

EXHIBIT B

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

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

Plaintiffs,)

vs.)

Case No: 1:13-CV-658

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

Defendants.)

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

Plaintiffs,)

vs.)

Case No: 1:13-CV-660

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

Defendants.)

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

Case No: 1:13-CV-861

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

Defendants.)

VIDEOTAPED DEPOSITION OF
KIM WESTBROOK STRACH - VOL II

1
2 VIDEOTAPED DEPOSITION OF
3 KIM WESTBROOK STRACH - VOL II

4
5 _____
6 11:09 A.M.

7 TUESDAY, JULY 1, 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
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

Counsel for NAACP Plaintiffs:

KIRKLAND & ELLIS
BY: DANIEL DONOVAN, ESQ.
655 Fifteenth Street, N.W.
Washington, DC 20005
(202) 879-5054
daniel.donovan@kirkland.com

ADVANCEMENT PROJECT
BY: DENISE LIEBERMAN, ESQ.
1220 L Street, N.W.
Suite 850
Washington, DC 20005
(202) 728-9557
dlieberman@advancementproject.org

TIN FULTON WALKER & OWEN
BY: ADAM STEIN, ESQ.
312 West Franklin Street
Chapel Hill, NC 27516
(919) 240-7089
astein@tinfulton.com

Counsel for League of Women Voters Plaintiffs:

SOUTHERN COALITION FOR SOCIAL JUSTICE
BY: ANITA EARLS, ESQ.
1415 West Highway 54
Suite 101
Durham, NC 27707
(919) 323-3380
anitaeearls@southerncoalition.org

ACLU of NC
BY: MEGHAN JONES, ESQ.
PO Box 28004
Raleigh, NC 27611
(919) 834-3466

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Counsel for the United States of America Plaintiffs:

U.S. DEPARTMENT OF JUSTICE
BY: JENIGH J. GARRETT, ESQ.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
(800) 253-3931
jenigh.garrett@usdoj.gov

Counsel for Plaintiff-Intervenors
League of Women Voters:

PERKINS COIE
BY: JOHN M. DEVANEY, ESQ.
700 Thirteenth Street, N.W.
Suite 600
Washington, DC 20005-3960
(202) 628-6200
jdevaney@perkinscoie.com

Counsel for Defendants State of North Carolina and
Members of the State Board of Elections:

NORTH CAROLINA ATTORNEY GENERAL
BY: KATHERINE A. MURPHY, ESQ.
ALEC PETERS, ESQ.
114 W. Edenton Street
Raleigh, NC 27603-1013
(919) 716-6900
kmurphy@ncdoj.gov

NORTH CAROLINA STATE BOARD OF ELECTIONS
BY: BRIAN LIVECCHI, ESQ.
441 N. Harrington Street
PO Box 27255
Raleigh, NC 27611
(919) 715-9188
brian.livecchi@ncsbe.gov

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Reported By:

DISCOVERY COURT REPORTERS
AND LEGAL VIDEOGRAPHERS
BY: DENISE MYERS BYRD, CSR 8340, RPR
TRAE HOWERTON, Videographer
4208 Six Forks Road
Suite 1000
Raleigh, NC 27609
(919) 649-9998
denise@discoverydepo.com

--oOo--

INDEX OF EXAMINATION

Page

By Mr. Donovan.....	8
By Mr. Devaney.....	87
By Ms. Murphy.....	105

--oOo--

INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION	Page
170	Declaration of Kim Westbrook Strach June 18, 2014	16
171	NC Voter Registration Application	21
172	(Exhibit number skipped)	
173	State Absentee Ballot Request Form	71
174	One-Stop Voting Sites for the May 4, 2010 Primary Election	78
175	Letter to Alexander Peters and Thomas Farr from Marc Erik Elias, Perkins Coie, May 5, 2014 Re: DMV Registration of Voters Who Will be 18 by the Next General Election	101
176	Letter to Marc Erik Elias from Alexander McC. Peters, May 16, 2014, RE: DMV Registration	101

--o0o--

1 THE VIDEOGRAPHER: On record at
2 11:09 a.m. Today's date is July 1, 2014.

3 Would counsel please now introduce
4 themselves and then our court reporter will
5 swear in the witness.

6 MR. DONOVAN: Daniel Donovan for the
7 plaintiffs.

8 MR. STEIN: Adam Stein for the
9 plaintiffs.

10 MS. GARRETT: Jenigh Garrett, plaintiff
11 United States.

12 MS. EARLS: Anita Earls, plaintiffs
13 League of Women Voters.

14 MR. DEVANEY: John Devaney for the Duke
15 intervenors.

16 MS. LIEBERMAN: Denise Lieberman for
17 the NAACP plaintiffs.

18 MR. LiVECCHI: Brian LiVecchi with the
19 State Board of Elections.

20 MR. PETERS: Alec Peters with
21 North Carolina Attorney General's Office for
22 defendants.

23 MS. MURPHY: And Katherine Murphy,
24 North Carolina Attorney General's Office for
25 the defendants.

1 MS. JONES: And Meghan Jones with the
2 ACLU for the plaintiffs.

3 KIM WESTBROOK STRACH,
4 having been first duly sworn or affirmed by the
5 Certified Shorthand Reporter to tell the truth,
6 the whole truth and nothing but the truth,
7 testified as follows:

8 EXAMINATION

9 BY MR. DONOVAN:

10 Q. Good morning, Ms. Strach.

11 A. Good morning.

12 Q. Thank you for your time.

13 You are the current executive director

14 for the State Board of Elections for

15 North Carolina, true?

16 A. Yes, sir, I am.

17 Q. And you are responsible for election

18 administration in North Carolina?

19 A. Yes, sir.

20 Q. And you'd agree with me that in that position

21 the right to vote is a fundamental right,

22 correct?

23 A. Yes.

24 Q. And you'd agree with me that the State Board

25 should make sure that North Carolina citizens

1 that are eligible to vote are actually able to
2 exercise that right, correct?

3 A. Yes.

4 Q. And from your prior deposition -- are you a
5 political science major?

6 A. No, I'm not.

7 Q. Oh, okay. What's your major from college?

8 A. Criminal justice.

9 Q. Criminal justice, okay.

10 From your study of voting and
11 elections, you understand there was a time in
12 this country when women could not vote, true?

13 A. I do.

14 Q. And you understand there was a time in this
15 country in North Carolina when African
16 Americans could not vote, true?

17 A. Yes, I do.

18 Q. And in exercising your duties you need to
19 follow state law?

20 A. Yes.

21 Q. And you need to follow federal law?

22 A. Yes.

23 Q. And if the federal judge in this case rules
24 that for the 2014 general election that the
25 State Board has to provide 17 days of early

1 voting, you'll provide that, correct?

2 A. I will.

3 Q. And if the federal judge rules for the 2014

4 election you need to provide full

5 out-of-precinct voting, the State Board will

6 provide that?

7 A. Yes, I will.

8 Q. And if the federal judge rules in the 2014

9 election you must provide what we call same-day

10 registration, you'll make sure that happens,

11 correct?

12 A. I will.

13 Q. When did you become the executive director?

14 A. May of 2013.

15 Q. So you have not been executive director

16 during what we call a general election,

17 correct?

18 A. I have not.

19 Q. And you haven't been the executive director

20 during a presidential election, correct?

21 A. I have not.

22 Q. And who at the State Board of Elections runs

23 your data analyses on elections?

24 A. Well, we have an IT division and we have an IT

25 director. Marc Burriss is our IT director. And

1 so all of that would be run under his
2 supervision.

3 Q. And does he -- once he generates it, does he
4 analyze it or does someone else analyze --
5 we'll get to your declaration. You have
6 certain charts, you know, whether it's by male,
7 female, party, race. Who generates those or
8 analyzes those kind of reports?

9 A. It could be various people either within his
10 division or it could actually be people within
11 our election support division, if they were
12 involved in -- they are sometimes involved in
13 making charts as well.

14 Q. And in North Carolina, there's a good round
15 number, 100 county boards of elections, right?

16 A. Correct.

17 Q. And they actually operate and run their local
18 elections, right?

19 A. They do.

20 Q. Your job, you and the others at the State
21 Board, oversee them?

22 A. Yes, sir.

23 Q. And in that, part of your job is to make sure
24 the elections are run lawfully and fairly,
25 true?

1 A. Yes.

2 Q. And when there's an election, who counts the
3 ballots; is it the county board or you at the
4 State Board?

5 A. It's the county board.

6 Q. And county boards in North Carolina, some
7 use -- they have machines that count the votes,
8 right?

9 A. Correct.

10 Q. And some ballots have to be hand-counted,
11 right?

12 A. Some do.

13 Q. And those are done by the county boards as
14 well?

15 A. Correct.

16 Q. And do you believe it's important that properly
17 voted hand-counted votes get counted just as
18 much as machine-counted votes?

19 A. Yes, I do.

20 Q. Even if it's more work for the county board
21 they should get counted, right?

22 A. Absolutely.

23 Q. Now, North Carolina also has a statewide voter
24 registration database, right?

25 A. Yes.

1 Q. And it's called SIMS, SONS? What do you call
2 it?

3 A. It's called SEIMS.

4 Q. SEIMS. Okay. And I think that's -- go ahead,
5 you spell it.

6 A. S-E-I-M-S.

7 Q. Okay. So we'll call it SEIMS.

8 What do you do with SEIMS?

9 A. SEIMS is -- it is a statewide voter
10 registration system and also it has all
11 registered voters in North Carolina are part of
12 that system. They are by county but they all
13 are part of one big system.

14 SEIMS is also sort of our -- how we set
15 up elections is done through SEIMS, how we --
16 one-stop voting and provisional voting, they're
17 all applications of SEIMS which our counties
18 use to run elections.

19 Q. At a high level, is SEIMS a program that can go
20 on any computer or is it a special computer?

21 A. Well, I mean, it can go on any computer. It's
22 an application that can go on a computer, yes.

23 Q. And the State Board also has -- let me just
24 stop there.

25 MR. DONOVAN: Did somebody join the

1 deposition? I think they joined and dropped.

2 BY MR. DONOVAN:

3 Q. Ms. Strach, the State Board of Elections
4 currently has an electronic poll book system,
5 correct?

6 A. We do for election -- actually for election
7 day, yes, and for one-stop voting.

8 Q. And is that different than SEIMS?

9 A. It's actually an application of SEIMS.

10 Q. And what is in the electronic poll book?

11 A. It's really your poll list. During one-stop
12 voting, that would be every registered voter
13 that's eligible to vote in that county will be
14 on their poll list and then for election day
15 that will be by precinct.

16 Q. And the State Board of Elections offers that to
17 the county boards, correct?

18 A. Every county uses the -- sort of the poll book
19 for one-stop voting, but they don't all use it
20 for election day. Some don't use an electronic
21 poll book at all. Some use a third-party
22 vendor, and we do have a large amount that use
23 ours.

24 Q. And have you tried to move all the counties to
25 your system, the electronic poll book?

1 A. We'd like to. We're making improvements to it

2 to encourage counties to want to do that.

3 Q. Okay. If I'm a worker in a precinct in a

4 county and I have your electronic poll book,

5 can I search for someone's name within that

6 poll book?

7 A. You should be able to, yes.

8 Q. And I can search for anybody's name within the

9 county, right, not just my precinct?

10 A. Yes, during one-stop you absolutely can.

11 Q. And if I have that same electronic poll book on

12 election day, I could do it as well, right?

13 A. That data is there, yes.

14 Q. And if I understand Mr. Burris's testimony

15 correctly, the State Board provides this

16 electronic poll book to the counties at no

17 cost?

18 A. Correct.

19 Q. Okay. Well, let's discuss elections.

20 Fair to say to say turnout can be

21 driven fir any particular election by several

22 factors, right?

23 A. Sure.

24 Q. Fair to say contested races generally generate

25 a higher turnout than uncontested races?

1 A. Yes.

2 Q. And an increase in registered voters could also
3 potentially increase election turnout, right?

4 A. Yes, it could.

5 Q. And if there's more polling sites, fair to say
6 there's the opportunity for more voters to
7 turnout, true?

8 A. It could be. It certainly could affect
9 turnout.

10 Q. Any other reasons that can increase turnout?

11 A. I think you covered many of them. Contested
12 races, usually that's a big driver in turnout.

13 Q. In your experience, do you think these
14 contested race is the biggest factor for
15 turnout?

16 A. I'm not sure. As you said, this is my first
17 general election so I probably am not the best
18 person to answer that question.

19 Q. Fair enough. Fair enough.

20 Let me hand you what we've marked as
21 Exhibit 170 which is your declaration.

22 (WHEREUPON, Plaintiff's Exhibit 170 was
23 marked for identification.)

24 BY MR. DONOVAN:

25 Q. Let me direct your attention to paragraph 4 of

1 your declaration. Do you have that in front of
2 you?

3 A. I do.

4 Q. Okay. You state in paragraph 4 that the recent
5 primary and general elections most comparable
6 to those of 2014 are the primary and general
7 elections that took place in 2010.

8 Do you see that?

9 A. I do.

10 Q. What do you mean by "most comparable"?

11 A. That is based on the fact that they're the same
12 races that are on the ballot in 2010 are on the
13 ballot in 2014. It's not a presidential
14 election year, and so the elections that we --
15 we consider to be most comparable is what's --
16 in House Bill 589 in us looking at the
17 cumulative hours, that's the election we were
18 looking at.

19 Q. Fair to say whether any -- although they might
20 have been the same races whether those races
21 were contested in 2010 versus 2014 varied,
22 correct?

23 A. Absolutely.

24 Q. And would you agree with me that primary
25 elections are not comparable to general

1 elections?

2 A. I would agree.

3 Q. And in primaries other than -- I think is it
4 unaffiliated or independent? What's the term
5 you use?

6 A. We're unaffiliated.

7 Q. Unaffiliated. Okay.

8 In primaries, other than unaffiliated
9 voters, voters that are either registered
10 Democrats or Republicans can only vote in their
11 partisan races, correct?

12 A. Right.

13 Q. And in general elections whether I'm
14 unaffiliated, Democrat or Republican, I can
15 vote in all the races, correct?

16 A. If you're an unaffiliated voter, you can choose
17 which party that you would like to vote. All
18 parties can vote in the non-partisan races.

19 Q. Gotcha. How about in a general election, can I
20 vote in all the races if I'm a registered
21 Republican, Democrat or unaffiliated?

22 A. Yes, you can.

23 Q. Okay. Let's turn to the registration process
24 that you talk about in your declaration.

25 A county board is required to register

1 any person who's qualified to vote in the
2 county and not excluded for some other reason,
3 right?

4 A. Correct.

5 Q. And a person is eligible to vote in
6 North Carolina if they're either born in the
7 U.S. or naturalized citizen and they need to
8 reside in North Carolina and the precinct, as I
9 understand it, 30 days before an election?

10 A. Correct.

11 Q. And the exclusions from what we just talked
12 about there, even if I have all that, if I'm
13 under 18 on the day of election I can't vote?

14 A. Correct.

15 Q. And if I'm a convicted felon who hasn't
16 finished my sentence, I can't vote?

17 A. Correct.

18 Q. And in order to register, a person in
19 North Carolina has to fill out a Voter
20 Registration Application?

21 A. Correct.

22 Q. And that needs to be filled out whether I am
23 going to vote on election day, whether I am
24 going to vote early voting or whether I am
25 going to do mail-in voting?

1 A. Correct.

2 Q. Same for everybody?

3 A. It is.

4 Q. And part of it is they have to fill it out
5 honestly, right?

6 A. Yes.

7 Q. And if they fraudulently or falsely complete
8 that form, that's what's called a Class 1
9 felony under North Carolina law, right?

10 A. That is correct.

11 Q. That's a serious charge, fair?

12 A. Yes.

13 Q. And you tell people that on your website,
14 right?

15 A. We do.

16 Q. And you in fact tell people that right on the
17 registration form itself, correct?

18 A. We do.

19 Q. And you in fact put that in a different color
20 ink than black, right; it's in red ink?

21 A. I believe that's correct.

22 Q. Let me hand you what we've marked as 171 which
23 is the North Carolina Voter Registration
24 Application from the State Board website.

25 ///

1 (WHEREUPON, Plaintiff's Exhibit 171 was
2 marked for identification.)

3 BY MR. DONOVAN:

4 Q. Go ahead and take a minute to look at that.

5 And the application is a one-page
6 application with a second pages that provides
7 instructions, correct?

8 A. Yes, sir.

9 Q. And as you walk through that, you have to
10 confirm that you're a U.S. citizen and will be
11 18 years of age by the election, correct?

12 A. Yes.

13 Q. And then you have to give your name, birth date
14 and, if you have it, your either voter
15 registration number, your driver's license or
16 the last four digits of your Social Security
17 number, correct?

18 A. Yes.

19 Q. And if I don't have that, I could check a box
20 right, under 3? Do you see that?

21 A. Correct.

22 Q. Upper right. Okay.

23 And then if we look at the second page
24 from -- excuse me -- from the second page
25 looking at the requirements, if I don't give

1 you any of that information in 3, I can give
2 you a current and valid photo ID, right?

3 A. Correct.

4 Q. And that's not limited to a North Carolina DMV
5 ID, correct?

6 A. Correct.

7 Q. Now, I also could just give you a current
8 utility bill that I receive where I live,
9 right?

10 A. That's correct.

11 Q. And a bank statement?

12 A. Yes.

13 Q. And a government check?

14 A. Yes.

15 Q. Or even a paycheck from my employer, right,
16 with my address?

17 A. Yes.

18 Q. Or any other government document that shows my
19 name and address that I'm registering at,
20 right?

21 A. Yes.

22 Q. So looking back at the application, you then
23 ask for the residential address and you also
24 ask for mailing address if different from the
25 residential address. That's Boxes 4 and 5. Do

1 you see that?

2 A. I do.

3 Q. Why does the state -- why does the county board
4 or the State Board ask for a mailing address if
5 different from the residential address?

6 A. Well, because there are some places in
7 North Carolina that the houses do not have
8 residential mail and so there may be the need
9 to have a mailing address in order for them to
10 receive information from the board of
11 elections.

12 Q. And even if a North Carolina citizen lives in a
13 place where they don't receive mail at their
14 residence, they're still eligible and should be
15 able to vote, correct?

16 A. Sure.

17 Q. How about the box next to mailing address that
18 says Map Diagram, can you explain to me what
19 that box is for?

20 A. I've asked that question myself.

21 If you don't have a street address,
22 it's giving you the opportunity to sort of map
23 it out.

24 Q. And that's because there still may be places in
25 North Carolina that are rural and don't

1 actually have addresses?

2 A. Correct. Correct.

3 Q. And then let's look at Box 7 at the bottom,
4 Previous Voter Registration. Can you tell me
5 what that box is for?

6 A. If you have been registered to vote in another
7 location, this is where you can provide that
8 information so that that registration can be
9 cancelled.

10 Q. At the bottom left is what I was referring to,
11 that's the -- in red ink, the application
12 provides if I provide any false information
13 that's a Class 1 felony, right?

14 A. Yes.

15 Q. Let's go back to page 2, the instructions.

16 Under the Voter Identification
17 Requirements, the second that says Photo ID
18 Requirements, do you see that? It's on the
19 right -- lower down, Photo ID Requirements.

20 Go ahead, you can point for her.

21 A. I'm sorry. I'm looking right at it.

22 Q. Sure. No problem.

23 So there it says photo ID, it says:

24 "Effective January 1, 2016,

25 North Carolina voters will need to show

1 a photo ID when voting in person."

2 A. I do.

3 Q. Why does it say "when voting in person" rather
4 than just one voting?

5 A. Because the House Bill 589 only required photo
6 ID when voting in person.

7 Q. So it's not required when you vote by mail?

8 A. Correct.

9 Q. So after we fill out the application which is
10 marked as 171, the application has to be
11 provided to a county board of election, right?

12 A. Correct.

13 Q. And that application has to be postmarked by
14 the voter registration deadline?

15 A. Yes, it do.

16 Q. And that is 25 days before the applicable
17 election, right?

18 A. It is.

19 Q. And postmark means I need to put it in the
20 postal service, right?

21 A. Right.

22 Q. How long does it take for the postal service on
23 average to have it postmarked to get it to the
24 county board?

25 A. I think that probably varies from county to

1 county.

2 Q. Fair to say some counties may take a week?

3 A. It could.

4 Q. But for a voter, all they need to worry about
5 is make sure the application is in the mail and
6 postmarked 25 days before?

7 A. Correct.

8 Q. And at that point the county board will receive
9 the application and reviews it to make sure
10 it's all filled out, right?

11 A. Correct.

12 Q. And if approved, they -- the county board then
13 starts the mail verification process?

14 A. Correct.

15 Q. And you believe 25 days is enough time to
16 verify voters, correct?

17 A. I believe that federal law only allows it to be
18 as much as 30. So I can't say that 25 days is
19 always enough time to verify a voter.

20 Q. So even if someone registers kind of what I'll
21 call the standard 25 days, it's not always
22 enough time to verify all the registrants,
23 correct?

24 A. Not always.

25 Q. Now, a person, in addition to mailing in this

1 form to the county board, can register at the
2 Department of Motor Vehicles, right?

3 A. Correct.

4 Q. And there's a few other agencies in the state,
5 right?

6 A. Correct.

7 Q. Let's focus on the DMV. If I go to the DMV --
8 well, withdraw.

9 If a North Carolina citizen goes to the
10 DMV and registers to vote at a DMV, that person
11 is considered registered on the date the
12 application is given to the DMV, correct?

13 A. Correct.

14 Q. Provided it's 25 days before the election?

15 A. Correct.

16 Q. Now, then for your process, then, the DMV has
17 to deliver that application to the county
18 board, right?

19 A. That process goes -- is sort of an automated
20 system through our statewide voter registration
21 system.

22 Q. So all the DMV applications, are they received
23 same day?

24 A. Overnight.

25 Q. Overnight. And how long before the election

1 does the agency need to deliver those to the
2 county board?

3 A. Does --

4 Q. I'm sorry. Withdrawn.

5 So the DMV receives applications?

6 A. Right.

7 Q. Is there a deadline by which the DMV needs to
8 deliver those to the county board?

9 A. Like I said, the way their process is set up,
10 I'm pretty certain that it's an overnight
11 process. They're electronically sent.

12 Q. Electronically conveyed?

13 A. Exactly.

14 Q. So you could mail it in, you could register at
15 an agency, and before the repeal by HB 589 a
16 person could what we call same-day register
17 during early voting, right?

18 A. Correct.

19 Q. And that's no longer available?

20 A. Correct.

21 Q. And when a person registered during same-day
22 registration, they would fill out this same
23 form 171, correct?

24 A. I believe so.

25 Q. And they would fill that out in front of an

1 election official, correct?

2 A. Yes.

3 Q. And the election official right there would
4 make sure the information is complete, correct?

5 A. They should.

6 Q. And before the repeal by HB 589, early voting
7 could begin as early as -- it was 17 days,
8 correct?

9 A. Correct.

10 Q. And when a person same-day registered, the
11 election official received the application
12 immediately, right, because they were right
13 there?

14 A. Correct.

15 Q. Now, during early voting, still a voter could
16 update their address, correct?

17 A. Yes.

18 Q. That's still part of what you can do?

19 A. Yes.

20 Q. So tell me the circumstances where an early
21 voter could go to the wrong precinct because
22 they have a new address but still vote.

23 A. An early vote?

24 Q. Yes, please.

25 A. During early voting, you do not have the same

1 precincts generally that you have during on
2 election day so they are usually -- we call
3 that one-stop voting locations. So you could
4 go -- any voter could go to any one-stop voting
5 location, and at that time when they state
6 their name and address, if their address has
7 changed, they'd have the ability to change that
8 address at that time.

9 Q. And they can still vote at that place, right?

10 A. Yes.

11 Q. Let's talk about election day. Let's say
12 someone is in an apartment and they move down
13 the street, same county but maybe a different
14 precinct.

15 A. Yes.

16 Q. Can that person still vote?

17 A. That person can still vote, yes.

18 Q. Tell me the circumstances.

19 A. If that person -- if the person shows up to --
20 let's say they show up to their old precinct
21 and they have moved, the board of elections --
22 excuse me -- the precinct official would direct
23 them to their new precinct, or if they did not
24 want to go to their new precinct, there will be
25 a place -- a central location, is what we call

1 it, where they can go -- usually that's the
2 board of elections -- where they can then also
3 vote, and if they decide that they're not going
4 to vote -- they don't want to go to either one
5 of those locations, they could vote a
6 provisional ballot at the old precinct where
7 only the ballot items that they were eligible
8 to vote would be counted.

9 Q. So with that provisional ballot, the county
10 board would have to hand count that ballot,
11 right?

12 A. Correct.

13 Q. So that's going to take some extra work by the
14 precinct or the county board to count those,
15 right?

16 A. Yes.

17 Q. Is it fair to say with this option, to
18 provisionally vote at your old precinct, it's
19 going to make it difficult to precisely predict
20 the resources that you need at each precinct?

21 A. Correct.

22 Q. Because you can't predict in advance the number
23 of unreported movers that are going to show up
24 at their old precincts, correct?

25 A. You can't, but you would certainly hope that

1 people would want to go to their new precinct
2 because that's where they would be able to vote
3 all the items they would be eligible to vote.

4 Q. But the goal is for everyone to show up at the
5 right precinct, right?

6 A. That's the goal.

7 Q. But you would agree with me part of the State
8 Board and county board's job is to make sure
9 people that are eligible that can vote do vote,
10 right?

11 A. I agree.

12 Q. And as part of your job as executive
13 director -- and you attached it to your
14 declaration -- you issued what's called a
15 numbered memo on this unreported move, correct?

16 A. I did.

17 Q. And you believe that memo conveys how county
18 boards should conduct themselves with respect
19 to unreported moves, correct?

20 A. Yes, sir, I do.

21 Q. And this was reviewed by your general counsel
22 so you believe it comports with both state and
23 federal law, true?

24 A. Yes.

25 Q. And are you aware that last week Wake County

1 voted to not count 11 provisional vote ballots
2 of unreported move voters who showed up to
3 vote?

4 A. I became aware of that after the primary
5 election.

6 Q. And what have you done to fix that?

7 A. The chairman of the State Board of Elections
8 has sent the board members of the Wake County
9 Board of Elections a letter instructing them
10 that they erred in doing that, that they should
11 have counted those unreported moves and that
12 they should do that in the future.

13 Q. And have they responded?

14 A. I'm not aware that they have.

15 Q. And that's because the State Board expects the
16 county boards to count provisional ballots that
17 are valid, correct?

18 A. Absolutely.

19 Q. Now, prior to the enactment of HB 589, an
20 out-of-precinct voter was allowed to cast a
21 provisional ballot on election day, correct?

22 A. Yes.

23 Q. And that ballot would have been counted in all
24 the contests for which the out-of-precinct
25 voter would have been eligible in their correct

1 precinct, correct?

2 A. Correct.

3 Q. So, for example, if the voter wanted to vote

4 for U.S. Senator from North Carolina, it

5 doesn't matter what precinct they go to, right?

6 A. Correct.

7 Q. Same thing for president?

8 A. Correct.

9 Q. Can you turn to your declaration, paragraph 53,
10 please. Go ahead and refresh yourself on that
11 paragraph and let me know when you're ready.

12 A. (Witness complying.)

13 Q. All set?

14 A. I'm all set.

15 Q. When did you join the State Board of Elections?

16 A. Around April of 2000.

17 Q. And in 2005, was it your job to provide
18 election information to the legislature?

19 A. No, it was not my job.

20 Q. And fair to say on this paragraph this was
21 research by Mr. Burris, correct?

22 A. Yes. Well, it was -- this paragraph
23 is based -- was -- I spoke to Mr. Burris
24 because Mr. Bartlett indicated that Mr. Burris
25 had provided this information, so I spoke with

1 him. We also used a tool that we have to
2 search our e-mails just to see what e-mails
3 existed during that time and what data might
4 have been transported to the legislature or
5 even in our office.

6 Q. You didn't conduct the e-mail search, correct?

7 A. I did not, no.

8 Q. And you're just reporting in paragraph 53 what
9 Mr. Burris told you, correct?

10 A. I am reporting what Mr. Burris told me and what
11 was the result of the search for e-mails that
12 was done by another person.

13 Q. Who did the e-mail search?

14 A. Cheryl Harris.

15 Q. But just to be clear, fair to say you didn't
16 run the e-mail search, right?

17 A. No.

18 Q. And you're reporting based on what Mr. Burris
19 told you as well, correct?

20 A. That is also true.

21 Q. Does North Carolina have online voter
22 registration?

23 A. We do not have online voter registration. The
24 statute provides us the ability -- as a state
25 agency, we are authorized to have online voter

1 registration as far as a state agency doing it,
2 but we do not currently have online voter
3 registration.

4 Q. Is that a goal of yours to have online voter
5 registration?

6 A. We would certainly like to provide it -- the
7 State Board of Elections to provide it, yes.

8 Q. Do you have any projects or processes in place
9 to provide online voter registration?

10 A. One of the things that we're currently working
11 on is sort of a rewrite of our entire SEIMS
12 application to make it more efficient, and that
13 is certainly part of our hope to include
14 something like that.

15 Q. And as we sit here today, a North Carolina
16 citizen cannot register to vote online through
17 the State Board of Elections?

18 A. That is correct.

19 Q. Now, let's talk about the verification process
20 once the county board or State Board receives
21 an application.

22 As we talk about it, the first thing
23 that someone does is make sure the registration
24 form is fully filled out, correct?

25 A. Correct.

1 Q. Is there any information on Exhibit 171 that
2 can be left blank and the application still be
3 considered sufficient or properly filed?

4 A. Well, I think that there is -- sometimes there
5 is missing information, and I know that our
6 county boards of elections make every effort
7 to -- if there is information that is missing
8 that would not prevent them from being able to
9 be verified, they make every effort to obtain
10 that information.

11 Q. What information on this Exhibit 171 can be
12 left blank and still be a proper application?

13 A. I certainly think that if -- you would need to
14 have -- 1 has to be completed. 2 and 3
15 are -- 3 is required. All of the places that
16 have required would be the things that would
17 need to be completed before you can proceed to
18 the verification process.

19 Q. Okay. So once -- and is it the county board
20 that reviews these?

21 A. It is.

22 Q. So once the county board reviews and starts the
23 process, under North Carolina law they then
24 start what you refer to as the mail
25 verification?

1 A. Correct.

2 Q. And that's either a card that's sent to their
3 residential address or their mailing address,
4 correct?

5 A. Correct.

6 Q. And you wait at least 15 days to see if it's
7 returned as undeliverable?

8 A. Correct. That's the clock in SEIMS.

9 Q. And if you get back the card as undeliverable,
10 you send another one, right?

11 A. Correct.

12 Q. And if you receive both, they're then marked as
13 an inactive voter?

14 A. If we are talking about prior to voting they
15 would be denied.

16 Q. That would be denied?

17 A. Yes.

18 Q. And let's look at paragraph 18 of your
19 declaration, and this is where you're talking
20 about the verification process.

21 And about halfway through that
22 paragraph you say:

23 "Therefore, it is possible
24 under the verification system for an
25 applicant to submit an application

1 for registration, vote in an election
2 while the verification process is
3 underway, and then, subsequent to the
4 individual's vote being counted, have
5 his or her registration application
6 denied, because the verification process
7 was not successfully completed."

8 Correct?

9 A. Correct.

10 Q. And by possible, you mean that someone could
11 register and just that mail verification
12 process hasn't finished its natural course,
13 correct?

14 A. Correct.

15 Q. And in and of itself, that does not mean the
16 voter is not a proper North Carolina voter, but
17 what it does mean is they haven't satisfied the
18 verification, correct?

19 A. Correct.

20 Q. When you say it's possible, have you conducted
21 any studies on the number of times this
22 happened in the 2014 primary?

23 A. The number of times --

24 Q. The number of people you say possible.

25 Possible is kind of a big word and kind of

1 vague.

2 Have you done any analyses on how many
3 times this happened, this registered and they
4 weren't fully verified before they voted?

5 A. We have -- we've done several audits after the
6 2014 primary. I don't believe that has been
7 part of it.

8 Q. And with this possible failing to complete the
9 verification process, that could happen for
10 people that end up voting on election day,
11 correct?

12 A. Yes.

13 Q. And that can happen for people that register
14 25 days before the election, correct?

15 A. It could happen, yes.

16 Q. It could happen under the old regime even for
17 people that same-day registered during early
18 voting, correct?

19 A. Yes.

20 Q. It could happen for people that vote mail-in
21 absentee, correct?

22 A. It could.

23 Q. And it could happen for people that register at
24 the DMV, correct?

25 A. It could.

1 Q. Let's go to paragraph 27 of your declaration.
2 Go ahead and review that and just let me know
3 when you're done.

4 A. (Witness complying.)

5 Q. All set?

6 A. Yes.

7 Q. Okay. Great. In paragraph 27 of your
8 declaration, you say:

9 "In the 2012 general election,
10 for example, there were multiple cases
11 of voters utilizing SDR -- same-day
12 registration -- who cast ballots that
13 were counted despite these voters being
14 ineligible to vote."

15 Do you see that?

16 A. Yes.

17 Q. Okay. How many cases of voters utilizing SDR
18 during 2012?

19 A. I don't have a specific number. We -- as part
20 of some of the data that was requested of our
21 office, we were looking at those occasions
22 where people had registered in the same
23 election year during the normal registration
24 period and had also registered during the
25 same-day registration period as well. So they

1 had been registered during the normal
2 registration period, been denied and then
3 registered again at same-day registration.

4 And so that data was what was pulled,
5 and looking at that data, looking -- analyzing
6 that data we have not completed the process
7 because there are many more voters -- there
8 were many voters that we looked at that had
9 been denied previously or maybe had been -- had
10 been registered and had been removed previously
11 and yet showed up on same-day registration,
12 registered to vote and at the same address that
13 they had previously been registered or been
14 removed at and voted.

15 Q. Okay. Can you give me how many?

16 A. I can -- I can't tell you specifically how
17 many.

18 Q. In your analysis, have you also analyzed people
19 that registered 25 days before the election
20 that also should not have been voters? Are you
21 doing that analysis as well?

22 A. I think there was some of that data as well.
23 Yes, I think there are certainly occasions
24 where people have registered 25 days and not
25 completed the mail verification process.

1 Q. And are there people that registered 25 days,
2 hadn't finished the mail verification, voted
3 and then later you found out they didn't
4 actually validly verified, you got both cards
5 back?

6 A. You're saying during -- yes, we found that
7 people that registered during same-day
8 registration that we didn't get -- they were
9 both found undeliverable.

10 Q. And how about for people that registered before
11 same-day, during your 25 days before the
12 election, some of those?

13 A. There were some cases of that.

14 Q. So there were some of both?

15 A. Yes.

16 Q. Now, in paragraph 27 you also talk about there
17 were individuals that were ineligible to vote
18 due to a felony conviction, correct?

19 A. Correct.

20 Q. And how many?

21 A. Again, I could not say that -- the specific
22 number now.

23 Q. And have any of those cases -- have any of
24 those individuals who were ineligible due to a
25 felony conviction and then voted, have they

1 been prosecuted?

2 A. As I said, we have just started looking at this
3 data, so that is certainly definitely something
4 we will do. If that is the case, we will
5 certainly refer those individuals that need to
6 be referred.

7 Q. And I assume your answer is the same. You go
8 on to say:

9 "Additionally, there were many
10 cases of voters who voted utilizing SDR
11 despite having had a registration
12 application denied due to a failure to
13 successfully complete the verification
14 process."

15 You don't know how many, correct?

16 A. I don't know how many.

17 Q. Let's go to paragraph 29, if we could, of your
18 declaration, which is Exhibit 170. Go ahead
19 and read that and let me know when you're done.

20 A. (Witness complying.)

21 Ready.

22 Q. Your conclusion in paragraph 29 -- or your
23 opinion, I should say is that the conclusion of
24 the report is unwarranted without further
25 analysis of the data.

1 Do you see that in the middle of the
2 paragraph?

3 A. I do.

4 Q. Have you done any further analysis of the data?

5 A. That is something we actually are currently
6 working on. This is -- this is -- the report
7 that I'm referencing here is just that, it's a
8 snapshot of data. In order to be able to draw
9 any conclusions from that, you would need to
10 look deeper into what those snapshots actually
11 represent.

12 And for that report, that had not been
13 done so we are seeing what we can do to provide
14 a better analysis of that same issue.

15 Q. So that's in process?

16 A. It is in process.

17 Q. And by snapshot, you mean that is kind of on
18 the State Board of Elections website you can
19 actually find out all the registered voters as
20 of a given date, correct? Well, let me
21 withdraw.

22 What do you mean by snapshot when you
23 use that term?

24 A. Whenever the data was -- the date that they
25 determined to use the data, whatever the status

1 of the voter was at that time, that's what
2 would be reflected and that was the information
3 that was used for that report.

4 So if that person just happened to
5 be -- had not -- a mailing had not gone out but
6 they were getting ready for a mailing, they may
7 show active when in fact the mailing hasn't
8 been returned yet and they might the next day
9 be inactive.

10 So it's just a the snapshot based on
11 that day so it's hard to know why that
12 individual is in the status that they're
13 currently in.

14 Q. So if I understand that right, because any
15 given day that whole voter registration
16 database may be different because you're
17 changing it every day?

18 A. Correct.

19 Q. Paragraph 28 I'm just going to refer you. You
20 discuss the Town of Pembroke municipal
21 election, correct?

22 A. Yes.

23 Q. And this is an election that actually took
24 place under your watch as executive director,
25 correct?

1 A. It did.

2 Q. And it was for town council in Pembroke?

3 A. Yes.

4 Q. And how many total voters were in that
5 election?

6 A. I did know that. I am not sure.

7 Q. Fair to say it was generally a small election?

8 A. It was a generally small election.

9 Q. And the allegations there were that certain
10 people, as I understand, showed up and
11 presented a lease that shouldn't have been
12 sufficient for them to vote, correct?

13 A. Correct.

14 Q. And the poll worker should not have registered
15 them, correct?

16 A. Correct.

17 Q. And those poll workers, they just missed it,
18 right?

19 A. That was certainly part of it.

20 Q. Sure, and there were other factors as well.

21 And have you done supplemental training
22 for those poll workers to make sure they don't
23 miss it next time or they know what are the
24 rules that apply to voting?

25 A. The Robeson County Board of Elections has been

1 instructed to ensure that.

2 Q. And Robeson County -- have you had other
3 challenges with Robeson County Board of
4 Elections in the past?

5 A. I can't speak specifically to what -- we have
6 had the Robeson County Board of Elections
7 appear before our board in the past.

8 Q. Fair to say you're working on improving their
9 administration of elections overall in Robeson
10 County?

11 A. I think that's very fair to say.

12 Q. And especially municipal elections, in the
13 past, North Carolina has had to have -- had to
14 do the elections over for a lot of reasons,
15 correct, for municipal elections? Let me
16 withdraw.

17 Are you aware that in the past the
18 State Board or county boards have called for
19 new elections after an election for municipal
20 elections?

21 A. There have been some. In my years at the State
22 Board, I could recall a few times that that's
23 happened.

24 Q. Which ones are you remembering?

25 A. Specifically I'm not sure that I can tell you

1 which counties or which municipalities, but I
2 do know there have been a couple over the years
3 that have been called.

4 Q. And the municipal elections are more likely to
5 have a new election just because the small
6 number of voters -- there's a small number of
7 voters and the number of votes matter even
8 more, or they could impact, I should say
9 better?

10 A. You're correct.

11 Q. In your declaration you talk about maintaining
12 the voter rolls or list maintenance. Part of
13 your job, right --

14 A. It is.

15 Q. -- part of the State Board's job or the county
16 boards?

17 And fair to say the State Board is very
18 devoted to making sure the voter rolls are as
19 accurate as they can make them, correct?

20 A. Correct.

21 Q. And fair to say the State Board and the county
22 boards exert a lot of time and effort on this
23 process?

24 A. Correct.

25 Q. And some of the list maintenance procedures

1 that you do are dictated by both federal and
2 state law?

3 A. Yes.

4 Q. And all of these procedures have to comply with
5 the National Voter Registration Act of 1993?

6 A. Yes.

7 Q. That's a federal law?

8 A. Yes, it is.

9 Q. So let's talk about the different ways that the
10 rolls can be updated.

11 We've already kind of touched on this,
12 but the county boards receive requests to
13 update or change a voter's information probably
14 on almost a daily basis, right?

15 A. Yes, there are changes going on. Yes, every
16 day -- the voter rolls are changing every day,
17 correct.

18 Q. And as the county board receives updated
19 information, they do their best to update the
20 rolls, correct?

21 A. When a county board receives any sort of change
22 to a voter status or address, they -- they
23 process that immediately or should.

24 Q. Yeah, should.

25 And when a county board receives a new

1 application like 171, let's say someone moves
2 from a county to a county, they register that
3 voter, but the SEIMS system, if they have their
4 numbers and information, they actually cancel
5 their old voter registration if I was in Wake
6 County and I moved to Robeson County?

7 A. Correct. If SEIMS can match that voter, it
8 will cancel that registration.

9 Q. And if SEIMS can't precisely but it has some
10 information actually flags it, right?

11 A. Correct.

12 Q. And it's up to the county board to follow up?

13 A. Correct.

14 Q. And you as the executive director would expect
15 these county boards to follow up on that
16 information, correct?

17 A. Yes.

18 Q. And from time to time, and probably on a daily
19 basis, other states may notify you that a
20 North Carolina voter has now moved to sunny
21 Florida, right?

22 A. Yes.

23 Q. Or North Carolina voter may have moved up to
24 Vermont, correct?

25 A. Yes.

1 Q. And if you receive notification they've
2 registered in another state, they are then
3 removed as an active voter from the
4 North Carolina system, correct?

5 A. Correct.

6 Q. And from time to time, as I understand, some
7 voters actually just say "I don't want to be a
8 registered voter any more," correct?

9 A. Correct.

10 Q. And then they're removed?

11 A. Correct.

12 Q. And these documents that are received by either
13 the State Board or the county board, they're
14 actually scanned into the SEIMS system, right?

15 A. They're actually scanned in, but if we get a
16 cancellation from the state, it will be the
17 responsibility of the county board to take that
18 cancellation and make the change themselves.

19 It's not something that we do on the state
20 level. It is a county process.

21 Q. I see. So they would get it but it's on them
22 to get it done?

23 A. Correct.

24 Q. And also in list maintenance there are people
25 who become ineligible because they're convicted

1 of a felony, correct?

2 A. Correct.

3 Q. And the State Board receives a list of

4 convicted felons once a month from the State

5 Board of Corrections?

6 A. Yes, I believe it is once a month.

7 Q. And then people using the system try to see if

8 there's matches, correct?

9 A. That's right, that information is made

10 available to the counties, and they are to

11 check that, and they are to remove any felons

12 in their county.

13 Q. And at the end of each quarter, you get the

14 federal felony convictions from the US

15 Attorneys here in North Carolina?

16 A. We do.

17 Q. Same process, then counties research and are

18 obligated to remove convicted felons from their

19 rolls?

20 A. Correct.

21 Q. People also are removed from the voter

22 registration due to death?

23 A. Yes.

24 Q. And the State Board receives a list of people

25 who died each month from the North Carolina

1 Department of Health and Human Services?

2 A. Health and Human Services.

3 Q. And those are made available to the county
4 boards?

5 A. Correct.

6 Q. And they're obligated to remove people who have
7 passed away as active voters?

8 A. Correct.

9 Q. Now, there's another method I read about. Also
10 you can -- a close relative may inform the
11 State Board or county board that their relative
12 had passed away.

13 A. That is correct.

14 Q. And then they would be removed as well?

15 A. Correct.

16 Q. And the State Board and county boards also try
17 to maintain the rolls by looking for duplicate
18 registrations, correct?

19 A. We do.

20 Q. And actually, the statewide system, if they can
21 tell automatically that someone registered in
22 another county, that will cancel their prior
23 registration, correct?

24 A. If it can make the match, yes.

25 Q. And then the system's also sophisticated enough

1 it runs reports where it flags people -- it

2 can't do an exact match, but for followup?

3 A. That's correct, for the counties to do that

4 work.

5 Q. For the counties, gotcha.

6 There's also the system, I understand,

7 called the no contact or --

8 A. NCOA?

9 Q. Yes. Can you explain what that is?

10 A. The NCOA mailing is also done. It is something

11 that when we -- we get the information from the

12 National Change of Address, and if we have

13 information that a voter has changed their

14 address, then they are sent a mailing,

15 confirmation mailing from which we are trying

16 to see if that is in fact the case, and if they

17 confirm that, that their change of address and

18 it's in the same county, we will update the

19 voter registration and that voter remains

20 active.

21 If they do not return the change of

22 address and it's also -- it's able to be

23 forwarded, if we do not get it back, then that

24 voter becomes inactive.

25 Q. And do you get a lot of these people that have

1 a change of address within a county where
2 they've moved but they haven't updated their
3 registration?

4 A. I'm not sure exactly what the statistics are,
5 but we -- that is a program that our counties
6 work every year.

7 Q. There's also a process where I think it's every
8 odd number year where the county boards send
9 again this non-forwardable, no contact mailing
10 to voters who hadn't voted in two federal
11 elections?

12 A. Right. That is the -- right the no contact
13 mailing --

14 Q. And that's different than the change of
15 address, right?

16 A. It is. It is.

17 Q. Can you explain that?

18 A. The no contact mailing is correct. If the
19 board of elections has not had any contact with
20 that voter, then what we do send a confirmation
21 mailing. We go through the verification and
22 then confirmation process. They would get a
23 verification mailing to the address. If it
24 comes back undeliverable, then they would get a
25 confirmation mailing, and if that is not

1 returned, that voter would then be made
2 inactive, still able to vote but would just be
3 inactive in the records.

4 Q. And also you conduct what's called DMV audits,
5 correct? Is that county board or State Board?

6 I'm sorry.

7 A. It's the State Board.

8 Q. So can you explain what the DMV audits are that
9 the State Board conducts?

10 A. What we -- DMV has death information so that's
11 part of what we audit for. So if DMV has death
12 information, we use that also for -- to be able
13 to remove.

14 If DMV also shows that someone has
15 moved out of the state, then we can use that
16 data for the counties right now for them to be
17 able to determine whether or not those people
18 need to be cancelled.

19 Q. How often do you do the DMV audits?

20 A. That's a Marc Burris question. I'm not sure.
21 He does this periodically. I'm not sure
22 exactly what timetable it's on.

23 Q. And as I understand, you've also started a
24 program where you check the U.S. citizenship at
25 DMV?

1 A. We do.

2 Q. Can you explain that process?

3 A. We check citizenship with DMV, but we also --

4 if we have information from the DMV that the

5 driver or voter has a legal -- is here by legal

6 presence and is not a citizen, then what we do

7 is through the Department of Homeland Security

8 we check that voter through the SAVE Program

9 and see if that person in fact has been

10 naturalized or is now a U.S. citizen.

11 Q. So that's a lot. Is there anything else you do

12 to maintain the rolls other than all those

13 steps?

14 A. I think you've hit most of them.

15 Q. Now, in your declaration -- let me direct your

16 attention to paragraph 23, please. And again,

17 just go ahead and refresh your memory on it.

18 Let me know when you're ready.

19 All set?

20 A. I'm ready.

21 Q. In here you talk about an instance about the

22 mail verification process where some of the

23 cards that were apparently not delivered were

24 not returned to the county board of election,

25 right?

1 A. Correct.

2 Q. And that's at Winston-Salem State University?

3 A. Yes, it is.

4 Q. And that's in Forsyth County I believe, right?

5 A. Yes, it is.

6 Q. So -- and with that, after that event, the
7 director of the county board of elections went
8 and spoke with the postal service there at the
9 Winston-Salem State University, right?

10 A. He did.

11 Q. And he explained that if they receive these
12 cards, they either need to call or they need to
13 return them, correct?

14 A. Apparently that is what I understand the
15 agreement to have been.

16 Q. And have you followed up to see how they've
17 been operating since that agreement is in
18 effect?

19 A. Since -- well, they're no longer operating
20 under that agreement. They have been
21 instructed that -- that the mail process should
22 work just as any other mail process and that --
23 if mail is undeliverable, that is the
24 responsibility of that post office at
25 Winston-Salem State University to return that

1 mail to the Forsyth County Board of Elections.

2 Q. So you talked with that county board and said
3 let the process run as it's supposed to?

4 A. Correct. And the chair of that county board
5 also understood that importance and made that
6 direction himself.

7 Q. And have you done any other supplemental
8 training there with Forsyth County or
9 Winston-Salem State University?

10 A. After that I think everyone sort of understood
11 once they saw what had happened that that
12 process is unacceptable and that the post
13 office -- does not need to be agreements
14 between county boards of elections and picking
15 up mail. That is a postal service
16 responsibility.

17 Q. And are you comfortable that that supplemental
18 training and direction has addressed that
19 issue?

20 A. I believe it has. I have had no information to
21 the contrary.

22 Q. You also -- not you. Withdrawn.

23 [REDACTED] North Carolina joined what's called the

24 [REDACTED] Interstate Voter Crosscheck Program, correct?

25 A. Correct.

1 Q. And that's housed and operated by the Secretary
2 of State in Kansas, correct?

3 A. It is.

4 Q. And I'm referring to paragraph 24 if you want
5 to look at the number. It's not a memory test.

6 So with respect to the Interstate Voter

7 Crosscheck Program that North Carolina joined,

8 the results of that were that there were about

9 35,750 registered voters in North Carolina who

10 share the first and last name and date of birth

11 with someone in North Carolina and in another

12 state in the 2012 general election; is that

13 right?

14 A. Correct.

15 Q. And by stating that, you're not suggesting to

16 the court that there were 35,750 instances of

17 voter fraud, correct?

18 A. I am not.

19 Q. That should not be taken from that statement,

20 correct?

21 A. It should not.

22 Q. Because someone's first and last name and date

23 of birth can be caused by a lot of reasons,

24 correct?

25 A. It could be. There are other reasons. There

1 are many reasons that could be.

2 Q. And why are they? Give me some that you know.

3 A. There certainly could be people who have the
4 same first, last name and date of birth across
5 states. That certainly is possible.

6 Q. Any other reasons?

7 A. For -- well, I guess that's the major reason
8 for that, yes.

9 Q. And are you aware that there's actually
10 North Carolina legislators whose first and last
11 name and date of birth are duplicates with
12 voters in other states?

13 A. I learned that recently.

14 Q. And you don't believe any of those four
15 identified legislators were committing voter
16 fraud, correct?

17 A. I have no information to believe that to be the
18 case.

19 Q. In addition, you also identified in paragraph
20 24 that -- you've identified 764 registered
21 voters again with first and last name, date of
22 birth and the last four digits of their Social
23 Security number again voted -- who appear to
24 have voted both in North Carolina and another
25 state, correct?

1 A. Correct.

2 Q. And that's in 2012?

3 A. Yes. Not 212.

4 Q. Yeah, right, right. Yes, 2012. Okay.

5 And again, you're not suggesting to the

6 court there were 765 instances of voter fraud

7 in North Carolina, true?

8 A. I have come to no conclusions about those at

9 this point.

10 Q. Okay. You got to my next point. I read your

11 testimony. You're still looking into that

12 issue, correct?

13 A. We are actively looking into that.

14 Q. But at this point you have come to no

15 conclusions, correct?

16 A. We have not come to conclusions, correct.

17 Q. And is North Carolina a member of an

18 organization or group that you're aware of

19 called the Electronic Registration Information

20 Center or ERIC?

21 A. We are not.

22 Q. Do you know what ERIC is?

23 A. I do.

24 Q. What is it?

25 A. ERIC is also -- it's a similar program to the

1 Interstate Crosscheck. It does not check for
2 duplicate registrations, but it does check for
3 multiple registrations across states.

4 We have actually met with the Pew
5 Center because it oversees the ERIC program,
6 and we've certainly met with them and are
7 talking with them about possibly in the future
8 joining that program as well.

9 Q. And under -- going back to the Interstate Voter
10 Crosscheck Program, are you aware of certain
11 states that have withdrawn from that program?

12 A. I am aware of -- Florida had been part of the
13 program but they did not participate in this
14 past election. I'm not aware that they have
15 withdrawn. My understanding from talking with
16 them is that they didn't just do it this past
17 election.

18 Q. And are you aware whether the state of Virginia
19 plans to continue to participate?

20 A. I don't know.

21 Q. Let's turn and talk about one-stop absentee
22 voting which is sometimes referred to as early
23 voting?

24 A. Correct.

25 Q. The official name is one-stop absentee voting.

1 Why don't you explain to me in kind of English

2 what is one-stop absentee voting?

3 A. It is in-person absentee voting. It is still

4 absentee voting but the person actually

5 presents to a one-stop early voting location to

6 cast their ballot.

7 Q. What are the benefits of one-stop absentee

8 voting for the voter?

9 A. There are additional certainly times for them

10 to cast their ballot and do so in person.

11 Certainly they can vote absentee by mail also,

12 but if they wanted to vote in person, they

13 could be afforded the opportunity as well.

14 Q. Any other benefits you can think of for the

15 voter of early voting?

16 A. Well, that is a time other than election day

17 that they could vote.

18 Q. What are the benefits of what I'll call early

19 voting for elections administration?

20 A. Well, there are benefits that on election day

21 you probably will not -- those people that have

22 voted early will not be voting on election day,

23 so your precincts might not have as much

24 traffic as they would on election day if people

25 had voted early.

1 Q. Any other benefits for election administration
2 of the early voting?

3 A. I mean I think that's probably -- I would say
4 probably one of the bigger benefits of it.

5 Q. Any others you can think of?

6 A. I mean I guess it's also -- different county
7 election officials would probably have
8 different answers to that question, and it's
9 certainly something that they are far better to
10 know the benefits to them as election
11 officials, but I do think you would probably
12 get different answers from different counties.

13 Q. And that's because each county historically,
14 with some supervision, have been able to craft
15 their own early voting plans, correct?

16 A. Yes. Their three member boards are able to do
17 that if they can come to a unanimous decision.

18 Q. And if they can't, sometimes the issue
19 percolates up to the State Board of Elections,
20 correct?

21 A. Yes, it does.

22 Q. And historically during the time there has been
23 17-day early voting, those plans have not been
24 uniform across the 100 North Carolina counties,
25 correct?

1 A. When you say uniform, do you mean in --

2 Q. Same dates, times.

3 A. During the 17 days, you're saying that
4 someone -- they might operate different
5 schedules?

6 Q. Yes, ma'am, that's a better way to put it.

7 A. Sure. Yes.

8 Q. And even under the primary election that you
9 talk about in your -- the counties had
10 different schedules?

11 A. Right. They had uniform schedules within the
12 county, basically uniform schedules, same
13 amount of -- number of hours and days of
14 operation, but those schedules differed from
15 county to county.

16 Q. And you don't yet -- the plans for early voting
17 for the 2014 general election haven't been set
18 yet, correct?

19 A. Some counties have started to pass their
20 implementation plans, but certainly most
21 counties have not done that yet.

22 Q. And by what date will those have to all be set
23 for all the counties?

24 A. I think we've set a date in late July or
25 August.

1 Q. Is that date on your website or is that --

2 A. I'm not sure if it is or not.

3 Q. But you believe it's in late July or August?

4 A. It is. It's probably in a numbered memo that
5 we have sent to the counties.

6 Q. So then you mentioned before -- I want to turn
7 to the mail-in absentee voting and you discuss
8 that in your declaration. If you want to refer
9 to it, it starts on page 12.

10 And this permits a voter to request a
11 ballot that they could just vote at home,
12 correct?

13 A. Correct.

14 Q. And to request an absentee ballot a voter must
15 use the State Absentee Ballot Request Form?

16 A. Yes, they must.

17 Q. And let's look at paragraph 39 of your
18 declaration. You say to request an absentee
19 ballot, the voter must complete and sign a
20 written request form, and that's referring to
21 the State Absentee Ballot Request Form,
22 correct?

23 A. Yes, it is.

24 Q. And although you say voter there, other people
25 other than the voter him or herself could

1 actually request it on behalf of the voter,

2 correct?

3 A. Correct. And your relative could request it,

4 yes.

5 Q. So when you use the word "voter" there, you

6 mean voter or close relative, correct?

7 A. Correct.

8 Q. And a close relative can be a spouse?

9 A. Could be.

10 Q. Brother?

11 A. Yes.

12 Q. Sister?

13 A. Yes.

14 Q. Parent?

15 A. Yes.

16 Q. Grandparent?

17 A. Yes.

18 Q. Mother-in-law?

19 A. Yes.

20 Q. Father-in-law?

21 A. I believe so.

22 Q. Daughter-in-law?

23 A. I believe so.

24 Q. Son-in-law?

25 A. I think so.

1 Q. Stepson?

2 MS. MURPHY: Should we get out the
3 statute book?

4 THE WITNESS: I think so, but I would
5 rather check the statute on that.

6 BY MR. DONOVAN:

7 Q. For sure, and you're more than welcome to do
8 that.

9 A. I believe that is correct.

10 Q. And all those people can request it on behalf
11 of someone else, correct, on behalf of the
12 voter?

13 A. On behalf of a near relative, yes.

14 Q. So, for example, a husband can request it on
15 behalf of a wife?

16 A. Yes.

17 Q. And a wife can request it on behalf of a
18 husband, correct?

19 A. Yes.

20 Q. Let me hand you what we've marked as
21 Exhibit 173, which is the State Absentee Ballot
22 Request Form.

23 And I may be out of order on the
24 exhibits because I skipped some exhibits.

25 MR. DEVANEY: Do you need a break at

1 any point?

2 MR. DONOVAN: Oh, yeah, do you want to
3 take a break?

4 THE WITNESS: No, I'm good.

5 MR. PETERS: We've been going a little
6 over an hour.

7 THE WITNESS: That's up to you.

8 MR. PETERS: No, that's up to you.

9 (WHEREUPON, Plaintiff's Exhibit 173 was
10 marked for identification.)

11 BY MR. DONOVAN:

12 Q. Go ahead and just give that a look. I'm sure
13 you've seen it.

14 A. (Witness complying.)

15 Q. All set?

16 A. I'm all set.

17 Q. Okay. So this, the State Absentee Ballot
18 Request Form, Exhibit 173, is a one-page actual
19 request form and then one page of general
20 instructions, correct?

21 A. Correct.

22 Q. And to fill this out, nobody needs to come
23 face-to-face with an election official, they
24 can download it and send it in, correct?

25 A. Correct.

1 Q. And the State Absentee Ballot Request Form,
2 like the others, needs to be signed, correct?

3 A. Correct.

4 Q. And it can be signed by the voter?

5 A. Yes.

6 Q. Or a near relative that we just talked about?

7 A. Correct.

8 Q. And this also asks, similar to the other one,
9 for the voter's identification number, if they
10 have that, or their voter registration number,
11 correct?

12 A. Yes.

13 Q. And if they don't have that, they can send in,
14 even under the new law, just a current valid
15 photo ID, correct?

16 A. They can -- basically we call it the HAVA ID.

17 Q. And they can also send in a utility bill,
18 correct?

19 A. Correct.

20 Q. And same of the HAVA we talked about on the
21 other one, right?

22 A. Correct.

23 Q. They do not need to have, even under this new
24 law, the North Carolina photo ID, correct?

25 A. Correct.

1 Q. So fair to say there's a difference between
2 voting in person under North Carolina law and
3 what you need to show versus mail-in absentee
4 voting?

5 A. Yes.

6 Q. And when you vote -- going back to this
7 application, you see the Signature of Near
8 Relative on page 2 at the bottom?

9 A. Yes.

10 Q. What steps did county boards take to confirm
11 the validity --

12 (Brief Interruption.)

13 MR. DONOVAN: I'm sorry about that.

14 BY MR. DONOVAN:

15 Q. Ms. Strach, what steps does the county or State
16 Board take when they receive a State Absentee
17 Ballot Request Form to confirm the validity of
18 the signature of the near relative?

19 A. The counties have been instructed that they
20 need to ensure the fact the person is a near
21 relative of the voter, and they certainly may
22 take probably different ways of doing that, but
23 that is part of their instructions from the
24 State Board that that is definitely a
25 responsibility of them.

1 Q. Of the county board?

2 A. Of the county boards to undertake.

3 Q. Are you aware of how any county board actually
4 does that?

5 A. I'm not -- I'm certain of how they specifically
6 do that.

7 Q. And on this application they don't ask when
8 they say Signature of Near Relative to state
9 your relationship to the voter, correct?

10 A. Not on this form.

11 Q. Are you aware is there another form for the
12 State Absentee Ballot Request Form where it
13 requests their relationship to the voter?

14 A. This is the Absentee Request Form. I did think
15 we had a form that did ask for the relationship
16 to the voter, but it is not on this form.

17 Q. So once a voter or a near relative or legal
18 guardian sends in this Absentee Ballot Request
19 Form, if they fill out all the information, the
20 county board sends the ballot to that address,
21 correct?

22 A. Correct.

23 Q. That ballot is then filled out -- under the new
24 law you need to have two witness signatures,
25 correct?

1 A. Yes.

2 Q. And it's sent back to the county board?

3 A. Two witness signatures or a notary.

4 Q. Or a notary, good point.

5 With the two witnesses, is there
6 anything that the county boards do to confirm
7 that those two witnesses were actually there
8 and saw the voter vote?

9 A. Well, they sign a certification and they
10 provide -- they sign that also as under penalty
11 of perjury. I believe it's also a felony for
12 them to do that, and they provide their name
13 and address information as well.

14 Q. Other than that, are you aware of any steps the
15 county board takes to confirm the validity of
16 those witnesses?

17 A. No.

18 Q. So fair to say under the current law, a
19 North Carolina citizen can register to vote and
20 vote absentee by mail without ever showing a
21 photo ID, correct?

22 A. Can vote absentee mail without showing the
23 photo ID?

24 Q. Yes.

25 A. Yes.

1 Q. But if a North Carolina citizen registers to
2 vote and shows up in person, they have to
3 actually show a photo ID?

4 A. Not until 2016.

5 Q. Starting -- good point. Starting 2016.

6 A. Right.

7 Q. And have you done any analyses to determine
8 whether Caucasians -- on there white people --
9 use absentee-by-mail voting more or less than
10 African Americans?

11 A. I have not. I'm not sure if we have that
12 information or not.

13 Q. And are you aware from the expert reports and
14 the facts in this case that in fact whites use
15 mail-in absentee voting more than African
16 Americans?

17 A. I've not read the reports.

18 Q. Are you aware of that fact?

19 A. I'm not aware of that fact.

20 Q. I'm going to refer -- you're free to refer to
21 pages 18 and 19 of your declaration. You talk
22 about some of the data.

23 A. Yes.

24 Q. And you talk about the voter turnout statistics
25 from 2010 primary versus the 2014 primary,

1 right?

2 A. Correct.

3 Q. And you identify that -- well, let me take a
4 step back.

5 The number of registered voters in
6 total in North Carolina has increased from what
7 I'll call May 2010 to May 2014, correct?

8 A. Yes.

9 Q. And during that time North Carolina's
10 population has also increased?

11 A. Yes, it has.

12 Q. And the number of African Americans residing in
13 North Carolina has also increased from the time
14 of the 2010 primary to the 2014 primary,
15 correct?

16 A. I believe so.

17 Q. And the number of registered African Americans
18 registered in North Carolina has increased from
19 the 2010 primary to the 2014?

20 A. I believe so.

21 Q. Now, in your declaration you note that there --
22 in raw numbers there was an increase in the
23 number of African Americans that voted in the
24 2014 primary. Do you see that?

25 A. I do.

1 Q. And did you look at that breakdown county by
2 county at all?

3 A. I don't think that we did look at it county by
4 county. I think we -- certainly we have that
5 information county by county, but I don't think
6 we looked at it county by county.

7 Q. Are you aware of the biggest increase of
8 African American voters when you compare both
9 the 2010 primary versus the 2014 was
10 Mecklenburg County?

11 A. I'm not aware of that specifically.

12 Q. Do you know how many early voting sites there
13 were in Mecklenburg County during the 2010
14 primary?

15 A. I believe there were 13.

16 Q. During the 2010 primary?

17 A. Excuse me. 2014.

18 I believe in 2010 there might have
19 either been one or two.

20 Q. This is an exhibit here. I am going to hand
21 you what has been marked as Exhibit 174 which
22 is Exhibit 9 to your declaration. You can go
23 ahead and look at it.

24 (WHEREUPON, Plaintiff's Exhibit 174 was
25 marked for identification.)

1 BY MR. DONOVAN:

2 Q. My question is: In 2010 primary, how many
3 early voting sites did Mecklenburg County have?

4 A. One.

5 Q. And in 2014, how many early voting sites did
6 Mecklenburg County have?

7 A. 13, I believe.

8 Q. Are you aware that during the 2014 primary
9 there was what one might call the hotly
10 contested 12th Congressional District primary?

11 A. Yes, I am aware of that.

12 Q. And that's Representative Mel Watts' old seat,
13 correct?

14 A. Yes.

15 Q. And Mel Watts was in that seat for a while,
16 correct?

17 A. Yes, he was.

18 Q. And fair to say when he was running there for a
19 while, he was pretty popular, generally an
20 uncontested primary, correct?

21 A. I believe you're correct.

22 Q. And in 2014, it was a hotly contested primary,
23 correct?

24 A. It was contested.

25 Q. And the 12th District covers, as I understand

1 it a lot of area, but it covers parts at least
2 of Mecklenburg and Guilford County, correct?

3 A. Yes, it does.

4 Q. And are you aware that Guilford County had the
5 second biggest increase in African American
6 voters during the 2014 primarily?

7 A. I'm not sure I looked at that.

8 MR. DONOVAN: Okay. Let's take a
9 break.

10 MS. MURPHY: Sure.

11 THE VIDEOGRAPHER: Going off record at
12 12:22 p.m.

13 (Brief Recess.)

14 THE VIDEOGRAPHER: Back on the record
15 at 12:40 p.m.

16 BY MR. DONOVAN:

17 Q. Ms. Strach, can you pull out the 171 which is
18 the Voter Registration Application.

19 A. Yes.

20 Q. A few follow-up questions.

21 In Section 3 there are boxes for voter
22 registration number, driver's license number
23 and last four digits of Social Security number.

24 What are those used for? What is that

25 information, if filled in, used to do?

1 A. What is it used for? I mean, if you put in a
2 North Carolina voter registration number, if
3 you have that, then that's part of what we're
4 going to try to match. Maybe you're already an
5 existing voter in the county already and you're
6 registering again. So we would use that for
7 that purpose to see if your voter record
8 already existed in our system.

9 Driver's license number is something
10 that we go through a validation process and
11 that is what that number's used to validate
12 with DMV. It's part of the process that's done
13 when a Voter Registration Application is
14 processed.

15 Q. Let me stop you there. What is the -- explain
16 to me what the validation process is.

17 A. Either if they -- if a voter provides a
18 driver's license or the last four of their
19 social, then we try to validate that with DMV,
20 with their records.

21 If a person does not provide that
22 information or there's a conflict on that, that
23 would be someone that would still be able to
24 vote, that would not in any way stop them from
25 voting, but they would be asked to provide

1 basically HAVA ID when they present to vote.

2 Q. So is this validation process done by the
3 county or the State Board?

4 A. It's information that's put into -- the county
5 puts the information in, but the validation
6 process happens in SEIMS, in our statewide
7 voter registration system.

8 Q. So that is done independent of that mail
9 verification system we talked about?

10 A. It is.

11 Q. Okay. Any other reasons or any other uses for
12 that information that either the state or the
13 county board uses, whether it's the
14 registration number, driver's license number,
15 Social Security number?

16 A. Well, what we will use it for going forward is
17 we are looking to see -- if people have
18 provided a driver's license number, it helps us
19 in our outreach efforts to identify those that
20 may not so that we can reach out.

21 If we see -- if we have information
22 that someone has not provided that or we do not
23 have that, that will be information we will use
24 to contact that person to ensure that they do
25 in '16 have photo identification.

1 Q. A little further down on the right, that map
2 diagram section we talked about earlier --

3 A. Right.

4 Q. Is that also used by county boards to identify
5 where homeless people may live?

6 A. That is correct.

7 Q. Let's go back to your declaration. I'm going
8 to focus on paragraph 27.

9 So at the bottom -- we talked about
10 some of this, but some folks would try to
11 register during open registration period and
12 they were denied because the mail verification
13 wasn't confirmed, correct?

14 A. They were denied because, right, they failed
15 mail verification.

16 Q. And one of the reasons they may have failed
17 mail verification is because the address it was
18 mailed to was wrong?

19 A. It could be.

20 Q. Especially in an apartment building, it could
21 have the wrong apartment number on it?

22 A. It could be.

23 Q. So there's a fair amount of reasons where they
24 may not have satisfied the mail verification
25 but they are still a North Carolina citizen,

1 non-felon and above 18 years of age otherwise

2 eligible to vote, correct?

3 A. That could be a reason.

4 Q. So if the mail verification was sent to the

5 wrong address or the post office messed it up

6 at an apartment building and that person then

7 went and same-day registered, they were

8 eligible to vote, correct, as a North Carolina

9 citizen?

10 A. They may be eligible as far as the other

11 eligibility, but their residence had not been

12 verified which is also something that makes you

13 an eligible voter in North Carolina.

14 Q. Well, but if I don't satisfy it once and I go

15 to register again to make it right, I'm not

16 precluded from making it right, correct?

17 A. No. And you can do that on election day as

18 well.

19 Q. So if you assume some of these folks that you

20 refer to -- I know we don't have the number --

21 that were denied during open registration but

22 show up and same-day register, they're actually

23 there in person, they would need a HAVA ID to

24 register, correct?

25 A. They would.

1 Q. So if they were there in person, they would
2 need proof of their current residency, correct?

3 A. They would need -- yes, they would have to have
4 some proof of that.

5 Q. A little further up in paragraph 27, returning
6 to your statements about the felony conviction,
7 and you said you're looking into that.

8 Now, as I understand in North Carolina,
9 once your sentence is completed, you're
10 automatically restored and able to vote,
11 correct?

12 A. No.

13 Q. Can you explain that?

14 A. Once your felony sentence is completed, you
15 must register -- reregister because you have
16 been removed from the rolls.

17 Q. Okay. So once the sentence is complete, I am
18 eligible to register?

19 A. You're eligible to register.

20 Q. And you said you're doing some further analyses
21 on this felony conviction. In this analyses,
22 how are you determining when this person's
23 felony conviction sentence was completed?

24 A. That's part of exactly what we're looking at.
25 When we see that the reason that the person was

1 removed after same-day registering was because
2 of felony conviction, then what we have to do
3 is go back and look at the DOC's website and
4 see exactly when that person's sentence was,
5 when they completed that sentence and when they
6 were in fact eligible to reregister if they
7 were in fact eligible to reregisters.

8 Q. So fair to say that you need to look at the
9 facts and circumstances of each voter?

10 A. You have to look at each voter.

11 Q. Let's go to paragraph 18 of your declaration.
12 I'm sorry, we covered that.

13 But I would ask you to turn to
14 paragraph 50 of your -- paragraph 50 of your
15 declaration.

16 You state in the paragraph 50 that
17 allowing out-of-precinct provisional voting
18 makes it difficult for county boards of
19 election to predict resource allocation. Do
20 you see that?

21 A. Yes, I do.

22 Q. How difficult is it?

23 A. I mean, it's difficult because if you do not
24 know how many -- who's going to show up to
25 vote, it's difficult to know how to prepare for

1 that as far as having the appropriate number of
2 election officials working, maybe having the
3 appropriate number of election equipment you're
4 going to need as well.

5 And if you're talking about
6 out-of-precinct provisional voting, these
7 people are all going to be voting provisional
8 ballots, so all of that would have to -- it's
9 difficult to predict what you would need to do
10 to be able to address that while you're also
11 dealing with people that are registered in the
12 precinct that are there to vote.

13 Q. And although it's more difficult, the State
14 Board of Elections and the county boards have
15 been able to do this in the past, correct?

16 A. They have done it in the past. We always do
17 what the General Assembly tells us to do.

18 Q. That's all I have. Thank you. I think Mr. --

19 MR. DEVANEY: I'm sorry. I'm John
20 Devaney.

21 EXAMINATION

22 BY MR. DEVANEY:

23 Q. Good afternoon, Ms. Strach.

24 A. Good afternoon.

25 Q. Am I pronouncing your name correctly?

1 A. You are.

2 Q. I'm John Devaney for the Duke intervenors.

3 Just following up on Mr. Donovan's last
4 question, do you have any examples of where a
5 county election board didn't have adequate
6 resources to accommodate provisional voting
7 when there are out-of-precinct voters?

8 A. I don't have specific examples. Certainly some
9 of the comments that I've heard since I've been
10 in this position from directors who talked
11 about the difficulties with out-of-precinct
12 voting for that reason, that that was difficult
13 for them to know what kind of resources they
14 needed there. So it's really been
15 conversations I've had with other directors at
16 conferences and occasions we've talked about
17 that.

18 Q. Just to be very clear, you don't have any
19 specific episodes, incidents where there were
20 insufficient resources to handle
21 out-of-precinct voting; is that correct?

22 A. No.

23 Q. Could you take a look, please, at paragraph 56
24 of your declaration, and just take a second to
25 read that and let me know when you're done.

1 A. (Witness complying.)

2 Q. So just to put this in context, as I understand
3 the law in North Carolina, 17-year-olds who are
4 going to be 18 on the day of the general
5 election are permitted to pre-register, if you
6 will. It's actually registration, it's not
7 pre-registration. Is that right?

8 A. They are eligible to register but there are
9 certain periods that they're eligible to
10 register.

11 If someone is going to turn -- is 17
12 and will turn 18 by the next general election,
13 they can -- begin registering 60 days prior to
14 the primary that they would be eligible to vote
15 in.

16 Q. And how late can they register?

17 A. And they have the same deadline as every other
18 voter, the 25 days prior to the election
19 primary.

20 Q. And it is a provision of North Carolina that
21 actually requires that they be permitted to
22 register during that period of time, correct?

23 A. It is.

24 Q. And in reading your last deposition and also
25 reading what's here, I think you acknowledge

1 that the Department of Motor Vehicles had been
2 instructed by the board of elections not to
3 permit 17-year-olds to register the way we just
4 discussed; is that correct?

5 A. There was a time shortly after House Bill 589
6 was passed that we were trying to determine how
7 we were going to work with DMV in order to
8 accomplish allowing 17-year-olds to register
9 and not -- our counties not engaging in
10 pre-registration.

11 And so at that time because of the
12 number of elections that a 17-year-old may be
13 involved in if they registered during a
14 municipal year, it was determined that DMV
15 could not -- their system could not accommodate
16 knowing that, and so at that time we had
17 instructed them just to register 18-year-olds.

18 Q. And as I understand it, the way the form is
19 completed, the applicant or registrant checks a
20 box that says whether he or she's going to be
21 18 on the day of the election, right?

22 A. They should, yes.

23 Q. So it's not rocket science to figure out
24 whether this person is going to be qualified,
25 right?

1 A. Well, it's not that it's rocket science, but if
2 you're a 17-year-old in an odd numbered year
3 going to the DMV and they ask you are you going
4 to be 18 by the next general election, you
5 might not know what your general election is,
6 you might not know if it's one -- if it's a
7 partisan primary and you're in Mecklenburg
8 County that that's in August or it might be
9 that maybe you're another municipality where
10 that general election is not until November.

11 So that 17-year-old might not know that
12 answer and the DMV probably doesn't know that
13 answer either.

14 Q. And so you all decided the best solution to
15 that is don't permit the registration at all?

16 A. Well, that was -- what we -- what we were
17 trying to prevent was a 17-year-old who
18 believed that they were eligible because they
19 were offered that registration to then believe
20 that they were in fact registered to vote when
21 in fact they were not registered to vote.

22 And we didn't want that kind of
23 confusion. We were trying to avoid that. That
24 was the only reason that we made that directive
25 to DMV.

1 And since that time we are certainly
2 looking for any way we can improve that and
3 ensure that anyone who is eligible is afforded
4 that ability. So we have now instructed them
5 to let all 17-year-olds to register to vote and
6 then we'll let the county boards determine if
7 in fact they were eligible at that time.

8 Q. So let me follow up on a couple things you
9 said. I think you said that you were trying to
10 avoid confusion among 17-year-olds whether they
11 were registered to vote or not. And related to
12 that, do you have examples of where there
13 really was confusion among 17-year-olds?

14 MS. MURPHY: Objection to form.

15 You can answer.

16 BY MR. DEVANEY:

17 Q. You can answer that.

18 A. Not specifically. We were -- we were trying to
19 work with DMV because they had been
20 pre-registering so they had been -- they had
21 been involved in -- a 16-year-old that shows up
22 to get a driver's license was able to -- prior
23 to 589 was able to fill out a voter
24 registration and that would be held by the
25 county board of elections.

1 So we had to provide instructions to
2 the DMV in how -- because that had been
3 repealed how that would no longer happen but
4 how we could ensure that those people that were
5 eligible were offered and those that were not
6 eligible were not offered voter registration.

7 Q. But in response to my question, is it right
8 that you -- and I'm stating "you"
9 generically -- the Board of Elections, and I'll
10 include you personally in that, you have no
11 knowledge of any actual confusion that existed
12 amongst 17-year-olds that you had to address;
13 is that right?

14 A. No because this had just -- when we made this
15 directive, this law had just gone into effect,
16 so this was something that we were trying to
17 avoid future confusion. There have not been
18 time for there actually to be any confusion.

19 Q. So here's my related question. The law in
20 North Carolina, I think you admit, says that
21 this registration of 17-year-olds during the
22 time period we discussed should be permitted,
23 and what caused the Board of Elections to
24 conclude that it could countermand that law and
25 tell the Department of Motor Vehicles "don't

1 register them"?

2 A. As I've tried to say here is that that was our
3 best effort. We were not in any way trying not
4 to abide by that law. It's what we thought was
5 the most workable thing we could do, and since
6 that time we have corrected that and we believe
7 that we have addressed that.

8 Q. But you agree that wasn't consistent with the
9 law, do you?

10 A. I agree that we wanted every person to be
11 offered that was eligible and we -- we
12 certainly understand that there -- if someone
13 would have been 18 at that point in time, they
14 were not offered an application by DMV, we
15 certainly recognize that.

16 Q. But my question is a little different. My
17 question is you agree that when you all
18 instructed the Department of Motor Vehicles not
19 to permit these 17-year-olds to register, that
20 was not consistent with North Carolina law?

21 A. I agree that North Carolina law says when
22 they're eligible to register and it's during
23 the 60 days prior to the primary election and
24 if that had happened during that time, that
25 would not have been consistent.

1 Q. How long did this instruction or order to the
2 Department of Motor Vehicles stay in place?

3 A. Oh, I need to go back and look at specifically
4 what that was. I believe -- I'm not sure when
5 they started to implement that. I'm thinking
6 it was September possibly.

7 Q. And when -- are you saying that there was
8 instruction to the Department of Motor Vehicles
9 to stop that and allow 17-year-olds to begin
10 registering?

11 A. Yes. Yes.

12 Q. When was that instruction given?

13 A. We have been working with DMV -- this has been
14 shortly after my first deposition that that
15 directive was given to the Department of Motor
16 Vehicles. We've been working with them since
17 that time and we've instructed our counties
18 that in fact will be receiving applications
19 from 17-year-olds who may not in fact be
20 eligible to register, but at this time they
21 will be and they should be processed if they
22 will be 18 by the general election.

23 Q. I'm trying to figure out the date of your first
24 deposition. It's April 16, 2014.

25 A. Yes.

1 Q. So we know that this instruction went out after
2 April 16, 2014. Do you have any memory of
3 when?

4 A. It would have been shortly after that. I can't
5 tell you specifically the date, but it was not
6 very long after that deposition that those
7 instructions went to.

8 Q. In what form were the instructions given,
9 orally, written?

10 A. Well, I think we actually sent an e-mail but we
11 also had conversations with those at DMV that
12 we work with to ensure that voter registration
13 process goes forward at DMV, so we had
14 conversations and I'm sure there was also an
15 e-mail exchange as well.

16 Q. Do you know if that e-mail has been produced in
17 discovery in this case?

18 A. I don't know, but I can certainly get that.

19 Q. And how many of the county boards did you talk
20 to about this; do you know?

21 A. County boards as far as -- we didn't talk to
22 county boards. We've sent out numbered memos
23 to the county boards advising them that this
24 would be taking place, that they will be
25 getting applications from 17-year-olds, and if

1 that 17-year old is not going to be 18 by the
2 general election, they would need to deny that
3 registration.

4 Q. So just to be clear, in addition to an e-mail
5 and maybe some conversation, is there also a
6 memo that --

7 A. A memo --

8 Q. Let me finish.

9 -- after your deposition in April that
10 instructed county election officials, hey,
11 begin registering 17-year-olds?

12 A. County boards of elections have always been
13 registering 17-year-olds when it's appropriate
14 to do so.

15 This memo was only with respect to what
16 DMV would be doing that they would be getting
17 information from the DMV. So this had nothing
18 to do with -- they have always been registering
19 17-year-olds when it was appropriate to do so.

20 Q. So the mail you're talking about just went to
21 DMV?

22 A. Correct.

23 Q. Did a memo go to DMV?

24 A. If a memo, it would have been in the form of an
25 e-mail to DMV.

1 MR. DEVANEY: Counsel, I would ask --
2 I'll admit I'm not familiar with all the
3 documents in this case, but if that e-mail or
4 any documents haven't been produced, we would
5 ask those be produced.

6 MR. PETERS: Sure.

7 MR. DEVANEY: Thank you very much.

8 BY MR. DEVANEY:

9 Q. So I think we've established that this period
10 within which DMV had been instructed not to
11 register 17-year-olds ran from roughly
12 September 1st to sometime after your deposition
13 this past April?

14 A. Right.

15 Q. Do you know how many 17-year-olds were refused
16 registration by DMV during that period of time?

17 A. I do not know that.

18 Q. Is that -- did the DMV -- I'm sorry.

19 Did the board of elections make any
20 inquiries into how many had been turned away?

21 A. I do not know if the staff person that has been
22 working with DMV has made that inquiry. I'm
23 not aware if it has been or not.

24 Q. Who is that staff person?

25 A. Veronica Degraffenreid.

1 Q. So you don't know if any effort has been made
2 to determine how many 17-year-olds may have
3 been turned away?

4 A. I don't know.

5 Q. Do you know if any effort has been made to
6 identify those who were turned away?

7 A. I don't know.

8 Q. Turning to your declaration, paragraph 56, the
9 second sentence you say:

10 "At the time of my deposition in
11 this case, the State Board had
12 requested that the Department of Motor
13 Vehicles not register 17-year-olds out
14 of concerns that DMV personnel should
15 not be required to master a complicated
16 set of timeframes."

17 Tell me what you mean by that, please.

18 A. That's what I was referring to earlier, the
19 timeframes could differ depending on what
20 election that the individual voter/driver at
21 DMV would be qualified to vote in and they
22 would need to know -- in order to know whether
23 or not that individual is going to be 18 by the
24 general election, they would have to know the
25 elections for which that individual was

1 qualified to vote in, so there would be
2 different timeframes based on where that person
3 presented at DMV.

4 Q. And do you have any evidence or did the board
5 of elections have any evidence that the DMV was
6 having difficulty figuring out what those
7 timeframes were?

8 A. Yes. In conversations with them, we were
9 trying to explain to them how we would have to
10 do that and, yes, that was -- we definitely
11 made efforts to try to make that happen.

12 Q. Let me ask it a little different. Are you
13 aware of any episodes or instances where they
14 got the timeframes wrong?

15 A. Well, they had not -- no, I'm not -- I'm not
16 aware of any -- where they've gotten the
17 timeframes wrong because I don't think they
18 were -- the examiners, that people were aware
19 of those timeframes.

20 Q. Let me show you a couple of new exhibits. And
21 I forget what exhibit number we are on. 175.

22 MR. DEVANEY: And what is the next
23 exhibit number, please?

24 THE REPORTER: 175.

25 MR. DEVANEY: So just for the record,

1 we'll mark the letter of May 5th from Mr. Elias
2 as 175 and the response letter from Mr. Peters
3 as 176, and that's dated May 16, 2014.

4 (WHEREUPON, Plaintiff's Exhibits 175
5 and 176 were marked for identification.)

6 BY MR. DEVANEY:

7 Q. Ms. Strach, have you seen these letters before?

8 A. I have -- I believe that I have seen the
9 May 5th letter but I have not seen the May 16th
10 letter.

11 Q. Okay. Let me ask you just a couple questions
12 about the May 5th letter, which is Exhibit 175.
13 You've already covered much of what's on the
14 first page of this letter.

15 So if you flip to the second page,
16 you'll see Mr. Elias, who is a colleague of
17 mine from my law firm, says:

18 "In addition, we request -- we request
19 that SBOE immediately institute a plan for
20 remediation to ensure that all
21 North Carolinians who are eligible to register
22 but were not offered the opportunity -- boy
23 this is a long sentence -- to register through
24 the DMV since the implementation of this policy
25 are personally contacted, affirmatively advised

1 of their right of register, and given the
2 opportunity to register by the SBOE in a manner
3 that does not require them to incur any further
4 burden or expense."

5 Do you see that?

6 A. Yes.

7 Q. I'm going to ask Mr. Elias --

8 Do you know if any remediation efforts
9 were undertaken?

10 A. I do not know if that was in fact the case.

11 What I do know is that it would only --
12 we would need to contact those people that
13 would have attempted to do this within the 60
14 and 25 days of the primary because that would
15 be the only time in question, I believe, that
16 people could have presented to DMV that would
17 have been in a time period that they'd been
18 eligible to register.

19 Q. And I know we touched on this earlier, just to
20 be clear, you don't know if any people turned
21 away were personally contacted and advised of
22 their right to register?

23 A. I don't, but I will ensure that that happens.

24 Q. And then please take a look at Exhibit 176

25 which was written by counsel for

1 North Carolina. In particular, take a look, if
2 you would, at the last paragraph on the first
3 page and just take a second to read that.

4 A. (Witness complying.)

5 Yes.

6 Q. This refers to a problem with a software
7 program that was used by DMV that, according to
8 this letter, prevented DMV examiners within the
9 timeframes imposed by North Carolina law from
10 offering voter registration to those who are
11 not 18 years old.

12 I notice in your declaration you didn't
13 mention anything about a software glitch. Do
14 you know what software problem is being
15 discussed here?

16 A. I would certainly not characterize it as a
17 glitch. I mean, it's the fact that they would
18 have to program -- DMV's software would have to
19 be programmed so that the examiners that are --
20 have the face-to-face with the voter or the
21 driver, they would have to have something in
22 front of them that allowed them to know what
23 the time periods were that that person would be
24 eligible. So DMV would have to program their
25 software to know all of those election dates

1 and all of those eligibility times.

2 Q. And this letter goes on to state that the State
3 Board of Elections and Department of Motor
4 Vehicles are working to address this issue and
5 we will update you when a solution is found.

6 Do you know, has anything been done to
7 address this software issue that you just
8 described?

9 A. The reason why we've instructed DMV to register
10 all 17-year-olds is because they did not think
11 it was a workable solution to be able to
12 program their software to do that, they didn't
13 believe they could do that, and so that is why
14 we gave the instruction to them if you can't do
15 that, register all 17-year-olds.

16 Q. So the software issue hasn't been fixed and so
17 instead you issued the broader proclamation you
18 just described?

19 A. Yes.

20 Q. And again, you think that went out sometime in
21 April or May of this year?

22 A. That's -- soon after my deposition is when we
23 started the conversations with DMV.

24 MR. DEVANEY: Okay. I'm probably done.

25 Just give me one moment to look through my

1 notes to ensure that.

2 Thank you. That's all I have.

3 MS. MURPHY: Any other?

4 MR. DONOVAN: I don't think there's any
5 other plaintiffs that have questions.

6 EXAMINATION

7 BY MS. MURPHY:

8 Q. Ms. Strach, earlier Mr. Donovan was asking you
9 about the importance to the State Board of
10 Elections to be sure that all eligible voters
11 can vote in the election.

12 Is it also important to ensure that
13 someone who's not eligible to vote does not
14 vote?

15 A. It is.

16 Q. And how is it determined whether someone is
17 eligible to vote?

18 A. That's something that we do as an initial
19 process that the county boards engage in when
20 they receive a registration to determine the
21 eligibility of that voter, and it's also
22 something that we deal with with our list
23 maintenance programs, also looking for the
24 different ways that we are looking to address
25 those people that might not be eligible so they

1 are not on the voter registration rolls.

2 Q. What determines whether someone's eligible to
3 vote? Do you need to be aware of laws?

4 A. Sure. Absolutely. Those are North Carolina
5 general statutes and federal lawsuits.

6 Q. It's not the State Board of Election that makes
7 the determination who's eligible?

8 A. The State Board of Election makes no
9 determination of the eligibility requirement.
10 Those are statutory.

11 Q. You were asked earlier about the criminal
12 penalties for fraudulently or falsely
13 completing an application. What is the -- what
14 is the class felony?

15 A. It's a Class I felony.

16 Q. Not a Class 1 felony, a Class I felony?

17 A. It's a Class I felony.

18 Q. Are there other methods by which an eligible
19 17-year-old can register to vote other than
20 through the DMV?

21 A. Yes. They can vote -- they can register, they
22 can get an application from our website, they
23 can do voter registration drives, any other way
24 that any other individual would be able to
25 register they would have that opportunity.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. MURPHY: I have no further questions.

MR. DONOVAN: Great. Thank you. Off the record.

THE VIDEOGRAPHER: This concludes the deposition of Ms. Kim Strach. Time going off record is 1:11 p.m.

[SIGNATURE RESERVED]

[DEPOSITION CONCLUDED AT 1:11 P.M.]

