. Okay. And what was the actual status codes, succeed, not succeed?

A. So 4 and 24 means that it did not succeed, 2 and 8 means that it succeeds, and I think 22 might have meant that as well.

Q. And what do those numbers mean?

A. And then -- let me make -- and the algorithms -- I will answer your question, but then I have to make an addendum to my previous answer.

So those status codes are simply ID numbers that represent exactly what you're saying. They represent -- you can chart out the mail verification process and each step is given a number, and so 2, 8 and 22 are the codes within the database that represent those successes or failures. So 4 and 24 means that it has gone all the way to the bottom and two mail verifications at least have returned undeliverable.

Okay. So -- but the algorithm is a

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little bit more complex than that, and you have to take into account -- and this is a bit more complex, but if people are removed, they're going to have -- like say they're removed because they moved, right. They then -- it will automatically say that they're status code 24, but they didn't fail because they moved -- or let's say they moved out of state, so they're no longer in the state. Someone manually clicks removed in the database. That's going to put a status code of 4 or 24. So because you know they're removed and not denied or returned inactive and there was a manual process you have to look at the row above and do the analytics.

Q. Are you saying 4 and 24?

A. 4 and 24.

Q. Okay. I'm sorry.

Do each of the numbers, the 2, 8, the 2, 24, do each of those numbers mean one thing?

A. They're particular steps within the mail verification process.

Q. And can you tell me what steps those are?

A. So --

MR. STRACH: Objection. I mean -- if

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you've memorized them or whatever, but don't speculate or guess.

THE WITNESS: All I can say is they are successes or failures. I can't remember -- I can remember one of them, which is 2.

BY MS. RIGGS:

Q. What is 2?

A. 2 means you -- you have gone -- the mail verification process -- so the initial mail verification was -- a mailing was sent out and it timed out, there was 15 days and you're now a status 2.

MR. DONOVAN: You're what?

THE WITNESS: You're now a status 2.

BY MS. RIGGS:

Q. So 4 and 24 were the not succeeded and 2, 8 and 22 were the succeeded?

A. Right.

Q. When you pull up a voter's mail verification log, I understand that you're looking at that initial mail verification, the results of it.

A. Uh-huh.

Q. Can you also see the results of the subsequent steps in the mail verification process?

A. So that would be a secondary batch.

35

Q. And I'm right, you didn't look at any secondary batches for this analysis?

A. Not for this analysis.

Q. For another analysis?

A. We did some work around it, but I couldn't tell you -- it was just part of kind of looking at the verification process. I couldn't tell you what the results were.

We just kind of -- there was a long time trying to figure out how do we determine what's an initial mail verification, and so it took us a while to realize, okay -- and us, it's really me, but asking questions. The initial mail verification process and status code 0 means that it's the initial mail verification process.

So there was looking at other batches, but we didn't do a far-flung analysis of different -- we didn't do a far-flung analysis of other mail verifications and whether they have come back. Does that make sense?

Q. Right. So you don't know if the people who are listed as failed but voted in your analysis, you don't know if they eventually verified through a later process?

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9 (Pages 33 to 36)

A. If they were denied, they had to reregister
altogether. If they were inactive, it is
possible that they did a voter change form or
some other mail verification process that would
have made them go -- that would have changed
their status, but --

Q. So all of the SDR registrants who failed but
voted had some voter history, right?

A. So that's -- so -- say that again.

Q. Well, I'm trying to --

A. Failed but voted had voter history.

Q. Yes.

A. So how it works, voter history is applied
within the mail verification process and
interrupts it. It then starts the mail
verification over so you get another mail
verification.

Q. So every voter who used -- well, I think we
discussed this with Ms. Strach. Almost every
voter who used same-day registration voted.

A. Almost, yes.

Q. So they had that interruption?

A. Right.

Q. And you were only looking at the results of the
additional mail verification that they -- that

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they were subject to after voting?

A. So that interruption would still be within the
same batch, so it would still be the initial
mail verification.
So how that works is you're
interrupting -- let's say the first mail
verification comes through and then voter
history is applied before the second mail
verification process goes through. It then
starts it over, and that's still the initial
mail verification process. It's not a new one.
And so then that completes fully and that's the
result of initial mail verification. And that
was what I was analyzing, whatever the final
result of the initial mail verification process
was.

Q. Okay. I think we're a little bit talking
around each other in the sense that if I go and
vote -- if I go and register and vote for the
first time using same-day registration, I vote
an absentee ballot, that's retrievable, and
within -- by law, within 48 hours the county is
supposed to start some verification process.
There isn't an initial mail verification that
got interrupted. I vote at the same time,

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right?

A. Uh-huh.

Q. Right?

A. You voted at the same time. Two days
later your -- hopefully would get started, your
mail verification process would get started.

Q. So there wasn't any interruption of that
first -- there was no first initial mail
verification to get interrupted, right?

A. No. So voter history being applied is a
different process. That's later. That's not
you voting. Voter history is applied usually
December 10th of this year.
So you have mail verification that was
initiated, which means we sent out the mail
verification card. And then let's say it's
15 days, however many days. The mail
verification card comes back undeliverable,
right. At that point let's say voter history
was applied after that verification card came
back undeliverable.
The application voter history would
interrupt the mail verification process and it
would send it back to start again. So you
would started again getting the first initial

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mail verification card and it would have to
come back undeliverable one and two more times,
and then whatever the result was, that's the
end of the initial mail verification process.
So does that answer your question?

Q. I think so.

A. Okay.

MR. DONOVAN: Can we take a short
break?

MS. RIGGS: Off the record.

(Brief Recess: 4:50 to 5:01 p.m.)

BY MS. RIGGS:

Q. I want to go back to one piece in Veronica's
analysis, the chart on the top of page 3.
Have you done any study to determine
how much of the difference in percentages
between SDR and non-SDR can be attributed to
the different -- the use of different snapshot
report dates?

A. I haven't done any analysis about Ronnie's
report other than removing the duplicates --

Q. Okay.

A. -- and filtering for voting.

Q. So you don't know how much of the difference in
rates is attributable to the difference in

40

10 (Pages 37 to 40)

1   dates?
2   A. I do not.
3   Q. Also your -- now I want to flip back quickly to
4   the top of page 2 and your understanding of --
5   understanding of Ronnie's proxies.
6   A. Okay.
7   Q. Are you -- is it your understanding that if a
8   voter had the first mailing returned
9   undeliverable but then later returned a
10   confirmation card, would they be counted in her
11   undeliverable rates?
12   A. No, not if they did that before the snapshot,
13   that's my understanding they would not because
14   their current status would be active verified,
15   I assume.
16   Q. So now I want to go back to what we were
17   talking with respect to your analysis and the
18   interruption of voter history in -- with
19   same-day voters.
20   A. Okay.
21   Q. I want to understand what would happen with
22   this interruption situation. So let me give
23   you a hypothetical.
24   If you have a college student who lives
25   on a college campus and is a student in the

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1   process over and -- yeah. So -- oh, if they're
2   verified -- so just to clarify your
3   hypothetical, you're saying they're verified
4   and then voter history is applied?
5   Q. Yes.
6   A. So the process wouldn't be interrupted unless
7   it came back undeliverable and then the actual
8   fact of voter history would, I believe, send it
9   back up to the start in that situation.
10   I know for a fact that if voter history
11   is applied in between the two mail
12   verifications, it definitely interrupts it and
13   sends it back. I'd have to think about in all
14   circumstances.
15   Q. Okay. But Jane Doe goes to school at NC State,
16   lives on campus, uses same-day registration.
17   They send a mail verification to her on
18   November 6 or 7. She still lives on campus.
19   She receives it. It's not returned
20   undeliverable. When her voter history gets
21   logged, counted --
22   A. Applied.
23   Q. -- applied in December of 2012, she doesn't get
24   another mail verification?
25   A. No.

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1   fall of 2012 --
2   A. Okay.
3   Q. -- and they graduate in the middle of
4   December 2012. If -- and they use same-day
5   registration to vote that fall in November.
6   The first mailing goes out 48 hours after they
7   register using same-day registration, correct?
8   A. Right.
9   Q. At least that's what the law requires, correct?
10   A. The law requires that. Whether it goes out is
11   not my thing.
12   Q. 15 days pass. So the mailing goes out at least
13   by November 6th or 7th. 15 days pass. That
14   voter -- if the mailing isn't returned, that
15   voter is verified.
16   A. That voter is verified subject to being
17   unverified later if it comes back
18   undeliverable.
19   Q. Okay. So when that voter's voter history is
20   applied I think you said December 10th, how
21   does that interrupt the process if the mail --
22   if their verification mailing hasn't returned
23   yet? Do they get a new mail verification sent
24   out?
25   A. It is my understanding that we would start the

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1   Q. Okay.
2   A. She's successful.
3   Q. My first hypothetical there assumed that
4   voters -- the first verification was sent out
5   within 48 hours.
6   A. Uh-huh.
7   Q. Now, assume that the voter verification, that
8   first mailing isn't sent out for a couple of
9   weeks.
10   A. Okay.
11   Q. If -- if the 15 days hasn't passed before --
12   you know, after 15 days and nothing comes back,
13   they're considered verified. Assume that
14   15 days hasn't passed when the voter history is
15   applied. Then what happens?
16   A. So you would be interrupting it between the
17   first and second stage and it would start over.
18   Q. Okay. Do you know -- I'm going to skip ahead,
19   but I think it's a good point now.
20   On page 6, the second paragraph, the
21   report says:
22   "Indeed, in the 2012 election, some
23   counties did not even begin the process
24   of mail verification of SDR registrants
25   until after the canvas."

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11 (Pages 41 to 44)

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Do you know which counties didn't begin
the verification process until after canvas?
A. I do not.
Q. Do you know how many counties didn't begin the
verification process?
A. I do not.
Q. Do you know the date after canvas by which
counties -- those counties who were late, when
did they finally get around to doing that?
A. I don't know. I'd have to look at each
individual voter in their -- in their initial
verification, when it was sent out.
Q. So you don't know if some counties didn't start
until months later with the verification?
A. I don't know. I'd have to look.
Q. All right. So going, then, to your analysis, I
want to understand why using the log codes is
not -- why you don't consider that a proxy for
failed or not failed verification.
A. It is a log of mail verification, so I don't
know how it could be a proxy for mail
verification failure. It's telling you --
that's exactly what the purpose of the table is
is to tell you whether mail verification
succeeded or failed in every step along the

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process. So I don't think that's a proxy at
all.
Q. The -- but you only looked at the very first
step.
A. Right. And we did that because we feel that
that is the most pertinent step in this
analysis because it is statutorily the
gatekeeper function that allows you to become a
registered voter or not.
You're an applicant until you pass
initial mail verification, in which case you're
then statutorily registered. All other mail
verifications are based on a registered voter.
And you can't go denied. You go inactive.
Q. So looking at this first chart, I want to
understand some of these numbers.
The first chart on page 4, Voters Who
Failed Mail Verification After Voting. 2012
Registrants Who Voted.
A. Right.
Q. So when you say failed mail verification, it's
only that very initial step of mail
verification?
A. It's -- it's the initial batch of mail
verification which -- it's a whole process.

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It's the initial mail verification. It's
several steps.
What I don't mean I think what you're
saying is I don't mean other mail verification
processes, such as NCOA or admin mailings.
That's not included in this analysis.
Q. So you don't know if -- so specifically
there's -- in this chart there are 2,361 Total
Failed After Voting, Same-Day Registrant in the
2012 election. Am I reading that right?
A. Yes.
Q. So this chart doesn't reflect --
A. Did you say SDR? I'm sorry. Did you say SDR
registrants?
Q. I think I did. We've got a lot of sick folks.
Those are people who failed that
initial mail verification batch, correct?
MR. STRACH: Objection. Be sure it's
clear.
THE WITNESS: Yeah. Once again, it's
2012 General Election, Total Failed, but it's
SDR specific.
BY MS. RIGGS:
Q. Right. But it's that initial verification
failure, the initial batch I think is -- the

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word you used is "batch"?
A. Yeah. So -- so it's the new voter mail
verification process fail. That can only be
done once per voter.
Q. And I want to understand the numbers in the
first white column, Total Registered and Voted
in 2012. This number, the 18,088, how does
this relate to numbers earlier in this report?
So it seemed to me there were 18,017, if I
looked at the chart on the page before.
A. You're talking about Ronnie's analysis?
Q. Yeah. Just the page before. I'm looking at
page 3 and page 4, and I'm looking at the
number of same-day registrants.
A. Okay. So the reason for that difference is
that is -- okay. So how I came up with my
number, I'll clarify, is I took -- I
answered -- like I said, the five-part inquiry.
I said -- I was looking at mail verifications
and so not actually the registration but mail
verifications and how many were registered in
2012 and did they have voter history, which is
different than how Ronnie did her analysis,
Ms. Degraffenreid, and then whether they were
in the SDR bucket.

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12 (Pages 45 to 48)

So I believe she did the similar
analysis that was done by the IT team which is
a specific table called Voter History One-Stop
which says they are SDR. But what she used as
a proxy for voter history there was ballot
status, which is -- the absentee correspondence
table will tell you if an absentee ballot,
which is inclusive of one-stop, came back as --
was accepted. It's not the same thing as voter
history being applied. It's usually very
similar, but it's not the same thing.

Q. I thought you filtered her number for who
voted.

A. I used her data sets, and her data sets for SDR
had ballot status which is what Ronnie used as
a proxy. She did the analysis once I
removed -- and so she filtered the first time
and I said, wait, you got duplicates, and I did
it again and filtered again. Does that make
sense?

Q. No. I'm still trying to understand why the
17,960 number for the May primary -- do you see
that number?

A. Tell me the page.

Q. Page 3. It's the May primary, SDR, Total New

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Registrations (Voted).

A. Okay.

Q. And I'm comparing that --

A. Other --

Q. Your chart says 18,088.

A. Right.

Q. So I'm trying to understand why those numbers
are different.

A. I didn't create the data set for Ronnie.
There's a couple of reasons --
differences in our methodology. So obviously
there's a difference in snapshot date. I don't
know that that should make a significant
difference.
The other difference is --

Q. Can I stop you there. Did you do any analysis
to see what the difference in snapshot date --
how that might affect the difference in
numbers?

A. No.

Q. Okay. Continue. Sorry.

A. The other thing is this is based on -- so her
analysis is based on ballot status. That is
the query that the IT team pulled for Ronnie,
which said they connected two different tables

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together. One was voter registration and one
was absentee correspondence, which will tell
you whether -- and then -- so when they
connected absentee correspondence and
connected -- actually a third table together
called voter history one-stop, they were able
to determine SDR -- whether they were in the
SDR bucket or not.
And that absentee correspondence table
gives you the ballot status, which is the
ballot return status. If that ballot return
status is considered accepted, we can assume,
for the most part, once again, it's a proxy,
that they voted.
And that's the data set she had. In
her original 2013 report, she just didn't
filter for ballot status. She then went back
and took that 2013 report, filtered for ballot
status, and she really did the reports -- the
charts on page 3. I then looked at her
analysis and said you still have duplicates and
I redid it using her same methodology. I
simply removed the duplicates and I filtered
for the same thing she filtered for, which was
ballot status.

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I think ballot status, although a
fairly precise proxy is still a proxy, and so
in my analysis I'm using voter history. Was
this voter history applied to that particular
voter for this particular election.

Q. Okay. So you came up with a number of 2,361
voters who, based on voter history, actually
voted and who failed the initial mail
verification process according to their log,
the voter verification log.

A. So -- I just want to make sure I'm precise
here. You said -- this is SDR only. They were
2012 registrants only. They failed mail
verification and that failure happened after
they voted.

Q. So maybe the easier way is for you to just tell
me what that 2,361 represents.

A. Which is what I just said.

Q. Okay. Say it again.

A. They're an SDR registrant.

Q. Okay.

A. They are a 2012 registrant. They failed mail
verification and that mail verification process
completed after they voted, which is everyone
for SDR.

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13 (Pages 49 to 52)

1 Q. Okay. That's everyone.	1 a zip file that says MailVerificationQuery_SDR_
2 And when you say failed mail	2 BobHallRequest.
3 verification, we're talking about the initial	3 What is -- did you put this file on the
4 mail verification process for a new registrant?	4 FTP site?
5 A. Right.	5 A. I did.
6 Q. You're not representing that -- or this number	6 Q. And what is this file?
7 doesn't reflect voters who may have actually	7 A. So Bob -- Bob Hall requested -- I think he
8 returned a confirmation card later?	8 requested the 2,361, and I'm not sure my memory
9 A. Right. That would be a different mail	9 serves me perfectly, and the registrations or
10 verification process. That would be a voter	10 the particular voters that applies to. I then
11 change process, for instance.	11 asked Kim Strach if that's something we should
12 Q. Right. But this report later says that the	12 provide him, and then we provided him that
13 purpose of mail verification is to prevent	13 analysis, that data.
14 ineligible applicants, right?	14 Q. He wanted the names of the 2,300 --
15 A. Right. So they're considered an applicant	15 A. He wanted several fields, and I'm pretty sure
16 until they complete the initial mail	16 it's 2361. I wouldn't be surprised if it's one
17 verification process, which its official term	17 of the other ones, but that's what I remember.
18 is new voter verification process. And once	18 Q. So now I'm going to hand you what we're going
19 they complete that process, they're now a	19 to mark as Exhibit 693.
20 registrant technically statutorily.	20 (WHEREUPON, Plaintiffs' Exhibit PX 693
21 So this is looking at that particular	21 was marked for identification.)
22 mail verification process. It's not looking at	22 BY MS. RIGGS:
23 other mail verification processes that might	23 Q. So I'm going to represent to you that I clicked
24 have occurred subsequent to that analysis.	24 on the zip file, and this is the first -- these
25 Q. I'm going to hand you what we're going to mark	25 are the first two pages of what came up. It
53	55
1 as 692.	1 was 24,342 pages if you printed out an Excel
2 (WHEREUPON, Plaintiffs' Exhibit PX 692	2 file.
3 was marked for identification.)	3 Do you recognize this spreadsheet?
4 BY MS. RIGGS:	4 A. It looks familiar.
5 Q. This is walking through how we accessed some	5 Q. Okay. And I think this is perhaps the results
6 data which is currently on the State Board FTP	6 of all 2012 registrants, but there is a column
7 website. So the first page, do you recognize	7 that says Registered Status, Not SDR, SDR.
8 this as the North Carolina State Board of	8 Do you see that?
9 Elections website?	9 A. I do. So I would be wrong to say it's the
10 A. I do.	10 2,361 previously.
11 Q. So then we clicked on Data and Statistics. The	11 Q. So -- and then there's a Mail Verification
12 next page, do you recognize that page from the	12 column that says -- in this chart it's all just
13 website?	13 Did Not Fail.
14 A. I do.	14 A. Right.
15 Q. All right. Then we clicked on SBE FTP Site.	15 Q. I filtered this chart for SDR and Failed and I
16 Do you recognize the next directory?	16 got 2,361. Does that make sense to you?
17 A. I do.	17 A. Uh-huh.
18 Q. All right. Then we clicked on Requests. Do	18 (WHEREUPON, Plaintiffs' Exhibit PX 694
19 you recognize the next directory?	19 was marked for identification.)
20 A. I haven't looked at this very often, but I can	20 BY MS. RIGGS:
21 assume it's Requests.	21 Q. This is Exhibit 694 that I am asking you about.
22 Q. Okay. And one of the directories on that page	22 This is from the previous exhibit just filtered
23 says Hall. Do you know who that is?	23 for SDR and Failed.
24 A. Bob Hall.	24 And if you look at the numbers on the
25 Q. Okay. So then we clicked on that and there is	25 left, which I added in so we could see, and go
54	56

14 (Pages 53 to 56)

1 to the last page, there are 2,361; is that
2 correct?
3 A. Based on the last page alone, yes.
4 Q. And so these would be the 2,361 voters who you
5 identified as -- SDR registrants, 2012
6 registrants, failed mail verification and
7 failed mail verification after voting.
8   Am I right on what the 2,361 is?
9 A. Yes, and that's what you're representing this
10 to be.
11 Q. Okay. So what I may need you to do is -- not
12 right now but go through and check it.
13   What was on the website would have been
14 correct, right?
15 A. Like I said, I don't know exactly what subset I
16 provided for Bob Hall, but it is -- yeah, I'm
17 assuming my data is correct.
18 Q. Okay. You wouldn't have put anything on the
19 website that wasn't correct?
20 A. Not on purpose.
21 Q. So I want to walk through some of these columns
22 that are in the 41-page exhibit, the shorter
23 exhibit -- well, it's the longer exhibit.
24   Did you create a column with the
25 registration -- Registrd_SDR, did you create

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1 that column in a spreadsheet that you gave to
2 Bob Hall?
3 A. I did.
4 Q. Okay. And were the only options same-day
5 registration or non-same-day registration?
6 A. I believe so.
7 Q. Okay. And did you identify -- how did you
8 separate same-day registration from not
9 same-day registration?
10 A. That is based on a table called Voter History
11 One-Stop and that table indicates that -- who
12 voted and whether they were a new registrant
13 during SDR.
14 Q. And then did you create a column in the
15 spreadsheet that you posted on the FTP site
16 that was Mail_Verif_Status?
17 A. I did.
18 Q. And were the choices for that Failed or Not
19 Failed?
20 A. I believe it was Failed and Did Not Fail.
21 Q. Oh, I'm sorry, Failed and Did Not Fail. Okay.
22   So how did you create that column from
23 the data in -- in SEIMS?
24 A. I didn't create it in SEIMS.
25 Q. From the data.

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1 A. It's the same process that I used here, which
2 is -- so SDR -- you want the second, Failed and
3 Not Failed.
4 Q. Right.
5 A. Like I said, you look at the mail verification
6 logs and you have an algorithm that goes
7 through which status codes are success at the
8 end of the mail verification process, which
9 status codes are failed and which ones mean
10 that you have to move up a step to the previous
11 record to see if that one failed or did not
12 fail because it was manually changed by an
13 individual because they moved out of state or
14 they were a felon or some other reason they
15 were removed.
16   And so the result of that algorithm is
17 a per person -- or let me rephrase that -- a
18 per registration application indicated whether
19 that person failed or did not fail that
20 particular registration.
21 Q. So was there some kind of algorithm you created
22 for -- I mean, I'm guessing you didn't go
23 through each 2,000 -- each one of these
24 24,000 pages of records and put Failed or Not
25 Failed in there.

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1 A. I'm sorry. This algorithm was created actually
2 for the entire table, and so that is what the
3 algorithm is based on. So this is -- this
4 algorithm was processed against several million
5 records.
6 Q. Okay. And the column S -- capital S-T-A-T,
7 what does that column represent?
8 A. That's -- oh, it must be truncated. It should
9 say status. I'm assuming the status column --
10 the headers are truncated, just so you know.
11 Q. Okay.
12 A. That's the status of the individual.
13 Q. Okay. And what about STATDES?
14 A. That's the status description of the records.
15 I'm sorry, not the individual.
16 Q. Okay. And what is the Reason column
17 representing?
18 A. That is the status reason of that record for
19 why that status is inactive, active or removed.
20 Or there's one other status there which is
21 temporary.
22 Q. Okay. So what's the difference between those
23 two, the ones that just have the letters and
24 the ones that have the word written out?
25 A. So databases are normalized, which means that

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15 (Pages 57 to 60)

1 the base tables have codes in them, like I or A
2 or sometimes they have numbers 1, 2, 3, 4. And
3 another table contains what those codes mean,
4 and you have to connect those tables together
5 to bring forward the description of those
6 codes.
7 Q. What -- the Reason Description -- the next
8 column that says ReasonDES, what does that
9 column depict?
10 A. That is the translation of the reason code that
11 you see right before it. And that comes, once
12 again, from a translation table within SEIMS
13 that translates that reason code. And this is
14 another example of normalization that occurs
15 within databases.
16 Q. Okay. So the Reason Description, Confirmation
17 Not Returned, what does that mean?
18 A. Confirmation Not Returned means that that was
19 the reason that that record went inactive.
20   So these are -- if you remember, these
21 are the proxies that Ronnie used.
22 Q. These -- okay. So going back to the -- right.
23 So I want to make clear, this is your data
24 that's on the FTP site, correct?
25 A. Yes, it is.

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1 code for what the status is what sometimes
2 represents the most proximate mail verification
3 and sometimes represents a whole different
4 reason.
5 Q. Can you look at number 6 on the front page
6 there.
7   MR. DONOVAN: 7.
8 BY MS. RIGGS:
9 Q. Oh, sorry, Row 7. It's an SDR, Failed, the
10 Status description is Active, the Reason is AV
11 and the Reason Description is Verified.
12   Do you see that?
13 A. I do.
14 Q. And the name is ███████████████.
15 A. Looks like it.
16 Q. Just so I understand, as of the -- you're not
17 saying that this voter is not verified, right?
18 A. What this would indicate is that they failed
19 initial mail verification process and that some
20 interrupting or later verification process did
21 not fail. It doesn't mean they're verified.
22 It just means it did not fail.
23 Q. So verified means did not fail?
24 A. Verified, right, because it -- that's just what
25 the terms in the database mean, but the -- if

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1 Q. So why do you have the Reason Description in
2 there?
3 A. Bob Hall's request was give me these columns,
4 and he spelled out the columns, including the
5 Reason code, Reason Description status, and
6 then he said indicate whether they have -- what
7 part of this chart they were a part of SDR,
8 non-SDR or -- you know, and then failed or not
9 failed.
10   So everything else is from the voter
11 registration table with translations from those
12 other tables. And there's at least three
13 translation tables involved in this, but he
14 just wanted me to include two columns of my own
15 which are the indicators that you see.
16 Q. Okay. I understand. So -- but the Reason
17 Descriptions are the accurate reasons for each
18 of these voters right now?
19 A. It would have been the date that that table
20 was, and I don't remember the date it was used,
21 and it would -- and it's not verification, just
22 so you know, necessarily.
23 Q. What does that mean?
24 A. It means, once again, this is a proxy not for
25 the initial mail verification. It is a reason

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1 you're asking what it actually means, it means
2 whatever the other -- so there's four different
3 other mail verification processes. It means
4 that it didn't go to a status code, which means
5 it failed. So usually it means it didn't come
6 back undeliverable is all that means.
7 Q. And these are -- so this voter I'm looking at
8 is an active voter?
9 A. Uh-huh.
10 Q. And because they're part of this 2,361, it
11 means they voted in 2012?
12 A. Yes.
13 Q. Okay. Look at the line right below it. It
14 says Moved Within State. I want to understand
15 what that reason code means.
16 A. It means they moved within the state.
17 Q. So the State Board of Elections knows that they
18 moved within state, not just moved generally?
19 A. Right, or the county official has put that as
20 the reason code.
21 Q. Okay. How would a county official know that
22 they moved within state rather than moved out
23 of state?
24 A. I don't know all the ways the county officials
25 do their business. I would -- yeah, I couldn't

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16 (Pages 61 to 64)

speculate on what all of the county officials
know. I would just say that there's several
ways that they can know that.
Q. Okay. And can you tell me what the Reason
Description, Verification Pending means?
A. Verification Pending?
Q. Yeah.
A. Where -- yes, I could. Where is it?
Q. Line 762.
A. Yes.
Q. What does Verification Pending mean?
A. It would mean that a subsequent mail
verification process has been initiated and we
don't know -- it's somewhere in the process.
Q. What does Confirmation Pending mean, Line 138?
A. It means something very similar, but that would
assume that it's waiting for a confirmation
mailing.
Q. Okay. Did you perform any analysis of these
2,361 voters to see the racial breakdown of who
failed same-day -- who failed the initial
verification?
A. I may have. I don't remember if I did or the
results.
Q. You don't remember the results?

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A. If I did, I don't remember the results.
Q. Did you do any analysis to see what percentage
of these voters had zip codes that were on
military bases?
A. I did not do that analysis.
Q. Did you do any analysis to see which of these
2,361 voters, their zip codes were on college
campuses?
A. I did not.
Q. Their zip codes or addresses on college
campuses?
A. I did not.
Q. Did you do any analysis to see how many of
these voters their addresses were homeless
shelters?
A. I did not.
Q. What would it mean to you if there were no
voters from Rowan County on the spreadsheet for
same-day -- so the data that was put on the FTP
site, if there were no Rowan voters listed as
having used SDR Failed or Not Failed, what
would that mean to you?
A. I would have to speculate. I don't know what
that would mean.
Q. Do you know where Rowan County is?

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A. I'm geographically challenged.
Q. So you don't know the city of Salisbury,
North Carolina?
A. No.
Q. You don't know that it's a sizable city in
North Carolina?
A. I do not. I'm sorry.
     MS. RIGGS: I'm going to pass the
witness now.
            EXAMINATION
BY MR. DONOVAN:
Q. Mr. Neesby, you were discussing looking at the
2015 SDR report. At the bottom is a footnote
regarding what is called inaccuracies. Do you
see that?
A. Are we on page 2?
Q. Page 2.
A. Give me a second. I do see it.
Q. You didn't draft that sentence, correct?
A. I did not.
Q. You would not use the word "inaccuracy" if you
wrote that sentence, correct?
A. I don't know what words I would use. I think
it's applicable in certain circumstances and
not applicable in others.

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Q. But if you wrote it, based on your description
before, you would not use the word "inaccurate"
to describe the data, correct?
     MR. STRACH: Objection; asked and
answered.
     You can repeat your answer if you want.
     THE WITNESS: I would write more
precisely, but I don't think that word isn't
insufficient for part of the data set.
BY MR. DONOVAN:
Q. In the 2013 SDR analysis -- withdrawn.
     In the 2015, you removed the
duplicates, correct?
A. Right.
Q. Okay. And is that because you believe they
were wrongfully included in the 2013?
A. Let me clarify. So in 2013, the -- the second
and third chart, I at least removed the
duplicates. We didn't change Ronnie's chart.
Q. So you left the duplicates in there?
A. Well, because we were -- this chart is
pertaining -- this is what was shown in the
first report.
Q. And in the 2013 report, they actually
identified the duplicates in that data,

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17 (Pages 65 to 68)

correct?

A. They did not identify it.

Q. Let me hand you PX 68, sir. Look at the second page. Look at the bottom under Removed, it says Duplicate, 265, correct?

A. Yes. That means something different.

Q. Tell me what that means.

A. So this is your reason code for removed and that means that that particular registration record was -- was a duplicate in some sense with a different registration record that is probably not part of this data set.

Q. So that's a different set of duplicates?

A. Like I said, it has nothing to do with duplicate in the data sense. It is about why that person was removed. It means that there is another record that it really is the same person.

(WHEREUPON, Plaintiffs' Exhibit PX 695 was marked for identification.)

BY MR. DONOVAN:

Q. I'm going to hand you what is marked as 695. This is the mail verification statute that you've been referring to, correct?

A. I don't know if it is all of it, but it is a

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portion of it.

Q. Okay. And this talks about -- if you look under (c) -- talks about verification of address by mail and then (e) talks about the second notice, correct?

A. It does.

Q. And then (g) talks about when the verification process is incomplete. Do you see that?

A. I do.

Q. And those would be almost all of the SDR because they're individuals who register and vote on the same day, correct?

MR. STRACH: Objection; calls for a legal conclusion, but answer what you can.

BY MR. DONOVAN:

Q. Your understanding.

A. My understanding is I don't know if they would meet that particular statutory definition, but the verification process may not even have begun or it may have begun or been incomplete.

Q. Or those voters under (g) -- can you look at the next page under (3). The statute itself talks about if a notice sent pursuant to (c) or (e), the first or second is returned as undeliverable after a person has already voted,

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then the county board shall treat that person as a registered voter but shall send a confirmation mailing, correct?

A. Correct.

Q. That's that confirmation mailing we were talking about earlier, correct?

A. I can't confirm that actually.

Q. Do you know if there's some other confirmation mailing that you're aware of?

A. So the SEIMS process and the statutory process may differ in some ways. So one of those ways is that -- and once again, I'm not a legal scholar or anything like that.

Q. No one in this room is, don't worry.

A. The initial --

MR. FARR: That hurts, Dan.

MR. DONOVAN: Especially him. Go ahead.

THE WITNESS: The initial mail verification process, if it's interrupted, it doesn't send a confirmation mailing.

So let's say one mail verification comes through, even two and then there's interruption, it will not send a confirmation mailing. It will send another mail

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verification process and even a second one. We've had instances of four mail verification processes before they finally fail.

BY MR. DONOVAN:

Q. Okay. And under this provision, you kept using initial mail verification. Are you aware, is that term used at all in this statute initial mail verification?

A. That is a description of the SEIMS process, new voter verification process, which is, at least in theory, supposed to represent this entire process.

Q. That's not a word used in the statute, correct?

A. Correct. I'm not a legal scholar.

Q. You used -- earlier you said when you were doing this you had discussions internally about the initial mail verification process and what that should involve, correct?

A. I did.

Q. And that was with Ms. Strach?

A. Yes.

Q. Among others, including lawyers in this room, correct?

A. Did I have -- I don't know that I described what the initial mail verification process. I

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might have talked about here's what it is.
They wouldn't help me clarify what the
initial mail verification process is.
Q. So they helped you identify what you would
define as the initial mail verification
process?
A. They did not.
Q. They did.
MR. STRACH: They did not.
BY MR. DONOVAN:
Q. They did not.
Who else did you discuss that
with other than Ms. Strach?
A. That would be the IT team saying how do we
determine the initial mail verification.
Q. In SEIMS?
A. Right.
MR. DONOVAN: Pass the witness.
EXAMINATION
BY MR. KAUL:
Q. The process that you were describing before
that Ms. Degraffenreid used to update her
analysis from 2013, was that same process
applied to the non-SDR registrations?
A. Clarify your question as to what process.

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Q. You said she used proxies the first time,
correct?
A. Right. And she used proxies the second time.
Q. With respect to the non-SDR registrations?
A. Both, right.
MR. KAUL: Could we go off the record
for just a minute.
(Brief Recess: 5:44 to 5:53 p m.)
BY MR. KAUL:
Q. Let me direct your attention back to the chart
with the 2,361, and I want to focus on Line 7
again.
A. Okay.
Q. So am I reading this correctly in understanding
that this person in Line 7 is currently
eligible to vote?
A. Like I said, it doesn't mean eligible to vote,
really. What it means is their address did not
return mail verification. As far as the
statutory ID and eligible to vote, it doesn't
necessarily go to that.
Q. With respect to that address, their address is
not a reason that that person would not be --
their residency verification rather --
A. As far --

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Q. Go ahead. Go ahead.
A. You can finish your question.
Q. The residency verification doesn't have
anything to do with that person's eligibility,
right?
MR. STRACH: Object to form.
Can you say as of when?
MR. KAUL: As of now.
THE WITNESS: Whenever this data was
pulled, it doesn't mean they're eligible in the
last election. It doesn't technically mean
they're eligible if an election happened the
date it was pulled. It means at the date it
was pulled we have no evidence that they're not
eligible.
BY MR. KAUL:
Q. And it means that the date that this was
pulled -- as of the date this was pulled, this
person had passed mail verification, correct?
A. There was -- it means -- you're right, and I
want to clarify that subsequently they could
still come back undeliverable, but what this --
Q. That's true of anybody, isn't it?
A. Yeah, but let me clarify. So let's say your --
you're returned undeliverable and we put mail

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verification process into -- we start your
initial mail verification, the 15 days go by,
then the time has passed. I take a snapshot
that day. You're going to look active
verified. On Day 16 you get the undeliverable
back, you're going to go undeliverable, and if
we took it a day later, you would be seen as
Confirmation, Not Returned Inactive in this
case. So it's all a result of timing.
Q. But as of the date this was pulled, Number 7
has passed mail verification, correct?
A. Like I said, they have a status code of 2, 8 or
22 and therefore, as far as we know, they --
and for instance, if a status code 2, all it
means is the 15 days have passed, the mail
verification process.
And we happen to know failures take
longer than successes in this regard. So for
someone to fail, it takes a little longer than
for someone to succeed. It's just a 15-day
window.
Q. This was pulled until 2015, right?
A. Right.
Q. So this is three years after these people used
SDR in 2012?

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19 (Pages 73 to 76)

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<tr><td>

1   A. Right, but this can result in the mail
2   verification process that happened five days
3   ago.
4   Q. Why would that person have gone through a mail
5   verification process --
6   A. After mailing, NCOA. It could be -- it can be
7   a voter initiated change, like address changes,
8   any -- this could happen 15 days ago and they
9   simply passed the actual date that -- the
10   expiration period, which is 15 days. That's
11   all this mean.
12   Q. Okay, but in many of the cases, it will mean
13   that the person subsequently verified, right?
14   A. Like I said, it's not an actual -- it's not
15   about verification truly. It's just we have --
16   it means -- all this means is the 15 days have
17   passed. They could later unverify, but they're
18   not unverified right now.
19   Q. These are people who used SDR in 2012 and as of
20   2015 are listed as active voters, right?
21   A. They're an active voter, yes.
22   Q. And in the same county where they used SDR in
23   2012, right?
24   A. They're an active voter in 2012 with the caveat
25   simply could mean that their verification

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</td><td>

1   SDR is a less effective process than
2   traditional mail registration, right?
3   MR. STRACH: Objection.
4   THE WITNESS: Can you ask that question
5   again. I don't really understand.
6   BY MR. KAUL:
7   Q. You're treating Number 7 as somebody who is in
8   your list of failed mail verification, right?
9   A. I'm a data guy. I'm not creating conclusions.
10   So what I'm saying is this person
11   failed their initial mail verification, which
12   is the new voter verification process. They
13   subsequently did a subsequent mail verification
14   process. And we don't know when that started.
15   It could be 16 days before I took the snapshot.
16   And at this point in time there's no return
17   undeliverable, but that could happen tomorrow
18   or the next week.
19   Q. And you could find out for those people when
20   the process started, right?
21   A. If I wanted, yeah, I could find that out.
22   Q. Did you do that?
23   A. For these people? Yeah, I know -- I mean, in
24   the data set shows when it started. I didn't
25   query it.

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<tr><td>

1   process went past 15 days and we're waiting for
2   the undeliverable to come back.
3   Q. This is actually the very same address that
4   they had when they voted in 2012?
5   A. We do not know.
6   Q. You do know it's the same county, though,
7   right?
8   A. We know it's the same county.
9   Q. And this is what accounts for the difference in
10   your numbers and Ms. Degraffenreid's, right?
11   A. I think that's oversimplified. I don't think
12   that's true.
13   Q. Would Number 7 have been counted as an active
14   voter in Ms. Degraffenreid's or a failure?
15   A. Her -- so you mean the difference. Yeah, so
16   her data set, which is not mine, it would
17   have -- this is one example of where they
18   failed initial mail verification, and if she
19   would have looked, she would have said, oh,
20   they're fine.
21   I would say they failed initial mail
22   verification based on whatever address they
23   used to vote.
24   Q. So Number 7, who's an active voter, you
25   characterize as somebody who is evidence that

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</td><td>

1   Q. But you could do that, you just didn't?
2   MR. STRACH: Objection. Are you
3   talking about for this particular spreadsheet?
4   Are you talking about this spreadsheet that was
5   given to Bob Hall or his research?
6   BY MR. KAUL:
7   Q. In your research.
8   A. In my research -- so you have to do several
9   queries. The first one is -- there's a lot of
10   steps to this process.
11   The first one is looking where -- is
12   where the batch begins and then looking at
13   where it ends, but -- so I didn't pull where --
14   when the voter verification started, the
15   initial verification. We hope it was within
16   two days, but we don't know that.
17   I pulled when it ended for the ending
18   of the verification process.
19   Q. But so a voter like Number 7 in your analysis
20   would be -- would be included in your group of
21   people who failed mail verification, right?
22   A. Yeah. Yes.
23   Q. And in Ms. Degraffenreid's analysis, that
24   person would not be included in that list; is
25   that right?

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</table>

20 (Pages 77 to 80)

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1   A. So given that a person like that person had the
2   exact same status in her data set, that would
3   be true.
4   Q. Okay. So that means that your process was
5   certain to lead to more mail verification --
6   mail verification failures than hers, correct?
7   A. Not true.
8   MR. STRACH: Objection.
9   BY MR. KAUL:
10   Q. Why is that?
11   A. That's not true because, once again, they're
12   snapshot data, but that's not important. The
13   reason is because hers goes both ways. So
14   someone could have succeeded the initial mail
15   verification, then failed. They could have
16   failed it, for instance, in the non-SDR --
17   well, as an SDR especially and then done a
18   subsequent mail verification process. So that
19   cuts both ways so I couldn't make that
20   conclusion.
21   Q. That couldn't have happened within two months,
22   though, could it?
23   A. It happens, yeah.
24   Q. That they would have passed a mail verification
25   and then failed a subsequent mail verification?

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1   Q. How could all of that have happened within the
2   few months between SDR and the day of the
3   snapshot that she had?
4   A. So let me give you an example. Let's say I do
5   a mail verification process. I -- then 15 days
6   go by. I'm now successful. I then do a
7   voter -- an address change. That address
8   change then fails to come back undeliverable
9   within 30 days.
10   That's an example of someone it could
11   have happened to.
12   Q. And that person would have had to update their
13   address with their voter registration within
14   15 days in your example of when they voted?
15   A. No. It could happen after the 15 days.
16   Q. Okay. It would had to have happened within
17   about a month to have been gone through a full
18   mail verification again after --
19   A. And have failed.
20   Q. -- and have failed?
21   MR. STRACH: Josh, eight minutes have
22   run. We can have her verify it.
23   THE WITNESS: Yes.
24   MR. KAUL: I believe it.
25   MR. STRACH: I would like to ask one

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1   A. It definitely could have happened.
2   Q. How could that have happened?
3   A. So where are we talking about two months, first
4   of all.
5   Q. Her data snapshot was from January of 2013; is
6   that right?
7   A. Right.
8   Q. And SDR voters would have voted in November of
9   2012?
10   A. Right or right before, yeah.
11   Q. So how could a voter have passed and then
12   failed mail verification within that time
13   period?
14   A. I'm asking for -- you mean a subsequent mail
15   verification process.
16   Q. Yes.
17   A. So one mail verification process fails.
18   Succeeds or fails?
19   Q. You said hers cuts in both directions, right?
20   A. It does.
21   Q. And that's because you're saying that that
22   person could have first passed mail
23   verification and then failed subsequently,
24   right?
25   A. Right.

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1   question just as a matter of housekeeping
2   before we conclude.
3   MR. KAUL: Can I ask one more question?
4   MR. STRACH: Sure.
5   BY MR. KAUL:
6   Q. Did you do any analysis to see how many times
7   that had happened?
8   A. I didn't look at the amount of times that -- if
9   I'm understanding your question, frankly, that
10   someone passed mail verification and failed or
11   vice versa.
12   EXAMINATION
13   BY MR. STRACH:
14   Q. Okay. Mr. Neesby, just a housekeeping matter.
15   On the report itself, there's a footer
16   that says the date is May 19, 2015. Do you
17   know if that date in the footer is correct or
18   not?
19   A. My recollection is, actually, it was in June.
20   This is the date of the earlier draft. We
21   simply didn't update the footnote.
22   It's my recollection that it was June
23   that we did the report, and I submitted the
24   data to the plaintiffs the day after.
25   MR. STRACH: Okay. That's all we have.

84

21 (Pages 81 to 84)

1   All right. Thank you.

2   [SIGNATURE WAIVED]

3   [DEPOSITION CONCLUDED AT 6:03 P.M.]

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1   STATE OF NORTH CAROLINA   )
) C E R T I F I C A T E
2   COUNTY OF WAKE   )

3

4   I, DENISE MYERS BYRD, Court Reporter and

5   Notary Public, the officer before whom the foregoing

6   proceeding was conducted, do hereby certify that the

7   witness whose testimony appears in the foregoing

8   proceeding were duly sworn by me; that the testimony

9   of said witness was taken by me to the best of my

10   ability and thereafter transcribed under my

11   supervision; and that the foregoing pages, inclusive,

12   constitute a true and accurate transcription of the

13   testimony of the witness(es).

14   Before completion of the deposition, review

15   of the transcript was waived.

16   I further certify that I am neither counsel

17   for, related to, nor employed by any of the parties

18   to this action, and further, that I am not a relative

19   or employee of any attorney or counsel employed by

20   the parties thereof, nor financially or otherwise

21   interested in the outcome of said action.

22   This the 19th day of July 2015.

23

24

         Denise Myers Byrd

25   CSR 8340, RPR, CLR 102409-02

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22 (Pages 85 to 86)

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