

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.

**NOTICE REGARDING
DEFENDANTS' SUMMARIES OF
DESIGNATIONS OF FACT
WITNESS DEPOSITIONS**

Civil Action No. 1:13-CV-658

LEAGUE OF WOMEN VOTERS OF
NORTH CAROLINA, et al.,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, et
al.,

Defendants.

Civil Action No. 1:13-CV-660

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF NORTH CAROLINA, *et*
al.,

Defendants.

Civil Action No. 1:13-cv-861

NOTICE REGARDING DEFENDANTS' SUMMARIES OF DESIGNATIONS OF FACT WITNESS DEPOSITIONS

The United States and the private plaintiffs respectfully submit this notice regarding summaries included by Defendants in their objections to Plaintiffs' designations of fact witness depositions. In its pre-trial order, the Court permitted parties to attach "a one-page summary of the key facts and relevancy of the testimony" provided by deponents in each deposition sought to be admitted." ECF No. 282, 13-cv-861. On Wednesday, July 8, Defendants submitted summaries of Plaintiffs' witnesses' depositions as an attachment to their Objections to and Counter-Designations of Plaintiffs' Designations of Deposition Testimony for Trial. ECF No. 302, 13-cv-861. This notice informs the Court that these summaries repeatedly misstate key facts concerning Plaintiffs' witnesses' testimony.

A few illustrative examples demonstrate why the Court should not rely on the factual accuracy of Defendants' summaries:

Defendants assert that Yvonne Washington, who went to the wrong polling place in the November 2014 election, "will be able to vote in future elections at her assigned precinct... if the bus can take her there." ECF No. 302 at 93. This assertion takes a hypothetical statement made by Ms. Washington out of context ("[i]f they got a bus or they got cars to come pick me up, yeah"), and is at odds with her testimony that she has no means of transportation to her polling site. Y. Washington Dep. 26:3-7, 39:6-40:4. Moreover, Ms. Washington's husband, Timothy Washington, testified in deposition that

it is impossible to take public transportation to their correct polling place. T. Washington Dep. 13:11-13.

Defendants also claim that Victoria Banks, an Activities Director at a nursing home who assists residents seeking to vote, will not have to take voters to multiple polling places because “all residents... will be registered at the same address.” ECF No. 302 at 3. Ms. Banks testified, however, that residents from neighboring counties are routinely admitted not long before elections, and she has not assisted anyone with registering at the nursing home. Banks Dep. 25:3-20, 40:7-14.

Similarly, Defendants posit that Gerrick Suggs “understood he could not vote” in the November 2014 election because he knew he was not registered in Craven County and could not register there during early voting. ECF No. 302 at 85. To the contrary, Suggs testified that he was advised to cast a provisional ballot in Craven County by the local board of elections and believed his vote may count because he had previously registered and voted while living at the same address. Suggs Dep. 14:8-15:9, 16:3-10.

Defendants suggest that Charise Dill could commit voter fraud. Since moving to North Carolina, however, Ms. Dill has not voted in either South or North Carolina. She is aware that her voter registration in South Carolina is no longer valid. When told by a volunteer that it would be illegal for her to go back to vote in South Carolina, she said, “Whoa. Okay. I’m not going to do that.” Dill Dep. 29:13-25.

Furthermore, Defendants state that Bryan McGowan, a 22-year-veteran of the Marine Corps, could have voted by absentee ballot in Onslow County, where he was

stationed until 2010. ECF No. 302 at 59. This would have been impossible because he retired from the military in April 2014 and moved to Clay County on July 1, 2014.

McGowan Dep. 9:11-13, 7:17-21.

Defendants also misinterpret North Carolina criminal law N.C.G.S. § 90-96 in their summary of the deposition of Brandi Smith. ECF No. 302 at 83. Probation without conviction is a procedure used for a narrow class of drug offenses. If the defendant completes probation without incident, the proceedings must be dismissed and are not considered a conviction. N.C.G.S. § 90-96(a).¹ Thus, Ms. Smith has never been convicted of a felony and should not have been removed from the voter rolls.

Defendants also assert that Maria Palmer “became a plaintiff in the NAACP Plaintiff Group at the request of a lawyer for the Advancement Project, Katelyn Swain.” ECF No. 319, 13-cv-658, at 607. Although she testified that Ms. Swain had asked her whether she wanted to be a plaintiff in the case, M. Palmer Dep. at 81:18-82:4, Ms. Palmer had earlier testified that the “main reason” she became a plaintiff was her concern for how the law would impact her constituents, student voters, and her re-election campaign. *Id.* at 80:25-81:14. Similarly, Defendants state that “Ms. Palmer also admitted that . . . her son[] would have been able to vote if she had informed him of the 25-day deadline for registration.” To the contrary, Ms. Palmer testified that her son had recently moved from Watauga County and that she simply “had [not] asked [her] son”

¹ N.C.G.S. § 90-96(a) provides that proceedings must be dismissed “without court adjudication of guilt and shall not be deemed a conviction . . . for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.”

whether he had registered to vote in a different county. *Id.* at 20:8-21:3. Ms. Palmer made no mention whatsoever of the registration deadline or her son's qualifications to vote. *Id.*

These examples constitute only a sample of the recurring inaccuracies provided by Defendants throughout their summaries. Plaintiffs can provide additional instances of misstatements of testimony if it would be of assistance to the Court.

Dated: July 10, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2015, I electronically filed the foregoing **Notice Regarding Defendants' Summaries of Designations of Fact Witness Depositions**, using the CM/ECF system in case numbers 1:13- cv-658, 1:13- cv-660, and 1:13-cv-861, which will send notification of such filing to all counsel of record.

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General Information

Court	United States District Court for the Middle District of North Carolina; United States District Court for the Middle District of North Carolina
Federal Nature of Suit	Civil Rights - Voting[441]
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