

# **EXHIBIT L**

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

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

Plaintiffs, )

vs. )

Case No: 1:13-CV-658

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

Defendants. )

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

Plaintiffs, )

vs. )

Case No: 1:13-CV-660

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

Defendants. )

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UNITED STATES OF AMERICA, )

Plaintiff, )

vs. )

Case No: 1:13-CV-861

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

Defendants. )

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VIDEOTAPED DEPOSITION OF  
GARY BARTLETT

1  
2 VIDEOTAPED DEPOSITION OF

3 GARY BARTLETT

4  
5 \_\_\_\_\_  
6 10:06 A.M.

7 TUESDAY, JUNE 24, 2014  
8 \_\_\_\_\_

9 OGLETREE DEAKINS NASH SMOAK & STEWART  
10 4208 SIX FORKS ROAD  
11 SUITE 1100  
12 RALEIGH, NORTH CAROLINA

13 By: Denise Myers Byrd, CSR 8340, RPR, CLR 102409-02  
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1           serve as executive director for the State Board  
2           of Elections?

3           A.   Just two months shy of 20 years.

4           Q.   Okay.  And I want to say, for the benefit of  
5           whoever watches this videotape, that I want to  
6           thank you for your service to the State of  
7           North Carolina.

8           A.   Thank you.

9           Q.   Now, you may reference your affidavit -- or  
10          declaration if this will help you.

11          When did you first become the executive  
12          director for the State Board of Elections?

13          A.   I became executive director through appointment  
14          August 3rd, 1993, and my last date was the  
15          first day -- May 15, 2013.

16          Q.   How are -- how is the executive director  
17          selected?

18          A.   The executive director was selected by the  
19          State Board which consists of five members, and  
20          I was reappointed every four years thereafter  
21          until 2013.

22          Q.   Okay.  And who appoints the State Board of  
23          Elections?

24          A.   The Governor appoints from a list of five from  
25          each major party.  So from a list of ten, five

1 are chosen, and it is always centered where the  
2 majority is the sitting Governor's party.

3 Q. So in '92 -- '93, when you were appointed, who  
4 was the governor at that point in time?

5 A. Governor Jim Hunt.

6 Q. And during the -- your years of service, were  
7 you reappointed?

8 A. Yes.

9 Q. And when would you be reappointed?

10 A. Every four years, usually in the summer after a  
11 presidential election. The statute calls for  
12 the appointment to be made somewhere around  
13 May 1st to May 15th, but usually it would  
14 happen sometime during the summer.

15 Most of the time, whoever the sitting  
16 governor was, had obligations at the General  
17 Assembly because they were in session.

18 Q. So who were the -- during your tenure on --  
19 when you were appointed and reappointed,  
20 who -- which party was the governor from every  
21 time you were reappointed?

22 A. Democrat.

23 Q. So every time you were reappointed, the State  
24 Board of Elections would have had a  
25 three-Democrat majority on the State Board of

1 Elections?

2 A. Yes, sir.

3 Q. Okay. Tell me a bit about your educational  
4 background prior to the time that you became  
5 the executive director.

6 A. I have a BA in history from the University of  
7 North Carolina Chapel Hill.

8 Q. And what about your -- when did you get that,  
9 what year?

10 A. 1976.

11 Q. Can you tell me about your work history from  
12 1976 until you became the executive director.

13 A. Be glad to. Directly before college and after  
14 college I worked for my father who was a  
15 masonry contractor, and I worked from being a  
16 laborer to a mason.

17 In 19 -- September of 1983, I was  
18 offered a job at Will Enterprises by David  
19 Will, which was a development and management  
20 company where I helped manage properties and do  
21 special projects and community service  
22 projects.

23 I also managed a fertilizer storage  
24 facility which was 30 percent nitrogen called  
25 Carolina Terminals, and somewhere around 1990 I

1 was offered a job and worked for Martin

2 Lancaster as a legislative assistant in

3 Washington DC, and from that point I was voted

4 in by the State Board August 3rd of 1993.

5 Q. Okay. Martin Lancaster, is my memory correct,

6 he was a Democratic congressman?

7 A. That is correct.

8 Q. And prior to coming to the State Board of

9 Elections, did you have any experience in

10 election administration?

11 A. No. Just the political process.

12 Q. Do you know how the State Board came to pick

13 you to be the executive director?

14 A. I can only present my side. I cannot tell you

15 what they were thinking.

16 I had a neighbor and good friend named

17 Phil Baddour who said that Alex Brock was

18 retiring, and he thought I would be a natural

19 for the job and he urged that I put in an

20 application, and I did, and I was chosen and I

21 was very grateful for that.

22 Q. And was Phil Baddour a member of the General

23 Assembly?

24 A. Not at that time.

25 Q. Was he ever a member of the General Assembly?

1 A. Yes. Yes, he was.

2 Q. And was he ever the majority leader of the  
3 Democratic caucus in the General Assembly?

4 A. Yes.

5 Q. Do you remember when he served in the General  
6 Assembly?

7 A. I cannot tell you those dates.

8 Q. Had he served at the time that he suggested  
9 that you apply for the executive director job?

10 A. No.

11 Q. So he got elected after you were executive  
12 director?

13 A. Yes. That is my recall. I just don't -- I  
14 don't know -- I don't think he was elected.

15 Q. Well, so this is not a memory test.

16 A. I know.

17 Q. So just do the best you can.

18 A. Right.

19 Q. At the time you were appointed executive  
20 director, were you registered with one party or  
21 the other?

22 A. I was registered as a Democrat.

23 Q. And are you still registered as a Democrat?

24 A. I am.

25 Q. Has that changed since the time you became the



1 executive director?

2 A. No.

3 Q. Have you ever made any political contributions?

4 A. I have made it before my tenure as executive  
5 director and once after my tenure as executive  
6 director.

7 Q. Okay. Before your tenure as executive  
8 director, were those contributions made to  
9 democratic candidates or the Democratic Party?

10 A. Yes.

11 Q. And after your tenure ended, who have you made  
12 contributions to?

13 A. Roy Cooper.

14 Q. Anyone else?

15 A. No.

16 Q. Okay. Now, you were not -- in 2010, Governor  
17 McCrory got elected I think; is that right?

18 A. 2012.

19 Q. 2012. Thanks.

20 So he got to pick the new board  
21 members?

22 A. Correct.

23 Q. And they were three Republicans in the majority  
24 on the new board?

25 A. Correct.

1 Q. Did you seek reappointment as executive  
2 director?

3 A. I have never sought reappointment. I knew the  
4 process and I knew that if the new board had a  
5 favorite that that favorite would be appointed.  
6 I did offer my services in any way that  
7 would be helpful, and they said no thank you.

8 Q. Did you ever ask to be considered for a  
9 specific job at the State Board after the  
10 Republicans held the majority?

11 A. My only conversation was the current chairman  
12 who thought that maybe there could be a  
13 possibility of me assisting with the  
14 time-limited positions related to voter ID, new  
15 laws, and then within two days I got a call  
16 from Don Wright on his behalf saying they  
17 really do not think it would be best to  
18 consider that and that was all to that.

19 Q. Did you ever ask to be considered for the  
20 campaign finance position?

21 A. No.

22 Q. Were you disappointed when you weren't  
23 reappointed as executive director?

24 A. You're always disappointed, but I understood  
25 the nature of the appointment.

1 Q. Do you hold any bitterness about not being  
2 reappointed?

3 A. No.

4 Q. Have you ever expressed to others that you were  
5 bitter about not being reappointed?

6 A. No.

7 Q. Now, looking at Exhibit 152, did you work with  
8 anyone in preparing this report?

9 A. I did.

10 Q. Who did you work with?

11 A. Allison Riggs.

12 Q. Anyone else?

13 A. No.

14 I would like to clarify that it is my  
15 understanding that when the attorneys got  
16 together, they might have pooled their  
17 resources, and what other conversations I might  
18 have had I do not know what information was  
19 from -- help from others, but I do know that I  
20 only worked with Allison Riggs.

21 Q. Okay. That's fine.

22 What did you do to get ready for your  
23 deposition today?

24 A. I thumbed through my declaration and Kim's and  
25 really did not look at the exhibits too hard.

1 A. The documents that I looked at were refresh my  
2 memory on my declaration and Kim Strach's  
3 declaration and thumbed through both exhibits  
4 but did not read every word of those exhibits.

5 Q. Okay. We can go over this in more detail if we  
6 need to, but in looking through Kim Strach's  
7 declaration, you're referring to the  
8 declaration she filed in this case?

9 A. That's correct.

10 Q. Just recently?

11 A. Yes. I believe it was June -- a date in June.

12 Q. Did you see anything in her declaration that  
13 you disagreed with or took exception to?

14 A. Only a couple points that caught my attention.

15 Q. Could you let me know what those are?

16 A. First of all, she makes a statement about  
17 same-day registration being the ability for a  
18 felon to circumvent the process and vote. I  
19 disagree with that, and I can explain later.

20 And the other thing that I disagree  
21 with is she was talking about primary turnout,  
22 and I do not think that primary turnout is as  
23 important as a general election turnout,  
24 especially a presidential election turnout.

25 At the time that we get to those

1 things, I'll be glad to go into further detail.

2 Q. Okay. That sounds good.

3 But other than that, was there anything

4 else in her declaration that you can recall

5 that you took exception to?

6 MR. DONOVAN: Objection to form.

7 BY MR. FARR:

8 Q. That means that your co-counsel didn't like the

9 way I asked the question, but you're allowed to

10 answer the question.

11 A. There are some minor things here and there, but

12 not substantial things.

13 Q. Okay. All right. Let's go into your report.

14 MR. CORDLE: By his report, you mean  
15 his declaration?

16 MR. FARR: Yes, sir.

17 MR. CORDLE: Just clarifying for the  
18 record.

19 MR. FARR: Exhibit 152.

20 BY MR. FARR:

21 Q. All right. I am going to start on paragraph 8.

22 And the first sentence, Mr. Bartlett, you  
23 state:

24 "After North Carolina voters  
25 waited in extremely long lines in the

1           1996 general election, a member of the  
2           General Assembly asked me and Johnnie  
3           McLean, Deputy Director of the State  
4           Board of Elections, to look at the  
5           outdated provisions for absentee voting  
6           in North Carolina election statutes."

7                   So I want to ask you some questions  
8           about that.

9           A. Okay.

10          Q. What's the basis for your statement that  
11          North Carolina voters waited in extremely long  
12          lines?

13          A. During the '90s when I first came -- the first  
14          presidential election was 1996 and there were  
15          long lines in a lot of our most populous  
16          counties such as Guilford, Wake, Forsyth,  
17          Buncombe, Union, Mecklenburg.

18                   In Union County there was lines as long  
19          as five hours. After -- on election night, I  
20          believe that Union County closed down sometime  
21          around 11:00 or after. There were just a lot  
22          of -- a lot of volume of people and they had  
23          long waits, and the General Assembly was  
24          looking at ways to curb waiting so they asked  
25          us to look at that chapter -- or article.

1 A. Majority.

2 Q. Still on paragraph 8, and I want to look at the  
3 last sentence in paragraph 8.

4 "It has been my experience in  
5 North Carolinians love early voting at  
6 a time that is convenient for them and  
7 permits certain North Carolinians the  
8 ability to vote in elections that  
9 otherwise may not have been able to vote."

10 Do you see that sentence?

11 A. I have.

12 Q. Okay. When you say North Carolinians love  
13 early voting, what's your basis for saying  
14 that?

15 A. Because each presidential year the raw numbers  
16 go up for participation. Currently in the  
17 presidential general election, there are more  
18 people who vote early than they do on election  
19 day.

20 Q. Is that true for off-year elections?

21 A. No.

22 Q. Is it your opinion that that increase in  
23 turnout is caused only by early voting?

24 A. I believe that early voting is a catalyst where  
25 people go and vote because it is convenient for

1       them at that point in time. There might be  
2       other things in their life that would keep them  
3       away on election day.

4       Q. Okay. And if there's things in their life that  
5       keep them away on election day, they can vote a  
6       no-excuse absentee ballot?

7       A. They have that option.

8       Q. Tell us about that. How does that work? When  
9       can you first apply for a no-excuse absentee  
10      ballot?

11      A. You can apply for an absentee no-excuse ballot  
12      which will be -- if it's in the board of  
13      elections, within 60 days of the elections,  
14      then the board of elections can issue that  
15      packet to the voter, the voter fills out the  
16      application, and as long as everything is  
17      complete on the application, they mark their  
18      ballots, have it -- have their signatures on  
19      the application and send it back in.

20                   The board will review it and see if all  
21      of the required information is on it, and if it  
22      checks out, then that mail absentee ballot will  
23      be counted.

24                   If not, it is mandated to the board of  
25      elections that they make a good faith effort to



1 try to get that information so that that

2 absentee mail ballot can count.

3 Q. Your testimony about presidential year turnout

4 for early voting, have you or the State Board

5 ever conducted a study to see how much that has

6 been impacted by get-out-the-vote and turnout

7 operations by candidates for parties?

8 A. No. We're just interested in the voter, not

9 necessarily the parties or the candidates, but

10 we do know that the most popular election is

11 president, and during presidential elections,

12 we have got to do everything we can to have as

13 many resources to where the numbers are.

14 Q. But you don't know whether there's a connection

15 between the rise of early voting and

16 get-out-the-vote strategies by parties or

17 candidates?

18 A. I never looked at it in that form. I was only

19 interested in the administration of the

20 election.

21 Q. Did you ever study the location of early voting

22 centers to see if they -- if their location was

23 more accommodating for one group or another?

24 A. No. That was local choice. My advice to

25 wherever there was dissension within the

1 county, which sometimes was followed, other  
2 times it wasn't, that one side picked one site,  
3 another one pick another and work it out  
4 because it's better to have a local decision  
5 than it come to the State Board.

6 Q. But the State Board never examined the  
7 locations of the early voting sites to  
8 determine if they favored one group or another?

9 A. If the facts were before them when it came to  
10 them, they would make a decision on those  
11 facts.

12 I recall in Durham County there was a  
13 site that was proposed one mile from another  
14 site that was appealed to the State Board and  
15 the State Board turned down that second site  
16 because it was so close to another.

17 Q. What year was that?

18 A. 2008, I believe.

19 Q. Can you think of any other examples?

20 A. There are one or two more, but I cannot recall  
21 what they are, but I can say for certainty that  
22 there was probably less than half a dozen  
23 during that time.

24 Q. Okay. Let's talk about county boards for a  
25 second. How are county boards selected?

1 A. I think -- no, no, no, no, no. Excuse me. I  
2 need to go back. It was -- the election was in  
3 '94.

4 Q. Okay. All right. Well, thank you.

5 Can you think of any other examples?

6 A. From that point on, whenever a State Board  
7 called for a new election during my tenure, we  
8 would have a presence on election day but not  
9 necessarily in every precinct. We would only  
10 do that on special occasions.

11 Q. Okay. So, Gary, when you had reports of long  
12 lines in elections, did you ever conduct an  
13 investigation of the precinct where the long  
14 lines existed to try to determine the cause of  
15 the long line?

16 A. As I mentioned to you earlier, there were phone  
17 calls and e-mail exchanges, basically too many  
18 people for the polling place that was at hand  
19 to handle those number of people.

20 Q. That was based upon e-mails you received from  
21 whom?

22 A. The county director or somebody representing  
23 that county board of elections.

24 Q. Okay. Did you all ever go down and actually  
25 analyze the number of machines that were

1 present in the precinct versus the number of  
2 voters?

3 A. Well, first of all, it would not matter if it  
4 was an optical scan mark sense because you  
5 would only have one tabulator, unless you had  
6 split precincts and you had to have two  
7 tabulators, but we tried to stay away from that  
8 as much as possible.

9 But those were the early days when we  
10 had a garden variety of different kinds of  
11 voting equipment where as we had more of a  
12 uniform type after 2006 where those types of  
13 problems kind of disappeared.

14 The urban counties that had the  
15 electronic touch screen, they had to look at  
16 allocations, and what they would do is do their  
17 own studies and send it to us and we would just  
18 look at it, but we did not -- usually did not  
19 do anything except answer questions that they  
20 might have. We did not do studies.

21 Q. All right. I asked a bad question about voting  
22 machines for optical scan counties or optical  
23 scan precincts.

24 A. Right.

25 Q. I understand. I voted in those precincts. You

1           too?

2           A.   Correct, all the ones that we have for  
3           North Carolina. That does not mean that at  
4           some point in time when we split more precincts  
5           that that number comes into question, but at  
6           the moment it takes care of our needs.

7           Q.   Okay. All right. Now, I am going to go back  
8           to your paragraph 8.

9           In the last sentence where you say  
10          early voting permits certain North Carolinians  
11          the ability to vote in elections that otherwise  
12          may not have been able to vote.

13          What do you mean by that?

14          A.   You have got military personnel there being  
15          deployed that utilize this, you have people go  
16          on business that go out of town, you have  
17          people who go on vacation, you have people who  
18          go visit families that's outside of their  
19          county. There are a number of reasons, and we  
20          would get feedback and phone calls from people  
21          saying we love this new voting.

22          In fact, I remember going in 2008 to a  
23          polling place, and I do not recall which one it  
24          was, but it was in Lenoir County. There was a  
25          long line and I said to this woman who I had

1       chatted with, "You know that on election day  
2       you wouldn't have to wait as long," and she  
3       looked at me and says, "Today is when I want to  
4       vote, it's more convenient for me to do it at  
5       the time when I choose."

6               And I think that that is the underlying  
7       feeling of a lot of people, that and wanting to  
8       get their vote counted. For some reason --  
9       this is just a few people who have talked to  
10      me. I cannot say that I've done any study or  
11      anything like that -- they would rather vote in  
12      person than do the paperwork with no absentee  
13      voting which they have that option.

14     Q. But under the new system, a person is able to  
15      go do early voting during the 10-day period,  
16      correct?

17     A. With current law, correct.

18     Q. So if they want to do early voting, they can  
19      still do it, they just have to vote within 10  
20      days instead of 17 days?

21     A. Correct.

22     Q. And they can also do a no-excuse mail-in  
23      absentee ballot?

24     A. Correct.

25     Q. And they also can vote on election day?

1 A. Correct.

2 Q. So can they not conform their behavior to vote  
3 based upon the procedures that are in place  
4 now?

5 A. If it is the law, they are going to have to.  
6 My only hesitation, and it is a big hesitation,  
7 you're dealing with a lot of volume in a  
8 presidential general election, and we are  
9 currently not suited precinct wise for a lot of  
10 volume to be administered on election day for  
11 people to vote and you will have long lines.

12 Q. Okay. Now that -- we're coming into an  
13 off-year election in 2014, correct?

14 A. Correct.

15 Q. So are you saying you don't have these same  
16 concerns or to the same degree for off-year?

17 A. Not the same degree. Now, there are going to  
18 be spikes when you have a really contested U.S.  
19 Senate race. If my memory is correct, you will  
20 have a turnout of anywhere as low as 43 percent  
21 and as high as 48 to 50 percent, but you do not  
22 see 65 to 70 percent like you do in a  
23 presidential.

24 Q. Okay. Now, when the county boards set up early  
25 voting sites for primaries?

1 A. Yes.

2 Q. I know what you're talking about, and I don't  
3 have any interest in going into more detail,  
4 but if anyone else does, they're welcome to it.

5 A. Okay.

6 Q. All right. I want to talk about paragraph 11  
7 and tell me what you mean that you have time to  
8 correct problems during early voting that you  
9 don't have on election day.

10 A. The main problems that you'll find are -- or  
11 the two main problems -- there could be more  
12 than two, but from time to time as much as you  
13 try to scrutinize and review ballots, every now  
14 and then there is a misspelling of a  
15 candidate's name, or if it's in a primary, they  
16 were not put in the order that they were  
17 supposed to be placed in or they were -- the  
18 office was left off the ballot, and it only  
19 occurs in a county here or a county there.

20 And also on election day -- excuse me.  
21 When they present and vote during the early  
22 voting one-stop period, the voter might be  
23 entitled to vote one ballot style but is given  
24 another, and we're able to review that,  
25 identify the problem, and most of the times we



1       have the ability to correct it and bring that  
2       voter back in.

3       Q.   Okay.  How many times has that happened?

4       A.   At least every election somewhere there is  
5       something of that nature.  It is not  
6       widespread, but it happens.  And I must say  
7       with our uniform procedures, it has happened  
8       less in recent years than it did during the  
9       1990s.

10      Q.   And so this is a -- not a major problem  
11      throughout the state on election day?

12      A.   On election it's not curable.

13      Q.   Okay.  But does it happen -- is it a major  
14      problem on election day?

15      A.   It used to be before we had no-excuse one-stop  
16      voting.

17                 I do not recall during the last two or  
18      three elections that any problem that I  
19      suggested could happen happened on election  
20      day.  I just don't recall any because we were  
21      able to resolve that during the early voting  
22      period.

23      Q.   And there will still be a 10-day early voting  
24      period under the new law --

25      A.   Correct.

1 Q. -- where these problems can be identified and  
2 corrected?

3 A. Correct.

4 Q. What do you mean by -- this is robust early  
5 voting, is that a word that you used?

6 A. It's a word that I use.

7 Q. Okay. What does that mean?

8 A. What it means to me is that people utilize  
9 early voting, especially in presidential  
10 elections, and robust is that because of the  
11 activity and all the ballot styles and people  
12 looking at the ballots, if there is an issue,  
13 it's caught sooner rather than later.

14 Q. Okay. Let me ask you a question, Gary. If the  
15 concerns you have about presidential elections,  
16 could the county boards and the State Board  
17 take steps to address those problems even with  
18 the 10-day early voting period between now and  
19 the presidential election?

20 A. It comes down to how many people that you can  
21 process on election day, and during that 10-day  
22 period to be able to do such, you are going to  
23 have to create a lot of new precincts and try  
24 to have precincts range anywhere from 2,500 to  
25 3,500 and not 5,000 and 6,000 or 4,500 because

1 if you look at the voter who goes in and votes,  
2 you can count on that voter taking up to five  
3 minutes. It's going to be a little more with  
4 there being no straight-party ticket voting.

5 It's also going to be -- let me think  
6 for a second. If you look at the time, you can  
7 only process so many people in a given time  
8 period without having new precincts, and with  
9 new precincts, you have to have new equipment,  
10 you have manpower needs, you also have  
11 different ballot styles -- well, let me  
12 rephrase that.

13 You may not have different ballot  
14 styles, but ballot styles come into play  
15 because you do not know how the voting district  
16 is going to come into that new precinct, and  
17 with the new precincts, it can only be within a  
18 voting tabulation district.

19 So currently the way the law is read,  
20 you can divide that voting tabulation district  
21 or you can combine but you can't make pieces  
22 parts.

23 Q. That's a state law?

24 A. Yes.

25 Q. That could be changed?

1 A. Yes, that's correct.

2 Q. But for example, could not the county boards  
3 add more early voting sites in different  
4 locations of the county?

5 A. Yes.

6 Q. And wouldn't that alleviate your concerns about  
7 long lines?

8 A. It could.

9 Q. Could voters change their behavior and try to  
10 show up at the early voting sites at hours that  
11 are different than what they've typically done  
12 in the past?

13 A. I can't answer that. I think that's up to each  
14 individual voter.

15 I think that the job of the election  
16 official is to make it as convenient for the  
17 voter so that they can have the most  
18 pleasurable experience in exercising their  
19 right to vote.

20 Q. But the voter can decide to come?

21 A. The voter is the decisionmaker.

22 Q. And they can decide what time to come?

23 A. Right.

24 Q. And they can decide which early voting site  
25 they go to?

1 A. That's correct.

2 Q. And am I correct that you can -- if you're a  
3 resident of Wake County, you can vote at any  
4 early voting site at Wake County; is that  
5 right?

6 A. Correct.

7 Q. Now, when you say the polling places are  
8 staffed by better-trained workers, have you  
9 conducted any studies on that or is that just  
10 your opinion?

11 A. That opinion is based on information back from  
12 the counties where they traditionally and try  
13 hard to get seasoned veterans that have  
14 experience in elections and not new people.  
15 That is -- is something that every county  
16 strives to do is to get those who are  
17 experienced first.

18 Q. You've had communications with every county in  
19 North Carolina to that effect?

20 A. Every one must submit a plan, and if there are  
21 questions about that plan that from time to  
22 time arises up, and, yes, we do talk about  
23 that.

24 And I can say that it is just uniformly  
25 people try to get the experience first and they

1 voters.

2 Q. Did you ever determine which early voting sites  
3 would -- let me rephrase that.

4 The early voting sites that had  
5 problems with long lines, did you determine  
6 whether or not these early voting sites were  
7 predominantly white or predominantly black  
8 areas?

9 A. No.

10 Q. So I want to ask you -- this term has come up  
11 in depositions like "wait time to vote." Did  
12 you -- does the State Board of Elections ever  
13 done any studies to see how long it takes a  
14 voter to vote in North Carolina?

15 A. No.

16 Q. And what do you consider wait time?

17 A. Like I said earlier, our rule of thumb is to  
18 try to process a voter within 20 minutes, if  
19 possible.

20 Q. And "process the voter" means?

21 A. Someone standing in line no more than  
22 20 minutes.

23 Q. Standing in line until they get their ballot  
24 or --

25 A. Until they present themselves, saying "I am Tom

1       Farr" and then going through the process and  
2       getting the ballot.

3       Q. So for waiting time you separate the time  
4       you're in line and you get checked in from how  
5       long it then takes you to vote?

6       A. Yes.

7       Q. And did you -- and Gary, I'm sorry, I've gone  
8       through a lot of depositions here recently and  
9       I don't want to repeat questions, but did the  
10      State Board ever make study as to how long the  
11      wait times were either on early voting or on  
12      election day?

13     A. No.

14     Q. And so I take it you never made a study as to  
15     any particular early voting center or precinct  
16     in North Carolina as to wait times?

17     A. What we gave were guidelines and talked about  
18     different types of issues. In fact, you will  
19     find that one of the exhibits is a memo about  
20     long lines that is sort of like best efforts,  
21     but studies, we do not have the manpower nor  
22     the time to do a lot of studies. We were just  
23     trying to keep up with the day's work at the  
24     moment.

25     Q. Okay. So the State Board hasn't looked at a

1 particular precinct or an early voting center

2 to evaluate what the causes may be of long

3 lines?

4 A. No because they might not have the same voting

5 center in a different election. Those change.

6 Yes, you do have traditional ones.

7 Some counties really love libraries. Other

8 counties will run away as far as they can from

9 libraries, but every tries first to find a

10 public building, and because it being a public

11 building, it might meet their needs for one

12 election but might be too big or too small for

13 another.

14 So there is a variation. So that would

15 be kind of hard to do. You can only do -- you

16 could probably do a study and make sure it's

17 flexible to accommodate those types of changes.

18 Q. Okay. So let's talk about long lines and

19 things that could cause long lines.

20 What -- do you have an opinion on that?

21 A. My opinion is very short. First of all, it

22 depends on the time of day you go. The peak

23 hours, I've already said, are -- like, for

24 instance, on election day 6:30 to 8:30, 11:00

25 to 1:00 and then 4:00 to 6:00.



1           Now, in some counties that may vary  
2           where there are more early and more late, but  
3           for the most part North Carolina votes more in  
4           the morning than they do later in the evening.

5           One of the presidential elections that  
6           I thought we were going to have a record  
7           turnout -- I forgot what year it was. It might  
8           have been -- it might have been '96 -- I  
9           thought that we were for a record turnout  
10          because of the long lines, and one of the  
11          reasons for the long lines is that people did  
12          not go into the polling place knowing who they  
13          were going to vote for and spent more time than  
14          usual, and as a result you saw a lot of split  
15          ticket voting.

16          So that could be a reason for a long  
17          line, but basically long lines occur when you  
18          do not have the parking or the facility or the  
19          manpower to process the volumes that show up,  
20          and that's basically all that comes to mind at  
21          the moment.

22                 MR. FARR: I'm sorry, I've got to do  
23                 this conference call now. So let's take our  
24                 lunch break and come back at 1:00.

25                 MR. DONOVAN: 1 o'clock.

1 MR. FARR: Would that be okay? Is that  
2 all right? And I apologize to everyone.

3 THE VIDEOGRAPHER: Off the record at  
4 11:53 a.m.

5 (Lunch Recess.)

6 THE VIDEOGRAPHER: Back on the record  
7 at 1:03 p.m.

8 MR. FARR: Thank you.

9 BY MR. FARR:

10 Q. Gary, can long lines be caused by the lack of  
11 precinct workers?

12 A. Yes.

13 Q. Can long lines be caused because of machine  
14 malfunctions?

15 A. Yes.

16 Q. Has that ever happened before?

17 A. Yes.

18 Q. Can long lines be caused by the power going out  
19 at a location?

20 A. Yes.

21 Q. And has that happened before?

22 A. Yes.

23 Q. Between now and the 2016 presidential election,  
24 could the county boards take steps to address  
25 some of the concerns that you have about long

1 lines?

2 MR. DONOVAN: Objection; form.

3 THE WITNESS: It's possible. However,

4 as you know, I am no longer part of elections

5 so I would not know what --

6 BY MR. FARR:

7 Q. You wouldn't know whether they did it or not?

8 A. Right.

9 Q. What they're doing, but they could create more

10 early voting sites, right?

11 A. Yes.

12 Q. They could create more precincts?

13 A. Yes.

14 Q. They could pick bigger facilities?

15 A. Yes.

16 Q. They could add poll workers?

17 A. Yes.

18 Q. They could add election equipment at the

19 precincts or early voting sites?

20 A. Yes.

21 Q. Now, I wanted to ask you have you ever  
22 administered or helped people who were engaged  
23 in same-day registration?

24 A. Please qualify.

25 Q. Have you ever checked somebody in who wanted to

1 Q. Would eliminating same-day registration have  
2 the potential for reducing wait times during  
3 early voting?

4 A. Each polling site would have varying  
5 circumstances where it could or couldn't. It  
6 depends on how it's set up and how much  
7 manpower there is. That is one of those "what  
8 if" questions that you can never answer  
9 correctly.

10 Q. But is there a potential that eliminating  
11 same-day registration could reduce waiting  
12 time?

13 MR. DONOVAN: Objection; form.

14 THE WITNESS: Like I said, possibly,  
15 probably, and it depends on the circumstances  
16 of that polling place.

17 BY MR. FARR:

18 Q. Well, if you had the same number of poll  
19 workers with same-day registration as you have  
20 without same-day registration, would that  
21 likely reduce the waiting time?

22 A. It would depend on the duties and  
23 responsibilities that were divided up and how  
24 they were done to the best of the process.

25 Q. What if the -- what if the people that were

1 not -- no longer doing same-day registration

2 were assigned the duty of checking voters in,

3 would that possibly reduce the wait time?

4 MR. DONOVAN: Objection to form.

5 THE WITNESS: Possibly.

6 BY MR. FARR:

7 Q. Wouldn't it probably reduce the wait time?

8 MR. DONOVAN: Object to form.

9 THE WITNESS: Like I say, possibly,

10 probably. However, you've got to look at the

11 circumstances of each polling place because it

12 will vary.

13 BY MR. FARR:

14 Q. I wanted to ask you about paragraph 14 in your  
15 report which is Exhibit 152. Explain to me  
16 exactly what you did for Senator Nesbitt as it  
17 related to Buncombe County.

18 A. Senator Nesbitt was concerned about the  
19 delaying of polling places -- early voting  
20 polling sites opening. Instead of -- at the  
21 beginning of the 17-day period, he did an  
22 analysis of one senate district, but I forgot  
23 the name of that senate district, but it  
24 encompassed Cherokee County and those that are  
25 within that senatorial district, and he found

1 A. I let Johnnie McLean review it and had a couple  
2 directors review it and had one director tell  
3 me that I was not strong enough. However, I  
4 was happy with my work product.

5 Q. Now, Gary, I think you said that the lines for  
6 voting had been longer at the early voting  
7 sites in the last two presidential elections  
8 than on election day.

9 A. Yes.

10 Q. In making your study, did you make an attempt  
11 to figure out how much extra capacity there was  
12 on -- at the existing precincts on election  
13 day?

14 A. No.

15 Q. You don't know how many more voters could be --  
16 did you make a study trying to figure out how  
17 many more voters --

18 A. That was not my focus.

19 Q. Well, okay. I know. I wanted to see if you  
20 looked at something.

21 A. No.

22 Q. Did you look at any one precinct in  
23 North Carolina to determine if there was extra  
24 capacity in voters that that precinct could  
25 handle on election day without adding workers

1 or new machines?

2 A. No.

3 Q. So your study that you performed did no

4 analysis of how much more -- how much more

5 capacity on election day could be serviced by

6 the existing precincts with the existing

7 workers and the existing number of machines and

8 precincts on election day?

9 A. No.

10 Q. So without knowing how much extra capacity that

11 even a single precinct could take on election

12 day, how do you know for sure that the county

13 boards would have to buy more equipment?

14 A. Any reasonable person that looked and saw a

15 very large precinct of 4,500 to 6,500 and you

16 have a high turnout, you do the math and you

17 can tell that if you have five minutes a voter,

18 you have a lot of process to do in a limited

19 amount of time and so you're going to have a

20 problem with volume.

21 Q. Yeah, but you don't know how much more a

22 particular precinct -- any one precinct in

23 North Carolina, you don't know how much more

24 volume they could handle; you didn't study

25 that?

1 A. I did not study that.

2 Q. Now, do you think that opening additional early  
3 voting sites could make early voting available  
4 to people who have not had access to early  
5 voting in the past?

6 A. Yes.

7 Q. Could opening up early voting sites result in  
8 people who voted on election day now in the  
9 future voting during early voting instead  
10 because the sites are more accessible?

11 MR. DONOVAN: Objection to form.

12 THE WITNESS: Could you repeat, please.

13 BY MR. FARR:

14 Q. Okay. You agree that opening more early voting  
15 sites could make early voting more accessible  
16 to people within a particular county?

17 A. Yes.

18 Q. Okay. Could that potentially reduce the number  
19 of people who would vote on election day if  
20 people who voted on election day in the past  
21 now had access to an early voting site?

22 A. It's possible.

23 Q. Did you take that into account in making your  
24 study about your conclusions that counties are  
25 going to have to hire or get more machines or



1 more poll workers?

2 A. As I said earlier, if you look at the numbers  
3 at the polling places and the precincts and  
4 what the polling place could have come to it,  
5 there's a limited time that you can process  
6 things, and if you just take a look at that,  
7 any common reasonable person can see you're  
8 going to have a jam.

9 Q. Okay. Did you ever study whether a particular  
10 county uses all of its voting equipment on  
11 early voting or do they hold back stuff that  
12 they use on election day?

13 A. That information has been gathered and  
14 utilized.

15 Q. Do you remember what it says?

16 A. It would vary from election to election  
17 depending on the turnout. There were so many  
18 counties that would hold machines in reserve in  
19 case one would falter. Each of those things  
20 have been presented to the State Board, and  
21 there should be records of that off and on  
22 through different elections. I cannot remember  
23 everything that occurred because it is a big  
24 operation.

25 Q. So there are counties that have not deployed

1 needs to be an audit that that machine has not  
2 been used twice.

3 Q. So the voting equipment that's used in early  
4 voting is not redeployed on election day?

5 A. No.

6 Q. Is that true all over the state?

7 A. Most everywhere that I'm familiar with, but I  
8 cannot say for certainty.

9 Q. Would you favor counties taking steps to make  
10 early voting more accessible to more voters?

11 A. I believe that it's a voter's choice. I think  
12 that what we've got to do is allow enough ways  
13 for it to be accessible to the voters and they  
14 could make their choice.

15 Whether they like to vote in person or  
16 if they want to vote by mail or if they want to  
17 show up on election day, we have to be flexible  
18 to make that the best experience possible for  
19 the voter.

20 Q. And would you agree that one way to make early  
21 voting more accessible to more voters in the  
22 county is to open more early voting sites?

23 A. That is a way.

24 Q. Okay. What about -- I want you to turn now to  
25 paragraph 20.

1 A. Yes.

2 Q. Are you aware that the State Board of Elections  
3 did a mailing to every household in  
4 North Carolina explaining the changes in the  
5 laws prior to the May primary?

6 A. I got a copy.

7 Q. Okay. And are you aware that they're going to  
8 do that same mailing again before the general  
9 election in the fall?

10 A. No. I'm just happy they got a budget.

11 Q. Would that -- would that be the sort of thing  
12 that you would support as far as voter  
13 education?

14 A. That is one of many things. The problem with  
15 voter education is to be effective, you've got  
16 to use many different types of media many  
17 different ways, many different times for it,  
18 and it's got to be over a period of time before  
19 it sinks in.

20 And usually my experience, whether it's  
21 election officials administrating something on  
22 election day or early voting or the voter,  
23 after two or three elections, it becomes the  
24 norm instead of the new.

25 Q. So the new system would become the norm and

1 people would understand it?

2 A. Yes, but it would take a transition time.

3 Q. How long would that be?

4 A. Usually two, three elections, but each -- each

5 item is different. So one might be for one

6 election, one might be longer. It just -- you

7 know, you never -- the good thing that you can

8 say about elections is that each election, even

9 though you do similar things, is always

10 different. It has its own personality, its own

11 character.

12 Q. So would you think two or three elections would

13 be enough for it to become the norm?

14 A. Possibly, yes, especially if it's part of --

15 those two or three elections includes a

16 presidential. The presidential general

17 election is so much different from the other

18 elections.

19 Q. Okay. So if you had -- if you had a general

20 election and a presidential election back to

21 back, would that result in these new practices

22 being the norm that people understood at that

23 point in time?

24 MR. DONOVAN: Objection to form.

25 THE WITNESS: It is possible.

1 BY MR. FARR:

2 Q. And then there's other elections going on

3 besides those two elections in the interim?

4 A. Correct.

5 Q. So that the same rules would apply to the

6 primaries?

7 A. Yes.

8 Q. And the municipal elections?

9 A. Yes.

10 Q. All right. Now I want to ask you about  
11 paragraph 23. You say I anticipate that the  
12 cut to early voting will negatively affect  
13 African Americans more than it will other  
14 groups.

15 Do you see that sentence?

16 A. I do.

17 Q. What's the basis of your opinion on that?

18 A. We have kept studies during my tenure, during  
19 my experience, of who utilized early voting,  
20 and it was Afro-Americans, seniors and usually  
21 first-time voters, and I believe that if there  
22 is a condensed period of time, it cuts down on  
23 their flexibility and their ability in some  
24 cases to vote early. They will have to use  
25 another form of voting or choose not to vote at

1 BY MR. FARR:

2 Q. Well, what did you -- when -- let's start over  
3 again.

4 When you -- your conclusions about  
5 African Americans participate more heavily in  
6 early voting than Caucasians, what are you  
7 basing that on, what statistics?

8 A. The State Board records during the time that I  
9 reviewed them showed a high number of  
10 Afro-Americans proportionately to other groups  
11 voting.

12 Q. Okay.

13 A. The record will show.

14 Q. I understand that, but what I want to know is  
15 what did you measure. Did you measure the  
16 percentage of African Americans who voted in  
17 the total election as compared to those who did  
18 early voting?

19 A. The focus was early voting. It was not general  
20 election when I was making that statement.

21 Q. So do you remember what those figures said?

22 A. It's been so long ago, and I'm not omniscient.

23 Q. Did you look to see if African Americans had  
24 participated at similarly high rates as  
25 compared to Caucasians in off-year elections?

1 A. I cannot answer that.

2 Q. You don't remember?

3 A. Don't remember.

4 Q. Did you ever look at it?

5 A. Yes.

6 Q. But right now you don't know what the answer

7 is?

8 A. No.

9 Q. Okay. Do you have any objections to the law's  
10 requirement -- the new law's requirement that  
11 the early voting sites be open the same hours  
12 as other sites within a county?

13 A. I am not in favor of that.

14 Q. And explain why you're not in favor of that.

15 A. Because I believe that each county should have  
16 flexibility to add more or less as their needs  
17 are. I believe in having more flexibility.

18 Now, I do think that there should be  
19 some type of provision that if a county tried  
20 to slide by because they were cheap and did not  
21 want to provide the necessary funds or  
22 budget for this that there -- there could be  
23 some way to keep that from happening, but I do  
24 believe in flexibility.

25 Q. And who gets to decide the flexibility issue?

1 differently than the person who lives in the  
2 more densely populated areas where they have  
3 more days and more hours?

4 A. I view it a different way. I view it as an  
5 opportunity which they may not have the ability  
6 to have if you were to say we must have  
7 somebody there 17 days.

8 Q. But the person in the densely populated area  
9 has got the opportunity to vote in 17 days but  
10 the person in the other part -- the smaller  
11 part of the county does not have that option?

12 A. I hear you, but what I'm talking about is  
13 practicalities.

14 MR. CORDLE: They can vote (inaudible).

15 THE WITNESS: They can.

16 BY MR. FARR:

17 Q. Okay. I want to talk about something that  
18 is -- having been involved with soccer for a  
19 long time, I don't understand the off-sides  
20 rule still. I am going to get into a topic now  
21 that is equally puzzling to me, which is list  
22 maintenance.

23 So I am going to hand you an exhibit

24 that I would like to ask the court reporter to

25 mark as Exhibit what?



1 THE REPORTER: Exhibit 153.

2 (WHEREUPON, Defendant's Exhibit 153 was  
3 marked for identification.)

4 BY MR. FARR:

5 Q. Gary, you can look at this as long as you like  
6 because I am going to have a lot of questions  
7 on this.

8 A. Okay. Just the first page or the whole thing?

9 Q. I am going to ask you about the whole document.  
10 I may give up maybe after the third or fourth  
11 page, but I do have a lot of questions on this.

12 A. Okay.

13 Q. Have you seen this before?

14 A. I have.

15 Q. You have?

16 A. Yes.

17 Q. Can you tell us what it is?

18 A. Basically is analysis of mail verification  
19 during when the registration period was open  
20 and also during the one-stop time periods and  
21 what the undeliverable rate of those  
22 verifications were, and it shows the numbers of  
23 new registrants and the dates that the report  
24 was generated.

25 Q. So my first question is was this -- this report

1 is dated February 11, 2013. Did Veronica --

2 A. She did it.

3 Q. Degraffenreid?

4 A. Yes.

5 Q. Very nice lady. She did this report.

6 A. Yes.

7 Q. What date -- the voter file, it gets changed

8 every day?

9 A. Yes.

10 Q. Do you know what date she used to look at this

11 report? Did she look -- this report is dated

12 February 11, 2013. Did she look at the voter

13 file the day after election day in 2012 or did

14 she look at the voter file at a later date?

15 A. At a later date.

16 Q. And a lot of things can change with each

17 voter's status every day?

18 A. Yes.

19 Q. So the voter file that she would have used to

20 prepare this report would have looked a lot

21 different than the voter file that would have

22 been available the day after election in 2012?

23 MS. RIGGS: Objection; vague.

24 THE WITNESS: Yes.

25 BY MR. FARR:

1 Q. Now, bear with me. Undeliverable -- well,  
2 let's go through the column on the first page.

3 It's got registration period in the  
4 first column. And as I understand it, Veronica  
5 has separated same-day registration periods out  
6 from other days where recommendations took  
7 place?

8 A. Correct.

9 Q. So the same-day registration periods, would  
10 they be 4/19/2012 to 5/5/2012 and 10/18/2012 to  
11 11/3/2012?

12 A. Correct.

13 Q. So as of the date of this report -- and then  
14 the number column shows how many people  
15 registered during those timeframes, right?

16 A. Right.

17 Q. So, for example, 18,086 voters were same-day  
18 registration people during the May primary in  
19 2012?

20 A. Correct.

21 Q. And 97,100 were same-day registration voters  
22 during the general election in 2012?

23 A. Correct.

24 Q. And then all the other total new registrants  
25 were people who registered at times other than

1 during the same-day registration?

2 A. Correct.

3 Q. And so most people register at times other than  
4 same-day registration?

5 A. Correct.

6 Q. Now, what about -- what does undeliverable rate  
7 mean?

8 A. Undeliverable rate means that the first and  
9 second verification notices have been returned.

10 Q. Okay. So, Gary, explain -- this is going to be  
11 seen by a judge and this is very complicated.

12 So why do you do verification mailings? What's  
13 the purpose of that?

14 A. The purpose is -- this comes from the National  
15 Voter Registration Act of 1993 that was  
16 implemented in 1995, and what the compromise at  
17 the time and I -- you know, it's been a while  
18 so I am going to give you the high level view.

19 There were trade-offs with things that  
20 each of the parties in Congress would want and  
21 they thought that instead of having ID that you  
22 could use -- you could use U.S. mail service to  
23 verify that the person lived at the place that  
24 they were living, and what has occurred is that  
25 a verification notice is set forth -- whenever

1 you get an application, you then in turn mail  
2 it to that voter at the address that they state  
3 is on their application.

4 And it is sent, and if it's returned,  
5 you send a second one. And the reason why is  
6 that there have been some issues before with  
7 spellings of names, spellings of streets, wrong  
8 zip code, error by the Postal Service, postal  
9 error maybe by the person maybe doing work at  
10 the board of elections, there could be a number  
11 of errors, but a second one is sent out. And  
12 if that is returned, then you deny that  
13 application and they are not eligible to be on  
14 the voter rolls.

15 Q. Okay. I've got a few questions about that.

16 A. Okay.

17 Q. When somebody fills out a registration form 25  
18 days before the election or during same-day  
19 registration, does that form have an address  
20 for the applicant's residence?

21 A. It is supposed to be their residence, yes.

22 However, there are some people who cannot  
23 receive mailings at that residence, and if it  
24 is a post office box, we must send it to  
25 the -- well, the board of elections must send

1 it to the post office box or whatever general  
2 delivery address that they receive their mail.

3 Q. Okay. Here's a question that I have: Is the  
4 voter allowed to put down a mailing address  
5 where the card will be mailed other than his  
6 residence address?

7 A. No.

8 Q. Are you sure?

9 A. I do not -- I believe that it must be their  
10 mailing address or residence address. It  
11 cannot be another address. For instance -- let  
12 me give you an example of what I mean.

13 Q. Okay.

14 A. Let's say that I live on my street. I cannot  
15 in lieu send it to another street in the same  
16 town. It is supposed to be the residence  
17 address or the mailing address that you receive  
18 your mail if it cannot be delivered to your  
19 residence.

20 There are several examples of not being  
21 able to go directly to your residence address.  
22 One might be an apartment complex that has a  
23 mail system of pickup somewhere. It could be a  
24 university dorm. There are just different  
25 examples of that nature.

1                   And then there are some areas that  
2           don't have postal service. I know that when I  
3           was a student and lived one year at  
4           Wrightsville Beach, there were a group of  
5           people that had general delivery at  
6           Wrightsville Beach and that's how they received  
7           their mail, and then you have a person who is  
8           homeless, and what we try to do is share with  
9           us where you spend the night, whether it be at  
10          some park bench or some tent and where you try  
11          to get your mailing and we try to accommodate  
12          that voter that way, but usually that is a  
13          temporary situation where they may be in that  
14          jurisdiction one election and gone somewhere  
15          else another election.

16        Q. Okay. So I think we're on the same page but  
17        let me ask you this: Does the registration  
18        form have a different space for residents'  
19        address and mailing address?

20        A. I have not seen the latest ones so I cannot  
21        tell you.

22        Q. Do people -- do applicants ever list different  
23        mailing addresses than the address they list as  
24        their residence?

25        A. I'm certain they do.

1 Q. And you said college students might be an  
2 example of someone who may do that?

3 A. Yes.

4 Q. And do you know if anyone ever lists a mailing  
5 address that is out of the State of  
6 North Carolina?

7 A. As their mailing address?

8 Q. Uh-huh. And if you don't know that, Gary,  
9 that's fine. This is complicated.

10 A. I remember one situation where there was a  
11 North Carolina -- an overseas citizen that  
12 claimed North Carolina as their residence, and  
13 it was in the City of Charlotte, and how  
14 through legal counsel we resolved that problem  
15 is that he stayed at this same hotel every time  
16 he came to Charlotte and so we would mail  
17 information not only to that hotel but also  
18 where he was overseas. That is the only thing  
19 that comes to my mind.

20 I am certain that there are lots of  
21 other examples that somebody like Veronica  
22 could share with you.

23 Q. Okay. All right. So let's -- walk me through  
24 this verification process.

25 I think you said that each registrant



1 gets two cards sent to them before they're

2 denied?

3 A. That's correct.

4 Q. What's the -- is that a state law or is that a

5 federal law to get two cards?

6 A. Both.

7 Q. So you say the Motor Voter Act requires that

8 also?

9 A. Yes. The state law basically reflects the

10 federal law.

11 Q. Okay. All right. So walk me through that.

12 When does the county board -- when are they

13 supposed to mail the first card?

14 A. During -- when same-day was law, they had

15 within 48 hours of receipt.

16 Q. 48 hours of receipt of what?

17 A. The application.

18 Q. Okay.

19 A. There are counties that will not process

20 immediately during when the registration books

21 are open. What they attempt to do is to get

22 enough mailings for a reduced mailing rate to

23 send out, and they may hold the cards maybe 7

24 to 14 days, but the -- I do not know if it's

25 policy or law, but we tried to encourage boards

1 of election to be prompt about that and try to  
2 stay within the 7 days so they do not get too  
3 far behind, but I do know there are counties  
4 that try to get enough to have a little  
5 discount on their mailings.

6 Q. So let's try to separate people that register  
7 25 days before the election versus same-day  
8 registration.

9 For people who register 25 days before  
10 the election, when are the county boards  
11 supposed to send the first verification card?

12 A. Most counties do it within one or two days, but  
13 most -- other counties save for a reduced  
14 postal rate, like I just said.

15 Q. Did you ever do an audit to see how many  
16 counties actually do it within one or two days  
17 versus how many hold the --

18 A. That information was gathered, but I cannot  
19 tell you anything about it.

20 Q. When was it gathered?

21 A. I would say at various times throughout my  
22 tenure since 1995.

23 Q. Okay. So some counties will send the first --  
24 we're talking about people who register 25 days  
25 before the election. Some counties will send

1 the card within 48 hours and others hold the

2 cards to get a discount on their mailings?

3 A. That's correct.

4 Q. And the cards were sent first class mail?

5 A. Yes.

6 Q. With return service requested?

7 A. Yes.

8 Q. Now, again talking about the people that

9 register 25 days before the election, when --

10 when is the second card sent and why?

11 A. The second card is sent upon receipt of the

12 returned piece of mail.

13 Q. This is something that's confusing to me.

14 Let's say the first card doesn't come back for

15 two months. Would the county board still send

16 the second mail verification card?

17 A. No because until it is received after a period

18 of about 15 days, they -- and they have not

19 received anything back, then they believe that

20 that person is at that address and they are

21 registered.

22 Q. So if the card doesn't come back within

23 15 days, the person's considered verified?

24 A. Yes.

25 Q. Even if the card comes back 20 days?

1 A. That's when you follow up with the second card.

2 Q. Okay. So if the card doesn't come back in  
3 15 days, the person's considered verified?

4 A. Yes.

5 Q. And he would be allowed to vote?

6 A. Yes.

7 Q. But if a card came back within 20 days, that  
8 person would then still get a second card?

9 A. Yes.

10 Q. Then what happened if that card came back?

11 A. The registration would be denied.

12 Q. Okay. And would that be true if the card came  
13 back in 15 days, 20 days or 25 days?

14 A. Any time a card gets back, you're mandated by  
15 law to send the second verification.

16 Q. And if the second card comes back 15 days  
17 later, 20 days later, 30 days later --

18 A. Or nine years later.

19 Q. -- the person's denied?

20 A. That has happened before.

21 Q. Okay. All right. Now, let's just again talk  
22 about people who register 25 days before the  
23 election. What if the person votes before the  
24 first card comes back, how is that person  
25 treated?

1 A. There is a provision in our law that states  
2 that if a person shows up in person and votes  
3 and the mailing comes back, you are supposed to  
4 process them as an inactive voter, put them on  
5 the inactive voter and move forward through the  
6 confirmation process.

7 Q. What if the first card comes back before the  
8 person votes, what status does that person  
9 have? Can they come in and vote then?

10 A. It's still a verification-pending status  
11 because you've got to have two to deny them the  
12 right to be registered.

13 Q. Okay. So if they came in to vote, even though  
14 one card had been returned, they would be  
15 allowed to vote?

16 A. Yes, because they voted in person.

17 Q. Okay. Now, the individual who's registered  
18 25 days before the election who shows up on  
19 election day and votes and has a card that  
20 comes back, a verification card, walk me  
21 through the process of what happens to that  
22 voter. What type of mailings do they receive  
23 at that point in time?

24 A. Just one verification mailing that has been  
25 returned, a second verification mailing would

1 be sent.

2 Q. Okay. What if the second verification came  
3 back, would you send a third verification?

4 A. No. If they had voted in person, they would be  
5 processed as an inactive voter.

6 Q. Okay. So the person registers 25 days before  
7 the election, they vote, card comes back, the  
8 verification card comes back, they're sent one  
9 more verification card?

10 A. Correct.

11 Q. If that card comes back, then what happens to  
12 them?

13 A. If they had voted, they are an inactive voter  
14 status and they go through the confirmation --  
15 list confirmation process.

16 Q. So they become inactive -- an inactive voter  
17 only after the second card comes back?

18 A. Right.

19 Q. Okay. And then after that, they go to an  
20 inactive voter status. Is that a function of a  
21 state statute or was that a policy of the State  
22 Board of Elections?

23 A. It is a federal and state statute.

24 Q. Okay.

25 A. Excuse me. Excuse me. Let me correct. The

1 list maintenance process is federal and state.

2 However, if someone voted and the confirmation

3 came back, I know that it is a state law. I

4 cannot affirm whether it has any federal

5 counterpart law, but I do know that's a state

6 law.

7 Q. So they don't go to inactive status unless two

8 cards come back?

9 A. Right and they voted.

10 Q. Okay. And then let me go to inactive status.

11 Then what happens to them?

12 A. Inactive status means if this person does not

13 come back and update their information and show

14 that they stayed within the county, then they

15 are taken off after two federal elections.

16 Q. Do they get any more mailings?

17 A. They get a confirmation mailing which is a

18 first class piece of mail that's forwardable,

19 and we find a lot of people who have moved in

20 this period of time.

21 Q. Are there any situations where a voter gets

22 three verification mailings before they get a

23 confirmation letter?

24 A. That's not how the law is set up. That's not

25 how the policies are set up.

1 The only way they would get a third  
2 vacation is if they put in a new application  
3 with a new address.

4 Q. Okay. Got that. I just -- I misunderstood  
5 what happened when you became an inactive  
6 voter. I thought you got another verification  
7 mailing.

8 A. No. It's a confirmation mailing.

9 Q. What's the difference between a verification  
10 mailing and a confirmation?

11 A. Verification cannot be forwardable.

12 Confirmation is forwardable.

13 Q. What does that mean?

14 A. That means if they left a forwarding address,  
15 that piece of mail that you sent would get to  
16 that potential voter who would either update  
17 their records or hopefully tell you they have  
18 moved out of that jurisdiction.

19 Q. All right. Let's turn to the next page of  
20 Exhibit 153.

21 MR. CORDLE: That's page 2?

22 MR. FARR: Yes, page 2. Thank you.

23 BY MR. FARR:

24 Q. So, Gary, it says 2012 election registration  
25 dates 01/01/2012 to 04/13/2012, right?



1 A. Yes.

2 Q. So this is the initial period for registration  
3 in North Carolina prior to the same-day  
4 registration in 2012?

5 A. Correct.

6 Q. So I want to go through some of these terms so  
7 I know what they mean. There is a column that  
8 says voter status and verification status and  
9 there is a term called active and next to  
10 active it says 128,196. Can you tell me what  
11 that is?

12 A. Active means that no verification mailing has  
13 been returned and they are assumed to be duly  
14 registered voters, and that will be the case  
15 unless the verification letter comes back.

16 Q. And again, this is what the voter file looks  
17 like sometime after the general election in  
18 2012?

19 A. Correct.

20 Q. So what does "Confirmation Not Returned" mean?  
21 And there's a number 2 next to that.

22 A. What that means is a confirmation mailing has  
23 been sent but no forwardable information or  
24 correspondence has been returned to the board  
25 of elections, county board of elections.

1 Q. And how does that differ from "Confirmation  
2 Pending"?

3 A. Confirmation pending means that the  
4 confirmation letter has been sent out but there  
5 has not been enough time for all the processes  
6 and mailing processes to work itself out.

7 Q. That's -- okay. Now, I lost my train of  
8 thought here. "Confirmation Returned  
9 Undeliverable," is that different?

10 A. Confirmation returned undeliverable means that  
11 the address that the confirmation mailing was  
12 sent to was not an address that could be --  
13 that the postal service could deliver to.

14 Q. Okay. And then what does "Unverified" mean?

15 A. Unverified means that you've got -- I'm not  
16 going to guess.

17 MR. CORDLE: Please don't guess,

18 Mr. Bartlett.

19 MR. FARR: Yeah, that's good, we don't

20 want you to guess.

21 THE WITNESS: Okay.

22 BY MR. FARR:

23 Q. So you don't know what that means?

24 A. I believe I do, but I'm not going to share.

25 Q. Because it's a guess?

1 A. Yes. And I think it's a 90 percent guess.

2 Q. Can you give me a 90 percent guess?

3 A. No, not today.

4 Q. All right. So what does "Verification Pending"

5 mean; do you know?

6 A. Verification pending means that the mailing has

7 been sent but it's not complete in the 15 days

8 or the second verification has not been

9 returned.

10 Q. So if the second verification has not been

11 returned, wouldn't that mean they would be

12 verified?

13 A. If the second has not been returned, they will

14 be verified, that's correct.

15 Q. So can you shed any light on what "Verification

16 Pending" means?

17 A. Verification pending is still a verification

18 letter is out there and the 15 days has not

19 been completed whether it's a first

20 verification mailing or a second.

21 Q. Okay. And then what does verify mean?

22 A. Verified means that these voters have gone

23 through the process and there have not been any

24 type of mailing that has been returned.

25 Q. Okay. Now "Denied," tell me what that means.

1 A. That means there had been two verification  
2 letters that had been returned and they have  
3 been denied their application for voter  
4 registration.

5 Q. Could the application be denied for reasons  
6 other than the cards being returned?

7 A. Yes.

8 Q. What are some of those other reasons?

9 A. Other reasons: The signature by the voter was  
10 not on the application, the birthday was not on  
11 there and they could not get this information.

12 Essential pieces of information on an  
13 application need to be on there, and that  
14 includes a name, a birth date, a residence  
15 address, a signature, also, are you an American  
16 citizen, are you a felon, all those things must  
17 be placed on the application. And if they  
18 aren't, the county boards are to make a good  
19 faith effort to try to get that information,  
20 and if they cannot, then they are denied.

21 Q. So does the county board look at that  
22 information before they send the first  
23 verification letter?

24 A. They are supposed to.

25 Q. So if the process is working properly, you

1 could be denied by the county board because you  
2 had omitted information from your registration  
3 form that was essential --

4 A. And required by law.

5 Q. And required by law. And that could happen  
6 before any verification card was mailed?

7 A. Yes.

8 Q. Now, does this report indicate how many of  
9 these voters who registered prior to same-day  
10 registration were denied by the county board  
11 because of inadequate registration forms versus  
12 how many were denied versus two cards came  
13 back?

14 A. Looking at the information, it -- the only  
15 place that could be missing pieces of  
16 information would be administrative and, of  
17 course, I mentioned to you earlier U.S. citizen  
18 and felony conviction, and they show felony  
19 conviction.

20 We do have duplications or the board of  
21 elections have duplications on occasion where  
22 somebody believed that if they -- they have to  
23 register for new -- for each election instead  
24 of being permanently registered as long as they  
25 stay within the county.

1 Q. But you were looking felony conviction under  
2 the removed category, right?

3 A. Yes.

4 Q. That's a whole different category than denied,  
5 is it not?

6 A. If you're convicted of a felony, you are  
7 denied.

8 Q. Okay. But what I'm saying is up in the part of  
9 the chart that says there were a total 2,225  
10 voters who were denied, this chart doesn't  
11 explain how many of them were denied because  
12 two cards were returned versus how many were  
13 denied for some other reason? It doesn't break  
14 down that number that way, does it?

15 MR. DONOVAN: Objection.

16 THE WITNESS: The way it is set out it  
17 looks like the denied or the verification  
18 mailing have been returned.

19 BY MR. FARR:

20 Q. Why do you say that?

21 A. Because it's talking about unverified,  
22 verification pending, verified. These are list  
23 maintenance processes versus the other  
24 processes that I was talking about early about  
25 if you're a U.S. citizen or if you did not

1 provide a signature or birth date or a

2 residency address.

3 Q. But, Gary, the section on "Removed," that's a

4 whole different animal. A removed voter is not

5 the same as a denied voter? We'll get to that

6 in a second.

7 A. If they are removed, yes, they are essentially

8 denied, but for the purposes of this breakdown,

9 it's different.

10 Q. Well, the removed voters are people who were

11 once on the list and verified who get removed,

12 right?

13 A. Yes. Yes.

14 Q. So the category under voter status and voter

15 verification for denied, there's no breakdown

16 there for the number of people who were denied

17 because of cards being returned versus people

18 who were denied initially by the county board

19 before the cards were mailed; is that correct?

20 A. I would have to agree with that.

21 Q. Okay. All right. Now let's talk about removed

22 voters -- well, let's first talk about inactive

23 voters. How do you become inactive?

24 MR. CORDLE: I'm sorry. Did you

25 say --

1 Q. And if they come back, whatever time they come  
2 back before you're denied by the mail  
3 verification process, you've got to have a  
4 second card come back?

5 A. Yes.

6 Q. Would you agree that it's more likely for  
7 someone to be denied based upon mail  
8 verification if they register 25 days before  
9 the election as opposed to people who do  
10 same-day registration?

11 A. It's possible.

12 Q. Well, my question: Isn't it more likely  
13 because the amount of time involved is only  
14 than 17 days?

15 A. Yes.

16 Q. So again as far as the number of denied voters  
17 here on page 4, this, again, doesn't break down  
18 whether they were denied because their  
19 applications were missing critical information  
20 versus people who were denied because two cards  
21 came back. There's no breakdown here, is  
22 there?

23 A. No.

24 Q. Do you think it's likely that most of these  
25 people who were denied were denied because



1 their applications were missing information?

2 MR. DONOVAN: Tom, can you give a date?

3 I object with the timeframe. I'm concerned  
4 with the timeframes here.

5 MR. FARR: Well, I'm not -- Dan, I  
6 appreciate your comment.

7 MR. DONOVAN: Objection; foundation.  
8 Go ahead.

9 MR. FARR: Let me think about what you  
10 just said.

11 MR. DONOVAN: And I can tell you at a  
12 break and not talk on the record here.

13 BY MR. FARR:

14 Q. The column "Denied" on page 4 means that these  
15 voters were not allowed to vote during the  
16 same-day registration process. Does it not  
17 mean that?

18 A. Correct.

19 Q. Okay. And people are allowed to vote the same  
20 day or allowed to cast a ballot and run it  
21 through the machine during same-day  
22 registration on the same day they register?

23 A. Yes, that's how the law is set up.

24 Q. And once that happens, if a card comes back,  
25 mail verification card comes back, that voter

1 would be treated as being inactive?

2 A. Correct.

3 Q. So if you're a same-day registration person and  
4 you're denied, that means you must have been  
5 denied while you were attempting to register?

6 A. Not necessarily. There could be a possibility  
7 where the two verification mailings came back  
8 before the canvas took place.

9 Q. Okay. And that would -- that would -- the  
10 maximum amount of time for that to happen would  
11 be 27 days, 17 days early voting and 10 days  
12 until the canvas?

13 A. Yes.

14 Q. So you're saying that -- so if somebody cast a  
15 ballot during same-day registration and the two  
16 cards came back before the canvas, they could  
17 be denied?

18 A. Yes.

19 Q. Okay. Do you think it's more likely that these  
20 persons who were denied were denied for reasons  
21 related to their application than because of  
22 the mail verification?

23 A. I cannot answer that.

24 Q. Would you agree that it's more likely for  
25 somebody to -- who registers 25 days before the

1 election to be denied for two cards coming back  
2 than it is for a same-day registration voter to  
3 be denied for two cards coming back?

4 A. I would say that you would have more time,  
5 correct.

6 Q. So there's more time to go through the  
7 verification process for people who register  
8 25 days before the election than for those who  
9 do same-day registration?

10 A. Yes.

11 Q. Okay. Now I want to ask you a question about  
12 what happens to a same-day registration person  
13 who -- whose first card doesn't come back until  
14 after the canvas and then the card comes back.  
15 How is that person treated?

16 A. We have already discussed that.

17 Q. Well, I want to see if there's a difference  
18 between same-day registration and normal --

19 A. There is not -- well, there is if it's same  
20 day. What is in the law, it says if you're a  
21 same-day registrant and you show up and vote in  
22 person, then you are treated as an inactive  
23 voter. If the same thing happens while the  
24 books are open without the act of voting, you  
25 are denied after the second verification.

1 Q. My question, though, is say the person did  
2 same-day registration and they voted and the  
3 first card comes back, let's say, before the  
4 county canvas, what happens to that voter? Is  
5 he denied at that point in time?

6 A. The county board, if they have the information  
7 before them, have that right to deny it and not  
8 count that vote.

9 Q. Even if only one card's come back?

10 A. Not one card. Excuse me.

11 Repeat the question, please.

12 Q. It's complicated, and I'm glad you asked me to  
13 repeat it.

14 Same-day registration person, one card  
15 comes back before the county canvas. Is his  
16 vote counted or not counted?

17 A. The process has not been completed so it's  
18 counted. You've got to have two verifications  
19 back before that kicks in.

20 Q. Okay. All right. So the same-day registration  
21 person who votes would only be denied under  
22 this -- as this term is defined here if both  
23 cards have been returned prior to the county  
24 canvas?

25 A. If both cards have been returned, they denied

1 before their -- their vote will not count if

2 the county boards act on it.

3 Q. And if one card is returned, the votes counted

4 and a second card is sent to that person; is

5 that right?

6 A. Yes.

7 Q. Okay. Now you said that somebody who votes is

8 treated as an inactive -- somebody who votes

9 who's had two cards come back is treated as an

10 inactive voter?

11 A. If they had already voted in an election, yes.

12 If the second verification comes back after,

13 yes, that's how -- that's how the law is set

14 up.

15 Q. So if a same-day registration person has no

16 cards that come back until after the canvas,

17 how does the verification process play out if

18 after the canvas the first card comes back?

19 A. You send a second card.

20 Q. Okay. And then after you send the second card

21 and it comes back, what do you do?

22 A. Then since they showed up and voted in person,

23 they are considered inactive and go through the

24 inactive process.

25 Q. And what does -- and for the same-day

1 from the postal service?

2 MR. DONOVAN: Objection; calls for  
3 speculation.

4 THE WITNESS: That's what common sense  
5 would tell you, but it is speculation.

6 BY MR. FARR:

7 Q. Okay. But common sense would tell you that  
8 they should all be returned?

9 A. Yes.

10 Q. And has the State Board ever tested that as far  
11 as you know?

12 A. No.

13 Q. Okay. Now going back to your report

14 Exhibit 152, you talk about in paragraph 25 the  
15 early voting ballots are retrievable.

16 A. Correct.

17 Q. Okay. How would you know there was a problem  
18 with early voting ballots?

19 A. If the voter was given the wrong ballot style.

20 Q. Or what about if they didn't verify eventually?

21 A. That is another possibility.

22 Q. Right. And is there not -- if someone ends up  
23 not verifying after the third week in November  
24 when the election results are certified, is  
25 there any remedy to a candidate if the number

1 of unverified voters would have an impact on  
2 that candidate's election?

3 A. If it happened after everything has been  
4 certified --

5 Q. Yeah.

6 A. -- and a Certificate of Election has been given  
7 to a candidate, there is no remedy within the  
8 election laws. I would say if there is any  
9 kind of remedy, it would have to go to some  
10 other aspect of the court.

11 Q. And you'll agree, will you not, Gary, that  
12 there's a possibility -- in fact a likelihood  
13 that some people won't complete the  
14 verification process until after the third week  
15 in November when the State Board meets?

16 A. That's possible.

17 Q. And we could go back and look at Exhibit 153  
18 and we could see that there were people who  
19 didn't verify as of the date of the report  
20 which would have been well after the November  
21 board meeting in 2012.

22 A. Right.

23 Q. Okay.

24 MR. DONOVAN: I'm just going to put in  
25 the objection that goes back to the timeframe

1 that I brought up before. Objection.

2 MR. FARR: Okay.

3 BY MR. FARR:

4 Q. Now, I want to ask you about paragraph 26

5 about -- you take exception to the change in

6 the law that takes away from the county boards

7 the right to keep precincts open on election

8 day.

9 A. Yes, sir.

10 Q. Can the State Board keep precincts open on

11 election day?

12 A. If the law does not allow it.

13 Q. Huh?

14 A. If the law does not allow it, they don't have

15 that kind of authority.

16 Q. Gary, I could be wrong, but my understanding is

17 that the new law does allow the State Board to

18 keep the polls open, and I may be wrong

19 because, honestly, there's a lot of stuff going

20 on in this case, but if that's what the law

21 says, would that address some of the concerns

22 that you have if the State Board could keep the

23 precincts open?

24 A. If there is a remedy for there to be an open

25 precinct, yes, that would be very helpful



1 because there are a lot of things that can  
2 happen on election day and they have happened  
3 during my tenure.

4 An example -- well, I've given several  
5 examples I think in there, but there was -- has  
6 been polling places that's been closed down  
7 because of bomb threats for an hour or more,  
8 and certainly, out of fairness, you need to  
9 allow those that may have tried to go vote a  
10 little extra time.

11 There's also been a chemical spill in  
12 an area where they closed the routes to the  
13 polling place. We had a tornado go through one  
14 of the polling places. We have had Hurricane  
15 Gustav come early and we had to close down some  
16 polling places, and we got some cutesy stories  
17 that we can tell of the brave election  
18 officials. And we've also had a former highway  
19 patrolman walking across the street and getting  
20 hit by a vehicle and die that caused to close  
21 down.

22 So things happen, and I believe out of  
23 a sense of fairness you need to have someone  
24 with the authority to say, hey, something's  
25 happened here, let's keep it open a little

1 while longer.

2 Q. And you're saying that if the new law allows  
3 the State Board to do that, that would address  
4 your concerns?

5 A. It should if they acted correctly.

6 Q. Okay. I'm now going to go into this section on  
7 same-day registration, but I've asked a lot of  
8 my questions I have on this so I think we can  
9 get through this pretty quickly.

10 Okay. Gary, you say -- look at  
11 paragraph 32.

12 A. Yes, sir.

13 Q. I am going to read that into the record.

14 "Just because a verification  
15 mailing was returned as undeliverable  
16 does not mean that the voter  
17 registration was invalid.

18 "My experience is that people move  
19 a lot, for a variety of reasons, and  
20 could legitimately live and vote at one  
21 address, and a subsequent move would  
22 cause problems for receiving verification  
23 mailings from the county board of  
24 elections."

25 Okay?

1           be 65 to 70 percent. All of those have  
2           different turnout rates. All of them have  
3           different characteristics.

4                     But my point, which I obviously am not  
5           stating it well enough, is that regardless of  
6           what election it is, there should be an  
7           opportunity for a voter -- a person that's  
8           eligible to register and vote, and I believe  
9           that the second chance that happens during the  
10          early voting period allows for that. Plus it  
11          cuts down on provisional ballots that happen on  
12          election day and that's another plus.

13          Q. Have you calculated how provisional ballots  
14          have been cut down?

15          A. Yes, I did. There have been study there. We  
16          could probably get that.

17                     MR. CORDLE: Wait for him to finish his  
18          question before --

19                     THE WITNESS: I'm trying to hurry it  
20          along.

21          BY MR. FARR:

22          Q. You're trying to do what?

23          A. Hurry it along.

24          Q. Well, don't do that. I'll go to four corners.

25          A. Well.

1 Q. So you say there are studies that show how  
2 provisional ballots have decreased after  
3 same-day registration?

4 A. Yes.

5 Q. And have they decreased in off-year elections?

6 A. I cannot tell you that.

7 Q. Now, under the law as it's been changed, voters  
8 can still register 25 days before the election  
9 without regard to race; is that correct?

10 A. Correct.

11 Q. And they can all go vote during the 10-day  
12 early voting period without regard to race?

13 A. What's that again, please?

14 Q. Voters can decide to vote during the 10-day  
15 early voting period --

16 A. Correct.

17 Q. -- without regard to race?

18 A. Correct.

19 Q. And they can all go vote in the precinct to  
20 which they're assigned without regard to race?

21 A. Correct.

22 Q. In paragraph 36 you talk about early votes  
23 being retrievable. Do you see that?

24 A. Yes.

25 Q. And whether they're retrievable or not would be

1 irrelevant if a problem was discovered after

2 the third week in November, after the State

3 Board certifies the election results?

4 A. And the certificates have been issued.

5 Q. And how long does that take?

6 A. We usually have them out the same day.

7 Q. Okay. But with that caveat, you agree with my

8 statement?

9 A. Yes.

10 Q. This won't make you happy. I don't think voter  
11 ID is an issue right now so I am going to skip  
12 that part of your affidavit and I am going to  
13 talk about out-of-precinct ballots.

14 So, Gary, when -- what's -- is there a  
15 difference between -- in your mind between an  
16 out-of-precinct voter and an unreported-move  
17 voter?

18 A. There is a difference.

19 Q. And how about explaining what you think the  
20 difference is.

21 A. Okay. The unreported move could be a person  
22 that shows up at their old precinct that has  
23 moved more than 30 days, and they have the  
24 option of voting at their new precinct or  
25 central location at the county board of

1 MR. CORDLE: Paragraph 48.

2 MR. FARR: Paragraph 48. Thank you,  
3 Bob.

4 BY MR. FARR:

5 Q. Have you ever talked to people who voted out of  
6 precinct?

7 A. I have had a couple voters talk to me before.

8 A lot of information I read came from the  
9 county boards themselves.

10 And what my conversation was with the  
11 voters that I talked to is that they did not go  
12 to their precinct because they heard about the  
13 early voting sites and thought they could go to  
14 an early voting site on election day and vote  
15 there.

16 Q. Okay. So those are the -- and how many people  
17 did you talk to about that?

18 A. Two or three.

19 Q. And did you talk to anyone else who gave you a  
20 reason for why they voted out of precinct?

21 A. Not firsthand, just information from counties,  
22 and basically the number one reason that we  
23 have gotten through the years is they went to a  
24 one-stop site.

25 Q. Okay. Did any -- did the State Board of

1 Elections ever conduct a survey of people who  
2 voted out of precinct to determine why they  
3 voted out of precinct?

4 A. Just reports that we would get from counties  
5 verbally.

6 Q. Right. So you never did -- the State Board  
7 never did a survey of the voters?

8 A. No.

9 Q. Did any county board actually ever survey  
10 voters in their county who had voted out of  
11 precinct?

12 A. No, not to my knowledge.

13 Q. Okay. Are there any other reasons why people  
14 might vote out of precinct besides the ones  
15 you've listed in paragraph 48?

16 A. Couple reasons that come to mind that I have  
17 heard is that they live elsewhere and would  
18 vote near their work because of the  
19 convenience. That's happened before.

20 Another reason -- and this used to  
21 be -- this used to be a lot larger than I would  
22 have ever thought -- there are some people that  
23 will go to their old precinct where they  
24 originally voted because they have a sense of  
25 community and a sense of belonging versus where

1           their new polling place is and where they  
2           should vote. That has happened. Those are the  
3           three things that come to mind.

4           Q. And you've talked to voters who have told you  
5           that?

6           A. I have talked to at least one or two that told  
7           me about a sense of community, and I have  
8           talked to at least two or three as it relates  
9           to being a one-stop site and at least one I  
10          know of business.

11          Q. Do you know whether or not there's any  
12          political organizations that -- or turnout  
13          organizations that take people to precincts  
14          without verifying whether it's the voter's  
15          correct precinct?

16          A. I am certain I have heard stories like that  
17          before too. I am certain that that does  
18          happen.

19          Q. Okay. Now paragraph 49 you talk about a  
20          handful of counties have expressed unhappiness  
21          about the time it took to count out-of-precinct  
22          ballots but the vast majority did not.

23                         Now, explain that to me, please. When  
24          you say they expressed unhappiness --

25          A. In the beginning they did not like the extra



1 law that helped that problem and the  
2 provisional ballots became more manageable, and  
3 I cannot recall what that is, but I'm certain  
4 Cherie Poucher could let you know.

5 Q. Has the State Board ever conducted a survey to  
6 see if there are any additional expenses for  
7 counties that have come about because of being  
8 required to count out of precinct?

9 A. No.

10 Q. And you have not actually conducted a survey to  
11 get formal feedback from county boards about  
12 their views on out-of-precinct voting?

13 A. We did not have to do anything formal because  
14 we're not bashful people.

15 Q. Because some of them may disagree with that,  
16 but you didn't do a survey, you didn't survey  
17 the county boards?

18 A. To my knowledge, no. It's possible.

19 Q. Okay. And I know one person who's not bashful  
20 is Cherie Poucher who is the elections director  
21 of the Wake County Board, and you say you've  
22 heard complaints from Wake County about --

23 A. Yes.

24 Q. -- out of precinct?

25 A. Yes.

1 Q. Are there additional thoughts associated with  
2 counting out-of-precinct ballots?

3 A. It depends on the number that a county has. It  
4 basically impacts the urban areas more so than  
5 the others. The more volume, the more possible  
6 out-of-precinct voters.

7 Q. And I think you've already said the  
8 out-of-precinct ballots were typically counted  
9 by hand.

10 A. They are counted by hand.

11 Q. So you have to have more staff available to  
12 count the out-of-precinct ballots by hand?

13 A. Yes.

14 Q. All right. I want to talk about voter fraud.  
15 What -- when somebody checks in under  
16 the prior law, what did a voter have to do when  
17 he checked in to either vote during early  
18 voting or on election day? We've talk about  
19 same-day registration people so I want to know  
20 someone who's already registered to vote. What  
21 do they have to do when they show up to vote at  
22 early voting and on election day?

23 A. They show up, they present their name by  
24 stating their name, their address, if it's a  
25 primary, their party affiliation. If they're

1 fraud?

2 A. Yes.

3 Q. And, Gary, what steps were taken when you were  
4 the executive director to compare -- well, let  
5 me start over.

6 Do you think there's people on the  
7 voter rolls in North Carolina who aren't really  
8 there any more?

9 MR. DONOVAN: Objection to form.

10 THE WITNESS: Our lists are naturally  
11 inflated due to how the federal and state law  
12 is set up.

13 BY MR. FARR:

14 Q. And that would include the fact that the  
15 verification process is not perfect?

16 A. That's correct. And the confirmation is not  
17 perfect either.

18 Q. Okay. So you would agree that the voter rolls  
19 are inflated?

20 A. Yes.

21 Q. When you were executive director of the State  
22 Board of Elections, what steps did you take to  
23 compare the voter rolls of North Carolina  
24 against the voter rolls in other states to see  
25 if there were potentially duplicate

1 during the early voting period?

2 MR. FARR: Objection.

3 Go ahead, Gary. I just didn't like the  
4 question.

5 THE WITNESS: Because we have more  
6 experienced people working.

7 BY MS. RIGGS:

8 Q. Is there --

9 A. And the director of election and their staff  
10 have an ability to fix it almost instantly  
11 whereas there's a larger population to look  
12 after on election day.

13 Q. You had a discussion with Mr. Farr about wait  
14 times and he asked you if you had ever  
15 performed any studies across the state to  
16 document wait times.

17 Do you recall that?

18 A. I do.

19 Q. To begin with, how would one go about  
20 conducting such a study?

21 A. You would have to have a lot of money to be  
22 able to do a sampling of voters who  
23 participated and get their opinions after the  
24 fact.

25 Q. You would have to have people stationed all

1 across the state?

2 A. Whatever the sample is selected as.

3 Q. And with that, like with other issues that

4 Mr. Farr asked you about if you had studies

5 conducted, did you find it always necessary to

6 conduct a formal study in order to assess the

7 problems facing different counties?

8 A. No. It would be nice that if we had the

9 resources that we could do some things, but for

10 the most part, the information on its face was

11 enough that you knew that there was a problem

12 you need to deal with it.

13 Q. Your county's -- county board of directors,

14 were they open in their communications with

15 you?

16 A. They were very open, and also county board

17 members that did not think or like what was

18 going on, they were not bashful either.

19 Q. When you were talking with Mr. Farr about the

20 causes of excessive wait times, one of the

21 things you mentioned was inadequate facilities

22 and manpower to process voters.

23 Do you recall that?

24 A. Yes.

25 Q. Can you explain that a little bit more?

1 A. There is another reason. Well, it's all  
2 combined together. If you have a large number  
3 of registered voters who did not utilize either  
4 mail absentee or one-stop absentee, you may not  
5 have the facility to parking abilities to  
6 process a lot of numbers of voters specifically  
7 if they come at one time. So they just have to  
8 wait their turn.

9 And there have been reports to us,  
10 whether they be right or wrong, that people  
11 would get fed up and leave instead of voting.

12 Q. So more volume of voters could cause  
13 increased --

14 A. Volume is the biggest problem, and not having  
15 the infrastructure, whether it be machinery or  
16 people to do the process or the facility to  
17 handle that kind of volume.

18 Q. If voters are taking longer in the privacy  
19 booth to fill out their ballot, could that add  
20 to wait times?

21 A. Yes.

22 Q. Do you anticipate under House Bill 589 that  
23 voters will take longer to fill out a paper  
24 ballot?

25 A. Yes.

1 Q. Why is that?

2 A. Well, for one thing there is no straight-party  
3 ticket voting anymore, and I think that they  
4 will not come as prepared as you would hope for  
5 them to come and they will sit and then start  
6 looking at their choices and whether -- choose  
7 whether or not to vote a full ballot or a  
8 partial ballot, and then you will have a larger  
9 under count number and you will have people  
10 complain that there are under votes which could  
11 be a voter's choice, especially getting close  
12 to election.

13 Q. You also had a discussion -- Mr. Farr asked you  
14 if you agree that more early voting sites could  
15 alleviate long lines.

16 Do you recall that?

17 A. I do.

18 Q. Could more -- a longer early voting period  
19 alleviate long lines?

20 A. Yes.

21 Q. Does opening more early voting sites cost  
22 counties money?

23 A. Yes.

24 Q. What has been the trend in the past few years  
25 or in the last few years of your tenure at the

1 State Board of Elections, were counties  
2 hesitant to open more early voting sites  
3 because of cost?

4 A. Counties usually do not get the budgets that  
5 they want to get, and there are some urban  
6 areas that have county commissions that do  
7 allow for that, but there is always a struggle  
8 with budgets and resources, especially early  
9 voting sites.

10 There's another problem with early  
11 voting sites. Finding enough early voting  
12 sites to utilize. You always have to find a  
13 place that has decent parking that is  
14 accessible, handicap accessible, and large  
15 enough to process the voters.

16 And another thing that happens on  
17 occasion is that you will have a site that you  
18 wear out you're welcome because you use them so  
19 much and it takes away from their mission.

20 So the longer that I was in my  
21 position, I really liked the idea of mega sites  
22 to try to get them proportional around the  
23 county, but as I mentioned earlier, there are  
24 situations that might meet the needs of a  
25 smaller community that is several miles away



1 from the populated area where they have the  
2 option of voting locally or traveling that 20  
3 or 30 miles.

4 Q. What about trends when it comes to precinct  
5 size with the counties, how is that -- precinct  
6 size within the counties, how has that changed  
7 over the last few years of your tenure?

8 A. With early voting, polling places became -- I  
9 mean precincts became much longer, and the  
10 reason why is because of cost efficiencies.  
11 It's easier and cheaper to process early voting  
12 where if you have a municipal or small  
13 election, you can rev up either small or large  
14 if it's presidential, and it's a fluctuating  
15 scale whereas if you have, let's say, a 6,000  
16 or 5,000 registered voter precinct, you should  
17 be dividing it or you're going to have problems  
18 as far as lines. That generates cost.

19 Q. So Mr. Farr asked you about how you knew that  
20 precincts were at capacity already or whether  
21 or not you had done any study to see how much  
22 capacity they had to accommodate more volume  
23 due to the reduced early voting cut.  
24 Is your opinion on the capacity to  
25 accept higher volume on election day related to

1        what you know about precinct size increases

2        over the last few years?

3        A. Yes, and knowing what happened when you had

4        similar sizes before we had no-excuse early

5        voting. There were times that we would

6        recommend counties just to divide their

7        precincts so they could be manageable on heavy

8        turnout elections.

9        Q. At a certain point does it not matter how many

10       people you put in the precinct to work it if

11       parking is limited outside?

12       A. That is certainly an issue.

13       Q. And would you describe that as a capacity

14       issue?

15       A. I would say that it is not only a potential

16       capacity issue but it would also be an issue of

17       someone driving by, cannot find a place to park

18       and walk that is reasonable and just saying the

19       heck with it and leaving.

20       Q. You had a conversation earlier about voting

21       equipment and how most counties use different

22       voting equipment for early voting than they do

23       on election day because of the possible need to

24       recount; is that right?

25       A. Okay, let's go back because this needs to be in

1           advice and counsel as to what good practices  
2           are, but what our job is to make the experience  
3           of the voter the most pleasant possible whether  
4           it's a small turnout election or a large.

5       Q.   But the reason you look at registered voters,  
6           you want to have a sense of what is necessary  
7           equipment wise and staffing wise for an  
8           expected turnout?

9       A.   Yes.

10      Q.   You talked with Mr. Farr about voter education  
11           over time and I wanted to ask you a few  
12           questions about that.

13                    Have you ever had to engage in voter  
14           education around a law as expansive as is House  
15           Bill 589?

16                    MR. FARR:  Objection to form.

17                    You may answer, Gary.  I just don't  
18           like the question.

19                    THE WITNESS:  There were two laws that  
20           we did our best to get information out within  
21           our means and that was the National Voter  
22           Registration Act of 1993 and HAVA.

23                    BY MS. RIGGS:

24      Q.   Did those laws contain the number of changes  
25           that are included in House Bill 589?

1 A. No.

2 Q. Have you ever had to educate and implement a  
3 law with as many changes as is contained in  
4 House Bill 589?

5 A. No.

6 Q. Have you ever had to educate voters on laws  
7 that repeal past voting practices?

8 A. I am certain that has happened but not at a  
9 large level at all.

10 Q. You had talked with Mr. Farr about how  
11 different provisions require different amounts  
12 of time or numbers of election cycles before  
13 they become the norm.

14 Do you remember that?

15 A. I do.

16 Q. Based on your experience, would more changes  
17 all at once require a longer amount of time for  
18 them to become the norm?

19 A. Possibly, but I believe -- and this is my  
20 opinion -- that there would be more up-front  
21 confusion, but after two or three times it  
22 would still come closer to the norm.

23 Q. I want to unpack what you mean by "the norm."  
24 Do you mean for voters to understand  
25 what the changes are?

1 A. Yes, and precinct officials too.

2 Q. Okay.

3 A. It is a hundred percent education.

4 Q. But that doesn't mean that all the voters would

5 be able to adjust to those changes, just that

6 voters would know about them?

7 A. They would be more familiar, that is correct.

8 Q. I believe you were talking also towards the

9 beginning --

10 MR. CORDLE: I'm sorry.

11 MR. FARR: Kathy has to leave.

12 THE VIDEOGRAPHER: Off the record at

13 4:42 p.m.

14 (Brief Interruption.)

15 THE VIDEOGRAPHER: On the record at

16 4:43 p.m.

17 MS. RIGGS: Before I ask you my next

18 question, Tom, are you okay if we clarify for

19 the record that Exhibit 153 in this deposition

20 is the same as Exhibit 41 in the Kim Strach

21 deposition?

22 MR. FARR: I'm sorry. I'm sure you're

23 right, so that's no problem.

24 MS. RIGGS: I'm sure Jenigh's right.

25 MR. FARR: What's that?

1 MS. RIGGS: I'm sure Jenigh's right.

2 BY MS. RIGGS:

3 Q. You talked about based on your experience what  
4 the anticipated outcome might be to the cuts to  
5 early voting in the 2014 general election.

6 Do you remember that?

7 A. To cuts to the general election '14.

8 Q. 2014 general election early voting, and you  
9 said the impact would not be to the same  
10 degree.

11 A. Of a presidential election?

12 Q. Of a presidential election.

13 A. That is correct.

14 Q. But you're not saying that there won't be a  
15 problem with long lines in the November 2014  
16 election?

17 A. There is a possibility in areas that there will  
18 be an impact because you have a senatorial  
19 race, and depending on the counties and the  
20 turnout and the interest, it could be impacted,  
21 but, as I said earlier, not at the same level  
22 as presidential.

23 Q. Okay. Sorry to jump around a little bit but I  
24 want to go to same-day registration.

25 Are there other reasons besides the

1 time it takes for verifications to be returned  
2 by the mail that you would expect the denied  
3 rate to be lower with same-day registrations as  
4 opposed to regular registrations?

5 A. The law contemplates on showing a driver's  
6 license, and that usually shows where they are  
7 registered to vote unless they do not update  
8 their driver's license records as they should.

9 And if they do not have a driver's  
10 license, then the HAVA ID is used. So  
11 there -- there is more identification used at  
12 any part of the election process. It's a  
13 little more scrutinized.

14 Q. Do you think the fact that the person is  
15 registering in person before a trained election  
16 official contributes to the lower denial rate?

17 A. It would have to.

18 Q. What kind of benefits do you see from that  
19 interaction, that in-person interaction?

20 A. Based on past experiences using people who are  
21 trying to pull a trick or prank, election  
22 officials can be suspicious and have reported  
23 things to the State Board and to the county  
24 board.

25 I remember there was a gentleman who

1 was an eligible voter acted very goofy and  
2 acted abnormally, and through our assistance at  
3 the State Board we tracked down who that person  
4 was to ensure that we could find out what the  
5 story was, and come to find out that the voter  
6 was trying to see if the system worked and he  
7 was impressed that we were able to track him  
8 down.

9 Q. Have you ever had -- heard of issues processing  
10 voter registration applications because of  
11 messy handwriting?

12 A. Yes.

13 Q. What could happen if the applicant's  
14 handwriting was ineligible (sic)?

15 A. It depends on the best guess of the election  
16 official.

17 Q. And if the person is registering in person,  
18 does that provide an opportunity to clarify  
19 messy handwriting?

20 A. Yes.

21 Q. I think you said this earlier but I just want  
22 to clarify. The first analysis that you did of  
23 same-day registration and the verification  
24 rates, were you required to do that?

25 A. You were -- we were required to present a study



1 to the General Assembly.

2 Q. And how was that requirement established?

3 A. That was established in law.

4 MR. FARR: A what, Gary?

5 MR. CORDLE: Established in law.

6 THE WITNESS: It was established in

7 law.

8 BY MS. RIGGS:

9 Q. So you weren't doing it because you were a

10 proponent of same-day registration?

11 A. It was required by law.

12 Q. Towards the end you talked with Mr. Farr about

13 how you count out-of-precinct ballots and the

14 time it takes to do that.

15 Do you recall that?

16 A. I do.

17 Q. It takes more time because those are

18 provisional ballots; is that right?

19 A. It takes more time because you have to do a

20 manual hand-to-eye view and count because the

21 machine, whether it be optical scan -- or

22 optical scan reader cannot determine the

23 difference of a split ballot.

24 Q. Does dealing with provisional ballots of any

25 type require more time and attention from

1 county boards?

2 A. It depends on if they are counted or not. If  
3 they do not have any issues as regard to  
4 out-of-precinct voting and they are to be  
5 processed, they can be put in the tabulator and  
6 counted by machine.

7 Q. You had mentioned that before -- I'm sorry,  
8 strike that.

9 You had mentioned that the introduction  
10 of same-day registration reduced the number of  
11 provisional ballots cast; is that right?

12 A. Yes.

13 Q. Without same-day registration, would dealing  
14 with those provisional ballots -- those added  
15 provisional ballots take time for the county  
16 boards?

17 A. There would be more provisional ballots because  
18 it's still required by law and whether they are  
19 duly registered or not they would be probably  
20 more.

21 Q. Would that take time for the county boards to  
22 take time and resolve?

23 A. It would take some time. How much time  
24 depended on the election.

25 Q. Mr. Farr asked you if the law -- this is with

1 regard to the ability to keep polls open an  
2 extra hour and you shared some reasons why  
3 that's so important, and he represented to you  
4 that if the State Board of Elections had that  
5 authority, he asked would you still be  
6 concerned about that. Do you remember?

7 A. I do.

8 Q. Do you remember under the old law was it the  
9 decision of the county boards or the State  
10 Board of Elections?

11 A. County board.

12 Q. Was that significant?

13 A. Yes because it could be handled quicker and  
14 information could be given out, notification,  
15 so people who chose to vote during that time  
16 period had that opportunity.

17 Q. Will it take longer to deal with if it has to  
18 be funneled through the State Board?

19 A. It depends how it is set up and if the State  
20 Board authorizes the executive director to make  
21 those calls or if they have to have a formal  
22 meeting. Those are things that I do not know  
23 about.

24 Q. And if the new law only authorizes the keeping  
25 of polls open for an extra 15 minutes as

1       opposed to an extra hour, is that a significant

2       difference in your mind?

3       A. I do not know. I think that each would be

4       depending on the circumstance. It might be.

5       It may not be. I just don't know.

6       Q. So it might depend on if it was a late start in

7       the morning versus --

8       A. A bomb threat.

9       Q. A bomb threat, okay.

10      A. Bomb threats take time. We take them serious,

11      and it usually happens in a courthouse on the

12      day that they have divorce court.

13      Q. When you were talking at the end about voter  
14      fraud and the check-in process, is there also a  
15      step when voters check in to vote where they  
16      have to sign something?

17      A. They have to sign the Authorization-to-Vote  
18      form.

19      Q. And is that also an affirmation that they are  
20      who they say they are?

21      A. Yes.

22      Q. What is the penalty for lying on that?

23      A. Class A felony.

24      Q. Can you -- do you know what that carries with  
25      it, that penalty?