

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

NORTH CAROLINA STATE)
CONFERENCE OF THE NAACP, *et al.*,)

Plaintiffs,)

v.)

1:13CV658

PATRICK LLOYD MCCRORY, in his)
official capacity as Governor of North)
Carolina, *et al.*,)

Defendants.)

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

Plaintiffs,)

and)

LOUIS M. DUKE, *et al.*,)

Plaintiffs-Intervenors,)

v.)

1:13CV660

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

Defendants.)

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

1:13CV861

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

Defendants.)

**DEFENDANTS' DESIGNATIONS OF DEPOSITION TESTIMONY IN
CONNECTION WITH PLAINTIFFS' MOTIONS FOR A PRELIMINARY
INJUNCTION**

Defendants¹ file the following designations of deposition testimony taken in the captioned matters in connection with Plaintiffs' motions for a preliminary injunction. With the exception of the Rule 30(b)(6) deposition of the N.C. State Board of Elections given by Kim Strach, all of the designations relate to depositions that were taken or transcribed after the deadline for Defendants to file their response to the motions for preliminary injunction. Designations are filed for the following deponents:

Charles Stewart, III

J. Morgan Kousser

Theodore Allen

Sen. Earline Parmon

Rep. Rick Glazier

Michael Dickerson

Gary Bartlett

Janet Thornton

Sean Trende

Cherie Poucher

¹ Defendants intended to file joint deposition designations with Plaintiffs, however, the parties have been unable to reach an agreement on a set of joint designations in time to allow the designations to be filed by the deadline set by the Court. Accordingly, the parties are separately filing their designations.

In addition, Defendants designate the entirety of the Rule 30(b)(6) Deposition of N.C. State Board of Elections given by Kim Westbrook Strach (taken April 16, 2014) and the Deposition of Kim Westbrook Strach (taken July 1, 2014). Copies of both depositions are attached to this filing. Defendants' designations for the other deponents listed above are summarized below and the designated portions are attached to this filing.

Stewart Deposition Designations

Stewart has been retained by DOJ. (Page 18, Line 21 through Page 19, Line 1)

Stewart's report is limited to early voting, same-day registration, and out-of-precinct voting. (Page 20, Lines 2 through 12)

Stewart was retained by USDOJ for Section 5 cases involving South Carolina and Florida. (Page 24, Line 12 through Page 25, Line 12)

Stewart admits that the general election in 2014 is a mid-term election and not a presidential election. (Page 38, Lines 8 through 16)

Stewart admits that turnout is higher in presidential years. (Page 39, Lines 4 through 10)

Exhibit 137 is Stewart's report with exhibits. (Page 41, Line 5 through Page 42, Line 5)

Stewart says that, under HB 589, seven days of early voting are eliminated but that the total number of hours must be maintained in prior corresponding elections and that county boards of election can request waivers for the number of hours for early voting. (Page 43, Lines 6 through 16)

Stewart agrees that, for 2014, the number of total early voting hours must correspond to the 2010 election. (Page 44, Lines 16 through 20)

Stewart prefers to rely on more than casual reading of newspaper accounts. (Page 46, Line 14-15)

Stewart says that there is a principle in social choice and economics called “revealed preferences” and that when people are given a choice they will choose the one that is of “the most benefit” to them. (Page 47, Lines 16 through 22)

Stewart says that now that early voting has been reduced to 10 days, voters who voted in first seven days are being “forced into a shorter period of time and a “second best option compared to the past.” (Page 48, Lines 1 through 8)

Stewart did not survey voters on their choice of which day to vote. (Page 49, Lines 5 through 12)

Stewart agrees that factors that influenced a voter on when to vote in 2010 could change significantly in four years but testified that he is relying on aggregates. (Page 49, Line 13 through Page 50, Line 5)

Stewart has never worked as a poll manager or election administrator. (Page 72, Lines 13 through 20; Page 79, Lines 4 through 16)

Stewart relied upon the 2012 Survey of Performance of American Elections (SPAE), that he has been involved with beginning around the 2008 election. (Page 84, Lines 10 through 22)

Stewart was the principal investigator for the 2012 survey which asks questions of voters about their experience at the polling place and was funded by Pew Charitable Trust. (Page 85, Lines 1 through 22)

Survey is based upon interviews of 200 respondents in each state “so that we can have large enough samples to compare, you know, any one of those performance metrics across – across two states or to make reports about the performance on different – on different measures across all states.” (Page 86, Lines 3 through 15)

Stewart also conducted the SPAE in 2008. (Page 88, Line 20 through Page 89, Line 6)

One of the goals of the survey is to create a series of questions that other researchers might use to have a common base of questions to understand more about what happens in the polling place. Questions are developed by a team of political scientists and reviewed by an outside review panel. Stewart served as the principal investigator and relied on a group called YouGov to put the survey on the web, choose the sample, invite people to participate, create the data files, and to administer the survey, including providing statistical weights and providing the raw data to be analyzed. Stewart was responsible for the process of forming the questions and making the final decision on questions. (Page 90, Line 2 through Page 92, Line 21)

People who participate are solicited by Polimetrix and opt in to give internet answers. (Page 93, Lines 4 through 17)

Millions of people opt in and Polimetrix draws out representative sample. (Page 93, Line 19 through Page 94, Line 5)

There are 200 people per state. Table 9 combines 2008 and 2012 elections. (Page 94, Lines 14 through 20)

Full data set is 10,000 (50 times 200). (Page 95, Line 7)

In combining the two surveys, 12,387 voters answered questions about how long they waited to vote. This does not include non-voters or voters who voted by mail in absentee. (Page 95, Line 16 through Page 96, Line 22)

In North Carolina, 188 early voters and 146 Election Day voters were interviewed. (Page 97, Line 20 through Page 98, Line 2)

Remaining North Carolina voters who were surveyed answered, “I do not know,” did not vote, or voted absentee. (Page 98, Lines 3 through 12)

YouGuv describes on its web site how respondents are randomly selected from a larger pool. (Page 98, Line 14 through Page 99, Line 9)

Table 9 does not distinguish between race or ethnicity. (Page 100, Lines 2 through 8)

Stewart’s memory is that there were insufficient African Americans sampled to be confident of estimates but Stewart did not include this in his report. (Page 100, Line 9 through Page 101, Line 6)

Table 9 says nothing about the impact on African American of waiting lines. (Page 101, Lines 7 through 11)

Table 9 does not break down racial disparity. (Page 102, Line 19 through Page 103, Line 9)

Stewart has no role in identification of voters who are interviewed as that is done by YouGuv/Polimetrix. (Page 103, Lines 10 through 18)

YouGuv is responsible for picking voters sampled and using sampling weights to draw conclusions about the state of North Carolina. Stewart did not check this. (Page 104, Line 10 through Page 106, Line 10)

According to Stewart, 200 voters sampled in Rhode Island will produce as precise an estimate of a mean as 200 in Texas or California. (Page 111, Lines 5 through 20)

There are over 6 million registered voters in North Carolina. (Page 114, Lines 11 through 17)

Regardless of size of state, Stewart can calculate a mean using “central limit thermo,” a “standard error” and a margin of error. (Page 115, Lines 5 through 20)

Stewart can calculate the uncertainty of that estimate and agrees that the larger the observations, the less the uncertainty. (Page 115, Line 21 through Page 116, Line 5).

Stewart calculates a margin of error in his sur-rebuttal. (Page 119, Lines 5 through 10)

His estimates on wait times are reliable within the standard error. (Page 120, Lines 2 through 15)

He did not include standard error in his original report. (Page 120, Line 16 through Page 122, Line 10)

Stewart thinks questions on 2008 survey were the same as 2012. (Page 123, Lines 11 through 21)

He did not report margin of error because the question was whether wait times are longer in North Carolina. (Page 128, Line 18 through Page 129, Line 1)

Stewart's interest in performing calculations on wait times in North Carolina arose after he was engaged by USDOJ to prepare a report on wait times. (Page 139, Lines 6 through 11)

Chart on page 74 of Stewart's report shows that wait time for early voters in North Carolina were longer than wait time for Election Day voters. (Page 141, Line 19 through Page 142, Line 2)

African Americans were more likely to vote early than whites. (Page 142, Lines 5 through 11)

Stewart admits that, under his table, lines were longer on Election Day than during early voting and early voting lines in North Carolina were longer than the national average. (Page 143, Line 15 through Page 144, Line 8)

Stewart states that question asked voters by survey was “How long did you have to wait in line to vote”, that this was not defined by the survey, that different people could interpret that question differently, and that there has been no research done on how respondents interpreted this question. (Page 144, Line 9 through Page 146, Line 19)

In table 9, wait times go from not at all to less than 10 minutes then to 10 to 30 minutes then to 30 minutes to one hour, then more than an hour - agrees this traded off getting answers that are precise. (Page 147, Lines 4 through 18)

Stewart calculated an average wait time for North Carolina by using the mean within each of the categories of wait time – so 20 minutes was used for voters who said they waited 10 to 30 minutes. It was the mean of the category but not the mean of the actual respondents because Stewart does not know the actual wait time. (Page 150, Line 6 through Page 151, Line 10)

Survey was done for 2008 and 2012 but not 2010. (Page 151, Line 15 through Page 152, Line 2)

Stewart never contacted or surveyed respondents to determine actual wait time. (Page 152, Line 16 through Page 153, Line 2)

Table 9 combines 2008 and 2012 survey. (Page 153, Lines 4 through 22)

Stewart had 200 respondents in 2008, 200 respondents in 2012. Out of the 400 total respondents, 146 voted on Election Day in either 2008 or 2012, and 188 voted early in either 2008 or 2012. Stewart does not account for how wait times in 2008 might have been different than 2012. (Page 154, Line 2 through Page 155, Line 1)

Stewart disputes that any percentage within the margin of error is equally valid. (Page 157, Lines 14 through 17)

Stewart did not state margin of error in original report but disclosed in sur-rebuttal after he read Thornton's report and the margin of error is 3.4%. (Page 160, Line 19 through Page 161, Line 20)

Stewart admits that high end is 5.9% plus or minus 3.9% but disputes that any point within that continuum is equally valid. (Page 162, Lines 2 through 22)

Stewart admits that any value within the curve could be the true answer. (Page 163, Line 16 through Page 164, Line 2)

Agrees that Dr. Thornton testified that any point within the plus or minus range is equally valid but Stewart disagrees. (Page 165, Line 18 through Page 166, Line 2)

Stewart asked to explain how a retrogression analysis could determine whether there is a statistically significant relationship between early voting and black turnout. He refers to Wolfinger and Rosenstone mentioned in his sur-rebuttal and states he would use CPS data across a number of years, and code every state on whether they have early voting – so the dependent variable is whether a voter may have voted or not, one independent variable would be whether the voter was African American, and another independent variable would be whether the state had early voting or not. (Page 168, Line 9 through Page 169, Line 22)

In retrogression analysis, we could separate the states with and without early voting, dependent variable did you vote, independent variable are you African American, then you would have the differential for states with or without early voting and determine if those two numbers are statistically equal or one is larger than another. This is “well within the canon of political science” to test a question like this. (Page 169, Line 1 through Page 170, Line 22)

Stewart did not perform an analysis like this for this case. (Page 170, Line 22 through Page 171, Line 1)

The null hypothesis in this analysis would be that the likelihood of an African American voting in an early voting state is equal to the likelihood of an African American voting in a non-early voting state. (Page 171, Lines 9 through 17)

The alternative hypothesis is that black turnout in early voting states is not equal to black turnout in non-early voting states. (Page 172, Lines 3 through 13)

“In classical statistics you start with the null hypothesis and the exercise to see if you can reject the null hypothesis.” (Page 172, Line 17 through Page 173, Line 4)

To reject the null hypothesis, the likelihood that the difference is due to chance is less than 5%. The null hypothesis is rejected only at the 95% confidence level. (Page 173, Line 6 through Page 174, Line 3)

If you get to 95% confidence level to reject the null hypothesis “within classical statistical theory . . . all you can say if you reject the null hypothesis is that you have rejected the null hypothesis.” This does not prove the alternative hypothesis. (Page 174, Line 4 through Page 175, Line 4)

People who responded to the survey Stewart used to do table 9 are people who could respond to the internet which is a “concern.” (Page 180, Lines 11 through 20)

Exhibit 134 is an article he published in 2013. (Page 181, Lines 6 through 9)

Factors that contribute to long lines include the number of people showing up at a precinct or early voting site, number of voting machines, number of poll workers and how precinct is organized, whether the voting site has electronic poll books, increasing the number of precincts, more early voting sites, location of early voting sites, machine malfunction, type of voting equipment that is used, training of poll workers, use of provisional ballots. (Page 183, Line 7 through Page 188, Line 15)

He has never observed a precinct where same-day registration has taken place. Eliminating SDR could increase or decrease wait time based upon discussions Stewart has had with election officials in Wisconsin and Minnesota. (Page 188, Line 16 through Page 190, Line 5)

Stewart did not attempt to analyze how SDR contributed to long lines in North Carolina. He has not studied North Carolina precincts and how they work on Election Day except in a cursory fashion. He did not identify specific precincts or early voting sites that had long lines. He does not know if lines were longer or shorter in predominantly African American voting locations. (Page 190, Line 14 through Page 191, Line 15)

Stewart did not study how many poll workers there are per precinct in North Carolina or how many voting machines per precinct. (Page 191, Line 16 through Page 192, Line 1)

Longest lines in Florida in 2012 were in six urban counties with rural counties not experiencing long lines. (Page 193, Lines 5 through 16)

He did not reach any conclusions about what caused long lines in Florida. (Page 194, Lines 15 through 18)

Lines in black areas were longer than white areas for early voting. (Page 195, Lines 7 through 17)

Stewart identified Florida ballot versus the Wake County ballot but refused to state whether it would be easier to vote the Wake County ballot, but then admits that in his article that wait time decreases with shorter ballots and that Wake County ballots are shorter than the Florida ballot. (Pages 196, Line 7 through Page 202, Line 17 & Exs. 131 through 134)

Stewart reviews Trende report table (Figure 15) on Florida voting. Stewart admits that early voting in Florida was down 10% in 2012 as compared to 2008 but that total vote was higher. (Page 203, Line 9 through Page 205, Line 2) (acknowledging a 1% increase in total vote).

He admits that national vote was down 1%. (Page 205, Lines 8 through 20)

He admits that black vote in Florida was down only 0.9% but that non-Hispanic white vote was down 3.3%. (Page 206, Lines 13 through 18)

Stewart admits that the gist of his testimony in the South Carolina section 5 case on voter ID was that voter ID would have a disproportionate impact on African Americans and that the ID statute was precleared by district court. (Page 207, Line 16 through Page 209, Line 1)

Engaged by DOJ for South Carolina and Florida. (Page 209, Lines 2 through 12)

Admits that one of the issues in Florida was the decrease in early voting days but declines to admit that gist of his testimony was that reduction of days would have a disproportionate impact on African Americans. (Page 209, Line 6 through Page 210, Line 20)

Stewart cannot recall if Florida statute was precleared. (Page 211, Lines 10 through 17)

Stewart does not remember if news story about Bush DUI changed polls but admits that news stories can change polls. (Page 212, Line 5 through Page 213, Line 21)

Stewart does not dispute that North Carolina starts no excuse mail in absentee 60 days before an election but does not know if that is generous. (Page 215, Lines 2 through 22)

Stewart did not include states that do not have early voting in his Figure 11, admits that 16 states do not have early voting and, if you include those states, North Carolina close to the middle of all states on early voting. (Page 214, Line 3 through Page 218, Line 2)

Stewart admits that if something dramatic happened before Election Day, voters in states without early voting could change their mind while voters in early voting states who have voted could not change their mind. (Page 219, Line 22 through Page 221, Line 21)

In 1982, at the time of the 1982 amendments to Section 2, most states did not have early voting, same day registration, (only 6 to 8 have same-day registration today), and it is his understanding that most states do not allow out-of-precinct voting. (Page 222, Line 4 through Page 225, Line 2)

Stewart admits that, unlike a disparate impact case where an employer decides not to hire someone because of a neutral practice, after HB 589, an individual can choose to register 25 days before an election, vote during the ten-day early voting period, the voter makes the cost calculation about staying to vote when there are long lines, can vote in their assigned precinct (he says voters get misdirected but he has made no study of how often

that happens in North Carolina and admits voters can find their proper precinct), that all voters can vote a no-excuse absentee ballot and that interest groups and political groups can conduct registration drives to register voters 25 days before the election. (Page 225, Line 3 through Page 233, Line 3)

The percentage of registered voters who are black went from 20.2% in 2004 to 22.5% in 2012. Stewart did not check on percentage of registered voters who were black in 1986. He has not compared increases in black registration in states without early voting, SDR, or out-of-precinct such as Mississippi or Virginia. (Page 234, Line 5 to Page 235, Line 9)

But, in giving testimony on wait time, Dr. Stewart compared North Carolina against other states. (Page 235, Lines 10 through 14)

Stewart did not do cross state comparisons between North Carolina and states without early voting, SDR, or out-of-precinct voting. (Page 236, Lines 7 through 15)

If early voting had an impact on registration or turnout, it would be helpful to compare black registration in states without early voting. “If that were the study I was doing . . . that would be how to design the research.” (Page 238, Lines 6 through 21) “[B]ut that would not get to the issue of disparate impacts, which is what I was retained to study.” (Page 238, Lines 6 through 21)

The proper comparison is whether African Americans avail themselves of a practice at a higher rate than whites. (Page 239, Lines 14 through 18)

He admits that black participation rates in voting and registration and voting may have gone up without early voting, SDR, and out-of-precinct voting. “It’s an empirical question that needs to be studied” and “I was not asked to study that...” (Page 240, Line 9 through Page 241, Line 2)

Stewart uses the term “burden” as a synonym for costs. There is a different burden on all voters who have to register 25 days before the election but this is a burden for those who had chosen in the past to vote early, use SDR, or vote out of precinct. (Page 241, Line 14 through Page 243, Line 4)

If they are given a chance between early voting, mail voting, Election Day voting, the one a voter chooses reveals the voter’s preference. (Page 245, Lines 4 through 11)

They expressed a preference for early voting, SDR, and out of precinct “given the options available to them.” (Page 245, Lines 12 through 22)

Admits that the new options available to voters are equally available regardless of race. (Page 246, Lines 17 through 22)

Stewart calculated “burden” by taking the number of black voters who were affected by changes as a percentage of all black votes. Blacks have higher preference for early voting, SDR, and out-of-precinct voting. (Page 249, Line 7 through Page 250, Line 2)

Admits that turnout is higher in presidential elections. (Page 253, Lines 14 through 18)

Review of the testimony by Trende and Davis showing Obama investment in North Carolina. (Page 254, Line 7 through Page 263, Line 22)

Admits that he did not attempt determine how Obama campaign contributed to black turnout “because that did not get to the issue of disparate impacts as I discussed earlier.” (Page 264, Lines 1 through 7)

How African Americans and whites use different voting options is a separate question from what drives turnout. (Page 264, Lines 8 through 21)

To determine impact of Obama on turnout would require an analysis of Obama efforts in all states. (Page 264, Line 22 through Page 265, Line 11)

Admits that Trende did a cross-state analysis of how the voting practices that have been eliminated may or may not have impacted black turnout - that is what Trende said but his

design was not “sufficient” to “ask that question with the degree of precision that is expected in my discipline.” (Page 265, Line 17 through Page 266, Line 4).

Stewart did not check Trende’s calculations for Virginia. (Page 266, Lines 13 through 16)

Obama won Virginia and Virginia does not have early voting, SDR, or out-of-precinct voting yet Stewart did not compare North Carolina with Virginia. (Page 266, Line 21 through Page 267, Line 15)

Trende did a cross-state comparison but not according to Dr. Stewart’s understanding of the standards. (Page 272, Lines 4 through 16)

Stewart was retained at the end of the summer of 2013 and admits that between September 2013 and April 14, 2014 that “he could have made headway” on such a study. (Page 272, Line 20 through Page 273, Line 20)

He has not made such a study in his initial report or his sur-rebuttal. (Page 273, Line 21 through Page 274, Line 17)

Whether these practices have an impact on turnout is not relevant. (Page 274, Line 18 through Page 275, Line 1)

Stewart admits that location of early voting centers can impact turnout and that he has not studied the counties that had Sunday voting as compared to those that did not nor did he study the impact of the location of early voting sites. (Page 275, Line 5 through Page 277, Line 8)

In discussing Melvin Montford's declaration that registration is a 365-day-a-year process, Stewart admitted that he has not taken into account impact of groups that take voters to precincts without determining their assigned precinct. (Page 278, Line 21 through Page 284, Line 1)

Kousser Deposition Designations

Kousser has no experience as a poll worker or elections board member. (Page 12, Line 22 through Page 14, Line 3)

Kousser is a partisan Democrat who has given money only to Democratic candidates including Senator Kay Hagan in this election cycle. (Page 14, Line 4 through Page 15 Line 21)

Kousser agrees that the role of an expert witness is to provide information that is helpful to the finder of fact, but admits that he is an advocate for the election practices eliminated by H.B. 589. (Page 20, Line 10 through Page 21, Line 20; Page 25, Line 20 through Page 26, Line 14)

Kousser admits that cross-state comparisons are useful in attempting to draw causal relationships but he did not conduct a cross-state analysis comparing black turnout in states that do not have same day registration, early voting, or out-of-precinct voting to determine whether these practices actually impact black registration or turnout. (Page 26, Line 22 through Page 27, Line 6; Page 28, Line 13 through 30; Page 32, Lines 4 through 5)

Kousser admits that he only focused on black registration and turnout in North Carolina. (Page 31, Lines 19 through 20).

Kousser admits that he did not consider or study black registration or turnout history in any other state without early voting, same day registration, or out-of-precinct voting, such as Virginia and Mississippi. (Page 33, Lines 3 through 14)

Kousser admits that Get-out-the-Vote efforts by the Obama campaign in North Carolina had a significant impact on black registration rates and turnout in 2008 and 2012. (Page 35, Line 12 through Page 36, Line 18)

Kousser agrees that President Clinton won North Carolina before early voting, same-day registration, and out-of-precinct voting was adopted by North Carolina. (Page 39, Lines 5 through 16)

Kousser admits that Obama won Virginia in 2008 and 2012 by adopting his campaign strategies to the election practices in existence in Virginia, which do not include early voting, same-day registration or out-of-precinct voting. (Page 39, Line 17 through Page 40, Line 11)

Kousser admits that he did not evaluate the location of early voting centers and the impact of location on black registration or turnout. (Page 43, Lines 3 through 7)

Kousser admits that he did not evaluate whether groups dedicated to turnout of black voters took voters to polls without regard to whether the voter was registered in the

precinct in question, as admitted by Melvin Montford, Executive Director of the North Carolina A. Philip Randolph Institute. (See Declaration of Melvin Montford ¶ 20, filed by plaintiffs and marked as Exhibit 139 in the Stewart Deposition). (Page 44, Lines 2 through 11)

Despite his statement in his report that there have been no credible charges of voter fraud in North Carolina, Kousser admits that he does not know the procedures, if any, available to a poll worker to determine whether a person who checks-in to vote is impersonating another voter, has never himself ever investigated voter fraud, does not know how many investigators have been hired in the past by the State Board of Elections to investigate fraud, does not know the past budgets of the State Board of Elections to investigate fraud, does not know whether North Carolina, before 2014, had ever checked its registration rolls against other states to search for duplicate registrations, is aware that in 2014 the State Board of Elections joined a consortium of states to compare voter rolls and discovered 700 “voters” with identical names, dates of birth, and last four numerals of their social security numbers who voted in North Carolina and another state. (Page 46, Line 15 through Page 50, Line 5)

Kousser admits that, as early as the 2011 legislative session, the public and opponents of HB 589 were aware that Republicans had introduced laws that would have repealed the practices eliminated in 2013 by HB 589. (Page 52, Lines 4 through 22)

Kousser claims in his report that Republicans engaged in intentional discrimination by working to pass HB 589 until the Supreme Court declared unconstitutional the coverage formula under Section 5 but admits that his only source for this opinion is newspaper articles that he did not cite in his report. (Page 53, Line 2 through Page 54, Line 21)

Kousser admits that Florida's decision to reduce the number of days of early voting and South Carolina's decision to adopt a photo ID requirement were both ultimately precleared by the United States Department of Justice under Section 5. (Page 55, Line 6 through Page 56, Line 3)

In his report, Kousser states that Republicans were "emboldened" to pass a photo ID law after the Republican General Assembly had "packed" blacks into districts they had shown they were capable of carrying with cross-over votes. (Page 58, Line 11 through Page 59, Line 11)

However, Kousser also made the following admissions about the 2011 legislative plan adopted by the North Carolina General Assembly:

Kousser states that his definition of packing blacks means putting more blacks in a districts than are needed for black voters to elect their candidate of choice and that his definition of racial packing has never been adopted by the United States Supreme Court which instead has defined "packing" as putting so much black population in two super

majority black districts as to preclude the creation of a third majority black district. (Page 59, Line 19 through Page 61, Line 16)

Kousser has never read the decision by the three-judge state court in *Dickson et al. v. Rucho et al.* (included as Exhibit 141 to Kousser deposition) that consisted of two Democrats, including one Democrat female African American judge, and one Republican, finding the 2011 legislative districts constitutional. (Page 59, Lines 12 through Line 18; Page 69, Lines 7 through 21)

Kousser admits that, following the decision by the Supreme Court in *Bartlett v Strickland*, it would be reasonable for states to create districts designed to protect the state from Section 2 liability with a black voting age population in excess of 50%. (Page 66, Line 16 through Page 68, Line 5)

Kousser admits that he is unaware of the state constitutional criteria that applies to the creation of state legislative districts, that he has not studied the 2000-era legislative districts, that he has not studied the amount by which the 2000-era legislative districts were underpopulated under the 2010 census, that he is unaware of the margins of victory for black incumbents in the 2000-era legislative districts, that he does not know if the margins of victory were less than the amount of population by which the 2000-era districts were under-populated, and that he does not know how much money was spent and raised by black incumbents in the 2000-era legislative districts as compared to any

Republican or Libertarian challengers to the incumbents. (Page 61, Line 22 through Page 66, Line 15)

Kousser admits that the 2011 legislative plans were precleared by the United States Department of Justice. (Page 68, Lines 11 through 14)

Kousser states in his report that, in the 2011 legislative plans, the General Assembly “packed blacks in a few districts.” (Page 68, Line 16 through Page 69, Line 2) However, Kousser admits that he has not compared the percentage of the state wide black voting age population included in the enacted legislative districts that have black voting age population in excess of 40% against the percentage of state wide black voting age population included in districts with 40% or more black voting age population in all other proposed legislative plans offered by the Southern Coalition for Social Justice, the Democratic leadership in the General Assembly, or the Legislative Black Caucus. (Page 72, Line 15 through Page 73, Line 2; Page 79, Line 5 through Page 81, Line 7; Page 84, Lines 6 through 17)

Kousser accused the 2011 General Assembly of “maximizing” the number of majority-black districts but admitted that he does not know whether this is true or not. (Page 84, Line 18 through Page 85, Line 19)

After accepting counsel's representation that the three-judge superior court found that the 2011 state Senate and House plans had provided black voters with rough proportionality in the number of districts in each legislative plan that would give black voters an equal opportunity to elect their candidates of choice, and admitting that he has testified in support of providing black voters with rough proportionality, Kousser finally admitted that he could not name a state wide election law that was found to be illegal under Section 2 or the Fourteenth Amendment where the state had given black voters proportionality, other than *Shaw v. Hunt* which was a racial gerrymandering claim, not a vote dilution or vote denial claims. (Page 87, Line 15 through Page 95, Line 8)

Kousser admits that one of the "senate factors" under *Gingles* is the extent to which blacks have been able to elect candidates of choice and that, in his report, he ignored this factor and also failed to confirm or comment on the fact that the 2011 legislative plans provided black voters with rough proportionality. (Page 94, Line 16 through Page 95, Line 8)

Kousser states in his report that the impact of HB 589 would "disproportionately burden African-American voters" but admits that all voters can register 25 days before the election, vote during the 10 day early voting period, and vote in their assigned precinct. (Page 95, Line 20 through Page 96, Line 16)

Kousser tries to equate the election regulation established by HB 589 to a poll tax but admits that a poll tax is different because a poll tax imposes a discriminatory qualification for voting. (Page 97, Lines 10 through 19)

Kousser admits that Congress has not violated Section 2 or the Equal Protection Clause by enacting legislation giving states the right to close their registration books 30 days before an election, or because Congress has not mandated early voting or out-of-precinct voting or same-day registration. (Page 98, Line 6 through Page 100, Line 9)

Kousser admits that plaintiffs' true theory is based upon Section 5 retrogression principles by his statement that Congress may have violated the equal protection clause if congress had enacted legislation allowing for 17 days of early voting, same-day registration and out-of-precinct voting and then reduced early voting to 10 days and eliminated same-day registration and out-of-precinct voting. (Page 99, Lines 3 through 15)

Kousser admits that he has made no calculations about how the reduction of early voting from 17 to 10 days or the elimination of same-day registration and out-of-precinct voting will reduce black turnout in the 2014 or 2016 elections, and that his opinion that black participation will be suppressed is based solely on black participation in voting and registration in 2008 and 2012. (Page 100, Line 10 through Page 103, Line 18)

Kousser argues that states without early voting, same-day registration, and out-of-precinct voting are “less democratic” without regard to whether black turnout and registration has increased at levels similar to North Carolina in states that do not have early voting, same-day registration, or out-of-precinct voting. (Page 104, Line 4 through Page 106, Line 8)

In Table 1 of his report, Kousser admits that he compared turnout in North Carolina against other states but only in presidential years, that turnout in California in 2008 and 2012 was lower than North Carolina, that California was not contested by presidential candidates in 2008 and 2012 which explains the lower turnout as compared to North Carolina, that the Obama campaign and Democrats invested substantial campaign resources in North Carolina in 2008 and 2012, that Obama carried Virginia in 2008 and 2012, that he has not considered or compared the resources invested by the Obama campaign in Virginia as compared to North Carolina, that Wake County is similar to northern Virginia in terms of the percentages of white voters who supported Obama, and that he has not studied Mecklenburg County to determine if white voters in that county were similar to white voters in Northern Virginia in terms of their support of Obama. (Page 106, Line 13 through Page 111, Line 19)

Kousser admits that, in 2008 and 2012, a higher percentage of black citizen age voting population voted than the percentage of white citizen age, that in 2006 and 2010, two off-year elections, a higher percentage of white citizen voting age population voted than black citizen age voting population, that early voting was in place in North Carolina in

2006, and that early voting, same-day registration and out-of-precinct voting was available in North Carolina in 2010. (Page 116, Line 10 through Page 117, Line 6)

Kousser admits that a higher percentage of whites as compared to blacks used early voting in 2004 and 2006, that a higher percentage of blacks as compared to whites used early voting in 2008 and 2012, and that in 2010, 36.2% of black voters used early voting while 33.3% of white voters used early voting. (Page 117, Line 7 through Page 118, Line 2)

Kousser admits that statements in his report about how Republicans voted on the out-of-precinct bill are based upon news stories not the legislative record and that he did not attribute alleged statements by Republicans to any specific legislator. (Page 120, Line 6 through Page 121, Line 8)

Kousser admits he does not know what motivated Republican legislators who voted against the out of precinct bill. (Page 122, Lines 2 through 12)

Kousser admits that news stories and not the legislative record are the source for statements, opinions, and positions he attributes to Republicans. (Page 122, Line 13 through Page 125, Line 6)

Kousser claims that the process for enacting the out-of-precinct bill was fair because the Democratic leadership allowed the state auditor to speak but admits that no Republican offered-amendments were passed and that the legislature did not hold a public hearing on this bill. (Page 125, Line 8 through Page 126, Line 7; Page 127, Line 15 through Page 129, Line 9)

Kousser admits that he does not know how many counties had Sunday voting during early voting in 2008 or the percentage of black population in counties that had Sunday voting. (Page 129, Line 10 through Page 130, Line 11)

Regarding his description of the process followed by the legislature in enacting HB 589, Kousser admits that he relied upon newspaper stories regarding proceedings in the North Carolina Senate. (Page 131, Lines 4 through 11)

Kousser admits that he reviewed the actual legislative history of HB 589. His testimony shows that his report omits factors that would show the absence of intentional discrimination under *Arlington Heights* that were known to Kousser or reasonably should have been known to him including: neither the Senate nor the House violated their rules of procedure, that House leaders held public hearings and provided for public comment and debate consistent with the statements made by House leaders, that the Senate leadership never promised that it would hold public hearings. (Page 132, Line 6 through Page 133, Line 10; Page 135, Line 6 through Page 136, Line 13). Additionally, despite

the statement in Kousser's report that the Senate "operated with no publicity until July 23," the Senate, in fact, posted a committee substitute for the original House bill on July 18. (Page 136, Line 14 through Page 137, Line 4). Further, no Democratic member made any points of order alleging violations of the Senate or House rules, (Page 137, Line 19 through Page 138, Line 2); nothing in the Senate or House rules require public hearings, (Page 138, Lines 3 through 6); another committee substitute was submitted to members of the Senate rules committee on July 22 consistent with the Senate's rules, (Page 138, Lines 7 through 16); the Senate rules committee had a committee hearing on July 23 and permitted members of the public, including counsel to Kousser, to speak at the committee hearing, (Page 138, Line 17 through Page 139, Line 9); there was no requirement under the Senate rules that members of the public be allowed to speak at committee hearings, (Page 139, Lines 10 through 22); three amendments were adopted by the committee including an amendment sponsored by Democratic Senator Clark, (Page 140, Lines 1 through 8); the committee substitute appeared on the Senate floor on July 24 and an amendment offered by Democratic Senator Josh Stein was adopted, (Page 140, Line 21 through Page 141, Line 11); the Chairman of the Senate Rules committee, Republican Senator Tom Apodaca, objected to a third reading of the bill so that debate on the bill could be carried over to July 25, (Page 141, Line 12 through Page 142, Line 11); and when the committee substitute passed third reading in the Senate on July 25, an amendment was made by Democratic Senator Dan Blue, an African American, and was adopted by the Senate, (Page 142, Line 12 through Page 143, Line 10).

Kousser admits that during the process that led to the enactment of same-day registration, which Kousser described as being fair, no amendments by Republicans were adopted by the legislature. (Page 143, Lines 2 through 20)

Kousser admits that one of the amendments by Democratic senators that was adopted, an amendment proposed by Senator Stein that requires all counties to keep the same number of hours for early voting in 2014 as the number of early voting hours in 2010, the same number of hours for early voting in 2016 as the number of early voting hours in 2012, and allows by counties waivers only when requested and approved by a unanimous county board of elections and state board of elections, but Kousser did not consider this a “major” amendment. Kousser also admitted that the requirements under HB 589 for waivers stands in contrast to prior early voting legislation that allowed the state board of elections to direct the implementation of an early voting plan in a specific county based upon a majority vote. (Page 144, Line 15 through Page 148, Line 12)

Kousser admits that, in comparing the process followed during the enactment of HB 589, he only reviewed the process followed when the practices repealed by HB 589 were originally enacted. (Page 148, Line 13 through Page 149, Line 12)

Kousser admits that he did not study the process followed by the legislature in 2003 when it enacted legislative redistricting plans until he reviewed Defendants’ brief in opposition to plaintiffs motion for a preliminary injunction, that redistricting plans are major

legislation, that a legislature should have public hearings when it enacts redistricting plans, that after reading Defendants' brief he could not dispute that the 2003 House legislative plan was introduced on November 24, 2003, that no public hearings were held on the plan, that the Democratic speaker of the house did not allow amendments from Republican house members, that the House plan was not referred to a committee, that the House passed the House redistricting plan on the same day it was introduced, that the Senate considered a committee substitute on the same day, that the Senate committee substitute made significant changes from the House bill, that the Senate committee substitute was adopted by the Senate on the next morning (November 25, 2003), that the House passed the Senate substitute with no debate on November 25, 2003, and that the bill was then signed by the Governor on November 25, 2003. (Page 149, Line 13 through Page 154, Line 9)

Kousser admits that he adjusted the Senate factors listed in *Gingles* for purposes of this case and that the only act of official discrimination he relied upon since 1990 is the enactment of HB 589 – even though there has been no ruling that HB 589 is discriminatory (Page 168, Line 11 through Page 171, Line 13), that a study he performed which has not been adopted by a court that the 1971 and 1981 congressional plans were discriminatory (Page 174, Line 10 through Page 175, Line 17); that racially polarized voting still exists in North Carolina (Page 177, Line 18 through Page 178, Line 1); that Senate factors such as large multimember districts, majority-vote requirements, numbered posts, candidate slating, and other similar practices cited in *Gingles* as Senate

factors no longer exist in 2014 in North Carolina and have not existed for many years and are not cited in his report as factors that would justify a finding of Section 2 liability because of HB 589 (Page 178, Line 11 through Page 181, Line 19; Page 186, Line 10 through Page 187, Line 14).

Kousser, in his report, equated the reduction of early voting from 17 to 10 days, the elimination of same day registration, and the elimination of out-of-precinct voting to candidate slating, majority-vote requirements and other similar election practices listed in *Gingles* despite the fact that, in 1982, a minority of states had early voting, same-day registration, and out-of-precinct voting and that nothing in the Senate report or the Senate factors state that the absence of early voting, same-day registration or out-of-precinct voting should or can be considered as part of the totality of the circumstances. (Page 181, Line 21 through Page 184, Line 9)

Kousser admits that no court has ever found that reducing early voting, eliminating same-day registration, or eliminating out-of-precinct voting are equivalent to a Senate factor under *Gingles* (Page 187, Line 21 through Page 188, Line 11), but that Kousser took “the spirit of” the Senate factors so that he could “make the best analogy I could to make the factors tailored for something else fit this particular case.” (Page 187, Line 21 through Page 188, Line 16)

Kousser relies upon the fifth *Gingles* factor regarding the relative wealth and education of black versus white but admits that currently in North Carolina blacks are registered at a higher percentage than their percentage in the voting age population, (Page 191, Lines 16 through 22), and that a higher percentage of registered black voters turned out to vote in 2008 and 2012 as compared to the percentage of white registered voters. (Page 192, Lines 16 through 22)

Kousser admits that he has not cited any examples of racial appeals in elections since the 1990 general election and that black candidates may engage in racial appeals. (Page 193, Lines 11 through 19)

Regarding the seventh *Gingles* “Senate factor”, Kousser admits that there has been a “big increase” in the number of black elected officials. (Page 194, Lines 10 through 20)

Regarding the Senate factor concerning “responsiveness of elected officials” to minorities, Kousser thinks this standard is based upon how minorities have “articulated” their needs even though politicians can have reasonable disagreements on the types of policies that are “responsive” to the needs of any group. (Page 199, Lines 10 through 18)

Kousser admits that he cannot name a case where liability has been found under *Arlington Heights* where members of the majority party accepted amendments to legislation offered by members from the minority party. (Page 201, Lines 1 through 11)

Kousser admits that he cannot name a case where liability was found under *Arlington Heights* where a legislature followed its own rules and procedures. (Page 201, Lines 13 through 22)

Kousser refers to proposed election changes supported by Republicans as “their anti-participation wish list,” that no Republican legislator described the election changes as an anti-participation wish list, and that the phrase anti-participation wish list is Kousser’s opinion. (Page 206, Line 3 through Page 208, Line 16)

Kousser states all Republican legislators must have known that HB 589 would disproportionately burden black voters because of information showing black preferences for early voting in first seven days, out-of-precinct voting and same-day registration but he does not cite to any testimony or statements by Republican legislators. (Page 213, Line 13 through Page 214, Line 19)

Kousser states that his report relies on newspaper stories because reporters “don’t have a horse to pull in political matters.” (Page 216, Lines 1 through 14)

Kousser’s report relies upon editorials by newspapers opposing HB 589. (Page 221, Lines 10 through 21; Page 222, Line 3 through Page 223, Line 9)

Kousser does not cite to any editorials in favor of photo ID. (Page 223, Lines 10 through 15)

Kousser admits that 92 of his 202 footnotes cite newspaper stories and that 45% of his sources in his report are newspapers. (Page 223, Line 22 through Page 224, Line 12)

Kousser did not independently confirm facts reported in news articles. (Page 225, Line 10 through Page 227, Line 7)

Kousser relied upon news stories by TPM Muckraker which has a “liberal political bent.” (Page 227, Line 13 through Page 228, Line 11)

Kousser admits that photo ID laws he interprets as being less restrictive than North Carolina’s ID law did not have a delayed enforcement of two years. (Page 256, Lines 9 through 13)

Kousser says that the only evidence before the General Assembly was that HB 589 would have a “discriminatory impact” and that a reasonable person could not conclude otherwise. (Page 257, Line 16 through Page 258, Line 15)

Kousser admits that his statement that growth of Latino population motivated HB 589 is based upon an editorial in the News and Observer. (Page 259, Line 7 through Page 261, Line 9)

Kousser states “that it’s a well-known fact that . . . there has been considerable – considerably more racial feeling, often anti-African American feeling, since Obama has been elected” in North Carolina and the whole country. (Page 261, Line 15 through Page 263, Line 11)

Kousser admits that he has no evidence regarding the intentions of even a single legislator who voted for HB 589. (Page 264, Lines 8 through 19)

Kousser admits that he has no statements from “important participants” that support his conclusions. (Page 269, Lines 3 through 7)

Kousser admits that the *Garza* case, in which he was a witness, incumbents cracked Hispanics to protect their own districts. (Page 289, Line 20 through Page 290, Line 1)

Kousser admits that he has made no predictions about black participation dropping off because of HB 589 and that he expects that drop off in non-presidential years will be less. (Page 290, Line 7 through Page 291, Line 13)

Kousser admits that the Democratic candidate for president in 2016 will put as much in resources into North Carolina as Obama in 2008 and 2012. (Page 291, Line 14 through Line 20)

Kousser says North Carolina will be less enticing to Democratic presidential candidates if HB 589 stays in place but he admits that he has not looked at any polling data and that Virginia will continue to be an enticing target for Democratic presidential candidates. (Page 291, Line 20 through Page 292, Line 10)

Kousser admits that if a Democratic presidential candidate is ahead in the polls for North Carolina in 2016 then they “might” put money into North Carolina. (Page 295, Lines 5 through 13)

Kousser states Democrats “may not target” North Carolina in 2016 even though he has made no predictions about what the exact effect of HB 589 will be in 2014 or 2016. (Page 296, Lines 15 through 20)

Allen Deposition Designations

For his definition of “long lines,” Allen uses 30 minutes based on comments made by President Obama during a speech, but then he says 2 hours is a time limit for determining a long line that has some legal standing. (Page 28, Line 2 through Page 29, Line 11)

He refers to a “principled approach” for deciding how to allocate voting machines, but he talked to no one at SBOE or any County BOE about how voting machines are assigned. (Page 31, Line 13 through Page 34, Line 6)

Franklin County, OH had no early voting in 2004 when they experienced problems with long lines, so his study of Franklin County in 2004, which he uses to compare to North Carolina, was based on an election where all voters showed up to vote on the same day. (Page 35, Line 20 through Page 36, Line 14)

His main critique for service time in elections is voting machine allocation. (Page 37, Lines 2 through 20)

Scan systems are more accessible than Direct-Recording Electronic (“DRE”) systems, and Allen confirms that 64% of counties in NC use scan systems and not DRE systems, and also that NC is phasing out the use of DRE systems. (Page 43, Line 1 through Page 44, Line 12)

The 2012 Florida ballot was 11 pages long, with nine pages of referenda and in three different languages. (Page 45, Line 17 through Page 50, Line 10)

In the 2006 and 2010 elections in North Carolina, the ballot was only 2 pages, and Allen testified that it would take less time to vote in North Carolina than in Florida based on ballot length. (Page 50, Line 13 through Page 52, Line 19)

The 2012 Wake County ballot was 2 pages vs. 11 pages for a Florida ballot, and Allen testified voters would most likely complete the North Carolina ballot more quickly. (Page 54, Line 10 through Page 55, Line 12)

Allen doesn't know one way or the other if a local board in North Carolina took a "principled approach" to assigning voting machines. (Page 55, Line 18 through Page 56, Line 4)

Definition for "waiting time" of 30 minutes as used in paragraph 21 of Allen's report is different (i.e. longer) than the definition used in his deposition. (Page 70, Line 5 through Page 73, Line 10)

Allen acknowledges there is a higher turnout rate for the time when polls close than other times throughout the day. (Page 78, Lines 12 through 19)

The 95th percentile in Allen's simulations means that 95% of all voters waited less than the estimated waiting time at polling places. (Page 83, Line 14 through Page 84, Line 5)

Allen has no actual arrival data for NC. (Page 85, Line 9 through Page 86, Line 4)

Allen admits that while the science of waiting lines is advanced, the application of waiting time to election systems is not very developed. (Page 109, Lines 11 through 18)

Application of the study of waiting lines in the election industry is "surprisingly poor." (Page 110, Lines 18 through 19)

Allen admits he is not an expert on human behaviors. (Page 111, Lines 17 through 18)

Data to test wait time relationships do not exist. (Page 113, Line 15 through Page 114, Line 6)

Deterministic model is more accurate and many random factors could influence wait times. (Page 130, Line 5 through Page 136, Line 17)

Allen did not conduct any poll worker counts in North Carolina, and he acknowledges that 17 days of early voting with one precinct worker and two machines would be more

likely to have longer waiting lines than 10 days of early voting with properly allocated machines and precinct workers. (Page 149, Line 18 through Page 151, Line 9)

Allen admits that same-day registration (“SDR”) added wait time for voters. (Page 151, Line 10 through Page 152, Line 12)

Allen acknowledges that the removal of SDR could result in shorter waiting times in NC. (Page 153, Lines 1 through 4)

Allen’s report does not account for the likelihood that the removal of SDR could result in shorter waiting times in North Carolina. (Page 154, Line 6 through Page 155, Line 3)

Allen’s report does not consider wait times during early voting and how wait times during early voting might be reduced by the elimination of SDR. (Page 156, Lines 8 through 14)

Allen acknowledges that the average wait time on Election Day in North Carolina could be less than the 13 minutes from Dr. Stewart’s report upon which Allen relied. (Page 158, Lines 2 through 16)

Allen admits that the average wait time in his report is skewed higher because wait times for early voting from Dr. Stewart's report is included in Allen's calculation of wait times for Election Day. (Page 159, Line 3 through Page 160, Line 5)

Allen admits that because of the margin of error in Dr. Stewart's report on wait times, there is a possibility that only 0.9% of early voters in North Carolina waited more than 1 hour. (Page 183, Lines 7 through 11)

Allowing out of precinct voters to cast provisional ballots could increase wait time in a precinct. (Page 191, Line 18 through Page 192, Line 6)

Allen's report does not evaluate now the elimination of out of precinct provisional voting might reduce wait time. (Page 200, Lines 3 through 6)

In Franklin County, Allen came up with his two percent rule of voter drop-off by comparing high-turnout precincts in 2004 election against low-turnout precincts in 2004 election. He did not look at turnout in low-turnout precincts in prior elections where there were no claims of long lines to see how turnout in 2004 in a specific precinct was different in past elections. (Page 213, Line 13 through Page 216, Line 13)

With regard to Allen's two percent reduction in turnout theory, the long ballots in Florida and Ohio were what he relied on to form this "rule," and ballots were longer in those states than in North Carolina. (Page 219, Line 19 through Page 220, Line 4)

It is possible that lower turnout is due not to longer lines, but because there is a historically low turnout rate in the precinct at issue. (Page 238, Lines 10 through 14)

For Allen's predictions for Election Day in North Carolina in Exhibit G of his report, the queuing model he used was based on early voting turnout in the presidential election year of 2012, not the off-year election of 2010. (Page 245, Line 1 through Page 246, Line 5)

Allen estimates how many voters will be deterred in North Carolina based upon his Franklin County analysis, without knowing how Franklin County precincts differ from any North Carolina precinct in terms of number of poll workers per voter or number of machines per voter. In making his estimate of deterred voters, he subtracts from the total registered voter list the number of voters who actually voted. Allen made no adjustments for precincts where registered voter population exceeded voting age population, no adjustments for registered voters who have never voted, and no adjustments for people who have not voted in last two or three presidential elections, so it is possible that people decided not to vote for reasons other than long lines. (Page 283, Line 21 through Page 290, Line 11)

Allen has never been qualified as an expert witness. (Page 329, Lines 15 through 18)

Allen describes himself as a Democrat, acknowledges that he has made campaign contributions to Obama, Gore, Kerry, and several Democrat senatorial committees, but he has never contributed to a federal Republican candidate. (Page 329, Line 21 through Page 331, Line 19)

Allen admits that his conclusion that eliminating seven days of early voting would cause wait times to increase significantly is speculative. (Page 348, Lines 11 through 16)

Parmon Deposition Designations

Parmon has been a legislator since 2002. (Page 9, Lines 14 through 23)

In the North Carolina House of Representatives, the Speaker, the Chairman of the Rules Committee, and the Chairman of other respective committees generally get to decide the flow of proposed legislation and whether bills get heard. (Page 11, Lines 6 through 25)

A bill pending at the legislature may go through a process known as “gut and amend” on occasion. There, a bill on one subject that has passed one chamber has the subject matter stripped out and replaced with completely different subject matter. This process is typical towards the end of a legislative session when a significant number of bills get enacted. (Page 12, Line 16 through Page 13, Line 13)

Parmon has been involved in conference committee negotiations which were in secret. (Page 14, Lines 3 through 6)

It is fairly typical that members drafting bills do not make the draft bills public during the drafting process. (Page 15, Line 24 through Page 16, Line 3)

Parmon was a House member during the 2003 redistricting session. (Page 16, Lines 4 through 14)

Redistricting legislation is “important” and “major” legislation. (Page 17, Lines 6 through 10)

Parmon was a prime sponsor of House Bill 91 during the 2007 session to enact same-day registration. However, Parmon is not familiar with the State Board of Elections’ address verification process and would not know any impact of same-day registration on the State Board of Elections’ ability to engage in that verification. (Page 22, Line 2 through Page 23, Line 12)

As early as April 2013, Parmon was aware of legislation pending in the form of Senate Bill 666 that would shorten the early voting period and repeal same-day registration. (Page 23, Line 13 through Page 24, Line 7)

To the extent voters have to wait in “long lines”, that is a problem connected with the number of voting sites. (Page 27, Line 6 through Page 28, Line 1)

Parmon believes that if someone is legally registered to vote in North Carolina, that person should be allowed to vote in any county and have his or her vote counted for statewide offices. (Page 35, Lines 8 through 14)

Parmon confirms that the 2003 Redistricting Plan was introduced on November 24, 2003, passed the House on all readings that same day, was sent to the Senate which changed the

bill, and returned to the House the next day for a concurrence vote by the House. (Page 37, Line 4 through Page 38, Line 18)

Parmon has no reason to doubt the accuracy of Exhibit 157, the transcript of the House debate on the 2003 Redistricting Plan on November 24, 2003. (Page 38, Line 22 through Page 39, Line 20)

During the 2003 redistricting process, the House Rules Committee chair, Rep. Culpepper, submitted proposed rules for the redistricting session which would allow the Speaker to place a bill on the calendar for immediate consideration without being first referred to a committee. Parmon says that procedure was “unusual.” (Page 41, Line 14 through Page 42, Line 12)

Parmon agrees that giving members less than an hour to review a bill before a vote, such as what was reflected in Exhibit 157, would be “unusual.” (Page 43, Line 20 through Page 44, Line 12)

Parmon agrees that the vote on Senate Bill 133 from the 2005 session regarding out-of-precinct voting was a “party-line” vote. (Page 46, Lines 8 through 23)

Parmon cannot say that any legislative rules were broken in the enactment of H.B. 589. (Page 46, Line 24 through Page 47, Line 5)

Parmon did not raise any points of order during the Senate debate on H.B. 589. (Page 47, Line 24 through Page 48, Line 10)

The 2013 General Assembly did not adopt any “special rules” specifically for the adoption of H.B. 589 as the 2003 General Assembly had done for the 2003 Redistricting Plan. (Page 57, Lines 9 through 17)

According to Parmon, African Americans tend to vote straight ticket Democrat because they favor legislation coming from Democratic members. She contends that, with the elimination of straight-ticket voting, “in 2014, I don’t know how many people that went in the polls and only voted one office, because they were so confused about who were Democrats and having to read every name that’s on the list. So it disproportionately impacted a group of people who historically voted Democrat.” (Page 87, Line 12 through Page 88, Line 1)

Glazier Deposition Designations

Glazier was first elected to the North Carolina House of Representatives in 2002 and has continuously served since that election. (Page 14, Line 19 through Page 15, Line 13)

According to Glazier, generally the Speaker, Rules Committee Chairman, and Chairman of any particular committee decide whether a bill is heard. It is fairly normal in the legislature for the committee chairmen and Speaker to control the flow of legislation. (Page 17, Line 21 through Page 18, Line 15)

It would not be unusual for a bill to get enacted that had gone through one committee hearing but not multiple committee hearings. (Page 20, Lines 14 through 23)

It is not a violation of the legislature's rules for one chamber to vote to concur with the other chamber's changes even without a conference committee. (Page 27, Lines 1 through 12)

The "gut and amend" process of stripping out the contents of a bill that has passed one chamber and insert completely different language is fairly common. (Page 27, Line 13 through Page 28, Line 23)

Glazier agrees that it is fairly common for a rush of bills to be approved at the very end of session. (Page 29, Lines 16 through 19)

Glazier has participated in conference committees on controversial bills that were in secret. Once the bill is modified in the private conference committee, it comes back to the chambers for an up or down vote much like a concurrence vote. (Page 31, Lines 1 through 20)

The drafting process of a bill is not a public process. (Page 33, Lines 2 through 9)

Bills affecting redistricting are bills that are controversial and “of great importance” to the state and the people of North Carolina. (Page 33, Lines 10 through 17)

Glazier is a Democrat and from 2002 through 2010 Democrats were the majority caucus in the legislature. (Page 36, Lines 18 through 24)

Glazier’s statements in his Declaration regarding increased turnout due to the repealed election measures were based on anecdotal information in his own county. (Page 42, Line 15 through Page 43, Line 12)

If Glazier knew that the data relied upon by the legislature in 2005 to make findings regarding the racial demographics of out-of-precinct voting omitted data from four of

North Carolina's largest counties, then that would have caused him concern. (Page 44, Line 3 through Page 45, Line 23)

Glazier does not believe that voters should be allowed to show up at any precinct they want and have their ballot counted for the races for which they are eligible. (Page 55, Lines 8 through 12)

Glazier was in the House during the debate on the 2003 Redistricting Plan. Despite being in the majority caucus, Glazier did not have much input into the plan given that the Democratic Speaker tried to take Glazier out of his district. Glazier was "double-bunked" in a district with another Democratic representative with whom the Speaker had a closer personal relationship. His district, like others, was drawn in private. At the end of the day, it was the Speaker who had the sole control over the boundaries of the district and the maps of the districts were not released to the public prior to the start of the session. (Page 58, Line 9 through Page 64, Line 12)

After the 2003 redistricting plan had passed the House, the Senate added significant changes regarding the creation of a three-judge panel for pending and future redistricting legal challenges. (Page 66, Line 8 through Page 67, Line 6)

In Glazier's time in the House, he does not ever remember the House going into a "committee of the whole" and it would be unusual for it to do so. (Page 67, Line 21 through Page 68, Line 10)

Glazier agrees that the process for the 2003 Redistricting Plan was an "odd process" and "a bit truncated for that short session." (Page 70, Lines 18 through 25)

There was not much difference between the process for the 2003 redistricting plan and H.B. 589 "in terms of timing." (Page 72, Lines 9 through 23)

Glazier believes the H.B. 589 process in the House was a "really good process." (Page 75, Lines 20 through 25)

To the extent that the Senate Rules committee allowed members of the public to speak, that was a better process than if the committee had not allowed public input. (Page 78, Lines 7 through 11)

When H.B. 589 came back to the House for concurrence, Glazier gave a speech and was able to get out all of the major points he wanted. He cannot say his speech would have been any better had he had more time. (Page 79, Line 23 through Page 80, Line 4)

Every member of the House Democratic caucus who wanted to speak on the concurrence motion was allowed to and able to speak. (Page 80, Lines 5 through 25)

No member of the Democratic caucus was left in the “queue” of members seeking the floor when the concurrence motion on H.B. 589 came up for a vote. (Page 82, Line 12 through Page 83, Line 9)

Glazier does not contend that any House rules were actually violated in the passage of H.B. 589. (Page 83, Lines 17 through 21)

Other bills in the 2013 session followed a similar legislative process as H.B. 589. (Page 84, Line 2 through Page 85, Line 1)

Glazier did not initially and unreservedly support the Uniform Military and Overseas Voter Act because, in the prior election the absentee ballots had gone disproportionately for his Republican opponent and he needed to think about it because “as a partisan matter this is not going to help Democrats.” (Page 104, Line 18 through Page 106, Line 5)

Glazier knew that the changes to H.B. 589 would likely contain ideas that had been pending in other bills. (Page 116, Line 25 through Page 117, Line 12)

Glazier voted in the May primary and is not aware of any individual that was not able to vote because of the implementation of H.B. 589. (Page 170, Lines 6 through 13)

Dickerson Deposition Designations

Mr. Dickerson testified that he believes that requiring the same number of hours for one-stop absentee voting as were offered in the last comparable election, even with the number of days of voting cut from a possible 17 days to ten days, increases access to one-stop absentee voting because of the additional voting sites that will be required. (Page 20, Line 13, through Page 23, Line 19; Page 47, Line 19 through Page 49, Line 21)

Mr. Dickerson testified that he does not anticipate there being in additional costs as a result of shortening the early voting period from 17 days to 10 days and the addition of new early voting sites. (Page 27, Line 2 through Page 28, Line 1)

Mr. Dickerson testified that it is possible that some voters who have utilized out-of-precinct provisional balloting have done so because interest groups took those voters to the wrong polling places, and that this has, in fact, happened in Mecklenburg County. (Page 46, Lines 10 through 24)

Mr. Dickerson describes how the process for same-day registration worked, and how it could take as much as five times as long to process a voter utilizing same-day registration as it did a regular voter. (Page 50, Line 15 through Page 52, Line 13)

Mr. Dickerson describes the process that will be used in 2014 for voters who present themselves to vote in a precinct other than their proper precinct, including how those voters will be told where they should go vote and how if the voter wants to vote in the precinct where he has presented himself, he will be allowed to vote a provisional ballot, even though that ballot will likely not be counted. (Page 61, Line 5 through Page 64, Line 12)

Bartlett Deposition Designations

Mr. Bartlett is a registered Democrat, was selected for the position of Executive Director of the State Board of Election by Democrats in 1993, was subsequently reappointed by Democrats on the State Board of Elections until 2013, and was disappointed that the new Republican majority on the State Board of Elections did not reappoint him in 2013. (Page 9, Line 11 through Page 15, Line 25)

Mr. Bartlett testified that there were only two statements in the declaration of Kim Westbrook Strach with which he has any significant disagreement—her statement that same-day registration provides an opportunity for a felon to register and vote, and her reliance on turnout information from the May 2014 primary, since he does not consider turnout in a primary to be as significant as turnout in a general election, particularly a presidential election. (Page 18, Line 12 through Page 19, Line 12)

Mr. Bartlett testified that North Carolinians favor one-stop absentee voting, neither he nor the State Board of Elections conducted any study to determine the degree to which use of one-stop absentee voting might have been influenced by get-out-the-vote efforts of candidates or political parties. (Page 28, Line 2 through Page 31, Line 23)

Mr. Bartlett testified that his reports of long lines at polling places were based on anecdotal evidence such as telephone calls and emails rather than on a study of any kind. (Page 40, Line 11 through Page 41, Line 20)

Mr. Bartlett testified that his only hesitation to agreeing that voters can conform their behavior to procedures required by H.B. 589 is that the current number of precincts might not be well-suited to handle the high turnout of a presidential election. (Page 44, Line 14 through Page 45, Line 23)

Mr. Bartlett testified that adding one-stop absentee voting sites in a county could alleviate his concerns about long lines and that “[t]he voter is the decisionmaker” and can decide when and where in a county to utilize one-stop absentee voting. (Page 56, Line 2 through Page 57, Line 6)

Mr. Bartlett testified that neither he nor the State Board of Elections conducted any study to determine how long wait times were, either during one-stop absentee voting or on election day. (Page 63, Line 10 through Page 65, Line 17)

Mr. Bartlett testified that long lines can be caused by a variety of factors, and that there are various steps county boards of elections can take to address his concerns about long lines. (Page 65, Line 18 through Page 66, Line 21; Page 67, Line 10 through Page 68, Line 19)

Mr. Bartlett testified that elimination of same-day registration could “possibly, probably” reduce waiting times and long lines at polling places. (Page 71, Line 1 through Page 72, Line 12)

Mr. Bartlett testified that, with regard to longer lines at one-stop early voting sites than on Election Day in the last two presidential elections, he had not examined whether any precincts could have handled higher turnout on Election Day. (Page 82, Line 5 through Page 84, Line 1)

Mr. Bartlett testified that he agreed that opening more one-stop absentee voting sites in a county could make one-stop absentee voting more accessible to voters in that county and could reduce the number of people voting on Election Day. (Page 84, Lines 2 through 22; Page 88, Lines 9 through 23)

Mr. Bartlett testified that new voting procedures typically come to be considered the “norm” within two or three elections, particularly if a presidential election is included in those two or three elections. (Page 91, Line 2 through Page 93, Line 9; Page 202, Line 10 through Page 203, Line 3)

Mr. Bartlett testified that his analysis showing that African American voters used one-stop absentee voting in proportionally higher numbers did not include any analysis of non-presidential elections. (Page 95, Line 2 through Page 96, Line 8)

Mr. Bartlett describes the mail voter verification process. (Page 102, Line 23 through Page 122, Line 4)

Mr. Bartlett describes reasons that a registration application might be denied following the mail verification process. (Page 122, Line 5 through Page 125, Line 20)

Mr. Bartlett testified that it is more likely that a registration application that should be denied based on mail verification will actually be denied if the registration is done 25 days prior to an election because of the time needed for mail verification. (Page 135, Lines 6 through 15)

Mr. Bartlett testified that a voter who uses same-day registration and whose registration application should be denied based on mail verification will nevertheless have his vote counted and be placed on the inactive voter list because they have already cast a vote unless the mail verification process can be completed in the ten to fourteen days before votes are canvassed and an election is certified. (Page 136, Line 19 through Page 140, Line 6)

Mr. Bartlett testified that there is no remedy for a candidate whose election is affected by a voter who utilizes same-day registration and whose registration application that should be denied based on mail verification votes and the mail verification process is not completed prior to canvass and certification of the election. (Page 146, Line 13 through Page 147, Line 22; Page 158, Line 22 through Page 159, Line 9)

Mr. Bartlett testified that his concerns that county boards of elections no longer have authority to keep polling places open longer on election day are addressed if the State Board of Elections has the authority to keep polling places open longer. (Page 148, Line 4 through Page 150, Line 5)

Mr. Bartlett testified that he doesn't know whether use of provisional ballots have decreased after use of same-day registration in "off-year" elections. (Page 157, Line 13 through Page 158, Line 6)

Mr. Bartlett testified that there are a variety of reasons voters might use out-of-precinct provisional balloting, and that neither he nor the State Board of Elections conducted any study to determine why voters voted out-of-precinct, but that he is "certain" that he has heard that political organizations take voters to precincts without verifying whether it is the precinct whether the voter is supposed to vote. (Page 174, Line 5 through Page 176, Line 18)

Mr. Bartlett testified that neither he nor the State Board of Elections ever conducted a survey or study as to additional costs a county board of elections might incur as a result of out-of-precinct voting and notes that there may be some additional costs associated with out-of-precinct voting. (Page 178, Line 5 through Page 179, Line 12)

Mr. Bartlett testified that North Carolina's voter rolls are inflated. (Page 185, Lines 3 through 20)

Thornton Deposition Summary and Designations

In ¶39 of her expert report, Dr. Thornton criticized Dr. Stewart's conclusion in his expert report that 3% of African Americans would be unable to vote based on the repeal of same-day registration. Dr. Thornton based her criticism in part on Dr. Stewart's failure to consider the high registration rate among African Americans. In response to questioning about the number of 17-year-olds that become part of the voting age population each year, Dr. Thornton testified about the African-American population in the 5-17 year-old age group: specifically, Dr. Thornton testified that 20.9% of those aged 5 to 17 are African American, while 21.3% of those over age 17 are African American. In response to questioning about whether Dr. Thornton considered the number of African Americans who enter or leave North Carolina each year, Dr. Thornton testified that she did not. (Page 108, Lines 13 through 22) (reporting age statistics).

In ¶41 of her expert report, Dr. Thornton criticized Dr. Stewart's conclusion regarding the impact on African Americans and Caucasians of the repeal of out-of-precinct voting. Dr. Thornton based her criticism on the grounds that Dr. Stewart failed to address the reasons for the increased use of out-of-precinct ballots; did not adjust for the lower participation rate among Caucasians during the 2012 election; and failed to adjust for other factors influencing decisions by individuals to vote and/or vote at the incorrect precinct. Dr. Thornton explained that without knowing why there was an increase in the use of out-of-precinct ballots in 2012 as compared to 2008, one cannot assume that similar results will

occur in future elections. Dr. Thornton testified that it would be important to consider whether African Americans who cast out-of-precinct ballots had actually moved; she suggested other factors that could account for out-of-precinct voting are the proximity of the precinct at which the person voted to the precinct at which the voter was registered; and the composition of the voting age population. (Page 112, Line 24 through Page 116, Line 3; Page 208, Line 19 through Page 216, Line 22)

Dr. Thornton was questioned about ¶35 of her expert report, in which she reported a statistically significant correlation between the available hours of early voting and a higher proportion of African American voting age population within a county. In response to questioning, Dr. Thornton testified that she was responding to a regression analysis performed by Dr. Stewart, in which he did not consider the proportion of African Americans. (Page 196, Lines 5 through 24)

In ¶37 of her expert report, Dr. Thornton casts doubt on Dr. Stewart's analysis of wait times during the 2012 election in North Carolina as compared to the rest of the country. Dr. Thornton explained that Dr. Stewart's analysis was based on a small sample, which led to a high margin of error. Due to the high margin of error, one cannot conclude that North Carolina's wait times were different from the national wait time. (Page 199, Line 14 through Page 205, Line 5)

Dr. Thornton described her experience in employment discrimination and credit and lending work, in which she applies similar techniques to those used to generate her expert report in this case. (Page 217, Line 22 through Page 219, Line 21)

Regardless of whether one measures turnout using (number of voters ÷ voter age population) or (number of voters ÷ number of registered voters), one cannot infer, without more, whether early voting and same-day registration caused the increase in turnout. To make such an inference, one would need to consider additional factors, such as those identified by Dr. Gronke in his expert report. One might also consider an analysis of data from other states. None of Plaintiffs' experts considered such factors. (Page 220, Line 20 through Page 222, Line 15)

Dr. Thornton explained the significance of the "null hypothesis" and the "p value," using as an example a regression analysis reported by Sean Trende at ¶121 of his expert report. Trende analyzed whether the number of voting laws a state passes affects African American turnout. In this example, the null hypothesis, which is what is being tested, would have been that there is no relationship between the number of laws passed and an increase in African American participation rate. Trende concluded that the null hypothesis could not be rejected, with a p value of 0.18. What that means is, assuming the null hypothesis were true (i.e., there is no relation between the number of laws passed and African American participation rates), then the probability of the measured data occurring is 18 percent. This is not statistically significant, so we cannot reject the null

hypothesis; stated differently, an 18% probability that the measured data would occur where there was no relationship between the number of laws and the turnout is sufficiently high that we can reject this hypothesis (of no relationship) as a possibility. Dr. Thornton explained the error of “confusion of the inverse”: This analysis does not demonstrate that it is 82% ($0.82 = 1.0 - 0.18$) likely that the alternative hypothesis (that an increase in African American participation is correlated to the number of laws) is true. (Page 223, Line 6 through Page 226, Line 23)

Dr. Thornton analyzed some data from the 2014 primary election in North Carolina, and reported her findings in Deposition Exhibit 125. Deposition Exhibit 125 summarizes Dr. Thornton’s conclusions regarding voter participation rates (turnout rates) among registered voters in North Carolina during the 2010 primary election as compared to the 2014 primary election. Among other conclusions, Dr. Thornton concluded that the participation rate of African Americans (calculated using the number of registered voters) was higher in 2014 than it was in 2010; that the percentage of African American voters who voted using early voting was higher in 2014 than in 2010; and that the percentage of all voters who were African American was higher in 2014 than in 2010. (Page 227, Line 1 through Page 237, Line 17 and Ex. 125)

Dr. Thornton criticized the multiple regression analysis performed by Dr. Charles Stewart, one of Plaintiffs’ experts, in his surrebuttal report at ¶99, on several grounds. Dr. Stewart’s variables in his analysis were discrete categories defined as periods of

waiting time (0-10 minutes; 10-30 minutes; 30-60 minutes; more than 60 minutes). Because these were “categorical” data, Dr. Thornton opined that Dr. Stewart’s use of a regression analysis was inappropriate and that there was not a meaningful interpretation of the statistical result. Dr. Thornton additionally opined that the analysis was further flawed by the fact that the time intervals were not uniform (the duration of the categories was 10 minutes, 20 minutes, 30 minutes, and infinite). Finally, Dr. Stewart committed the error of “confusion of the inverse” by concluding that that probability that early voters in North Carolina waited longer than early voters nationwide was 99.9%. (Page 238, Line 15 through Page 241, Line 8)

Trende Deposition Designations

Trende explained what the Current Population Survey (“CPS”) is and described some limitations with this data, including the propensity of people for over-reporting their voting. Trende explained that there is evidence in the literature showing that within a state, the over-reporting tends to remain constant; thus, when using the data to look at a difference in two points in time, the over-reporting bias corrects itself. (Page 79, Line 23 through Page 82, Line 18)

Trende explained that he used the CPS data to perform the analyses reported in Figures 3 through 6 of his expert report, as opposed to data reported by the states themselves or data from some other source, because it was important to Trende that he have a consistent data set from all states; not every state tracks registration or voting by race, but CPS does collect this information and makes it available. (Page 83, Line 6 through Page 84, Line 8)

Trende acknowledged errors in his regression analysis that had been pointed out by Dr. Gronke. After correcting those errors and repeating his analysis, Trende determined that the opinions he proffered in his expert report are still correct and remained unchanged. He prepared a supplement to his declaration, Deposition Exhibit 121. (Page 315, Line 13 through Page 316, Line 9, and Dep. Ex. 121)

For the state of Virginia, Trende calculated the African American percentage of the electorate and the white percentage of the electorate for presidential and off-year elections from 1998 through 2012, and calculated the difference in each year in under/over-representation by whites in each year. The results are depicted in Deposition Exhibit 122. (Page 316, Line 22 through Page 318, Line 22, and Ex. 122)

Plaintiffs' experts, Dr. Gronke and Dr. Stewart, used validated data only in an in-depth study of North Carolina, and in a study of early voting in Florida in 2012. (Page 318, Line 25 through Page 319, Line 20)

Although Trende did not use validated data to generate Figures 5 and 6 on page 19 of his expert report, none of Plaintiffs' experts have generated anything to refute Figures 5 and 6, whether with validated data or without, nor have Plaintiffs' experts attempted to reproduce Figures 5 and 6 using validated data. (Page 319, Line 21 through Page 320, Line 23)

In Florida, the participation rate (share of citizen voting-age population that voted) decreased from 2008 to 2012 among whites by 3.3% and among African Americans by 0.9%. Trende concluded that if long lines affected voting, they had more effect on whites than on African Americans. (Page 322, Lines 4 through 19)

In the 2012 election, the white share of the electorate did not remain the same or increase, as Trende had predicted, because the white population dropped; Trende's prediction that the white share of the electorate in 2012 would increase was predicated on an assumption that the white population would rise. (Page 323, Line 10 through Page 324, Line 7)

Trende gave several reasons why he did not weight the CPS data in his regression analysis: First, it is not uncommon in the political science literature not to employ weighting techniques; second, when looking at change over time, the over-reporting (which weighting attempts to counteract) will cancel out within a state; in addition, over-reporting was less of an issue for Trende because he was not looking at overall turnout, but at turnout among African Americans; and finally, weighting techniques are dependent on assumptions which may be inappropriate when looking only at African American turnout, as Trende was doing. (Page 324, Line 11 through Page 326, Line 23)

Trende's retrogression analysis included 33 states and the District of Columbia. Trende used CPS data because it was available for all these jurisdictions and he could thus make a meaningful comparison of the jurisdictions with CPS data. (Page 327, Lines 1 through 21)

Plaintiffs' experts did not do any regression analyses and did not account for the impact of the Obama campaign on early voting, same-day registration, out-of-precinct voting, or pre-registration. (Page 327, Line 23 through Page 328, Line 25)

Trende has been invited to appear on many respected television and radio programs, many of which would not be labeled conservative. (Page 329, Line 8 through Page 331, Line 9)

Trende criticized the practice of some conservatives, who purported to “unskew the polls,” because these conservatives believed the polls reflected a number of Republicans that was too low. Election results proved that the notion of “skewed polls” was misguided. (Page 331, Line 16 through Page 332, Line 19)

Poucher Deposition Designations

Ms. Poucher testified that pre-registration of 16- and 17-year olds sometimes caused confusion and resulted in telephone calls to the Wake County Board of Elections office from 16- and 17-year olds who did not understand when they could vote. (Page 17, Line 19 through Page 18, Line 13, Ex. 206)

Ms. Poucher testified that pre-registration of 16- and 17-year olds also resulted in additional administrative burdens for elections officials because these voters had to be processed at least twice: once when the registration form was submitted, again when the voter actually became eligible to vote, and possibly a third time if the voter moved before he or she became eligible to vote. (Page 18, Line 21 through Page 19, Line 22)

Ms. Poucher testified that if the one-stop early voting period is extended to 17 days from 10 (as a result of the court entering a preliminary injunction), this would create financial hardship for the counties because the budgets have already been passed for county boards of election and, in Wake County, the county board of elections has already adopted a plan for early voting in November based on the budget that was passed. (Page 38, Line 25 through Page 39, Line 18)

Ms. Poucher testified that the number of provisional ballots in Wake County dropped as a result of voter data being available electronically which allowed poll officials to better determine why a voter did not appear in the poll book at a particular

precinct and because of press releases encouraging voters to update their address when they move. (Page 57, Line 7 through Page 58, Line 23)

Ms. Poucher was questioned about comments she submitted in 2005 to the U.S. Election Assistance Commission regarding voters who voted provisionally as a result of “unreported moves.” At the time the comments were submitted, a bill intended to clarify that “out-of-precinct provisional ballots be counted for all contests for which the voter was eligible to vote” was pending before the General Assembly but had not yet been passed. (Page 55, Line 8 through Page 57, Line 6; Page 59, Line 3 through Page 61, Line 22; Page 81, Line 12 through Page 84, Line 2; Ex. 207)

This the 11th day of July, 2014.

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