

EXHIBIT C

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
CHERIE POUCHER

1
2 VIDEOTAPED DEPOSITION OF

3 CHERIE POUCHER

4
5 _____
6 12:03 P.M.

7 WEDNESDAY, JULY 2, 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

1 CHERIE POUCHER,

2 having been first duly sworn or affirmed by the

3 Certified Shorthand Reporter to tell the truth,

4 the whole truth and nothing but the truth,

5 testified as follows:

6 EXAMINATION

7 BY MS. WU:

8 Q. Good morning, Ms. Poucher.

9 A. Hi.

10 Q. Thank you for appearing today. I know you're
11 very busy and I won't take very much of your
12 time.

13 I represent the NAACP plaintiffs in a
14 lawsuit challenging HB 589. And for the
15 record, you gave a declaration in this case?

16 A. That is correct.

17 Q. Have you been deposed in the past in any other
18 litigation?

19 A. Yes, in -- several years ago and then I believe
20 either -- I think it was 2000.

21 Q. What were those two cases about?

22 A. Redistricting.

23 Q. Both of them?

24 A. Yes.

25 Q. And so since you've been through the process

1 1991.

2 Q. Great. And how long were you at the Governor's
3 Office?

4 A. I can't remember exactly when I started there,
5 so I prefer not to give anything definite.

6 Q. That's fine.

7 And can you repeat, when did you start

8 at the County Board of Elections?

9 A. July 1, 1991.

10 Q. And to clarify, that was at the Wake County --

11 A. Wake County Board of Elections, correct.

12 Q. What was your position when you first started
13 there?

14 A. At that time, by statute, we were called
15 supervisors.

16 Q. And how long were you in that position?

17 A. I still am.

18 Q. So does that mean the title changed from
19 supervisor --

20 A. The legislature changed the title from
21 supervisor to director of elections, but I do
22 not know the year.

23 Q. So from 1991 to the present you've been in the
24 same position even though the title of your job
25 changed?

1 A. Correct.

2 Q. Okay. And what are your duties as the director
3 of --

4 A. The main responsibility is to follow all of the
5 statutes for federal, state, county
6 governments, register the voters, comply with
7 all of the list maintenance procedures, conduct
8 elections, bond referendums, and that would
9 include municipalities, everything related to
10 an election.

11 Q. And how many employees does Wake County Board
12 of Elections have?

13 A. That depends on the time of year. Right now we
14 have 19. The county recently enacted their
15 budget, gave us five additional positions. At
16 election time, we can hire up to a hundred plus
17 temporary staff.

18 So at this time, because I do have an
19 election in two weeks, I do have a multitude of
20 part-time staff working on the election
21 process, and then, of course, over 2,000
22 precinct officials on election day depending on
23 the type of election.

24 Q. And the 2,000 precinct officials, are they
25 temps or something different?

1 Q. Is that your signature at the bottom on page 5
2 of your declaration?

3 A. Yes, it is.

4 Q. And is this a true and accurate copy of your
5 declaration?

6 A. To the best of my ability.

7 Q. Great. How did you prepare this declaration?

8 A. I had spoken with the Attorney General's
9 Office -- I cannot remember the woman's name.
10 I had not known her before -- and she had asked
11 that I complete a declaration. I talked with
12 Scott Warren, the county attorney. He said to
13 go ahead.

14 I was told the main thrust of what my
15 declaration should be. I typed this, sent it
16 back to my county attorney, and then I signed
17 it and sent it to the Attorney General's
18 Office.

19 Q. Did you ever meet with anyone from the Attorney
20 General's Office --

21 A. No.

22 Q. -- about the declaration?

23 A. No.

24 Q. Turning to paragraph 4 of your declaration,
25 which is on page 2, you mention that you -- the

1 Wake County Board of Elections does -- or used
2 to do voter registration drives each fall in
3 high schools in Wake County.

4 A. Correct.

5 Q. About how many high schools would you cover?

6 A. We cover every single high school in Wake
7 County.

8 Dr. Gilbert was chair of the Board of
9 Elections. He used to be on the Board of
10 Education. We used to do the drives, but when
11 he became board chair, we began making it a
12 contest.

13 In the summer, we met with the head
14 person for -- at the main office in regards to
15 the social studies and gave them information on
16 how to register. You know, there are certain
17 things on a form that you must have. And then
18 that person met with all of the main social
19 studies schools, each of the high schools.

20 They were given a sufficient number of
21 forms. The high school itself, each high
22 school had a list of what we would refer to as
23 the eligible students. By that, I mean those
24 that are citizens and those that would be 18 by
25 the next election.

1 So once schools started back in the
2 fall, they were all set to go. We set a
3 deadline which was prior to the regular voter
4 registration deadline which would make them
5 eligible to vote, for instance, in off-year,
6 make them eligible to vote for the municipal
7 elections in October and November.

8 Each school, also to my knowledge, had
9 student representatives and it was a very
10 successful program.

11 Q. What do you mean by very successful?

12 A. You could have -- I think Broughten won it one
13 year with 99 percent of the eligible
14 registering.

15 Q. Do you know offhand annually how many of these
16 16- and 17-year-olds you registered through
17 these voter registration drives?

18 A. I could not give a number, no.

19 Q. Going back to paragraph 4, you state that --
20 it's about I think the third sentence down:
21 "The pre-registration of 16- and
22 17-year-olds created confusion among 16- and
23 17-year-olds who may have thought that -- who
24 may have then thought he or she was registered
25 and could vote."

1 A. Correct.

2 Q. What's the basis for your statement?

3 A. We would get calls in our office wanting to
4 know why they had not gotten a voter
5 registration card.

6 Q. Did you speak to any of these people yourself?

7 A. No, I didn't. I couldn't remember. I might
8 have talked to some. I've got staff that
9 answers the phone, you know, before it gets to
10 me. And then you'd have to explain to them
11 that "I'm sorry, but we will notify when you're
12 going to be eligible and you'll get a voter
13 card at that time."

14 Q. Beyond that conversation, was there -- once you
15 explained or once one of your volunteers
16 explained on the phone, was there any confusion
17 after that?

18 A. That I wouldn't know. I don't know if any of
19 them came to vote at an election and had to be
20 told, no, they weren't in the books.

21 Q. And also in paragraph 4 you mention that
22 pre-registration of 16- and 17-year-olds
23 increases -- increases the administrative costs
24 of county boards of elections.

25 A. Any time an application would come in, you had

1 to complete the data entry. That's a resource.

2 Then it goes into what is called an IQ. The
3 state holds that.

4 So we're doing the processing; then it
5 goes to the state. The state is responsible
6 for getting that back to us when the person is
7 going to be eligible. Then we have to move
8 that over into our system, send them a voter
9 card, and then if they have moved or if they
10 have gone away to college and registered at
11 college, then we're processing them again,
12 sending them a card. So that, again, is a
13 county resource.

14 Q. So for a normal voter who doesn't go through
15 the pre-registration process, what process does
16 the county board do to get them registered?

17 A. You process it and you send them a voter card.
18 You don't have to -- it doesn't go into what
19 you would refer the IQ.

20 Q. So the only additional step is the IQ step?

21 A. And the number who may have moved. We're a
22 very transient county.

23 Q. But for normal voters, you also have to send
24 the verification mailings once a normal voter
25 registers through the normal registration?

1 A. That's correct.

2 Q. And sometimes those normal -- those people who
3 register through the normal process, also you
4 have to send them one or two verification
5 mailings?

6 A. We follow the list maintenance procedures, yes.

7 Q. And sometimes with those normal people who
8 register through the normal registration
9 process, you get the second verification back
10 as non-deliverable; is that correct?

11 A. Sometimes, yes. I couldn't give you a number.

12 Q. And then sometimes you would have to reregister
13 them if they show up? If they register -- if
14 you get the second verification back, they get
15 kicked out of the system; is that correct?

16 A. The statewide voter registration system which
17 is run by the State, when that second
18 verification is returned, we barcode it in and
19 then at that time the state's infrastructure
20 takes it to the next status.

21 Q. What's that status?

22 A. My understanding is that status would be
23 denied, but it depends on what the status is at
24 the time.

25 Q. And then going back, you mentioned the IQ

1 system. What is that?

2 A. If a voter does not complete an application,
3 they don't have their birth date, they don't
4 have a signature, that cannot be processed
5 fully. Therefore it has to go into an IQ
6 system which the state also -- it goes over
7 there and then on a daily basis letters are
8 generated again from the state system to send
9 that voter with a copy of the registration
10 explaining to them what is needed before
11 they're completely registered.

12 Q. And so for pre-registration, until -- before
13 the voter's actually eligible, they go into
14 that IQ system?

15 A. That I do not know. That you'd have to find
16 out exactly through the state system.

17 Q. Okay. Have you ever conducted a study at the
18 Wake County Board of Elections' level comparing
19 the number of undeliverable verification
20 mailings that Wake County receives for
21 pre-registration voters to voters who register
22 through the normal process?

23 A. No because an envelope returned is an envelope
24 returned.

25 Q. Moving on to paragraph 6 of your declaration --

1 funding came from for printing the new forms
2 that were required under HB 589. Can you walk
3 me through that process again?

4 A. For the May primary?

5 Q. Yes.

6 A. We went and got the forms redone and cut back
7 on temporary staff in order to meet our budget.

8 Q. So you didn't have to go and request extra
9 funding from the --

10 A. We did not ask for extra funding.

11 Q. Did you get any extra funding from any other
12 source?

13 A. No. The only -- we printed the forms. Now
14 that we've got the new budget in place, we've
15 got the forms that we're doing for 2014
16 general.

17 Q. For general?

18 A. Yes. Those are being done now.

19 Q. You also mention that new training materials
20 had to be drafted --

21 A. Yes.

22 Q. -- by the County Board of Elections?

23 A. We -- as Wake County, we prepare a new precinct
24 official manual for every single election
25 because every single election does have

1 something different. It's about an
2 80 -- 80-plus page document. I think I put one
3 of those in or several of them in my -- the
4 documents that I had sent previously.

5 A primary deals with political parties,
6 so you go through the step-by-step with that.

7 Then it had to be recreated because of the
8 changes in the law.

9 We also do training videos that we put
10 online, so any time our officials have a
11 question on one aspect of election day, they
12 can go through to refer to it. It's the same
13 for the training also for early voting. That's
14 different because the process is different for
15 early voting than election day. So all of that
16 had to be printed also.

17 Q. So for each election you come up with new
18 training materials specific to that election?

19 A. That's correct.

20 Q. So that's regardless of whether there's a
21 change in law, you always come up with
22 different training materials?

23 A. Correct because we always try to improve.

24 Q. Going back to the printing of forms, for the --
25 in order to print for the general election in

1 with their ID out.

2 Q. But my question was were precinct officials
3 instructed to ask to see a copy --

4 A. No.

5 Q. -- of the --

6 A. No.

7 Q. I'm sorry. Just in general, wait until I
8 finish my question and then answer. All right.
9 Thank you.

10 Were precinct officials trained as to
11 whether an ID would pass the reasonable
12 resemblance test?

13 A. They were not trained. It's not a requirement
14 at this time.

15 Q. So if a person had an ID that had a photo of
16 them with their married name on it, like a
17 North Carolina driver's license with their
18 married name but on the voter rolls they were
19 listed under their maiden name, were precinct
20 officials at all trained on whether that ID
21 would be acceptable in the 2016 election?

22 A. We have not received any direction from the
23 State Board of Elections on exactly what will
24 take place in 2016. So, no, they were not
25 trained.

1 Q. So all they were trained on was what -- to ask
2 whether or not the voter had a photo ID?

3 A. Correct.

4 Q. Not whether that ID would actually be
5 acceptable in the 2016 elections?

6 A. That is correct. We do not know at this time
7 what the State Board will direct.

8 Q. Were precinct officials at all instructed on
9 asking a voter whether their photo ID would be
10 expired by the 2016 election?

11 A. No.

12 Q. So the question was just whether you had a
13 photo ID that was on the list?

14 A. The question was what we were given by the
15 State Board.

16 Q. Got it.

17 A. They were then given the sheet prepared by the
18 State Board of the IDs.

19 Q. Okay.

20 A. And I believe the State Board number was on
21 there if any voter had questions.

22 Q. Okay. Now, if the court issues a preliminary
23 injunction on HB 589 and -- for the general
24 2014 election, Wake County Board will have to
25 train officials on how election laws were prior

1 When the board of elections, it opens on that
2 Thursday during normal business hours. The
3 additional sites were not open that same.

4 Q. I think I understand what you're saying. You
5 said -- so you had the same number of sites but
6 some of those sites would not be open on
7 certain days?

8 A. Or all.

9 Q. Or at all. And then now in 2014 they might
10 have been open for more days?

11 A. They were all open the same number of days and
12 the same hours.

13 Q. Okay.

14 A. For 2014. I'm not referring back to 2010.

15 Q. I got it.

16 What was the exact number of hours that
17 you had for one-stop voting in 2014?

18 A. I can't give you a number. I know we met it.

19 Q. So in your declaration -- this is still
20 paragraph 16 at the bottom of page 4 --

21 A. Paragraph 6.

22 Q. Yeah, at the bottom of page 4. Are you there?

23 A. Yeah. You said 16.

24 Q. I'm sorry.

25 For one-stop -- you say for the

1 one-stop period to be extended to 17 days would

2 create a financial hardship for the counties.

3 What do you mean by that?

4 A. 2014 budget is passed. We would have to get

5 additional resources to open the additional

6 hours.

7 My board has already adopted a plan of

8 implementation for November 2014. It met the

9 budget that it requested.

10 Q. But there aren't additional hours under the

11 cumulative hours requirement; isn't that

12 correct?

13 A. There's one or two. Yes, there is.

14 Q. Where?

15 A. In our office.

16 Q. How many hours?

17 A. That information will be on our website and in

18 the minutes.

19 Q. But you don't know sitting here how many hours?

20 A. No, I do not. The board met on that last week.

21 Q. How much additional -- how much additional
22 finances are you going to have to expend to
23 keep those -- to keep your office open for
24 those --

25 A. That is something I'd have to research.

1 Q. So sitting here today you have no idea?

2 A. I'm not going to give numbers unless I have a
3 sufficient time to look at everything that is
4 involved.

5 Q. And going back to that same statement, you
6 said, you know, for the one-stop period to be
7 extended to 17 days would create financial
8 hardship for the counties; is that correct?

9 A. Yes.

10 Q. You've only served on the Wake County Board of
11 Elections; isn't that correct?

12 A. Yes.

13 Q. What's your basis for asserting that it will
14 create a financial hardship for any other
15 county in the state?

16 A. County directors talk: How much did you ask,
17 what is your board doing.

18 There's been a lot of media attention
19 as county boards do early voting sites. The
20 State Board says the plans have to be in by
21 July 31st, so everyone is meeting that deadline
22 now with their boards meeting. So you get an
23 idea. Budgets have passed.

24 Q. So who specifically have you talked to from
25 other counties?

1 A. I talk to directors all the time.

2 Q. Who specifically?

3 A. I can't give you any specifics exactly.

4 Q. Are you aware that other county board of
5 elections directors have testified in this case
6 that the cutting back of early voting would not
7 increase or decrease the amount spent for
8 one-stop voting?

9 MR. FARR: Objection to the form.

10 THE WITNESS: No.

11 BY MS. WU:

12 Q. Did you review any other budgets for any other
13 county?

14 A. No. We talk about budgets.

15 Q. But you don't remember who you talked to?

16 A. After 23 years in this position, directors call
17 me all the time for a lot of various questions,
18 what are you doing, got a better way of doing
19 this. I do not keep a log of my phone calls.

20 Q. You don't remember any conversations you had
21 with any county directors about the budget?

22 A. No. My understanding is the budgets were done
23 on 10 days.

24 Q. Turning back to paragraph 5, out-of-precinct
25 voting. Now, just stepping back generally, can

1 we're going to need to take a break.

2 MS. WU: I'm not going to take an hour.

3 MR. FARR: Cherie, do you need to take
4 a break?

5 THE WITNESS: I'm okay.

6 MR. DEVANEY: I'm sorry. This is John
7 Devaney on the line. I just wanted to announce
8 that I was here. I represent Duke intervenors.
9 I'll probably have five to ten minutes worth of
10 questions. I just wanted to announce that.
11 Thank you.

12 BY MS. WU:

13 Q. So then we just went through the pre-HB 589
14 process. In the post HB 589 process, it's my
15 understanding that out-of-precinct ballots that
16 are cast are no longer counted; is that
17 correct?

18 A. From the latest memo or one of the memos we
19 received from the State Board, if it's an
20 unreported-move voter --

21 Q. Okay. So aside --

22 MR. FARR: Can she finish her answer.

23 BY MS. WU:

24 Q. Oh, yeah. Go ahead. Sorry.

25 A. If an unreported-move voter goes to their old

1 precinct and says "I moved," again, that same

2 process would transpire at the help table:

3 "Let me look up your new address, I'll tell you

4 where you vote."

5 If they do not want to vote or go to

6 their new precinct, they have to be offered the

7 provisional ballot. You never deny anyone the

8 right to vote. You explain the situation.

9 Q. Okay.

10 A. In this situation because, in essence, they are

11 voting out of precinct because they have moved

12 more than 30 days, then, yes, they are voting

13 out of precinct, but the congressional race

14 would count.

15 Q. But that counts?

16 A. Yes.

17 Q. So for anyone other than the unreported-move

18 voter who votes out of precinct, those would

19 not be counted, correct?

20 A. That is my understanding for the law, yes.

21 Q. But they would still be offered -- they would

22 still be directed to the help desk, correct, if

23 they showed up in the wrong precinct?

24 A. If they are not in the poll book for that

25 precinct, they are directed to the help table

1 in all situations.

2 Q. And if they choose not to go to their correct
3 precinct, they would still be offered a
4 provisional ballot; is that correct?

5 A. With the understanding to let them know it
6 would not count.

7 Q. But they would still -- go ahead.

8 A. Thank you. Unless it's an unreported move.

9 Q. So they would still be offered a provisional
10 ballot to vote?

11 A. Correct.

12 Q. And they could go vote in the voter booth
13 enclosure?

14 A. Correct.

15 Q. And that provisional ballot would still go into
16 that sealed bag?

17 A. Yes.

18 Q. And that provisional ballot would go with all
19 other provisional ballots back to the Wake
20 County Board of Elections' office; is that
21 correct?

22 A. The operations center.

23 Q. The operations center, sorry.

24 And you would still have to
25 determine -- go through that research process;

1 is that correct?

2 A. That is correct. To the Board of Elections, it
3 is still just a provisional ballot.

4 Q. Right. And then at what point -- and then you
5 would recommend -- you would give those
6 provisional ballots to the Board of Elections
7 to determine whether that out-of-precinct
8 provisional ballot could be counted or not?

9 A. We do not recommend.

10 Q. Okay. But it would go to the County Board of
11 Elections?

12 A. It is a decision of the county board, correct.

13 Q. So they would still get that out-of-precinct
14 provisional ballot that was cast?

15 A. Correct.

16 Q. The only change in the process is that the
17 county board would determine under HB 589 that
18 it was not -- that they could not count that
19 vote; is that correct?

20 A. Repeat that, please.

21 Q. Sorry. The only difference is that the county
22 board of elections, once they receive that
23 provisional ballot, would determine that that
24 vote could not count for those districts?

25 MR. FARR: Objection to the form.

1 A. The county board is the only one that has the
2 authority to approve or disapprove any ballot,
3 yes.

4 Q. So they would still have to review the ballot?

5 A. Yes.

6 MR. FARR: Objection to form.

7 BY MS. WU:

8 Q. Ms. Poucher, do you know what the United States
9 Election Assistance Commission is?

10 A. Yes.

11 Q. What is it?

12 A. The Election Assistance Commission.

13 Q. What does it do?

14 A. I'm not going to give a definition because I
15 don't know a sufficient amount of what it is to
16 state a good answer.

17 Q. So you don't even know in general what they do?

18 A. They oversee. I know they do a testing and
19 certification for election equipment and
20 software. They have quick guides.

21 Q. Have you ever testified in front of the
22 United States Election Assistance Commission?

23 A. Years ago.

24 Q. When? Do you know?

25 A. It's been a long time ago.

1 Q. If I represented to you it was in 2005, does
2 that sound --

3 A. If you say so.

4 Q. Do you remember what the nature of that
5 testimony or hearing was about?

6 A. Not that one because there were others that I
7 have different task force -- force -- task
8 forces that I have been involved with on a
9 national level.

10 Q. Sure. Do you remember submitting written
11 testimony as part of that hearing?

12 A. I have submitted testimony in regards to
13 several hearings, but if you say so, but I do
14 not recall.

15 Q. Okay. I am going to hand you what will be
16 marked as Exhibit 207.

17 (WHEREUPON, Plaintiff's Exhibit 207 was
18 marked for identification.)

19 BY MS. WU:

20 Q. Do you see the title --

21 MR. FARR: I would like to suggest that
22 we take a break so she can read this testimony
23 before we have further questions on it.

24 MS. WU: That's fine. I want to note
25 for the record the title of the document is

1 Written Comments, Cherie Poucher, Director of
2 Elections, Wake County, North Carolina,
3 Implementation and Use of Provisional Voting.

4 And we can go off the record so you can
5 have a chance to review it and take a break.

6 THE VIDEOGRAPHER: Going off record at
7 1:04 p.m.

8 (Brief Recess.)

9 THE VIDEOGRAPHER: On back on record at
10 1:18 p.m.

11 MR. FARR: Thank you, Jodi. I
12 appreciate you giving me a chance to ask this
13 question.

14 MS. WU: Sure.

15 MR. FARR: We notice that there were no
16 Bate stamp numbers on this document and we
17 wanted to know if you were aware of whether
18 this document was produced to the defendants
19 prior to this deposition.

20 MS. WU: This is a publicly available
21 document that we located off the internet.

22 MR. FARR: Was it produced?

23 MS. WU: It was not.

24 MR. FARR: Okay. Thank you.

25 MS. WU: Yep, no problem.

1 MR. FARR: You may continue.

2 MR. WARREN: Are you ready?

3 THE WITNESS: I don't know that I wrote
4 it.

5 MR. FARR: Well, just let Jodi ask you
6 questions.

7 BY MS. WU:

8 Q. Ms. Poucher, have you had a chance to review
9 the testimony, the document in front of you?

10 MR. FARR: Exhibit 207.

11 BY MS. WU:

12 Q. Yes.

13 A. Yes.

14 Q. And what is it?

15 A. As the title says, it's written comments by me
16 for the implementation and use of provisional
17 voting.

18 Q. And to the best of your knowledge, is this a
19 true and accurate representation of the written
20 comments you submitted to the U.S. Election
21 Assistance Commission?

22 A. I cannot say. I'm not sure when this was
23 written and it's a long time ago. So I would
24 prefer -- I don't know. I know I gave
25 statements. I know North Carolina was one of

1 the first to offer provisional voting.

2 Q. Do you have any reason to believe that it's not

3 a true and accurate representation of the

4 statements you provided to the U.S. Election

5 Assistance Commission?

6 A. If you say so.

7 Q. Now, in paragraph 1, as you see on the first

8 page, you stated in your written comments to

9 the United States Election Assistance

10 Commission, quote:

11 "Provisional voting provides a

12 mechanism to ensure that all citizens

13 have a chance to vote and at the same

14 time maintains the integrity of the

15 election process."

16 Is that correct?

17 A. That's what it states here in writing, yes.

18 Q. And then moving down to the fourth paragraph --

19 let me know when you're there -- you also

20 state, quote:

21 "The voters appreciated the

22 fact that they were allowed to vote

23 and the precinct officials appreciated

24 the fact that they no longer had to

25 tell a person that they could not vote

1 [REDACTED] in that precinct. It alleviated angry
2 [REDACTED] responses to the official and
3 [REDACTED] decreased the number of calls into it
4 [REDACTED] the Board of Elections office," end quote.

5 [REDACTED] Is that correct?

6 A. That's what it states, yes.

7 Q. Now, flipping to page 2, you provided some
8 [REDACTED] numbers for election years from 1998, 2000,
9 [REDACTED] 2002 and 2004 for provisional ballots that were
10 [REDACTED] counted. Do you see that?

11 A. Yes.

12 Q. In 2004, you listed the number of provisional
13 [REDACTED] ballots counted as over 10,000, it's
14 [REDACTED] specifically 10,915; is that correct?

15 A. That's what it states, yes.

16 Q. To the best of your knowledge, do you know if
17 [REDACTED] after 2004 that number stayed the same,
18 [REDACTED] increased, decreased, for Wake County?

19 A. For Wake County, it began going down.

20 Q. So, for example, in the 2012 election, do you
21 [REDACTED] know approximately how many ballots were cast
22 [REDACTED] provisionally?

23 A. I know we can get that information from the
24 [REDACTED] State Board, but number-wise no.

25 Q. Do you know -- do you have any explanation for

1 why the number of provisional ballots

2 decreased?

3 A. The use of the laptop with all of the data in
4 the laptop for the precinct official to let the
5 voter know and to be able to get them a
6 transfer or let them -- the most of what we
7 call an unreported move is the voter that shows
8 up at their new precinct, they've moved, they
9 haven't let us know.

10 They show up at the correct place but
11 they're not in the poll book because they did
12 not update their address with us.

13 That help table official can look them
14 up, "Oh, yes, you are registered," and the
15 person can say, "Yes, I moved."

16 Q. And the laptop allowed the help desk official?

17 A. The laptop can say, okay, we have your
18 registration information, what is your new
19 address.

20 Q. Got it. Any other reasons why provisional
21 ballots might have decreased?

22 A. We do a lot of press releases in regards to
23 constantly updating your address.

24 Q. Do you think that same-day registration had any
25 impact on decreasing the amount of provisional

1 ballots that were cast in Wake County?

2 A. I wouldn't want to give an opinion on that.

3 Q. So at the bottom of that table on page 2 you

4 stated:

5 "The majority of Wake County's

6 provisional voters are unreported

7 moves."

8 A. Correct.

9 Q. Can you just explain to me what "unreported

10 moves" are?

11 A. Again, it's that voter that is currently

12 registered in Wake County, moved within Wake

13 County but did not notify the Board of

14 Elections by the 25-day deadline and showed up

15 at the polling place for their new address.

16 That's an unreported move.

17 Q. And that unreported mover, does he or she cast

18 a provisional ballot?

19 A. With the poll book, we at that time were

20 allowed to vote them as a transfer voter.

21 Q. What is a transfer voter?

22 A. You transfer them out of one precinct into

23 another.

24 Q. So do they cast a regular ballot or a

25 provisional ballot?

1 A. Regular.

2 Q. Okay. What if that unreported mover shows up
3 to their old precinct?

4 A. Hopefully the voter would tell us they moved.

5 Q. And if they tell you they moved and they are
6 now technically in a new precinct, what
7 happens?

8 A. Then they are -- now what are you talking now
9 because we're going before and after. So I
10 might have misunderstood the question. I'm
11 sorry.

12 Q. You mean pre HB 589?

13 A. Uh-huh.

14 Q. Okay. So post HB 589, if an unreported mover
15 shows up at their old precinct, what happens?

16 A. If they inform -- when they state their name
17 and address -- hopefully they would state their
18 current correct address, which is not the
19 address in the book -- they would be sent to
20 the help table. At that time they would have
21 multiple choices.

22 Q. What are those choices?

23 A. They could update their information on the
24 Authorization to Vote. There's a section on
25 the authorization, and we could physically

1 transfer them into their new precinct on this
2 piece of paper. They would go to their new
3 precinct and vote a regular ballot.

4 Q. And if they choose to do that transfer but then
5 not go to their new precinct to vote, what
6 would happen?

7 A. They wouldn't be a transfer. They would --
8 if -- at that time they would probably then
9 state -- because I'm not in the precinct so
10 this is a supposition.

11 Q. Sure.

12 A. If the voter says, "Well, I don't want to go to
13 my new precinct," we could also tell them to go
14 to the central location, which is our office.

15 Q. What if they don't want to go to the central
16 location?

17 A. Then they are informed to vote a provisional
18 ballot.

19 At that time, generally what we would
20 hope that the voter would do is take a Voter
21 Registration Application to update their
22 address after the election.

23 Q. So if the unreported mover votes -- chooses to
24 vote the provisional ballot in the old
25 precinct, under HB 589 does that vote

1 A. Yes.

2 Q. Okay. Turning back to Exhibit 207, the written
3 comments that you submitted to the
4 United States Election Assistance Commission,
5 turning to page 4, you concluded your
6 statements by stating, quote:

7 "The provisional ballot is a
8 wonderful tool allowing all citizens
9 who feel they are eligible to vote to
10 cast a ballot. It places the burden
11 of determining voter eligibility on
12 the Boards of Election who have at
13 hand all the information necessary to
14 make a decision.

15 "The voter is not disenfranchised
16 and the local precinct official does
17 not have the final say. Standardization
18 of the use and implementation of the
19 provisional ballot in each state should
20 be our goal," end quote.

21 That was your statement?

22 A. As written here, yes.

23 Q. Just a couple more questions.

24 Since HB 589 has passed, have you
25 received any calls from people in Wake County

1 down into any category.

2 Q. Okay. So I take it, just to be clear, that
3 you've not done any -- any analysis of what
4 effect on registration and voter participation
5 this pre-registration program had; is that
6 right?

7 A. That is correct.

8 Q. Okay. Just a few more questions and we'll be
9 done. Bear with me one second here, please.

10 Still focusing on paragraph 4 of your
11 declaration, you state in the third to last
12 sentence:

13 "In many instances, the pre-
14 registered voter had moved (and the
15 verification mailing was returned) or
16 the pre-registered voter was at
17 college and registered in another
18 county or state."

19 Similar to my prior questions, do you
20 have any quantification of this, Ms. Poucher,
21 as to how many instances on which this
22 occurred?

23 A. No, sir, I do not have any information on
24 statistics. That could be something you might
25 be able to have the State Board determine

1 through their software, but I would not.

2 Q. Okay. So you just don't know how often this
3 occurred?

4 A. Correct.

5 Q. And I take it for the next sentence which says:

6 "The county board would then have

7 to send a second mailing to the person

8 which again would have been returned

9 undeliverable."

10 You don't have an understanding of how

11 often that occurred?

12 A. We don't differentiate between any of the

13 different mailings. For a verification mailing

14 that is mailed out, as I said before, we do not

15 know if it's the first verification, the second

16 verification, if it's asking for information,

17 et cetera.

18 Q. Okay. So to be clear, with respect to this

19 pre-registration program, to the extent second

20 mailings were sent and/or returned as

21 undeliverable, you don't have the information

22 to know how many involved actually the

23 pre-registration program?

24 A. That is correct.

25 Q. Okay. That's all I have. Thank you.

1 provisional ballot envelope to make that
2 determination. Then once the determination is
3 made of do you count or not count, at that time
4 the envelope itself would be opened.

5 Q. Okay. All right. Thanks.

6 Now I want to just ask you a couple
7 questions about Exhibit 207.

8 And, Ms. Poucher, you testified that
9 you and I met before this deposition; is that
10 correct?

11 A. Yes.

12 Q. Did you and I discuss Exhibit 207 when you and

13 I met two days ago, I guess it was?

14 A. 207, no, sir.

15 Q. Okay. Do you recall the last time you saw

16 Exhibit 207?

17 A. Probably after it was written.

18 Q. Okay.

19 A. And I'm not sure from here. I can assume when

20 it was written, and that was many years ago.

21 Q. And you recall that counsel for the NAACP, I

22 believe they represented that it was her

23 understanding this was prepared in 2005. Do

24 you recall that?

25 A. That's what was stated, yes.

1 Q. Let's turn to paragraph 4.

2 A. Yes.

3 Q. Do you see the third paragraph there?

4 A. The third paragraph, yes.

5 Q. I'm going to read it into the record.

6 MS. WU: You're on page --

7 MR. PETERS: I think he meant page 4.

8 BY MR. FARR:

9 Q. I'm on page 4, the third paragraph. You see

10 where it says:

11 "Because of the Supreme Court

12 ruling, Senate Bill 133 has been

13 filed in the North Carolina General

14 Assembly to clarify the legislative

15 intent that out-of-precinct provisional

16 ballots be counted for all contests for

17 which the voter was eligible to vote."

18 Do you see that?

19 A. Yes.

20 Q. What Supreme Court case were you referring to

21 there? Do you remember?

22 A. This involved the contest -- and I believe I've

23 got that written in here too -- the contest for

24 state superintendent of public instruction and

25 there was a dispute in regards to here where it

1 stated out of precinct at that time we referred
2 to as more or less unreported move, and there
3 was an extensive lawsuit in regards to those
4 provisional ballots and that's where the bill
5 was filed.

6 Q. Okay. Do you recall that in the Supreme Court
7 case the North Carolina Supreme Court ruled
8 that what we've described as out-of-precinct
9 provisional ballots should not be counted?

10 MS. WU: Objection to form.

11 BY MR. FARR:

12 Q. Do you recall that?

13 A. The Supreme Court, let's see.

14 Q. If you don't recall, that's fine.

15 A. No, I don't. Oh, except it says it here so
16 somewhere.

17 Q. Okay. The document speaks for itself.

18 So when you wrote this statement, the
19 statute to clarify legislative intent about
20 out-of-precinct provisional ballots had been
21 filed in the North Carolina General Assembly.

22 Is that what your statement says?

23 A. Yes.

24 Q. Does the statement say that that statute had
25 been passed at the time you prepared this

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

statement?

A. No.

MR. FARR: That's all I have.

THE VIDEOGRAPHER: This concludes the deposition of Ms. Cherie Poucher. Time going off record is 2:06 p.m.

[SIGNATURE RESERVED]

[DEPOSITION CONCLUDED AT 2:06 P.M.]