

# Exhibit S

# EXPERT REPORT

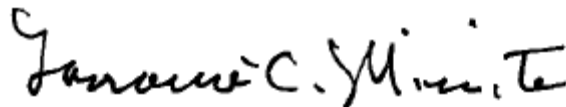
*North Carolina State Conference of the NAACP*

v.

*McCrorry, et al.*

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
Case No.: 1:13-cv-00658-TDS-JEP (D. N.C.)  
Judge Thomas D. Schroeder  
Magistrate Judge Joi Elizabeth Peake

December 4, 2015

A handwritten signature in black ink that reads "Lorraine C. Minnite". The signature is written in a cursive, flowing style.

**LORRAINE C. MINNITE, Ph.D.**

This report supplements my February 12, 2015 expert report in *North Carolina Conference of the NAACP v. McCrory*<sup>1</sup> to take account of recent changes to North Carolina's challenged voter identification requirements.

On June 23, 2015, Governor McCrory signed HB 836 into law creating a "reasonable impediment" option for those voters who do not comply with the new photo identification requirements. Although the precise details of how this option will be administered are unclear,<sup>2</sup> it appears from the text of the law that such voters may now cast a provisional ballot upon signing a declaration stating that they suffer from a "reasonable impediment" in obtaining photo identification, such as a disability, family responsibilities, lost or stolen identification, lack of a birth certificate or other supporting documents. If the voter is challenged or fails to provide the last four digits of his or her Social Security number and date of birth, or an acceptable document bearing his or her name and address, the provisional ballot is not counted.

As such, the amended law does not change the photo identification requirement for casting a *regular* ballot. Rather, by carving out more opportunities to cast provisional ballots in place of regular ballots, it only increases the inconsistency and therefore, the irrationality of the existing law.

A voter's right to receive and submit a provisional ballot upon written affirmation that he or she is a registered and eligible voter is mandated by Section 302 of the Help America Vote Act of 2002 (HAVA).<sup>3</sup> According to an early advisory from the U.S. Election Assistance Commission, "[t]he nature and procedures associated with a provisional ballot are wholly distinct from those of a traditional ballot."<sup>4</sup> Primarily, voter identification requirements or challenges to voter eligibility by election officials or private actors may not prevent the receipt and submission of a provisional ballot, as it is the question of voter eligibility that triggers the provisional ballot in the first place.

That said, federal law does not mandate that a provisional ballot be counted.<sup>5</sup> Typically, once cast, provisional ballots are set aside, to be counted after an election, giving election

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<sup>1</sup> *North Carolina State Conference of the NAACP v. McCrory*, United States District Court for the Middle District of North Carolina, Case No.: 1:13-CV-00658, Declaration of Lorraine C. Minnite, Ph.D., February 15, 2015.

<sup>2</sup> As of the time of writing of this Report, I understand that the State of North Carolina has not provided responses to the discovery requests served upon them as to the details of the requirement or the State's plans as to administering the photo identification requirement or the new provisions pursuant to HB 836.

<sup>3</sup> 42 U.S.C. § 15842 states: "If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot..." See also, *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 574 (6th Cir. 2004).

<sup>4</sup> U.S. Election Assistance Commission, "EAC Advisory 2005-006: Provisional Voting and Identification Requirements," September 13, 2005, p. 2; available at [http://www.eac.gov/assets/1/workflow\\_staging/Page/337.PDF](http://www.eac.gov/assets/1/workflow_staging/Page/337.PDF).

<sup>5</sup> *Ibid.* "The bottom line is that the casting of a proper, traditional ballot constitutes a vote, while the casting or submission of a provisional ballot does not. A traditional ballot is cast only after voter eligibility has

officials more time to determine voter eligibility according to state law. In North Carolina, official ballot counting begins at the close of polls;<sup>6</sup> provisional ballots are returned to county boards for verification and resolved before the official canvass, which occurs seven to ten days after an election (depending on the type of election).<sup>7</sup>

Table 1 summarizes provisional balloting statistics for North Carolina across the four federal general elections conducted between 2008 and 2014.

**Table 1**  
**Provisional Balloting in North Carolina**

	2008		2010		2012		2014	
	#	%	#	%	#	%	#	%
<b>Total Votes Counted</b>	<b>4,338,197</b>		<b>2,700,706</b>		<b>4,539,729</b>		<b>2,918,052</b>	
<b>Provisional Ballots</b>	<b>53,976</b>		<b>26,257</b>		<b>51,192</b>		<b>18,749</b>	
Counted in Full	22,188	41.1	12,083	46.0	18,041	35.2	8,388	44.7
Partially-Counted	4,319	8.0	3,611	13.8	5,321	10.4	564	3.0
Rejected	27,469	50.9	10,563	40.2	27,830	54.4	9,797	52.3
<b>Reason for Rejection:</b>	<b>27,469</b>		<b>10,563</b>		<b>27,830</b>		<b>9,797</b>	
Wrong Precinct Voter	0	0	49	.5	0	0	1,390	14.2

Source: U.S. Election Assistance Commission, Election Administration and Voting Survey Comprehensive Reports for the 2008, 2010, 2012, and 2014 Elections.

A regular ballot cast is a ballot counted. As noted above, a provisional ballot is merely a claim to preserve the right to cast a ballot and “postpone the voter eligibility determination to a time when more perfect or complete information may be provided.”<sup>8</sup> Therefore, provisional ballots may or may not be counted. Table 1 shows that in three of the last four federal elections, North Carolina rejected more than half of all provisional ballots cast. The State’s provisional ballot rejection rate is much higher than the national average, which was 19.2 percent in the 2014 election,<sup>9</sup> and 24.1 percent in the 2012 election.<sup>10</sup>

Moreover, prior to the passage of HB 589, only 49 provisional ballots out of more than 130,000 cast in the 2008, 2010, and 2012 elections were rejected because a voter voted in the wrong precinct. In 2014, after HB 589 eliminated the fail-safe provisions that

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been determined by the State. Hence, the moment it is cast, it becomes an individual’s vote. On the other hand, the submission or casting of a provisional ballot is not a vote. Rather, it is a claim that the potential voter who submitted it has the right to vote and reserves that right.” (p. 2).

<sup>6</sup> N.C. Gen. Stat. § 163-182.2 (2015).

<sup>7</sup> N.C. Gen. Stat. § 163-182.5 (2015).

<sup>8</sup> U.S. Election Assistance Commission, “EAC Advisory,” p. 2.

<sup>9</sup> U.S. Election Assistance Commission, “The 2014 EAC Election Administration and Voting Survey Comprehensive Report, 2014,” A Report to the 114<sup>th</sup> Congress, June 30, 2015, p. 15; available at [http://www.eac.gov/assets/1/Page/2014\\_EAC\\_EAVS\\_Comprehensive\\_Report\\_508\\_Compliant.pdf](http://www.eac.gov/assets/1/Page/2014_EAC_EAVS_Comprehensive_Report_508_Compliant.pdf).

<sup>10</sup> U.S. Election Assistance Commission, “The 2012 Election Administration and Voting Survey,” September 2013, p. 12; available at [http://www.eac.gov/assets/1/Page/990-050%20EAC%20VoterSurvey\\_508Compliant.pdf](http://www.eac.gov/assets/1/Page/990-050%20EAC%20VoterSurvey_508Compliant.pdf).

permitted the full or partial counting of “out-of-precinct” ballots cast by otherwise eligible voters, North Carolina rejected 1,390 such provisional ballots, or more than 28 times as many provisional ballots as had been rejected for this reason in the previous three federal elections combined. Given these patterns, in North Carolina, any rule that channels voters into casting provisional ballots increases the odds that their ballots will not be counted.

According to political scientist Charles Stewart, “African Americans are more likely to be given provisional ballots in North Carolina than whites, by roughly a factor of two. This is true of all provisional ballots as a general matter, and of out-of-precinct provisional ballots specifically.”<sup>11</sup> Stewart’s conclusions are based on his analysis of state voting records in North Carolina for the 2006 through 2012 federal elections. According to political scientist Allan Lichtman, among out-of-precinct voters whose ballots were partially counted in the three federal elections prior to the passage of HB 589 (2008, 2010 and 2012), African Americans were over-represented compared to their share of the regular voting electorate by 7.9, 36.5, and 12.0 percentage points, respectively.<sup>12</sup> Thus, HB 836, which channels voters lacking government-issued photo identification into provisional voting, where African Americans are already disproportionately represented – coupled with the elimination of the out-of-precinct provisional ballot option, as proscribed by HB 589 – will disproportionately negatively impact African American voters.

One example of an inconsistency resulting from HB 589 and HB 836 is that the primary requirement to show a government-issued, current photo identification to vote, does not apply to voters casting mail-in absentee ballots (which are more heavily used by white voters than black voters<sup>13</sup>), nor does it apply to persons who, due to age or physical disability, are unable to enter the polling place and permitted to vote from a vehicle (“curbside” voters). And yet, there is no evidence to suggest that these types of voters are any less likely to willfully misrepresent their identity or eligibility and to commit voter fraud than the types of voters to whom the requirement does apply. In fact, to the extent that there have been cases of absentee ballot fraud in North Carolina, the opposite is true. According to the North Carolina State Board of Elections (SBE), although there are very few documented cases of absentee ballot fraud in recent elections in the state, there were more cases of this type of fraud investigated by that agency between 2000 and 2012 that

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<sup>11</sup> *U.S. v. State of North Carolina*, U.S. District Court for the Middle District of North Carolina, Civil Action No. 1:13-CV-861, Declaration of Charles Stewart III, Ph.D., May 2, 2014, p. 96.

<sup>12</sup> *North Carolina State Conference of the NAACP v. McCrory*, United States District Court for the Middle District of North Carolina, Case No.: 1:13-CV-00658, Declaration of Allan J. Lichtman, Ph.D., April 11, 2014, pp. 42-47.

<sup>13</sup> Other experts in this case have reported that in recent elections in North Carolina, whites are more likely to vote by mail-in absentee ballot than blacks or Latinos. For example, see *North Carolina State Conference of the NAACP v. McCrory*, United States District Court for the Middle District of North Carolina, Case No.: 1:13-CV-00658, Declaration of Barry Burden, Ph.D., April 11, 2014, p. 15 (“In the 2012 election...[whites] were almost twice as likely to vote this way as were Latinos and more than three times as likely to use the option as were blacks. Similar patterns were apparent in the 2008 and 2010 elections.”).

merited referral to local prosecutors (N=47) than there were cases of in-person voter impersonation (N=2), the type of fraud targeted by photo identification requirements.<sup>14</sup>

Another example of an inconsistency under HB 589 and HB 836 is that although most of the limited number of acceptable forms of photo identification must be unexpired, an expired North Carolina-issued (but not other state-issued) driver's license, may be accepted as long as the expiration date is not more than four years before the election in which a voter wishes to vote; or, if the voter is over the age of 70, an expired North Carolina driver's license may be proffered as long as it was not expired before the voter reached the age of 70. Again, there is no evidence to suggest that individuals in these latter categories of expired identification holders are any more or less likely to willfully misrepresent their identity or eligibility and to commit voter fraud than the types of voters to whom the requirement does apply.

Fundamentally, as no new facts have come to light concerning the incidence of voter fraud in North Carolina since I compiled my expert report in this case, the new "reasonable impediment" option, like the underlying photo identification requirement itself, serves no rational public policy purpose. I therefore reiterate the conclusions of my earlier report, which remain in force in light of the current requirements under HB 589 and HB 836:

- A.** The empirical evidence makes clear that fraud committed by voters either in registering to vote or at the polls on Election Day is exceedingly rare, both nationally and in North Carolina.
- B.** Between 2000 and 2014, the North Carolina State Board of Elections referred just two cases of voter impersonation to county district attorneys for prosecution. Over the same period, there were no federal indictments for voter impersonation in North Carolina. More than 35 million votes (35,134,262) were cast in the 16 primary and federal elections alone between 2000 and 2014 in North Carolina. If we count the two referrals as cases of voter impersonation, the rate of voter impersonation fraud in these elections is .000005692449.
- C.** Given the lack of evidence substantiating a problem of voter fraud, stringent photo identification requirements, including those in North Carolina, are not justified to reduce or prevent voter impersonation and other forms of voter fraud.

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<sup>14</sup> *North Carolina State Conference of the NAACP v. McCrory*, United States District Court for the Middle District of North Carolina, Case No.: 1:13-CV-00658, Declaration of Lorraine C. Minnite, Ph.D., February 15, 2015, p. 87.

Moreover, even with the reasonable impediment option, North Carolina's stringent photo identification requirements remain a deterrent to voting for those citizens who lack the requisite identification – a group of people evidence has shown are disproportionately African American.<sup>15</sup>

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<sup>15</sup> Michael C. Herron and Daniel A. Smith, "Race, Shelby County, and the Voter Information Verification Act in North Carolina," *Florida State University Law Review* (forthcoming, 2015).

# Exhibit T



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

3 NORTH CAROLINA STATE CONFERENCE ) CASE NO. 1:13CV658  
4 OF THE NAACP, et al.,                )  
5                                    Plaintiffs,                            )  
6 V.                                        )  
7 PATRICK LLOYD MCCRORY, in his        )  
8 Official capacity as Governor        )  
9 Of North Carolina, et al.,            )  
    Defendants.                            )

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10 LEAGUE OF WOMEN VOTERS OF NORTH ) CASE NO. 1:13CV660  
11 CAROLINA, et al.,                    )  
12                                    Plaintiffs,                            )  
13 V.                                        )  
14 STATE OF NORTH CAROLINA, et al., )  
15                                    Defendants.                            )

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16 UNITED STATES OF AMERICA,            ) CASE NO. 1:13CV861  
17                                    Plaintiff,                            )  
18 V.                                        )  
19 STATE OF NORTH CAROLINA, et al., ) Winston-Salem, North Carolina  
20                                    Defendants.                            ) July 23, 2015  
    ) 9:07 a.m.

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21  
22                                    TRANSCRIPT OF THE **TRIAL/DAY NINE**  
23                                    BEFORE THE HONORABLE THOMAS D. SCHROEDER  
24                                    UNITED STATES DISTRICT JUDGE

25                                    Proceedings recorded by mechanical stenotype reporter.  
    Transcript produced by computer-aided transcription.

1 A What page are you on?

2 Q I believe it is Footnote 63. Let me check that. It is on  
3 page 19.

4 A Okay.

5 **THE COURT:** Page 19 of what?

6 **MR. STRACH:** The 2015 report.

7 **THE COURT:** Okay.

8 **BY MR. STRACH**

9 Q And the last paragraph on that page, The researchers  
10 conclude that "although a sizable share of the population  
11 believes that vote fraud commonly or occasionally occurs, there  
12 is a little or no relationship between beliefs about the  
13 frequency of fraud and electoral participation." Do you see  
14 where I am at?

15 A Yes.

16 Q So it is the case that a sizable share of the population  
17 nonetheless believes that vote fraud commonly or occasionally  
18 occurs?

19 A I think we have a number of studies of public opinion  
20 where people respond that way, but often the term is very  
21 generic and not used specifically in the ways that I am using  
22 it.

23 Q Okay. And you agree -- I believe you told me you did  
24 review the legislative record for House Bill 589; is that  
25 correct?

1 A I believe I reviewed most of it.

2 Q And you did see that there were numerous references to  
3 voter fraud, at least in general, in that record; is that  
4 correct?

5 A That's correct.

6 **MR. STRACH:** Your Honor, that's all the questions I  
7 have for now.

8 **THE COURT:** Any redirect?

9 **MR. MANER:** Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 **BY MR. MANER**

12 Q Dr. Minnite, I think you just testified that you had  
13 reviewed some of the materials from the legislative record for  
14 House Bill 589; is that right?

15 A Yes.

16 Q What materials have you reviewed?

17 A I reviewed the -- these were all transcripts. I believe  
18 there were two public hearings. There were House Election  
19 Committee hearings that involved invited testimony. I read all  
20 the testimony of the people who testified, and then there were  
21 a number of floor debates in the House. I think it was  
22 Appropriations Committee, a finance committee, and then there  
23 were also -- I think I reviewed three days in the Senate, a  
24 transcript of meetings in the Senate.

25 Q And in your review of all of those materials, did you find

1 evidence that impersonation fraud was a problem in North  
2 Carolina?

3 A No. This was consistent in every state that I've reviewed  
4 the legislative record of. There has never been a showing of  
5 voter fraud in states that have adopted photo ID laws, for  
6 example. So I didn't find any evidence in the legislative  
7 record of voter fraud in North Carolina.

8 Q And in your review of those same materials, did you find  
9 evidence that fraud and same-day registration was a problem?

10 A No.

11 Q Did you find that the legislature considered any  
12 fraud-related evidence prior to enacting H.B. 589?

13 A Well, we go back to the letter that was sent by the State  
14 Elections Board director, Gary Bartlett, that March -- I think  
15 it was March 11th letter which went to the General Assembly  
16 House Elections Committee. So I believe this was before them,  
17 the House Elections Committee and the Appropriations  
18 Subcommittee, this evidence with the table that we've  
19 discussed.

20 Q And in reviewing the legislative history for House  
21 Bill 589, what evidence, be it studies or statistical evidence,  
22 did you find that North Carolina voters had a lack of  
23 confidence in the electoral process?

24 A I didn't find any.

25 Q And in your review of those same materials, what evidence,

1 again, any statistics or studies, did you find that North  
2 Carolina voters believed that a photo ID was necessary to  
3 protect the integrity of the electoral process in North  
4 Carolina?

5 A I didn't find any.

6 Q What about evidence that laws prohibiting voter fraud in  
7 North Carolina are unenforced?

8 A There were allegations by some people in the public  
9 hearings who just said we don't think they are being enforced,  
10 but there was no evidence presented to support those  
11 allegations.

12 Q You were asked some questions about same-day registration.  
13 Do you recall that?

14 A Yes.

15 Q There's been a suggestion in this case that same-day  
16 registration is more susceptible to fraud than non-same-day  
17 registration. Have you found any empirical evidence to support  
18 that suggestion?

19 A No, sir.

20 Q Why do you think that is?

21 A Well, you have to remember with same day, as with Election  
22 Day registration, people who come to register in North  
23 Carolina, they had to bring additional proof of eligibility by  
24 bringing proof of residency, and so there is sort of additional  
25 documentation required; and they also do this in front of poll

# Exhibit U

# EXPERT REPORT

*North Carolina State Conference of the NAACP*

v.

*McCrary, et al.*

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
Case No.: 1:13-cv-00658-TDS-JEP (M.D.N.C.)  
Judge Thomas D. Schroeder  
Magistrate Judge Joi Elizabeth Peake

**December 4, 2015**

A handwritten signature in black ink that reads "Barry Burden". The signature is written in a cursive, flowing style.

**Barry C. Burden, Ph.D.**

## **Background and Purpose**

In preparation for trial, I submitted an expert report in this case to the Court on February 12, 2015. In the days just before the trial began, the state legislature passed and Governor McCrory enacted SL 2015-103, an amendment passed as HB 836 that modified the photo ID provision of SL 2013-381. As a result of the last-moment change in law, the photo ID provision was not addressed during the summer trial proceedings and my report was not altered to reflect the amendment to the law. The purpose of this supplemental report is to explain how the modification of the photo ID law found in SL 2015-103 affects the conclusions I reached.

My earlier report analyzed SL 2013-381 through the lens of the “Senate factors” that underlie Section 2 of the Voting Rights Act. Relying on well-established social science theories and a variety of documents and data sources, I reached several conclusions about the photo ID portion of the law. I deemed the original photo ID requirement to be a tenuous policy because the law is poorly reasoned in terms of its lack of connection to evidence of a policy need for the provisions enacted, and unnecessarily strict in terms of its limited pool of acceptable forms of identification and other restrictions. I concluded that SL 2013-381 would impose a disproportionate burden on blacks and Latinos relative to whites because of how the law interacts with social and economic conditions in the state. Moreover, minority residents would face more difficulty than whites in overcoming those burdens.

On review of SL 2015-103,<sup>1</sup> I conclude that while the modification of the photo ID law has potential to ameliorate certain of the burdens imposed by the original law and the potentially to reduce the disparate effects that it imposed on blacks and Latinos in North Carolina, the requirement remains tenuous and disproportionately burdensome, particularly among those who are unaware of the newly added “reasonable impediment” option or who may be deterred by the process required to use the option. The evidence available as to the State’s efforts at public education around SL 2013-381 over the last two years shows that such education efforts generally did not include information about the reasonable impediment option. At the same time, however, there has been significant media coverage and public discussion of the new laws and their requirements, and thus there is likely some understanding within the electorate that a photo ID requirement now exists and perhaps that an “exception” to that requirement was created. However, what little information is available to the public is less accessible to black and Latino voters for many of the same reasons discussed at length at the trial last summer, *i.e.*, due to disproportional educational attainment and lower literacy rates, as well as language barriers. As a result, blacks and Latinos will continue to be disproportionately impacted by the photo ID requirement.

## **The Options Available in SL 2015-103**

SL 2015-103 provides that a resident who appears at a polling place to vote but lacks valid ID is permitted to pursue one of two alternatives. First, he or she may complete a written request for

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<sup>1</sup> As of the time of writing of this Report, I understand that the State of North Carolina has not provided responses to any of the discovery requests served upon it as to the details of the requirement or the State’s plans as to administering the photo ID requirement or the new provisions pursuant to SL 2015-103. I reserve the right to supplement these Opinions on the basis of such additional information if and when it becomes available.



an absentee ballot within the time frame previously allowed by law. Second, he or she may complete a reasonable impediment declaration and cast a provisional ballot at the polls.

The *absentee ballot option* provides only limited amelioration of the burden imposed by the photo ID requirement. Indeed, the option is not new because voters were permitted to request an absentee ballot under the same parameters before SL 2015-103 was enacted. The amendment requires that voters without acceptable ID be “notified” about the option. Absentee ballot request forms are due to the county Board of Elections by 5 p.m. on the Tuesday before the election. The form may be delivered to the Board by mail, by email, by fax, or in person. Thus, the absentee ballot option is not available to a voter who appears in the final week before Election Day or a voter who wishes to cast a ballot in person at the polls. Use of this option is further limited for those who are given the form within a day or two of the deadline, as submission of the form by mail will not be a viable means for meeting the application deadline. Other means of delivery require time and resources such as transportation, more expensive shipping options (*e.g.*, overnight), or access to a computer or fax machine. Many votes are cast in the final days of the campaign cycle. Professor Charles Stewart’s expert report shows that black voters are more likely than white voters to cast ballots in the final week of early voting.<sup>2</sup> Minority voters also have less in the way of resources such as literacy and transportation to navigate this process. As a result, the absentee ballot option for voters without ID has little ability to ameliorate the disparate burden of the law because of its limited applicability.

Even for a voter who is able to use the absentee ballot option, the administrative burdens are significant. Once an absentee ballot is received, the voter must return it for counting. Ensuring the completion and return of the absentee ballot requires additional actions on the part of the voter. As I noted in my prior report, absentee ballots are less likely to be counted than those cast in person.<sup>3</sup> Voters also rightly have less confidence that absentee ballots will be counted as they intended and might be dissuaded from using this option.<sup>4</sup> Moreover, minority voters in North Carolina are more likely to vote in person and are less likely than white voters to cast absentee ballots.<sup>5</sup> As a result of these limitations, this absentee ballot provision does not substantially ameliorate the disparate impact of the photo ID requirement.

Relative to an absentee ballot, the *reasonable impediment option* has more potential to ameliorate the impact of the photo ID requirement, but the relief provided is still limited, and disproportionately so for black and Latino voters. A brief description of the option is required to explain this conclusion.

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<sup>2</sup> See Figure 16 of the Stewart report.

<sup>3</sup> See also Charles Stewart (2011), “Adding Up the Costs and Benefits of Voting by Mail,” *Election Law Journal* 10:297-301.

<sup>4</sup> Barry C. Burden and Brian J. Gaines (2015), “Absentee and Early Voting: Weighing the Costs of Convenience,” *Election Law Journal* 14:32-7. Paul Gronke (2015), “Voter Confidence as a Metric of Election Performance,” in *The Measure of American Elections*, ed. Barry C. Burden and Charles Stewart III, New York, NY: Cambridge University Press.

<sup>5</sup> See PX242 at App. S, Tables 2 and 3 (Stewart Rpt.); see also PX231 at 144-148 (Lichtman Rpt.), PX229 at 23 (Burden Rpt.).

A voter wishing to avail her or himself of the reasonable impediment process must first present a voter registration card, another approved identification document showing name and address, or the last four digits of a Social Security Number and date of birth. The reasonable impediment declaration form then requires the voter to mark one of seven impediments (such as “lack of transportation” or “family responsibilities”) or to list an “other reasonable impediment.” Notwithstanding the voter’s indication, a voter’s county Board of Elections may apparently still reject a provisional ballot if it has grounds to believe that the declaration is “factually false,” was completed to “denigrate” the photo ID requirement, or is “obviously nonsensical.” No guidance is provided in the statute, nor am I aware of any guidance that has been issued by the State, regarding any limits on the discretion of such county Board of Elections officials in deciding to reject a ballot on these grounds. Any registered voter in the county may also challenge another voter for these reasons, prompting additional scrutiny by the county Board of Elections before the voter’s ballot may be counted. Although this requirement is not in the statute, the reasonable impediment declaration form developed by the state requires the voter to sign it to indicate understanding that “fraudulently or falsely completing this form is a Class I felony under Chapter 163 of the NC general statutes.” A voter might be reluctant to sign the form out of concern that making a mistake would subject him or her to prosecution.

Other important details of the reasonable impediment process remain unclear. First, it is unclear if another reason such as “not being aware of the photo ID requirement” would be accepted as a reasonable impediment. If lack of knowledge of the photo ID requirement is not accepted as reasonable impediment and an additional provisional ballot affidavit is required, SL 2015-103 continues to impose a significant burden on aspiring voters. Second, because a voter using a reasonable impediment form must also cast a provisional ballot, it is possible that the voter will additionally be required to complete a provisional ballot affidavit. Although to my knowledge the State has not declared exactly what processes will be used, it is clear that a voter using the reasonable impediment option faces the burdens of providing documents or information at the polls and completing additional paperwork.

In general the requirements of the photo ID law demand more time, skills, and other resources of voters lacking photo ID than are required of traditional voters. Perversely, the group of voters most likely to lack photo ID are also the group that would be most likely to lack precisely these additional resources, typically for the same reasons that they lack the identification in the first place, *i.e.*, disproportionately lower levels of literacy and education – and these are disproportionately black and Latino voters. The reasonable impediment option will be helpful to some voters who are aware of and are able to pay these costs, but the costs will continue to be disproportionately felt by blacks and Latinos compared to whites, even though minority voters have fewer resources to overcome them. Concern about the administrative hassle and time and money required to navigate the new photo ID requirement as well as its reasonable impediment exception declaration process is likely to deter blacks and Latinos more than whites. I conclude that while the reasonable impediment option moderates the impact of the photo ID requirement modestly, it does not eliminate the disproportionate burdens imposed by SL 2013-381. Depending upon the details as to how the new provisions are going to be administered, these burdens have the potential to remain significant.

## Public Awareness

Even if the absentee ballot and reasonable impediment options could successfully ameliorate the disparate burden imposed by SL 2013-381, they would do so only to the degree that aspiring voters are aware that these options exist and are prepared to take advantage of them. My review indicates that the State has not sufficiently informed the public about the amendments to the photo ID requirement.

The photo ID requirement under SL 2013-381 is in effect beginning on January 1, 2016. The law mandated a “soft rollout” in the 2014 and 2015 elections in which participating voters were informed about the law. Generally speaking, providing this sort of information at the polls, in concert with other means of public education, could have been helpful in ameliorating the burden imposed by the law. In this instance, however, this approach falls short in two ways. First, it misses many voters who will vote in the November 2016 presidential election. Even in the highest turnout election during the soft rollout period – the November 2014 election – approximately 3 million votes were cast. In the 2012 presidential election, which is a better guide to participation levels in the 2016 presidential election, turnout was 4.5 million — or 50% more voters. Thus, even delivery of accurate information at the polls about the photo ID requirement would fail to reach at least 1.5 million North Carolina residents expected to vote in November 2016.<sup>6</sup> Even voters who were informed about the photo ID requirement at the polls were not informed about the reasonable impediment option because it did not yet exist.

Additionally, in early 2015 the state Board of Elections implemented a targeted mailing to approximately 218,000 residents who were identified through Department of Transportation data as lacking photo ID for voting. These individuals were sent a mailing informing them about the ID requirement, but that mailing did not include information about the reasonable impediment option because it did not yet exist. Presumably recipients of the mailings remain largely unaware of the provisions created in SL 2015-103.

In early November 2015, following enactment of the reasonable impediment option, the state Board of Elections released a public service announcement that would be posted online and aired on television and radio stations around the state in the lead up to the 2016 elections.<sup>7</sup> The one-minute spot features individuals urging viewers to bring an ID to the polls to vote. The speakers list the IDs that are acceptable, although the ad makes no mention of whether various forms of ID must be unexpired to be valid for voting. Partway through the ad, a voiceover asserts that “the process is easy.” This assertion is true for many or even most voters, but not for all. Specifically, it is less true for black and Latino voters than for whites. Another voice in the ad states that, “If you don’t have an ID, or if you’re unable to obtain one, there are still options for voting,” with no further details or information on those options. This message is reiterated at the end of the ad, where the web site and phone number for the Board of Elections are provided. At no point does

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<sup>6</sup> The discrepancy between those informed at the polls in November 2014 and those who vote (or wish to vote) in November 2016 is actually greater than 1.5 million. Some voters who participated in 2014 will not vote in 2016, so the number of new voters exceeds 1.5 million. In addition, the voting eligible population has change between the two elections due to immigration to and from the state, deaths, and individuals who reached majority age in the two years between the elections.

<sup>7</sup> <https://vimeo.com/144657827> (last visited November 25, 2015).

the announcement mention the “reasonable impediment” affidavit option. In fact, the ad reflects no specific changes that resulted from the amendment to the photo ID law and could have been aired before SL 2015-103 was enacted.

Public awareness of photo ID requirements is essential so that aspiring voters can successfully navigate the law and cast ballots that will be counted. A lack of public information has been a concern in other states where photo ID laws have been implemented.

For instance, the Supreme Court of Pennsylvania cited in its opinion permanently blocking a photo ID law adopted in that state in 2012 an expert witness who provided evidence about public knowledge of the law. A statewide survey showed that 38% of eligible voters did not know that that the state had an ID requirement.<sup>8</sup> In addition, while 98% respondents believed that they had valid ID for voting, subsequent questions about specific forms of identification revealed that only 86% in fact did have valid IDs under the law. The Court’s opinion also cited another expert who opined that the state’s informational campaign about the photo ID law was inconsistent in messaging and incomplete in the detail it provided. As a result, the state fell short of correcting prior information and that “contributed to confusion and rendered the marketing campaign ineffective at accurately educating the electorate.”<sup>9</sup>

Beyond the Pennsylvania example, surveys in other states indicate that public knowledge is often far from accurate. In Wisconsin a statewide survey was conducted following a highly publicized federal appeals court ruling enforcing the state’s photo ID.<sup>10</sup> The survey showed that 20% of registered voters erroneously believed that a photo ID would not be required to vote in the upcoming election.<sup>11</sup> Another 7% reported “don’t know,” for a total of 27% who were unaware of the law. Most importantly, whereas only 19% of whites mistakenly believed that ID would not be required, 28% of blacks and 25% of Latinos were misinformed. Adding those who “don’t know” raises the share of each group that was uninformed to 28% for whites, 35% for blacks, and 40% for Latinos.<sup>12</sup>

Although public awareness in North Carolina about the general voter ID requirement might be better than in Wisconsin, knowledge of the reasonable impediment provision added in July 2015 is likely to be low.

National survey data suggest how commonly aspiring voters abstain from voting because they believe that they are unable to comply with voter ID laws. Consider data from the Survey on the Performance of American Elections, an academic study that surveys thousands of registered

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<sup>8</sup> Expert report of Matt A. Baretto, *Applewhite, et al. v. Commonwealth of Pennsylvania et al.* (No. 330 MD 2012). Rates were similar for registered voters (34.3%) and people who voted in the 2008 election (34.2%).

<sup>9</sup> Memorandum opinion by Judge McGinley, *Applewhite, et al. v. Commonwealth of Pennsylvania et al.* (No. 330 MD 2012) filed January 17, 2014, page 11.

<sup>10</sup> The decision was issued on September 12, 2014. The Marquette Law Poll was in the field September 25-28. A subsequent order from the U.S. Supreme Court reinstated the injunction on October 9, 2014.

<sup>11</sup> The rate was a similar 18% for “likely” voters.

<sup>12</sup> These figures are provided in the crosstab analysis posted at <https://law.marquette.edu/poll/results-data/> (last visited November 20, 2015).

voters after each federal election. Respondents who reported that they did not vote in a recent election were asked, “How much did the following reasons play in your not voting in the November General Election?” This question was followed by a list of 14 reasons. For each reason, a respondent could indicate that it was “not a factor,” “a minor factor,” “a major factor,” or “I don’t know.” In 2012 the share of non-voters selecting “I did not have the right kind of identification” as their reason for not voting was 11% among whites and 19% among blacks and Latinos. In 2014, those citing ID as a factor comprised 8% of whites and 14% of blacks and Latinos. It is unclear whether all of these individuals had accurate perceptions of what constituted a lack of ID, but that is part of the point. A nontrivial share of the electorate does not participate in federal elections because they believe that they do not have the necessary ID. For the reasons described above in other contexts, these perceptions are more common among black and Latino voters than among whites.

While the “reasonable impediment” option could help ameliorate the disproportionate burden of SL 2013-381, it would only do so if the public is sufficiently informed about the provision so that they are not dissuaded from voting by the belief that ID is strictly required of individuals who wish to vote in person, and if they are not deterred by the process of executing the paperwork necessary to exercise that option. Lower levels of education among blacks and Latinos relative to whites will require that initiatives to inform the public be particularly targeted at minority residents to counteract the misinformation that most likely exists on these issues at present.

# Exhibit V

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

3 NORTH CAROLINA STATE CONFERENCE ) CASE NO. 1:13CV658  
4 OF THE NAACP, et al., )  
5                   Plaintiffs, )  
6 V. )  
7 PATRICK LLOYD MCCRORY, in his )  
8 Official capacity as Governor )  
9 Of North Carolina, et al., )  
                  Defendants. )

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10 LEAGUE OF WOMEN VOTERS OF NORTH ) CASE NO. 1:13CV660  
11 CAROLINA, et al., )  
12                   Plaintiffs, )  
13 V. )  
14 STATE OF NORTH CAROLINA, et al., )  
15                   Defendants. )

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16 UNITED STATES OF AMERICA, ) CASE NO. 1:13CV861  
17                   Plaintiff, )  
18 V. )  
19 STATE OF NORTH CAROLINA, et al., ) Winston-Salem, North Carolina  
20                   Defendants. ) July 15, 2015  
  ) 9:04 a.m.

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21  
22                   TRANSCRIPT OF THE **TRIAL/DAY THREE**  
23                   BEFORE THE HONORABLE THOMAS D. SCHROEDER  
24                   UNITED STATES DISTRICT JUDGE

25                   Proceedings recorded by mechanical stenotype reporter.  
                  Transcript produced by computer-aided transcription.

1           **THE COURT:** He may give his opinions.

2           **MS. O'CONNOR:** I would also move at this time to  
3 admit Dr. Burden's 2014 expert report, surrebuttal report and  
4 declaration. Those are Plaintiffs' Exhibit 44 and 169, both of  
5 which are in the binders that I handed up, as well as his 2015  
6 expert report and surrebuttal report, which are Plaintiffs'  
7 Exhibits 229 and 224 (sic), also in the binders.

8           **THE COURT:** Any objection?

9           **MR. FARR:** No, sir.

10          **THE COURT:** They are admitted.

11 **BY MS. O'CONNOR**

12 Q       Dr. Burden, you referred a moment ago to the calculus of  
13 voting. Can you explain what that means?

14 A       The calculus of voting is a theory of voter behavior. It  
15 is a mathematical equation that explains why some voters  
16 participate and other voters do not. It relies on a simple  
17 idea of cost and benefits, that a voter participates when the  
18 benefits of participating exceed the costs.

19       The benefits to a voter are essentially the value that the  
20 voter sees in electing a candidate of their preference compared  
21 to other the candidate or candidates in the race.

22       The costs involve the efforts and other costs that a voter  
23 would have to pay in order to participate. Those costs can be  
24 tangible and financial: The cost of transportation, the cost  
25 of postage, the cost of a long distance phone call. They could



1 also be intangible costs: Effort involved to learn about the  
2 candidates, to learn where to cast a ballot, how to register,  
3 to find a polling place. So a variety of costs.

4 Q Can you explain the effect that these costs have on voter  
5 behavior?

6 A Theory and evidence shows that voters are very sensitive  
7 to costs. Small changes in costs on their own part or imposed  
8 by others can affect their likelihood of voting quite  
9 dramatically.

10 Q You also discuss in your report and you've mentioned voter  
11 habit. What do you mean by that?

12 A Voting is a social behavior, and so like most other human  
13 behaviors, it can be habitual. The first time that a person is  
14 intending to cast a ballot, there are some costs that need to  
15 be paid in terms of learning about the process, what's  
16 required, what identification is needed, where does one  
17 register, where is the polling place, what are the polling  
18 hours. Once those costs have been successfully paid, the costs  
19 are lower in ensuing elections, and so the voting habit is  
20 easier to establish.

21 Q What are some of the ways that you've seen in your  
22 research that voter habit is impacted by changes in voting  
23 regulations?

24 A Once a voter has paid those costs and become a regular  
25 voter, changes in those parameters disrupt the voting habit and

1 require them to pay additional costs to find new ways to cast  
2 their ballots.

3       There is plenty of research showing a variety of ways in  
4 which states have changed election practices, and that has  
5 disrupted voting habits. Some examples would be the locations  
6 of polling places. Studies show that when states relocate or  
7 consolidate polling places, even if they are closer to the  
8 voter's home, that it can disrupt their behavior and make them  
9 less likely to vote.

10       Likewise, changing the register date, shortening polling  
11 hours, and imposing voter registration requirements in the  
12 first place, all of those things have some effect in disrupting  
13 habit and deterring voting.

14 Q     Is the impact on voter behavior the same for changes that  
15 add additional opportunities for registering and voting as they  
16 are for changes that remove those types of options?

17 A     No. That's an important point. There really isn't a  
18 symmetry between a state adding additional options or ways in  
19 which a voter can cast a ballot and eliminating or removing  
20 those options.

21       When the state offers new opportunities, whether it be  
22 different ways to register or additional days on which a person  
23 may vote, a voter may be aware of those, may take advantage of  
24 them, but they are not required to do. It's no automatic  
25 disruption to their voting habit.

1 In contrast, when the state removes those options that a  
2 voter has been using, the voter has no choice but to change  
3 their behavior and so must engage in this costly activity of  
4 finding a new way in which to participate.

5 Q Have you done any research on the effect of adding  
6 additional voting options or opportunities?

7 A I have. In fact, just last year I published a journal  
8 article with three of my colleagues studying the effects of  
9 adding early or absentee voting on voter turnout in two  
10 Presidential elections.

11 In that study, we found, surprisingly, that when states  
12 offered a form of earlier absentee voting without excuse, on  
13 its own, it didn't increase voter turnout on average.

14 Q How does your work in that study apply to your analysis of  
15 H.B. 589 in this case?

16 A As much as I stand by that study, I don't think it applies  
17 in this case, not to H.B. 589, for several reasons. One reason  
18 is that was a study of nationwide voting patterns in two  
19 Presidential elections, not a study of North Carolina. So the  
20 measures we used to capture early or absentee voting procedures  
21 across the states weren't nuanced enough to recognize the  
22 subtleties of North Carolina law or any other state's law.

23 Second, that was a study of the addition of voting options  
24 in the states. We were looking at states that offered new ways  
25 to vote by absentee or early. H.B. 589 is about removing those

# Exhibit W

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

3 NORTH CAROLINA STATE CONFERENCE ) CASE NO. 1:13CV658  
4 OF THE NAACP, et al., )  
5 Plaintiffs, )  
6 V. )  
7 PATRICK LLOYD MCCRORY, in his )  
8 Official capacity as Governor )  
9 Of North Carolina, et al., )  
Defendants. )

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10 LEAGUE OF WOMEN VOTERS OF NORTH ) CASE NO. 1:13CV660  
11 CAROLINA, et al., )  
12 Plaintiffs, )  
13 V. )  
14 STATE OF NORTH CAROLINA, et al., )  
15 Defendants. )

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16 UNITED STATES OF AMERICA, ) CASE NO. 1:13CV861  
17 Plaintiff, )  
18 V. )  
19 STATE OF NORTH CAROLINA, et al., ) Winston-Salem, North Carolina  
20 Defendants. ) July 27, 2015  
9:04 a.m.

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21  
22 TRANSCRIPT OF THE **TRIAL/DAY ELEVEN**  
23 BEFORE THE HONORABLE THOMAS D. SCHROEDER  
24 UNITED STATES DISTRICT JUDGE

25 Proceedings recorded by mechanical stenotype reporter.  
Transcript produced by computer-aided transcription.

1 did not attempt to account for any individual factors that  
2 might affect a voter's propensity to turn out, like age, sex,  
3 or income, in the manner that you did in your voter ID study;  
4 right, Dr. Hood?

5 A Not that I recall. Not that I recall.

6 Q Thank you, Dr. Hood. I don't have any further questions  
7 at this time. I believe the Department of Justice has some.

8 CROSS-EXAMINATION

9 **BY MR. FISHER**

10 Q Good afternoon, Dr. Hood.

11 A Good afternoon.

12 Q Spencer Fisher representing the United States. We met at  
13 your deposition; right?

14 A Yes, sir.

15 Q I just have a few more questions to follow up with you,  
16 and the first is, as a political scientist with an emphasis on  
17 studying the history of the South, you would agree with me that  
18 historic segregation in the North Carolina schools has harmed  
19 black educational outcomes in North Carolina; correct?

20 A I can state from the data I collected there are  
21 educational disparities between blacks and whites in North  
22 Carolina.

23 Q You explicitly note in your report that income and  
24 education gaps exist in North Carolina; is that right?

25 A That's fair, yes.

1 Q Now, you've also acknowledged in other cases when you've  
2 testified that the greater costs a voting system imposes, such  
3 as the time and effort it takes to overcome administrative  
4 requirements or other barriers to successfully voting (sic),  
5 the less likely a voter is to vote; is that right?

6 A Yes. Let's be clear. We are not talking about a monetary  
7 cost.

8 Q Dr. Hood, that's all I asked you.

9 **THE COURT:** Well, he can explain his answer.

10 **THE WITNESS:** No, I'm using the word "costs" in terms  
11 of monetary costs in that particular sentence, but that's a  
12 very old theory in political science, yes.

13 **BY MR. FISHER**

14 Q And you've testified elsewhere that you can't think of a  
15 political science concept -- and you just mentioned it's an old  
16 concept -- you can't think of a concept that is more firmly  
17 established with respect to voter turnout than the idea that  
18 the more costs a system imposes, the less likely a voter is to  
19 turn out; true?

20 A It's been around a long time as a concept, as a  
21 theoretical framework for studying turnout in political  
22 science.

23 Q It's been around a long time, but you've testified  
24 elsewhere that there is no concept more firmly established in  
25 political science; is that right?

1 A In political science or in the turnout -- the study of  
2 turnout in political science?

3 Q Dr. Hood, I will ask the question again.

4 A Okay.

5 Q We can look at your cross-examination in Texas. You've  
6 testified elsewhere that you can't think of a political science  
7 concept that is more firmly established with respect to voter  
8 turnout than the idea that the more costs a system imposes, the  
9 less likely a voter may be to turn out; true?

10 A Yes, in terms of turnout again.

11 Q You would agree with me that registering to vote is a  
12 cost; right?

13 A Yes. Again, not talking about a monetary cost.

14 Q And you agree that the effort required to participate in  
15 the electoral process can be a cost, even if it doesn't involve  
16 the expenditure of money, as you've mentioned, not a monetary  
17 cost; correct?

18 A Sure.

19 Q And you've talked about turnout here, and you've  
20 testified -- we've looked at the demonstratives. Mr. Ho just  
21 went through a long explanation with you on turnout in 2010 and  
22 2014; but other than looking at turnout, you've not studied the  
23 burden that the changes brought about by H.B. 589 placed on  
24 minorities voters in this case; is that correct?

25 A That was my chief dependent variable of interest I was



1 studying, yes.

2 Q It was the only variable -- turnout was the only variable  
3 that you looked at; is that correct?

4 A Well, dependent variable. Not only variable, dependent  
5 variable. That's what I was trying to look for an effect with.

6 Q So you were looking for the effect using turnout; correct?

7 A That's correct.

8 Q Okay. And there is nothing in your report in this case  
9 that addresses the question of burdens that could be caused by  
10 reduction in early voting that's not specifically linked to  
11 turnout; correct?

12 A Well, all my opinions in this section of my report are  
13 based on the turnout variables, so, yes.

14 Q Okay. Earlier you testified about your article "Much Ado  
15 About Nothing." I believe that's Plaintiffs' Exhibit 735.  
16 That's the Georgia voter ID article; is that correct?

17 A That's correct. I mean, there was more than one, but  
18 that's on the Georgia voter ID statute.

19 Q And you testified -- you answered earlier a question about  
20 the conclusion of that article, concluding that the Georgia law  
21 had a suppressive effect on turnout; true?

22 A Yes, it had a slight suppressive effect. That's not the  
23 end of the story, though.

24 Q But that article was published in 2012; is that right?

25 A That's when it was published, yes.

# Exhibit X

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

NORTH CAROLINA STATE CONFERENCE )  
OF THE NAACP, EMMANUEL BAPTIST )  
CHURCH, BETHEL A. BAPTIST )  
CHURCH, COVENANT PRESBYTERIAN )  
CHURCH, BARBEE'S CHAPEL )  
MISSIONARY BAPTIST CHURCH, INC., ) 30(b)(6) Deposition of  
ROSANELL EATON, ARMENTA EATON, ) North Carolina State Board  
CAROLYN COLEMAN, JOCELYN ) of Election by  
FERGUSON-KELLY, FAITH JACKSON, ) Kim Westbrook Strach  
MARY PERRY and MARIA TERESA ) Volume 5  
UNGER PALMER, )

Plaintiffs, )

vs. )

PATRICK LLOYD MCCRORY, in his )  
official capacity as the ) Case No: 1:13-CV-658  
Governor of North Carolina, KIM )  
WESTBROOK STRACH, in her )  
official capacity as Executive )  
Director of the North Carolina )  
State Board of Elections, JOSHUA )  
B. HOWARD, in his official )  
capacity as Chairman of the )  
North Carolina State Board of )  
Elections, RHONDA K. AMOROSO, in )  
her official capacity as )  
Secretary of the North Carolina )  
State Board of Elections, JOSHUA )  
D. MALCOLM, in his official )  
capacity as a member of the )  
North Carolina State Board of )  
Elections, PAUL J. FOLEY, in his )  
official capacity as a member of )  
the North Carolina State Board )  
of Elections and MAJA KRICKER, )  
in her official capacity as a )  
member of the North Carolina )  
State Board of Elections, )

Defendants. )

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VIDEOTAPED  
RULE 30 (b) (6) DEPOSITION OF  
NORTH CAROLINA STATE BOARD OF ELECTIONS  
BY  
KIM WESTBROOK STRACH  
VOLUME 5

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10:04 A.M.  
FRIDAY, DECEMBER 18, 2015

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

By: Denise Myers Byrd, CSR 8340, RPR, CLR 102409-02

1 (excluding curbside)."

2 Do you see that?

3 A. I do.

4 Q. And you agree with that statement today?

5 A. I do.

6 Q. I want to focus most of our discussion today on  
7 this exception.

8 Ms. Strach, what does "a reasonable  
9 impediment" mean in the context of State Law  
10 2015-103?

11 MR. PETERS: Objection to the extent it  
12 calls for a legal conclusion.

13 By MR. GLICK:

14 Q. You can answer?

15 A. I would say that it's any barrier or obstacle  
16 that keeps a voter from being able to obtain a  
17 photo ID.

18 Q. And when you say keeps a voter from obtaining a  
19 photo ID, you mean one of the acceptable forms  
20 of photo ID under HB 589 as modified by 836,  
21 correct?

22 A. Yes, that's correct.

23 Q. Have you sought guidance -- strike that.

24 Has the State Board of Elections sought  
25 guidance from the North Carolina Attorney

1 General on how to interpret the Reasonable  
2 Impediment provisions of State Law 2015-103?

3 MR. PETERS: Objection to the extent it  
4 calls for privileged information.

5 THE WITNESS: We've not asked for any  
6 written guidance from the Attorney General's  
7 Office, no.

8 BY MR. GLICK:

9 Q. Why not, Ms. Strach?

10 A. Because I think it -- the law seems very  
11 straightforward, that it provides a list of  
12 things that can be checked and it also provides  
13 a place where people can list anything that is  
14 not listed as a reasonable impediment or a  
15 barrier.

16 Q. Do you think county boards of elections would  
17 benefit from increased guidance as to what  
18 impediments would qualify as a reasonable  
19 impediment under the new law?

20 MR. PETERS: Objection to the extent it  
21 calls for speculation about what she thinks  
22 county boards would think.

23 THE WITNESS: I don't know what county  
24 boards may think. We are trying to provide  
25 guidance to them of just how to provide that

1 form. And if we -- giving guidance to them  
2 that a voter can provide anything that they  
3 consider to be a barrier or an obstacle to them  
4 getting a photo ID. We've not limited that,  
5 and we didn't feel that it was necessary for  
6 anyone else to limit that.

7 BY MR. GLICK:

8 Q. So we'll get to the specific exceptions listed  
9 in a few moments, but you would agree there are  
10 seven reasons -- specific reasons that are  
11 listed in the statute, correct?

12 A. Yes.

13 Q. And then there's an "other" category that  
14 you've identified here?

15 A. Correct.

16 Q. You haven't given any -- you haven't sought --  
17 strike that.

18 You haven't sought any guidance from  
19 the North Carolina Attorney General as to how  
20 to interpret that "other" category, have you?

21 A. I've not sought any written guidance from the  
22 Attorney General, no.

23 Q. Have you sought informal or non-written  
24 guidance?

25 MR. PETERS: Objection to the extent it

1 Q. And, in fact, Ms. Strach, you instructed your  
2 staff to look into South Carolina's election  
3 handbook to see how they implemented the  
4 Reasonable Impediment provision in that state,  
5 correct?

6 A. I believe I probably told someone on our  
7 outreach team or legal team to do that.

8 Q. And you're aware that they did so, correct?

9 A. Yes, I think they did.

10 Q. Now, Ms. Strach, are you aware that in  
11 South Carolina the South Carolina election  
12 administrator sought guidance from the  
13 South Carolina Attorney General regarding the  
14 interpretation of the South Carolina law prior  
15 to its implementation?

16 A. I'm not aware of that.

17 Q. Are you aware that the South Carolina Attorney  
18 General provided a written opinion analyzing  
19 the Reasonable Impediment provision in that  
20 state?

21 A. I'm not sure that I've read that, no.

22 Q. Now, nothing was preventing you here in  
23 North Carolina from seeking interpretive  
24 guidance from the North Carolina Attorney  
25 General, correct?



1 A. No, but I think one of the things that's  
2 important is that in South Carolina's law, they  
3 did not have a list the same way that we do.  
4 There was a much more -- a broader definition  
5 of reasonable impediment.

6 Our definition of reasonable impediment  
7 in providing examples is much more thorough  
8 than South Carolina's.

9 Q. But you'd agree with me -- you agreed with me  
10 before there was a catchall category in the  
11 North Carolina law for other impediments,  
12 correct?

13 A. Right, just to make it even more accessible to  
14 people in case something was not defined.

15 Q. But you haven't sought any official guidance  
16 from the North Carolina Attorney General as to  
17 how to interpret that "other" category,  
18 correct?

19 A. I have not because I think it's broad and that  
20 it's -- we do not want to limit what people can  
21 say is a reasonable impediment.

22 Q. Okay. And, again, nothing was preventing you  
23 from seeking guidance on the breadth of that  
24 "other" category from the North Carolina  
25 Attorney General, correct?

1 A. No. I just didn't think I needed to.

2 Q. And do you have plans to seek interpretive  
3 guidance -- official guidance from the  
4 North Carolina Attorney General at any time  
5 before the March 2016 primary election?

6 A. On that specific question or --

7 Q. On the breadth of the Reasonable Impediment  
8 provision.

9 A. I don't.

10 Q. Any plans before the November 2016 general  
11 election here in North Carolina?

12 A. Unless there's an issue that arises from the  
13 March primary, I don't see at this time it  
14 would be necessary.

15 Q. You submitted a declaration in support of the  
16 Defendant's Opposition to the North Carolina  
17 NAACP Plaintiffs' Motion for Preliminary  
18 Injunction in this case?

19 A. Yes.

20 Q. I'm going to hand you that. If we can mark  
21 that as 698.

22 (WHEREUPON, Plaintiffs' Exhibit 698 was  
23 marked for identification.)

24 BY MR. GLICK:

25 Q. Ms. Strach, I trust you've seen this

1 declaration before.

2 A. Oh, yes.

3 Q. Okay. You'd agree that nowhere in this  
4 declaration, Ms. Strach, do you address how  
5 "reasonable impediment" is going to be  
6 interpreted in North Carolina, correct?

7 MR. PETERS: Object to the form.

8 MR. GLICK: If you need to take time to  
9 look at the declaration, please do.

10 THE WITNESS: I'm not sure that I --  
11 could you ask your question again. I'm sorry.

12 BY MR. GLICK:

13 Q. Sure. So you filed a 19-page -- sorry. Strike  
14 that.

15 You filed a 21-page declaration on  
16 December 11, 2015, correct?

17 A. I did.

18 Q. This was filed in conjunction with the  
19 Defendant's Opposition to the NAACP Plaintiffs'  
20 Motion for Preliminary Injunction, correct?

21 A. Yes.

22 Q. And if we look at Page 3, Roman Numeral I is  
23 Election Official Training.

24 A. Yes.

25 Q. And if we look on Page 6, Roman Numeral II is

1 Q. And if that category -- or even the seven  
2 categories that are listed are construed  
3 narrowly, the provision -- the exception might  
4 not be useful to a lot of voters, correct?

5 MR. PETERS: Object to the form of the  
6 question. I don't know what you mean by  
7 "construed narrowly."

8 THE WITNESS: I don't either.

9 BY MR. GLICK:

10 Q. If it's construed strictly -- strike that.

11 If it's construed in a manner that  
12 makes it difficult for voters to access the  
13 exception, then it would not be useful to  
14 voters, correct?

15 MR. PETERS: Object to the form.

16 MR. FARR: Object to the form.

17 THE WITNESS: The form does not allow  
18 for it to be -- the instructions -- the statute  
19 says -- the "other" is there is not as a way of  
20 limiting. And as I said, the county boards  
21 cannot make a determination that something is  
22 not reasonable. That is not for -- that is not  
23 a call that they have to make.

24 Their job is not to look at anything  
25 that's on that line and make a determination

1           that they don't believe that's a good reason  
2           for someone not to provide a photo ID.  So I  
3           don't think that -- the law doesn't provide for  
4           that.

5       BY MR. GLICK:

6       Q.  Would you agree, Ms. Strach, that the  
7           Reasonable Impediment provision should be  
8           interpreted broadly?

9       A.  The provision -- the types of impediments  
10          should be interpreted broadly?  I think the  
11          statute's clear that, yes, it should be  
12          interpreted very broadly.  That's why the  
13          "other" category is in the law.

14      Q.  You agree that the Reasonable Impediment  
15          provision should be construed with all  
16          inferences in favor of the voter?

17      A.  I absolutely agree with that.

18      Q.  You agree that election officials should err on  
19          the side of the voter in evaluating a  
20          Reasonable Impediment Declaration?

21      A.  That is -- that is information that we provide  
22          our -- we provide in training always see this  
23          in the light most favorable to the voter.

24      Q.  So the answer to my question is yes?

25      A.  Yes.

1 Q. You agree that the Reasonable Impediment  
2 provision should be construed with all  
3 inferences in favor of protecting the  
4 fundamental right to vote?

5 A. Yes.

6 Q. So if there's any doubt in the process, you  
7 agree that it should be resolved in the favor  
8 of the voter's vote counting, correct?

9 MR. FARR: Objection to the form.

10 THE WITNESS: I agree that county  
11 boards should look at any information they have  
12 in light most favorable to the voter, yes.

13 BY MR. GLICK:

14 Q. And if there's any doubt in the process, it  
15 should be resolved in favor of the voter's vote  
16 counting, correct?

17 A. If there is --

18 MR. FARR: I object to the form. It  
19 was the same question he just asked.

20 MR. GLICK: Tom, we're all friends here  
21 so I'll allow the two of you to both object,  
22 but if you could just either not speak over one  
23 another or the witness, I'd appreciate it.

24 MR. FARR: Well, you can keep asking  
25 her the same question when she doesn't give you

1 the answer that you want. So that was the  
2 second time you asked the same question.

3 MR. GLICK: Well, you objected to the  
4 form and she --

5 MR. FARR: I objected again.

6 MR. GLICK: And you objected again.  
7 And she didn't answer the question because you  
8 objected to the form. So I tried to reword it.  
9 So I'll ask my question again.

10 BY MR. GLICK:

11 Q. Ms. Strach, you would agree if there's any  
12 doubt in the process, that doubt should be  
13 resolved in favor of the voter's vote counting,  
14 correct?

15 MR. FARR: Objection to the form.

16 THE WITNESS: The statute provides  
17 that. It states that three board members have  
18 to unanimously agree that the reasonable  
19 impediment is false, not that it's not  
20 reasonable. So I think that the statute sets  
21 up that it should be in the light most  
22 favorable to the voter, and that's certainly  
23 the guidance that we have already provided and  
24 will continue to provide.

25 BY MR. GLICK:

1 Q. And if any one individual member of the county  
2 board has a doubt, that doubt should be  
3 resolved in favor of the voter's vote counting,  
4 correct?

5 A. Yes.

6 Q. You agree that a voter's belief that he or she  
7 has a reasonable impediment should not be  
8 second-guessed?

9 A. I think that law requires that it not be  
10 second-guessed. And yes.

11 Q. You would agree it's up to the voter to  
12 determine if they have a reasonable impediment?

13 A. Yes.

14 Q. And you would agree that poll managers and  
15 county boards do not have discretion to  
16 determine if a voter's explanation is not  
17 reasonable.

18 MR. PETERS: Object to the form.

19 THE WITNESS: I agree that they do not.

20 BY MR. GLICK:

21 Q. And you agree that poll workers and county  
22 board officials should not investigate or  
23 question voters regarding the reasonableness of  
24 the impediment that they identify?

25 A. Not the reasonableness, no.



1 Q. You agree that when a Reasonable Impediment  
2 affidavit is submitted, the county board of  
3 elections must find that the provisional ballot  
4 is valid unless the board has grounds to  
5 believe the affidavit is false?

6 A. False or that it denigrates the law or that it  
7 is nonsensical, yes.

8 Q. So if the voter thinks they have a reasonable  
9 impediment, that should be good enough for the  
10 poll worker, the poll manager and the county  
11 board, correct?

12 MR. PETERS: Object to the form.

13 THE WITNESS: If the voter completes --  
14 checks a box, one of the boxes on the form, and  
15 they believe that they have a reasonable  
16 impediment, then, yes, that is not the job of  
17 the county board to make a determination of  
18 whether or not the county board thinks it's  
19 reasonable. And they are -- have been told  
20 that and will continue to be told that. That's  
21 very important.

22 BY MR. GLICK:

23 Q. So the reasonableness of the impediment is  
24 subjective as to the voter, correct?

25 A. That's up to the voter to determine whether

1           they believe it's reasonable or not, yes.

2           Q. I want to walk through some potential  
3           impediments and assess whether they would count  
4           in your view as reasonable. All right.

5                           (WHEREUPON, Plaintiffs' Exhibit 699 was  
6           marked for identification.)

7           BY MR. GLICK:

8           Q. Ms. Strach, I've handed you what we've marked  
9           as Exhibit 699, which is a copy of General  
10          Assembly of North Carolina, Session 2015, House  
11          Bill 836, the Ratified Bill. Do you see that?

12          A. I do.

13          Q. And if you want to flip over to Page 8 at the  
14          top. Let's start with under (e) (1), the seven  
15          impediments -- well, I'll read Number 1. It  
16          says:

17                           "Separate boxes that a voter may  
18                           check to identify the reasonable  
19                           impediment, including at least the  
20                           following."

21                           Do you see that?

22          A. Yes.

23          Q. And it lists seven. And for the record, lack  
24          of transportation; disability or illness; lack  
25          of birth certificate or other documents needed

1 to obtain photo identification; work schedule;  
2 family responsibilities; lost or stolen photo  
3 identification; photo identification applied  
4 for but not received by the voter voting in  
5 person.

6 Do you see those?

7 A. I do.

8 Q. Would you agree, Ms. Strach, that for these  
9 reasons, a voter listing any of these as his or  
10 her reasonable impediment, that would be  
11 accepted by a county board?

12 A. Yes.

13 Q. If a voter -- and we've talked already there's  
14 a space here for "other reasonable impediment,"  
15 correct?

16 A. Correct.

17 Q. And on the form that we'll see a little bit  
18 later today, the form that the State Board of  
19 Elections has created also lists a space for  
20 "other" with a line next to it, correct?

21 A. That's correct.

22 Q. If a voter writes in that "other" area that  
23 church responsibilities prevented them from  
24 obtaining photo ID, you would agree that would  
25 be a valid reason, correct?

- 1 board and that's what the board's job would be.
- 2 BY MR. GLICK:
- 3 Q. So, Ms. Strach, even if the voter -- even if
- 4 the voter said that they had a lack of
- 5 transportation, the county board could question
- 6 that reason based on evidence of when the voter
- 7 had access to a car?
- 8 A. I think the law would not allow them to
- 9 question whether or not it's reasonable for
- 10 them to say that's the reason that they don't
- 11 have that, but if the county board, all three
- 12 members, had evidence that that was not true,
- 13 then I think that is something that could be
- 14 brought before -- the board could bring that
- 15 voter and have them -- they could make a
- 16 determination based on those facts, but that
- 17 would be up to the board -- that would be a
- 18 factual finding of the board, of the three of
- 19 them determining that that reason -- not that
- 20 it's not reasonable, it's false. It's not
- 21 true.
- 22 Q. So I'm a little confused, Ms. Strach, because
- 23 earlier I believe you said that the voter's
- 24 reason could not be second-guessed, correct?
- 25 A. Right.

1 Q. So a voter who says that they lack  
2 transportation, if it turns out that they have  
3 transportation one day a week, you're now  
4 saying that can be second-guessed by the  
5 three-member county board?

6 A. I'm not saying it's reasonable. I'm saying if  
7 the county board believed that that was false,  
8 that they could call that voter in, give them  
9 due process and have them explain.

10 If they believe that that person, you  
11 know, is driving all the time, they would have  
12 to then make a determination of whether or  
13 not -- that voter may still have some reason  
14 why they stated that it was lack of  
15 transportation. It would then be the board's  
16 determination of whether or not, after hearing  
17 those facts, if it's not that it's not false,  
18 it was reasonable to them to say that's why  
19 they couldn't get a photo ID.

20 So that's why it's fact specific, and I  
21 don't think that's something that I could give  
22 you an answer on. There -- it's -- what I  
23 think my job and what the county board's job  
24 are is making sure that they're not trying to  
25 just make a determination on the fact they

1 don't think it's reasonable.

2 If they have reason to believe that it  
3 is false, then they can question that voter and  
4 based on the information that that voter gave  
5 them, the three of them would have to determine  
6 that the information they provided and what  
7 they put on their form was false, was not true.

8 Q. So a voter who says they lack transportation  
9 but actually has transportation one day a week  
10 could be found to be factually false?

11 A. Again, I don't know that I can answer that  
12 question. It may be that the voter could  
13 provide information and explain why lack of  
14 transportation still is a reasonable impediment  
15 to them. I don't think I could answer that and  
16 state that would not be appropriate.

17 Q. But you agree that having a car one day a week  
18 would be a valid grounds to challenge the  
19 reasonableness of a voter's lack of  
20 transportation reason on their Reasonable  
21 Impediment Declaration?

22 MR. PETERS: Object to the form.

23 THE WITNESS: Could you ask that --  
24 re-ask that question.

25 BY MR. GLICK:

1 Q. I guess my question is this: Who decided the  
2 voter actually has a lack of transportation?

3 A. Well, I think that that's where you have the  
4 challenge. You can -- someone can challenge  
5 the voter, and if you had -- the board had  
6 grounds -- that they believe that they had  
7 grounds that information put on that form was  
8 false, then they have the ability to question  
9 that voter in the same way that a challenge  
10 would be resolved.

11 Q. So if a voter had access to a car one day a  
12 week, it might be false for them to say that  
13 they lack transportation?

14 A. That would be a determination the county board  
15 would have to make after giving the voter the  
16 opportunity to tell them why they believed when  
17 they signed that that that was factual.

18 Q. The election's roughly three months away,  
19 primary election, correct?

20 A. Yes.

21 Q. If a voter had access to a car one day between  
22 now and the middle of March, you think that  
23 they could properly declare that they lacked  
24 transportation and that was the reason they  
25 couldn't obtain photo ID?

1 MR. PETERS: Object to the extent it  
2 calls for speculation.

3 THE WITNESS: Again, I can't  
4 speculate -- I can't speculate on what  
5 information that person puts down.

6 If that person believes that their lack  
7 of transportation is what did not allow them to  
8 get a photo ID, then they can certainly sign  
9 that declaration, and unless there is evidence  
10 that three board members believe that that is a  
11 false statement, that they could get an ID, not  
12 that it's not reasonable for them to state  
13 that, then I don't think -- the board cannot  
14 look and say, well, it's not reasonable for you  
15 to say lack of transportation, but they can  
16 make a determination if they believe there is  
17 grounds that something is false.

18 I don't know what those facts would be,  
19 but that is in the law for them to do and  
20 that's why I don't think I should speculate on  
21 it because I don't know what those facts would  
22 be.

23 BY MR. GLICK:

24 Q. Well, I'm just a little confused, Ms. Strach,  
25 because earlier you had indicated that you



1           didn't believe that the voter's reason for why  
2           they had a reasonable impediment should be  
3           second-guessed, correct?

4           A. I don't think their reason should be  
5           second-guessed, right. The fact that they say  
6           lack of transportation, if they believe that is  
7           the reason, then they can sign that and that  
8           would be a reasonable impediment.

9                           And unless the board states that it's  
10           not that -- we don't think it's not reasonable,  
11           we just don't think it was true, it was not  
12           factual -- and I don't know what facts you  
13           would have to have to prove that, but that's  
14           the only way that a board would get to make a  
15           determination not to count that ballot, not  
16           that the -- that the reason was not reasonable.  
17           It's that you've stated something that three  
18           board members have some evidence that that's  
19           not true. I don't know what that would be, but  
20           I think that's what this is stating.

21           Q. At the end of the day, who determines whether  
22           having a car one day a week would not allow the  
23           voter to cite a lack of transportation, the  
24           voter or the board?

25           A. Again, if the voter thinks that the fact that

1           they only have access to a car one day a week,  
2           that does not allow them to get a photo ID, I  
3           believe they can sign the Reasonable  
4           Impediment.

5                       And I believe that a board would -- the  
6           only way a board could not look and say, well,  
7           that's not reasonable, they should go on that  
8           one day a week and get it, I don't think that's  
9           what the board can do. The board would have to  
10          have some other evidence to determine that that  
11          was not factual.

12                      I can't think what that would be, but  
13          that would be standard that they would have to  
14          use in order not to count that ballot.

15          Q. Because you'd agree that if the voter believed  
16          that they lacked transportation, that should  
17          not be second-guessed by the board, correct?

18          A. That should not be second-guessed that that was  
19          their reason for not getting the photo ID,  
20          absolutely not.

21          Q. Not only that that was their reason but that  
22          that reason was reasonable, correct?

23          A. Right. It's -- again, it's not going to the  
24          reasonableness of what they have put down.

25          Q. And if the voter thinks that not having a car

1 that you would identify as executive director  
2 of the State Board of Elections that the State  
3 Board has provided to county boards on how to  
4 interpret or assess the reasonableness of a  
5 voter's impediment?

6 A. Once again, I don't think -- the guidance will  
7 be you're not to determine the reasonableness  
8 of it.

9 Q. My question is not what the guidance will be or  
10 even what the guidance has been.

11 My question is how has such guidance  
12 that you have indicated, how has that been  
13 provided to county boards to date?

14 A. Well, the guidance has been provided providing  
15 them a copy of the law. They have that. That  
16 is clearly in the statute. That's one way.  
17 And also, as I said, that information was  
18 shared with county board members at the August  
19 training.

20 Let me say this also is that we had  
21 municipal elections, and it's not unusual for  
22 information that's not going to be relevant to  
23 a particular election to be shared after that  
24 election. We're in that process now. That  
25 would be consistent with how information is

1 shared with counties after any election.

2 Q. But, Ms. Strach, sitting here today on  
3 December 18, 2015, less than three months  
4 before the presidential primary election, the  
5 statewide primary elections here in  
6 North Carolina, other than the August training  
7 materials, you cannot identify any written  
8 materials or direction provided from the State  
9 Board of Elections to county boards other than  
10 the law itself?

11 MR. PETERS: Objection. It's been  
12 asked and answered numerous times in this  
13 deposition and it's becoming abusive the way  
14 the question's being asked.

15 MR. GLICK: I'd just like an answer.

16 MR. PETERS: I'm stating my objection.

17 BY MR. GLICK:

18 Q. Go ahead.

19 A. As I've stated, the law itself on this point  
20 lays out that. So that has been provided. And  
21 the information in August was shared with  
22 county boards of elections and information is  
23 going to be coming as it would with any other  
24 election.

25 Q. I understand it's going to be coming, but

1 sitting here today, other than the law and the  
2 August training materials, you can't identify  
3 any other materials provided to county boards?

4 A. Not to date.

5 MR. PETERS: Objection. She just  
6 answered that question.

7 THE WITNESS: To date, that is the  
8 plan.

9 MR. GLICK: I'm going to hand you what  
10 we'll mark as Exhibit 700.

11 (WHEREUPON, Plaintiffs' Exhibit 700 was  
12 marked for identification.)

13 BY MR. GLICK:

14 Q. Ms. Strach, I will represent for the record  
15 that this Exhibit 700 was from the Production  
16 Number SBE-2\_0001202. Okay.

17 A. Okay.

18 Q. Ms. Strach, do you recognize this as a version  
19 of the Poll Worker Training that you referenced  
20 from August of 2015?

21 A. This is one of the trainings that was provided  
22 at the August training. This is not the one I  
23 was specifically talking about with respect to  
24 reasonable impediment, but this is one of the  
25 trainings that was provided at the August

1 training.

2 Q. And I apologize. This is not numbered, but  
3 about two-thirds of the way through the  
4 pamphlet there's a page that's marked No Photo  
5 ID At This Time. Do you see that?

6 A. Yes.

7 Q. And it says -- and on the next page after that  
8 it says No Photo ID Reasonable Impediment. Do  
9 you see that?

10 A. Correct. Right.

11 Q. It says in this form Sign Reasonable Impediment  
12 Form; Provide identifying information; Vote a  
13 provisional ballot. Do you see that?

14 A. That's correct.

15 Q. And nowhere on this page or on the adjacent  
16 pages does it reference how poll workers should  
17 interpret the reasonable impediment in the 2016  
18 election.

19 MR. PETERS: Objection. I believe the  
20 witness has stated many times in this  
21 deposition that poll workers do not do that.

22 THE WITNESS: They do not. They do  
23 not. That is not their role.

24 BY MR. GLICK:

25 Q. Well -- but whether or not it's their role or

1 not, you'd agree there's nothing in here about  
2 how a Reasonable Impediment form should be  
3 interpreted by poll workers, correct?

4 A. Poll workers don't interpret Reasonable  
5 Impediment Declarations. That's not their job.

6 It would be inappropriate for me to put  
7 that in a PowerPoint because that's not one of  
8 their responsibilities.

9 Q. Well, let me ask you this, Ms. Strach: When a  
10 voter goes to the polls, the first person they  
11 encounter is a poll worker, correct?

12 A. Correct.

13 Q. And when they're filling out a Reasonable  
14 Impediment Form, they're interacting with a  
15 poll worker, correct?

16 A. Sure.

17 Q. They're not interacting with a member of the  
18 county board of elections, correct?

19 A. Correct.

20 Q. You would agree, Ms. Strach, that it's  
21 important for poll workers to understand what  
22 would constitute a reasonable impediment for a  
23 particular voter, correct?

24 MR. PETERS: Object to the form.

25 THE WITNESS: The poll workers have a

1 form that they are to provide the voter that  
2 has the Reasonable Impediment Declaration,  
3 that, yes, that that is the instructions that  
4 they are to provide to the voter. That is not  
5 for them to determine the reasonableness of  
6 that or make -- that's not their job. That's  
7 not their role.

8 They are to provide options to the  
9 voter of what they can do if they do not have a  
10 photo ID. So that's why these two -- these two  
11 slides -- the first one is someone that does  
12 have an ID, they just didn't have it with them  
13 at this time. The second one is the voter  
14 doesn't have an ID. They say they do not have  
15 one, can't obtain one.

16 This is where the -- okay. This is  
17 where the voter would be given the option to  
18 sign the Reasonable Impediment. It would be  
19 explained to them.

20 And so, yes, from that perspective, the  
21 poll worker is being trained on that process of  
22 giving the voter an opportunity -- they say I  
23 cannot obtain a photo ID, explaining the  
24 Reasonable Impediment form and giving them the  
25 opportunity to sign it and vote a provisional



1 ballot. That is the extent of what they do.  
2 That provisional ballot is then addressed by  
3 the county board of elections.

4 BY MR. GLICK:

5 Q. Fair enough, but if a voter at the polls on  
6 election day had a question about the  
7 Reasonable Impediment Declaration form, they  
8 would be asking that question to the poll  
9 worker, correct?

10 A. Sure.

11 Q. And if they had a question about whether or not  
12 a particular impediment would count as a  
13 reasonable impediment, they would ask that  
14 question to the poll worker, correct?

15 A. And it would be appropriate for the poll worker  
16 to say that's a question for the county board  
17 of elections. That's not a question that I  
18 should be answering. And that's one of the  
19 instructions that we're providing as well.

20 So, no. There's some questions that a  
21 poll worker shouldn't be answering because  
22 that's not their role and responsibility.  
23 Their role is to make sure that voters have the  
24 information and have ways of getting the  
25 information.

1 Q. But you'd agree it would be important for poll  
2 workers to be trained on how to manage  
3 Reasonable Impediment Declaration forms,  
4 correct?

5 A. When you say manage, what do you mean by manage  
6 the forms?

7 Q. Well, how to address questions from voters  
8 regarding the form itself, correct?

9 A. Right. They will -- they will have specific  
10 instructions about how to address the form, of  
11 how they assist a voter with completing the  
12 form, but how that is addressed with the county  
13 board is not their role.

14 Q. Well, let's go back to the hypothetical of the  
15 voter who says they only have access to a car  
16 one day a week. Okay.

17 A. Okay.

18 Q. And they go up to the poll and they say to the  
19 poll worker, I want to check -- I think I -- I  
20 only have access to a car one day a week so I'm  
21 going to check lack of transportation, is that  
22 okay. Is the poll worker allowed to address  
23 that question?

24 A. The poll workers -- if the voter says I don't  
25 have an ID and the reason I don't have the ID

1 is because I don't have transportation, the  
2 poll worker is going to say that is that form.  
3 You can put this on the form. This is any  
4 impediment you have that you believe has kept  
5 you from obtaining a photo ID.

6 That's what poll workers are going to  
7 be instructed to give this option, if that is  
8 what the voter tells them. I don't have an ID  
9 for whatever reason. This is the proper way  
10 for you to put that reason down and that will  
11 be then addressed by the county board of  
12 elections.

13 Q. And who will instruct the poll workers on that  
14 process and how to respond to types of  
15 questions like that?

16 A. Well, actually, this year it's going to be  
17 multiple people in coordination. We have done  
18 training videos that county boards already have  
19 that address the reasonable impediment issue,  
20 some scenarios where a poll worker may  
21 encounter someone that doesn't and providing  
22 them.

23 We have what we call station guides  
24 that the State Board of Elections has created  
25 in conjunction with county boards of elections

1 Q. Okay. Well, what is the appropriate time,  
2 Ms. Strach, with less than three months before  
3 the election?

4 A. Our training is based on -- this is not the  
5 first election that we've had. This training  
6 happens in close proximity to an election.

7 So we are starting -- we've already  
8 provided a lot of our training materials so in  
9 preparation for trainings -- most counties do  
10 training with their poll workers will do that  
11 in February.

12 Q. Well, you referenced a numbered memorandum a  
13 few minutes ago.

14 A. Yes.

15 Q. Are you planning to issue one related to the  
16 Reasonable Impediment provision?

17 A. I am usually will probably do a numbered memo  
18 that addresses numerous issues. I am certain  
19 that reasonable impediment will be one of those  
20 issues that will be included in any written  
21 guidance that I would provide going -- in  
22 preparation for the March primary.

23 Q. And when do you intend to issue that  
24 memorandum?

25 A. I'm not sure exact -- as I said, there are

1 multiple things that are being planned. A  
2 numbered memo would be just one of those  
3 things.

4 I am planning on providing guidance on  
5 reasonable impediment. It's ongoing.

6 Q. Agreed. Is there a date by which you would  
7 anticipate providing a numbered memorandum  
8 related to the Reasonable Impediment provision?

9 A. I have not actually specifically thought about  
10 a numbered memo about the reasonable  
11 impediment, but I would be very -- I'm certain  
12 that I will be doing numbered memos -- multiple  
13 numbered memos as the new year starts and as we  
14 start doing training in preparation for March.  
15 So there will be a number of numbered memos. I  
16 don't have a date certain of when those will be  
17 issued.

18 Q. But January at the earliest at this point?

19 A. Yes, I think that's true.

20 Q. You would agree that the State Board has not  
21 held any public hearings regarding the  
22 Reasonable Impediment provision, correct?

23 A. Not Reasonable Impediment, no.

24 Q. And you have not issued any proposed rules or  
25 regulations regarding the Reasonable Impediment

1 provision?

2 A. No.

3 Q. Now, previously your office did hold public  
4 hearings and issued proposed rules regarding  
5 certain aspects of the photo ID requirement  
6 prior to the enactment of HB 836, correct?

7 A. Right, with reasonable resemblance and also  
8 with a couple of other things as well.

9 (WHEREUPON, Plaintiffs' Exhibit 701 was  
10 marked for identification.)

11 BY MR. GLICK:

12 Q. I'm going to mark quickly Exhibit 701.  
13 Exhibit 701 is an August -- is an October 15,  
14 2015, memorandum issued to interested parties  
15 under your name. Do you see that?

16 A. I do.

17 Q. And this was for a proposed rule on signage at  
18 early voting sites notifying voters of the  
19 option to request an absentee ballot by mail?

20 A. Yes.

21 Q. And that was part of a law that was -- that was  
22 part of the election changes made as part of  
23 State Law 2015-103, correct?

24 A. That is correct.

25 Q. So you have put out some proposed rules

1           regarding changes for SL 2015-103, correct?

2           A. This was the -- that SL 2015-103 directed the  
3           State Board to make a rule with respect to  
4           signage. That was a mandate of the statute.

5           Q. And whether there was a mandate or not, you  
6           haven't issued any proposed rules regarding  
7           reasonable impediment, correct?

8           A. No, we were not. That -- our mandate was on  
9           signage.

10          Q. And do you have any intention to issue rules --  
11          proposed rules in advance of the March 2016  
12          primary related to reasonable impediment?

13          A. No. We believe that the statute is clear.

14          Q. Are -- you're not a lawyer, Ms. Strach,  
15          correct?

16          A. I'm not.

17          Q. Are most county board of election officials  
18          lawyers?

19                       MR. PETERS: Object to the extent it  
20                       calls for speculation.

21                       THE WITNESS: I don't know.

22          BY MR. GLICK:

23          Q. You have legal counsel -- I'm not asking you to  
24          disclose any information, but you have legal  
25          counsel as -- the State Board of Election has

1 assess the reasonableness of an individual  
2 voter's declaration?

3 A. Not the reasonableness.

4 MR. PETERS: Object to the extent it  
5 calls for speculation.

6 THE WITNESS: Right. Again, not to the  
7 reasonableness.

8 I guess there's nothing -- there's  
9 nothing that limits -- there's no limitations  
10 in the statute about -- a county board has to  
11 have grounds, and so if they -- if there's some  
12 reason that they have, they would need to have  
13 grounds in order to even bring that before the  
14 full board.

15 So I'm not sure I understand. Are they  
16 limited in finding information?

17 BY MR. GLICK:

18 Q. Let's go back to the county there are 50 people  
19 who have filled out this Reasonable Impediment  
20 form. Okay.

21 A. Right.

22 Q. Can a member of the county board of elections  
23 run a Google search on those 50 people to  
24 figure out the circumstances by which they  
25 figured out -- by which they served the



1 Reasonable Impediment Declaration?

2 MR. FARR: Mike, could I just have a  
3 standing objection to hypothetical questions so  
4 I don't have to say it every time you ask one.

5 MR. GLICK: You can, but, you know,  
6 there's a reason that these questions are being  
7 asked.

8 MR. FARR: I'm sure of that, but I  
9 object to the fact that they're hypothetical  
10 questions. I don't want to interrupt you every  
11 time you do that. So may I have a standing  
12 objection to hypothetical questions.

13 MR. GLICK: You may, Mr. Farr.

14 MR. FARR: Thank you.

15 THE WITNESS: I would answer there's no  
16 prohibition on a county board of election  
17 member looking at Google.

18 BY MR. GLICK:

19 Q. Okay. You would agree, Ms. Strach, that the  
20 State Board of Elections has not published  
21 proposed rules or regulations regarding the  
22 challenge procedure for Reasonable Impediment  
23 Declarations, correct?

24 A. No.

25 Q. You haven't conducted any hearings in the state

1 on that issue?

2 A. No.

3 Q. And in the training materials that you  
4 referenced from August, there hasn't been any  
5 mechanism of the -- there hasn't been any  
6 mention of the challenge mechanism, correct?

7 A. I'm not sure. There likely was a mention of  
8 the challenge provision because that's  
9 certainly part of the reasonable impediment  
10 process.

11 Challenges are also something that are  
12 not just for reasonable impediment. I mean,  
13 you can have challenges for a variety of  
14 things, and so challenges of something that  
15 have been discussed also at that training, I'm  
16 sure reasonable impediment could have been --  
17 was probably one of those challenges, but there  
18 are other kinds of challenges that we also  
19 discuss at trainings.

20 MR. GLICK: Counsel, the witness today  
21 has numerous times referenced this August  
22 training, and I've even got an asked-and-  
23 answered objection a couple times because I  
24 asked a number of follow-up questions on it.

25 You made a production last week I

1 believe of 60,000 documents. We are going  
2 through that and still going through it.

3 We would ask that the defendant's  
4 identify the final version of the training  
5 materials that the witness has referenced today  
6 by Bates number as soon as possible.

7 MR. PETERS: Sure.

8 MR. GLICK: Thank you.

9 BY MR. GLICK:

10 Q. Ms. Strach, you agree that the person  
11 challenging another voter's declaration has the  
12 burden of establishing the falsity of that  
13 declaration?

14 A. Yes.

15 Q. Has the State Board of Elections established  
16 any mechanism or offered guidance to county  
17 boards on how to notify voters whose Reasonable  
18 Impediment Declarations are being challenged?

19 A. Not specifically, but we have ongoing processes  
20 on how you notify voters that have been  
21 challenged because there are other types of  
22 challenges that county boards of elections will  
23 likely deal with during this same time period  
24 that have nothing to do with reasonable  
25 impediment. So there are -- they are aware of

1 A. Correct.

2 Q. Web address.

3 You'd agree that nowhere in this  
4 mailing does it explicitly say that the law has  
5 changed since the last mailing, correct?

6 A. I think by saying an important update was our  
7 reason for using those words.

8 MR. GLICK: Are you telling me that  
9 those versions are not identical?

10 MR. PETERS: Yeah, they're not  
11 identical.

12 THE WITNESS: I should have asked. You  
13 always ask.

14 MR. GLICK: Well, we have to go off the  
15 record, but why don't I mark it before we go  
16 off the record. We'll mark -- nope, that's not  
17 the right one.

18 Well mark the proper one as Exhibit 704  
19 and then we can go off the record, if I can  
20 find it. Why don't we go off and I'll find it  
21 during the break.

22 THE VIDEOGRAPHER: Going off the  
23 record. The time is 12:21 p.m.

24 (Brief Recess.)

25 ///

1 (WHEREUPON, Plaintiffs' Exhibit 704 was  
2 marked for identification.)

3 THE VIDEOGRAPHER: Going back on the  
4 record. The time is 12:45 p.m.

5 BY MR. GLICK:

6 Q. Ms. Strach, going back to the training you  
7 referenced in August -- I may have asked this  
8 earlier so I apologize, but the course that you  
9 referenced regarding the Reasonable Impediment  
10 Declaration, that was not a mandatory course  
11 for county board of election officials,  
12 correct?

13 A. I'm not sure if it was mandatory. The training  
14 was mandatory, attending. There were several  
15 things that were being taught at the same time.  
16 They did have some flexibility about which  
17 training they received.

18 I believe that this one was given a  
19 couple of times so that they could have done  
20 that, but I'm not sure if that was one of the  
21 ones that everyone received.

22 Q. So you don't know if every county board of  
23 election official received this specific  
24 Reasonable Impediment training?

25 A. I'm not certain that every single one of them

1 received the actual training in the -- in the  
2 room.

3 Q. Was attendance taken at the August training?

4 A. Yes, there was attendance.

5 Q. Do you know if every county was represented at  
6 the August training?

7 A. I do believe that there might have been one or  
8 two counties that were not there for reasons,  
9 but I couldn't tell you right now who those  
10 counties were, but there was not -- most  
11 counties -- I would say by full majority, most  
12 counties were there.

13 Q. Do you have a record of which counties were  
14 unambiguously represented among their county  
15 board of election officials?

16 A. I know that we have that information. I  
17 don't -- I don't know what it is sitting here  
18 right now.

19 Q. And was the attendance taken at a -- at what  
20 level was the attendance taken? That is,  
21 was -- were counties marked as having attended  
22 on a training-wide level or on a, sort of,  
23 course-wide level?

24 A. Well, definitely on a training-wide level, and  
25 they signed up, I believe, for training. I'm

1 not sure how that was documented.

2 MR. GLICK: We'll mark Exhibit 705.

3 (WHEREUPON, Plaintiffs' Exhibit 705 was  
4 marked for identification.)

5 MR. PETERS: Did 704 get marked?

6 MR. GLICK: It did, but I'm -- it did,  
7 but I'm not -- I will use it, but not quite  
8 yet.

9 MR. PETERS: Okay. That's fine.

10 BY MR. GLICK:

11 Q. Exhibit 705, Ms. Strach, I'll represent, was  
12 sent by counsel for the defendants to the NAACP  
13 plaintiffs, and it is titled Reasonable  
14 Impediment Declaration. Do you see that?

15 A. Yes, I do.

16 Q. And this is -- is this the Reasonable  
17 Impediment Declaration form that you intend to  
18 be distributed throughout the state for use in  
19 the March 2016 election?

20 A. It is. I will say that there might have been  
21 some tweaks since that time, but this is  
22 generally the form, and there's been no real  
23 substantive changes, I don't believe.

24 Q. I may have some questions about the form later,  
25 but for now my question is: Was this form

1 Do you see that?

2 A. I do.

3 Q. So my first question is who -- who received  
4 this mailing in November?

5 A. It would be -- as you spoke to earlier and it's  
6 in my declaration as well, there were three  
7 mailings that we did prior to the reasonable  
8 impediment legislation being signed into law,  
9 and those mailings were sent to people that we  
10 had matched as potentially not having a photo  
11 ID based on matching criteria.

12 And so because that mailing was to  
13 educate them on the photo ID requirement and  
14 the exceptions at that time, we mailed this  
15 mailing to those people that had received that  
16 mailing that had told us they didn't have an ID  
17 or we did not have a response from them.

18 We did not mail to those that came back  
19 to us as undeliverable, but those that we could  
20 mail to that had either stated they didn't have  
21 an ID or we had not heard from them received  
22 that. So that would have been a little more  
23 than 10,000 people that had signed the  
24 Acknowledgment of No Photo ID during either the  
25 May primary or November general election or the



1           municipal elections as well.

2           Q. Now, this mailing references reasonable  
3           impediment.

4           A. It does.

5           Q. And is this the only mailing that's gone out to  
6           voters in North Carolina that references  
7           reasonable impediment thus far?

8           A. The only mailing? There are -- as far as a  
9           mailing, yes, to that. There are other  
10          documents that voters will have that have  
11          reasonable impediment on it, voter registration  
12          form. Other documents like that will have that  
13          information on them as well.

14          Q. Okay. The first sentence -- well, strike that.

15                         You would agree, Ms. Strach, that  
16          nowhere on this form does it reference the fact  
17          that the law changed since the last letter or  
18          mailing that voters received from the State,  
19          correct?

20                         MR. PETERS: Object to the form.

21                         THE WITNESS: What it says is we've  
22          sent you information in the past and we want to  
23          update you on voter ID requirements.

24          BY MR. GLICK:

25          Q. But it doesn't explicitly say the law has

1 changed, correct?

2 A. No, it doesn't. It just says these are updates  
3 which would appear to mean that things have  
4 changed since we mailed you something last.

5 Q. But you didn't say "The law has changed, please  
6 read this," correct?

7 A. No. We said that and we'll hope that people  
8 read that, yes.

9 Q. When you said "that," you said what you said in  
10 the first sentence, but you didn't say "Please  
11 read this, the law has changed"?

12 A. No, we didn't say that.

13 Q. Ms. Strach, you have -- since HB 589, the State  
14 Board of Elections has managed a website that  
15 is, I believe, VoterID.NC.Gov, correct?

16 A. Yes.

17 Q. And on the homepage of that website there is  
18 now a video; is that right?

19 A. There is -- there's several things on the  
20 homepage of that.

21 Q. I know. I'm specifically -- I want to ask  
22 about --

23 A. Are you talking about the TV ad?

24 Q. Yes. Well, that's one of the questions I want  
25 to ask you. I'm sorry for talking over you.

1                   One of the questions I want to ask is  
2                   where is that video run, but the first question  
3                   I want to ask is you're familiar with the video  
4                   that's on the homepage, correct?

5           A.   I'm familiar with the ad, yes.

6           Q.   You've watched the video before?

7           A.   I've watched that ad before, yes.

8           Q.   And I believe, if I pull it up on the screen,  
9                   and the title is Bring It PSA. That video, is  
10                  that --

11          A.   Yes.

12          Q.   And the "It" that it refers to is voter ID?

13          A.   Yes.

14          Q.   And the text and graphic on the open screen of  
15                  that video says Be Seen, Be Heard. Are you  
16                  familiar with that?

17          A.   Right.

18          Q.   And there's a depiction of an ID and then an "I  
19                  Voted" sticker; is that right?

20          A.   That's correct.

21          Q.   Who developed that video?

22          A.   That was -- we put an RFP out and contracted  
23                  with a professional media group, and they --  
24                  that was their concept, and they actually  
25                  produced the TV ad that you're referring to.

1 Q. What's the name of that professional group?

2 A. MSA Advertising.

3 Q. Where are they based?

4 A. Out of Raleigh.

5 Q. Who determined the language in the video?

6 A. Well, ultimately they are the -- what they --  
7 they provided language to us of what they  
8 believed would be the most effective way of  
9 getting this message out in a TV ad. That's  
10 their expertise. That's their expertise to  
11 have.

12 We ultimately approved that, but it was  
13 their concept and it was their language in the  
14 ad that they provided to us because they felt  
15 that was the best way to provide the  
16 information of what we were trying to educate  
17 the public about.

18 Q. But ultimately the State Board of Elections  
19 signed off on the language?

20 A. Yes.

21 Q. And did you have final say on that?

22 A. I did.

23 Q. Now, I'm happy to show you the video, but I  
24 will say that, for the record, we have  
25 transcribed the video as Exhibit 706.

1 (WHEREUPON, Plaintiffs' Exhibit 706 was  
2 marked for identification.)

3 BY MR. GLICK:

4 Q. I'm happy, again, Ms. Strach, to show the video  
5 here, but does this text appear accurate to  
6 you?

7 A. Let me read through it. I have seen it enough,  
8 I probably can tell you if this is it.

9 I believe this is the text of the ad.

10 Q. Sitting here today, no reason to believe the  
11 transcript in front of you is not accurate?

12 A. I don't.

13 Q. Do you agree that the video does not mention  
14 reasonable impediment by name, Ms. Strach?

15 A. It does not.

16 Q. It says if you -- in the middle lines 7 and 8  
17 in the transcription, "If you don't have an ID  
18 or if you're unable to obtain one, there are  
19 still options for voting." Is that correct?

20 A. That's correct.

21 Q. So it refers to unnamed exceptions but not  
22 reasonable impediment specifically, correct?

23 A. It does not.

24 Q. And why not?

25 A. Because our -- we talked about that, and there

1           were probably -- we had talked about whether or  
2           not to put "reasonable impediment" in it.

3                     Our -- the experts there advised us  
4           that they didn't believe that that -- people  
5           might not know what that means, reasonable  
6           impediment, they might not understand what that  
7           means, and so what we need to try to do is  
8           educate people: There are options if you don't  
9           have one.

10                    You know, this is just one way of  
11           educating people about reasonable impediment,  
12           and they felt that was the most effective way  
13           were to use words that people would understand,  
14           if I don't have one, there are still ways I can  
15           vote, and that that conveyed that message  
16           better, likely, than stating the words  
17           "reasonable impediment" where someone might not  
18           know what those words meant.

19           Q. You would agree, Ms. Strach, that people may  
20           not know what "reasonable impediment" means,  
21           correct?

22           A. They may not know what those words mean, but  
23           they need to understand what it means is that  
24           if you don't -- if you have a barrier to voting  
25           and you can't obtain one, you can still vote.

1           That's what our message is. It happens to be a  
2           Reasonable Impediment Declaration that you  
3           sign, but it's really the fact that you can  
4           obtain an ID, and that's the message that we  
5           wanted to make sure we were conveying.

6           Q. Who made the decision not to refer to  
7           reasonable impediment by name in the video?

8           A. Ultimately I did.

9           Q. You considered -- strike that.

10                         Ms. Strach, do you consider the  
11           reasonable impediment exception to be an  
12           important exception to the photo ID  
13           requirement?

14           A. Yes. It's one of the exceptions that we are  
15           absolutely trying to educate the public on.

16           Q. Don't you think reasonable impediment would be  
17           important to mention in a PSA video like this?

18           A. We mentioned reasonable impediment. We just  
19           didn't use those words, but the words that mean  
20           the very same thing, and anyone that would have  
21           a reasonable impediment by using these words  
22           would still be able to utilize it.

23           Q. Ms. Strach, can you identify for me the words  
24           in Exhibit 706 that convey reasonable  
25           impediment?

1 A. "If you don't have an ID or if you're unable to  
2 obtain one, voting options are available."

3 Q. And sitting here today, those are the words  
4 that you think convey reasonable impediment in  
5 this Bring It PSA?

6 A. I believe that those words provide the message  
7 to voters that if they don't have one, that  
8 they would be able to -- and they fit -- those  
9 words would be able to show up and vote a  
10 Reasonable Impediment Declaration, and that's  
11 our goal is getting those people to the polls.

12 Q. Do you think including the words "reasonable  
13 impediment" would better educate voters?

14 A. Our experts did not believe that it would. In  
15 fact, they thought it might be less of a  
16 message because people might not understand  
17 what those words mean, but they do understand  
18 if I'm unable to obtain one. They do  
19 understand -- probably more likely to  
20 understand that.

21 Q. And when you say the experts, you're referring  
22 to the MSA Advertising agency?

23 A. Yes.

24 Q. And do they have expertise in election law?

25 A. No, but they have expertise in wording and what



1           messaging and what -- understanding what we're  
2           trying -- our message is. They have an  
3           understanding in that and how you are best to  
4           effectively get that message out in a 30-second  
5           timeframe.

6                         And this is what we're talking about.  
7           We're talking about generally 30 seconds.

8           Q. I'll represent --

9           A. Or 60 seconds, maybe, for this one, 60 seconds  
10          being the longer of the ads.

11          Q. So a voter may show up at the polls having seen  
12          this video and they might not -- strike that.

13                         If a voter has seen only this video,  
14          you would agree they wouldn't know to ask by  
15          name for a Reasonable Impediment Declaration  
16          exception, correct?

17          A. They don't need to. They would never need to.  
18          They'll never be asked to ask for a Reasonable  
19          Impediment Declaration.

20                         Based on the options that are given to  
21          them, they will -- they will be able to sign a  
22          reasonable impediment, but they're not going to  
23          be required to know that that's the name of it.

24          Q. I'll hand you what we'll mark as 707 and 708.

25          ///

1 A. On television and radio, AM and FM.

2 Q. And do the radio ads reference "reasonable  
3 impediment" by name?

4 A. The radio ads are the same scripts as the TV  
5 ads.

6 Q. The same as the Bring It PSA --

7 A. The Bring It, yes.

8 Q. Who prepared the script -- going back to  
9 Exhibit 707. Who prepared the script for the  
10 30-second Be Recognized TV commercial?

11 A. Once again, that would be MSA Advertising as  
12 well.

13 Q. Is this television commercial Be Recognized, is  
14 this being produced?

15 A. It's being produced currently.

16 Q. Has this run publicly yet?

17 A. Not yet. It's not -- it's in production right  
18 now.

19 Q. When do you plan that you would start to run  
20 the Be Recognized television commercial?

21 A. Early January.

22 Q. And where would that run?

23 A. That would run statewide as well.

24 Q. And do you have a budget yet for either the  
25 Bring It -- do you have a budget for the

1 Bring It PSA advertisement or the Be Recognized  
2 TV advertisement?

3 A. We do. We have contracted with, as I said,  
4 Focus Advertising and their role is the PSA --  
5 to place these PSAs. And they provide this  
6 service to a lot of state agencies where the  
7 result is you're supposed to get more time at a  
8 less cost because you're going to get more  
9 exposure. So we have budgeted money for that.

10 We currently have about \$900,000 that  
11 is left in the actual VIVA fund, and a great  
12 portion of that will go for media.

13 Q. But in terms of specific dollar value, you  
14 don't know that right now?

15 A. The -- I have known that. I'm not sure exactly  
16 what has been spent to date.

17 Q. Okay. Now, Ms. Strach, you would agree with me  
18 that despite the -- you would agree with me,  
19 Ms. Strach, that despite the title of the  
20 script Be Recognized, Voter ID Reasonable  
21 Impediment, you would agree with me that the  
22 words "reasonable impediment" nowhere appear in  
23 the 30-second TV script advertisement.

24 A. I agree, and for the same reasons that I  
25 provided for the Bring It ad, for the same

1 reasons.

2 Q. It says "If for some reason you can't get one,  
3 no worries, you'll still be able to vote,"  
4 right?

5 A. Correct.

6 Q. But it doesn't describe why or how a voter  
7 would be able to vote if they don't have ID,  
8 correct?

9 A. Not time to. In a 30- or 60-second ad, there's  
10 no time to provide that.

11 That's why our message here is to get  
12 something out to drive people to the message  
13 that they can vote and provides a way they can  
14 get more information, and that's what these ads  
15 do.

16 Q. Let's look briefly at Exhibit 708, the  
17 60-second commercial. Just have you confirm  
18 for me again that the words "reasonable  
19 impediment" don't appear anywhere in that  
20 advertisement, correct?

21 A. The words do not. What they mean do.

22 Q. Now -- and the words that you would refer to  
23 here -- so let's look at Page 1 of the script  
24 on Page 11395.

25 A. Yes.

1 Q. Towards the bottom, it says:

2 "This election, voters will be asked  
3 to show a photo ID at the polls."

4 A. Correct.

5 Q. And that's a true statement, correct?

6 A. Correct.

7 Q. And then if we flip over to 11396, it says:

8 "And if there's something preventing  
9 you from getting one, no worries --  
10 you'll still be able to vote. Just come  
11 to the polls and we'll help you cast your  
12 ballot."

13 Do you see that?

14 A. Yes.

15 Q. And that's the language that you would say even  
16 though it doesn't say "reasonable impediment,"  
17 that's what it means?

18 A. That is. And if someone comes to the polls  
19 because they've seen this, they will be given a  
20 Reasonable Impediment Declaration and they will  
21 be able to vote.

22 Q. And the reason that you didn't use the words  
23 "reasonable impediment" is because you thought  
24 it might confuse voters to use those words?

25 A. The marketing people thought that that --

1           And so you definitely want -- we want  
2           to make sure that we are providing county  
3           boards of elections with all the tools that  
4           they have and at the appropriate times that  
5           we're providing it. So including everything in  
6           a training video is probably not the most  
7           effective way to do that.

8           BY MR. GLICK:

9           Q. You would agree there's nothing in the training  
10          videos that has been published and is on the  
11          State Board of Elections website to date  
12          regarding a broad interpretation of the  
13          Reasonable Impediment Declaration, correct?

14          A. I think it would be inappropriate to put it in  
15          that format.

16          Q. Nothing about what would qualify on the  
17          write-in "other" list as a valid reason,  
18          correct?

19          A. Once again, that's not what that -- the purpose  
20          of that is. So putting that there would not be  
21          an appropriate place to do that.

22          Q. So the answer to my question is, yes, it's not  
23          included in the script or video?

24          A. Yes, it's not included in the script.

25          Q. And nothing giving any more description to any

1 of the reasons listed in the statute, lack of  
2 transportation, work schedule, et cetera?

3 A. Not in the training videos. Again, that's not  
4 the purpose of the training videos.

5 Q. Are voters who seek to fill out Reasonable  
6 Impediment Declarations, are they entitled to  
7 assistance at the polls?

8 A. Yes.

9 Q. From any person of their choosing?

10 A. Right, as long as it's not an employer or  
11 someone that would be prohibited from providing  
12 assistance.

13 Q. I've seen training materials that reference one  
14 of the reasons that a -- so sitting here today,  
15 if a voter raises their hand and says at the  
16 polls I need help reading this Reasonable  
17 Impediment Declarations form, they can get help  
18 for any reason?

19 A. Sure.

20 Q. A voter does not need to declare that they need  
21 assistance due to illiteracy in order to  
22 receive assistance, correct?

23 A. They can receive assistance, right, from anyone  
24 of their choosing.

25 Q. They don't have to invoke illiteracy to get

1           that assistance, correct?

2           A. Right. They can just say that they just need  
3           assistance.

4           Q. And they can get assistance from a friend, a  
5           parent, a child, correct?

6           A. Right, from anyone other than someone that's  
7           prohibited from providing assistance.

8           Q. Okay. How many training programs does the  
9           State Board of Elections intended to provide to  
10          county boards in advance of the March 2016  
11          primary?

12          A. Training programs, do you mean -- well, I  
13          can -- let me answer that several ways.

14                        The statewide training is something  
15                        that will be done prior to the May primary, in  
16                        January -- January, early February.

17                        The regional trainings that we are --  
18                        have confirmed and are putting out to the  
19                        counties that are going to be done several  
20                        places in the state. Right now, we're doing at  
21                        least four, and I believe that there are plans  
22                        to do additional trainings as well.

23                        And these training seminars are unlike  
24                        any the State Board of Elections has done  
25                        before. These are open not only to county



1 boards and to directors and staff, but it is  
2 also open to precinct officials. So we're  
3 trying to make sure that we bring everybody to  
4 the table to -- so they understand the tools  
5 that we have put together.

6 Q. Does the State Board set guidelines for how  
7 many courses or hours the county boards must  
8 use in training poll workers in advance of the  
9 March 2016 primary?

10 A. There are no specific hours requirements, but  
11 we're going to make sure they get a substantial  
12 number of hours this year.

13 Q. Okay. Ms. Strach, do you agree that the  
14 amendment to HB 836 makes no changes to mail-in  
15 absentee ballot voters and the photo ID  
16 requirements for those voters?

17 A. Makes no changes?

18 Q. Yes.

19 A. It makes no changes to the process. They have  
20 afforded or it requires now precinct officials  
21 to advise voters that are still in that time  
22 period of their ability to cast a mail-in  
23 absentee ballot.

24 Q. And mail-in absentee ballots are still not  
25 required to show photo ID, correct?