

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                                    )  
7 V.                                        )  
8                                    )  
9 PATRICK LLOYD MCCRORY, in his        )  
10 Official capacity as Governor        )  
11 Of North Carolina, et al.,            )  
12                                    )  
13 Defendants.                            )

---

10 LEAGUE OF WOMEN VOTERS OF NORTH ) CASE NO. 1:13CV660  
11 CAROLINA, et al.,                    )  
12                                    Plaintiffs,                                )  
13                                    )  
14 V.                                        )  
15                                    )  
16 STATE OF NORTH CAROLINA, et al., )  
17                                    )  
18 Defendants.                            )

---

16 UNITED STATES OF AMERICA,            ) CASE NO. 1:13CV861  
17                                    )  
18 Plaintiff,                                )  
19                                    )  
20 V.                                        )  
21                                    )  
22 STATE OF NORTH CAROLINA, et al., ) Winston-Salem, North Carolina  
23                                    ) July 30, 2015  
24 Defendants.                            ) 9:03 a.m.

---

22                                    TRANSCRIPT OF THE **TRIAL/DAY FOURTEEN**  
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 APPEARANCES:

2 For the Plaintiff:  
 3 (NAACP)

PENDA D. HAIR, ESQ.  
 DONITA JUDGE, ESQ.  
 DENISE D. LIEBERMAN, ESQ.  
 4 ADVANCEMENT PROJECT  
 1220 L Street, NW, Suite 850  
 5 Washington, DC 20005

6 DANIEL T. DONOVAN, ESQ.  
 BRIDGET K. O'CONNOR, ESQ.  
 7 MICHAEL A. GLICK, ESQ.  
 CHRISTOPHER J. MANER, ESQ.  
 8 JODI WU, ESQ.  
 KIRKLAND & ELLIS, LLP.  
 9 655 15th Street, NW, Suite 1200  
 Washington, DC 20005

10 IRVING JOYNER, ESQ.  
 11 N. C. CENTRAL UNIVERSITY SCHOOL OF LAW  
 P. O. Box 374  
 12 Cary, North Carolina 27512

13  
 14 (LWV)

ALLISON JEAN RIGGS, ESQ.  
 ANITA S. EARLS, ESQ.  
 15 GEORGE E. EPPSTEINER, ESQ.  
 SOUTHERN COALITION FOR SOCIAL JUSTICE  
 16 1415 W. Highway 54, Suite 101  
 Durham, North Carolina 27707

17 JULIE A. EBENSTEIN, ESQ.  
 18 DALE E. HO, ESQ.  
 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
 19 125 Broad Street, 18th Floor  
 New York, NY 10004-2400

20 CHRISTOPHER A. BROOK, ESQ.  
 21 AMERICAN CIVIL LIBERTIES UNION OF NC  
 P. O. Box 28004  
 22 Raleigh, North Carolina 27611-8004

1 APPEARANCES (Continued):

2 (USA)

CATHERINE MEZA, ESQ.  
 JOHN A. RUSS, IV, ESQ.  
 3 DAVID G. COOPER, ESQ.  
 AVNER M. SHAPIRO, ESQ.  
 4 SPENCER R. FISHER, ESQ.  
 ELIZABETH M. RYAN, ESQ.  
 5 JENIGH J. GARRETT, ESQ.  
 U. S. DEPARTMENT OF JUSTICE  
 6 Civil Rights Division  
 950 Pennsylvania Avenue, NW  
 7 Washington, DC 20530

8 GILL P. BECK, ESQ.  
 U. S. ATTORNEY'S OFFICE  
 9 100 Otis Street  
 Asheville, North Carolina 28801

10

11 (Intervenor  
 Plaintiff):

JOSHUA L. KAUL, ESQ.  
 12 PERKINS COIE, LLP  
 1 E. Main Street, Suite 201  
 13 Madison, Wisconsin 53703

14

BRUCE V. SPIVA, ESQ.  
 AMANDA R. CALLAIS, ESQ.  
 15 PERKINS COIE, LLP.  
 700 13th Street, NW, Suite 600  
 16 Washington, DC 20005

17

JOHN W. O'HALE, ESQ.  
 18 POYNER SPRUILL, LLP  
 P. O Box 1801  
 19 Raleigh, North Carolina 27602-1801

20

21 For the Defendants:

22 (State of NC)

ALEXANDER M. PETERS, ESQ.  
 KATHERINE A. MURPHY, ESQ.  
 23 N.C. DEPARTMENT OF JUSTICE  
 P.O. Box 629  
 24 Raleigh, North Carolina 27602

25

1 APPEARANCES (Continued):

2 (State of NC) THOMAS A. FARR, ESQ.  
 PHILLIP J. STRACH, ESQ.  
 3 MICHAEL D. MCKNIGHT, ESQ.  
 OGLETREE DEAKINS NASH SMOAK & STEWART  
 4 P. O. Box 31608  
 Raleigh, North Carolina 27622

5 (Governor) BUTCH BOWERS, ESQ.  
 6 BOWERS LAW OFFICE, LLC  
 1419 Pendleton Street  
 7 Columbia, South Carolina 29201

8  
9

10 Court Reporter: BRIANA NESBIT, RPR  
 Official Court Reporter  
 11 P.O. Box 20991  
 Winston-Salem, North Carolina 27120

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## I N D E X

1		
2	<b><u>DEFENDANTS' WITNESSES:</u></b>	<b><u>PAGE:</u></b>
3		
4	BRIAN NEESBY (Continued)	
5	Cross-Examination by Ms. Riggs	13
	Cross-Examination by Mr. Cooper	35
6	Cross-Examination by Mr. Kaul	36
7		
8	<b><u>PLAINTIFFS' REBUTTAL WITNESSES:</u></b>	<b><u>PAGE:</u></b>
9		
10	DAPHNE C. GAINNEY	
11	Direct Examination by Mr. Eppsteiner	95
	Cross-Examination by Mr. Farr	98
12		
13	GEORGE O. BAILEY, IV	
14	Direct Examination by Mr. Eppsteiner	100
	Cross-Examination by Mr. Farr	105
15	Redirect Examination by Eppsteiner	110
	Recross-Examination by Mr. Farr	111
16		
17	CHARLES H. STEWART, III, PH.D.	
18	Direct Examination by Ms. Ryan	113
	Cross-Examination by Mr. Farr	128
19	Redirect Examination by Ms. Ryan	132
20	ALLAN J. LICHTMAN, PH.D.	
21	Direct Examination by Mr. Glick	134
	Cross-Examination by Mr. Strach	163
22	Redirect Examination by Mr. Glick	185
23		
24		
25		

EXHIBITS		<u>Identified</u>	<u>Received</u>
1			
2	<u>Exhibits:</u>		
3	D-343 Summary of citizens Susan		64
4	Schafer provided that were not		
5	able to vote in Durham County		
6	D-13 Analytical comparison of hours,		64
7	number of sites, and number of		
8	days of one-stop in 2010 and		
9	2014		
10	D-344 Analytics for 2008-2014 general		64
11	elections for voters age 24 and		
12	under		
13	D-349 Comparison of curbside ballots		65
14	by race		
15	D-BN-1 Table of registration Source		65
16	Code 01 applications over time		
17	D-BN-2 Table of registration Source		65
18	Code 06 applications over time		
19	D-8 Dr. Charles Stewart article:		82
20	"Waiting to Vote, Summer 2013"		
21	D-12 BNA article/Expert evidence		82
22	report		
23	D-15 Affidavit of Erika Churchill,		82
24	6/4/15		
25	D-21 Plaintiff Barbee's Chapel		82
	Missionary Baptist Church's		
	responses and specific		
	objections to Defendants'		
	second set of interrogatories		
	D-23 Plaintiff Covenant Presbyterian		82
	Church's responses and specific		
	objections to Defendants'		
	second set of interrogatories		
	D-27 Plaintiff Emmanuel Baptist		82
	Church's responses and specific		
	objections to Defendants'		
	second set of interrogatories		
	D-29 Emmanuel Baptist Church meeting		82
	minutes		
	D-33 Plaintiff NAACP's responses and		82
	specific objections to		
	Defendants' second set of		
	interrogatories		
	D-34 NC NAACP 2010 manual on branch		82
	election procedures		

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

EXHIBITS		<u>Identified</u>	<u>Received</u>
1			
2	<u>Exhibits:</u>		
3	D-39 NC NAACP letter to		82
4	Representative Lewis/Voter		
5	suppression tactics of the		
6	Republican-led NC General		
7	Assembly		
8	D-41 6/1/10 Email/2110 with		82
9	attachment 2010 hkong action		
10	steps for booklet final		
11	D-42 Letter to Governor Patrick		82
12	McCrorry from NC NAACP		
13	D-44 Urbanomics "Voter Empowerment		82
14	Training"		
15	D-45 "An Election Year Guide for		82
16	Faith-Based Organizations"		
17	D-46 Urbanomics "Voter Empowerment		82
18	Training"		
19	D-47 7/25/13 Email/NC NAACP "Action		82
20	Alert: Call your		
21	Representative and Say 'NO!' to		
22	Voter Suppression"		
23	D-48 NC NAACP immediate release		82
24	letter/Partisan Gerrymandering		
25	and a Negative Impact on		
26	Section 5 Counties in the		
27	Congressional Map		
28	D-49 NC NAACP immediate release		82
29	letter/On the Day of Public		
30	Hearings, NC NAACP Questions		
31	Incomplete Redistricting Maps		
32	D-50 Letter from Reverend Barber		82
33	D-51 Forward Together Moral Movement		82
34	timeline		
35	D-52 12/30/13 email/North Carolina		82
36	must make a choice		
37	D-53 NC NAACP State Conference voter		82
38	empowerment expenses, 2010-2014		
39	D-54 NC NAACP press release/My		82
40	Prayer for the Heart of Our		
41	State and Nation		
42	D-55A Realizing Transformational		82
43	Movement in the South -- NC		
44	NAACP Forward Together! Moral		
45	Freedom Summer 2014 --		
46	Strategic Plan		
47	D-56 "Four Positive Actions for		82
48	2014"		

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

EXHIBITS		<u>Identified</u>	<u>Received</u>
1			
2	<u>Exhibits:</u>		
3	D-57 "New Voter Suppression Law Threatens the Right to Vote in North Carolina"		82
4	D-58 "Campaigns/Civic Engagement -- Steps to Registering Voters"		82
5	D-59 2/20/13 letter from Representative Lewis to NC NAACP		82
6	D-61 NC NAACP immediate release/Open Letter		82
7	D-62 NC NAACP immediate release/NC NAACP statement: The		82
8	D-66 Investiture of Justice Wynn CD of NC NAACP Freedom Fund Banquet		82
9	D-68 NC NAACP immediate release/NC NAACP's statement on voter ID		82
10	D-109 11/12/14 email string/It's All Fun and Games Until Someone Gets Purged		82
11	D-110 Various screenshots of Becky Mock's Facebook posts		82
12	D-120 2012 Elections mail verification analysis of new voters		82
13	D-122 Copy of front of Carnell Brown's ID card		82
14	D-123 Copy of back of Carnell Brown's ID card		82
15	D-132 Declaration of Michael Dickerson		82
16	D-134 Alexander Ealy's NC voter registration application		82
17	D-135 Alexander Ealy's Cumberland County provisional voting application		82
18	D-136 Alexander Ealy's NC voter registration application		82
19	D-167 Transcript of session on November 24, 2003 redistricting plan		82
20	D-168 NC House voting tally		82
21	D-169 One-stop voting tally on House Bill 91		82
22	D-170 Senate vote tally on House Bill 91		82
23			
24			
25			

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15



EXHIBITS		<u>Identified</u>	<u>Received</u>
1			
2	<u>Exhibits:</u>		
3	D-191 Copy of Gerrick Suggs' driver's license		82
4	D-193 Screenshot of voter registrant information		82
5	D-200 Google Map of 508 E. Walnut, St, Goldsboro, NC, to 601 Royall Ave., Goldsboro, NC		82
6	D-201 Google Map of 508 E. Walnut St., Goldsboro, NC, to Wayne County Public Library, Goldsboro, NC		82
7			
8	D-202 Provisional voter instructions		82
9	D-217 Declaration of Carolyn Justice, 6/17/14		82
10	D-218 Various roll call votes		82
11	D-220 Cheri Poucher affidavit		82
12	D-221 NC General Assembly Joint Legislative Elections Oversight Committee, transcript of proceedings, 4/2/14		82
13	D-222 Forsyth County BOE meeting minutes, 9/3/12		82
14	D-223 Forsyth County BOE meeting minutes, 10/15/13		82
15	D-224 Copy of postcard mailing		82
16	D-225 Excerpts of Gary Bartlett deposition		82
17	D-226 Declaration of Charles Underwood		82
18	D-227 One-stop locations for 2010 general election		82
19	D-228 Presentation of Joint Legislative Oversight Committee		82
20	D-229 2012 Mail verification report for new voters		82
21	D-230 1/7/13 DMV matching report, 3/5/13 supplemental analysis		82
22	D-231 Affidavit of Kim Strach, 6/18/14		82
23	D-232 NC registration application		82
24	D-233 Absentee ballot request form		82
25	D-234A Exhibits attached to declaration of Kim Strach, 3/9/15		82
	D-257 Declaration of Charles Underwood		82

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

EXHIBITS		<u>Identified</u>	<u>Received</u>
1			
2	<u>Exhibits:</u>		
	D-258 Required documents schedule		82
3	D-261 Miami-Dade County Sample Ballot from 11/2012 General Election		82
4	D-262 Wake County Sample Ballot from 11/2010 General Election		82
5	D-263 Wake County Sample Ballot from 11/2012 Presidential Election		82
6	D-292 Senate Bill 767/SL2000-136 history		82
7	D-294 Senate Bill 1054/SL2002-158 history		82
8	D-295 Transcript of House of Representatives 11/24/03 session		82
9	D-326 Declaration of John Davis		82
10	D-342A Emmanuel Baptist Church's finance reports		82
11	D-345 NCSBOE table of turnout data		82
12	D-355 Compendium appendices/Dr. Charles Stewart's 2015 expert report, Appendix S-BB		82
13	D-356 Provisional ballot usage, 2006-2014, Dr. Charles Stewart's Table 18		82
14	D-357 Dr. Charles Stewart's Table 15		82
15	D-358 Dr. Charles Stewart's Appendix U		82
16	D-366 Deposition designations of Charles Underwood		85
17	D-367 Deposition designations of Dean Roberts		85
18	D-368 Deposition designations of Cherie Poucher		85
19	D-369 Deposition designations of Erika Churchill		85
20	D-372 Deposition designations of Michael Dickerson		85
21	D-373 Deposition designations of Gary Bartlett		85
22	D-374 Deposition designations of Carolyn Justice		85
23	D-377 Daphne Gainey's NC voter registration application		163
24			
25			

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

## EXHIBITS

<u>Exhibits:</u>		<u>Identified</u>	<u>Received</u>
P-694	NCSBOE 2015 SDR failed mail verification analysis	24	191
P-745	Copy of George Bailey's voter registration card	104	105
P-748	NVRA reports		192
P-749	NC FAST reports		192
P-747	Voter registrations by public assistance agencies		192
P-826	Demonstratives AL-19, AL-22, and AL-23		192
P-491	11/25/14 Email from Greg Michalek to Clyde Roper	192	
P-744	Democracy NC report	192	

## P R O C E E D I N G S

1  
2           **THE COURT:** Mr. Farr.

3           **MR. FARR:** Thank you, Your Honor. One preliminary  
4 matter. Last night you made the call that we ask the  
5 Plaintiffs if they would let us know who their rebuttal  
6 witnesses were. We recall that we were told we would learn  
7 that last night. This morning we got an email saying that  
8 Dr. Lichtman and Dr. Stewart would be the rebuttal witness and  
9 other unidentified voter witness. So we would like to request  
10 that the Plaintiffs give us some notice of who the unidentified  
11 voter witnesses will be during the rebuttal portion.

12           **MS. RIGGS:** Your Honor, whether there are two and  
13 their variability is still being determined, but, primarily, it  
14 depends on what Mr. Neesby says in the next 20 or so minutes.

15           **THE COURT:** Can you tell them who they are so they  
16 can prepare in the event that you call them?

17           **MS. RIGGS:** The second I find out what Mr. Neesby is  
18 going to say, I would be happy to do that about these voters.

19           **THE COURT:** I think you should tell them now who they  
20 are.

21           **MS. RIGGS:** We can do that, too.

22           **THE COURT:** Whether you call them is up to you.

23           **MS. RIGGS:** While that's being taken care of, may I  
24 begin, Your Honor?

25           **THE COURT:** Yes. Let me remind you, Mr. Neesby, you

1 are still under oath.

2 **THE WITNESS:** Yes.

3 CROSS-EXAMINATION (Continued)

4 **BY MS. RIGGS**

5 Q Good morning, Mr. Neesby.

6 A Good morning.

7 Q When we finished speaking yesterday, we were transitioning  
8 to start to talk about your 2015 analysis. Do you remember  
9 that?

10 A I wasn't sure that we were transitioning.

11 Q Well, we were.

12 A Okay.

13 Q So one of the reasons you thought that the 2015 analysis  
14 was important was because in 2013, Ms. Degraffenreid used  
15 so-called proxies to determine mail verification rates for SDR  
16 and non-SDR registrants; right?

17 A That is correct.

18 Q Okay. And she used I think what you described as  
19 registration status code and registration status reason code?

20 A That is correct.

21 Q Okay. So I just want to explain to the Court some  
22 possible registration status codes would be active, inactive,  
23 denied, and removed; correct?

24 A And temporary.

25 Q Okay. But those are the universe. And then the possible

1 reason codes, some examples -- I probably can't list the entire  
2 universe, but some examples would be verified, confirmation not  
3 returned, verification returned undeliverable, confirmation  
4 returned undeliverable, deceased, denied, along those lines?

5 A Denied, no, but the rest.

6 Q Denied, no. Okay. But deceased and confirmation returned  
7 undeliverable or not returned?

8 A That is correct. And this references the most proximate  
9 verification status in those examples, not necessarily the new  
10 voter verification status and also there's one other, but I  
11 can't remember it.

12 Q And so confirmation mailings aren't part of this new voter  
13 initial mail verification process, according to you; correct?

14 A They are -- this is the SEIMS process. So, statutorily,  
15 there is some ways that SEIMS doesn't track perfectly with the  
16 statute. A confirmation mailing isn't a part of it once you  
17 are denied. There is a sort of side branch, in which case, if  
18 you send -- if the voter sends back an undeliverable -- not  
19 undeliverable notice, but you get a forwarding address on a  
20 nonforwardable piece of mail, that a county official will take  
21 that forwarding address, put it in the system; and as part of  
22 the new voter mail verification process even though it is a  
23 nonforwardable piece of mail, it will send that address to the  
24 voter, and that's a confirmation mailing.

25 So there is a side wing of the new voter mail verification

1 process in case there is a forwardable piece of mail -- a  
2 nonforwardable piece of mail but with a forwarding address.

3 Q Aside from that example, though, confirmation -- the  
4 results of confirmation mailings weren't generally part of what  
5 you were considering the new voter initial mail verification  
6 process?

7 A Confirmation mailings, generally speaking, other than that  
8 exception, are part of the other four mail verification  
9 processes.

10 Q Okay. So in her analysis, if Ms. Degraffenreid saw that a  
11 voter was active and verified, so the registration status and  
12 the status reason, she counted that voter as having passed mail  
13 verification; correct?

14 A Correct.

15 Q Okay. And, likewise, if she saw the registration status  
16 being inactive and the reason being confirmation returned, she  
17 considered that voter to have failed mail verification;  
18 correct?

19 A That is correct.

20 Q And am I right that there were three situations in which  
21 she considered a registrant to have failed the mail  
22 verification, the first one being denied in the reason --  
23 denied in the status and verification returned undeliverable in  
24 the reason, the second being inactive in the status and  
25 confirmation returned undeliverable in the reason, and the

1 third being inactive in the status, confirmation not returned  
2 in the reason?

3 A That is correct.

4 Q Okay. Those were the three combos that resulted in her  
5 determining there was a mail verification failure?

6 A That is correct.

7 Q Okay. So rather than use those combinations, you looked  
8 at a log in SEIMS of the mail verification log; correct?

9 A That's correct. The table is called VERIFICATION\_HISTORY.

10 Q Okay. And within that log, you determined that certain  
11 status codes meant that the initial mail verification succeeded  
12 or did not succeed; correct?

13 A Correct, the new voter mail verification.

14 Q And there were five status codes for steps within that new  
15 voter mail verification log; correct?

16 A There are a lot more than that. Those five are -- that  
17 you are probably referencing reference the completion of the  
18 mail verification process with the exception that if there is a  
19 manual removal because, let's say, someone moved out of state  
20 or became a felon, those would be reasons why you would have to  
21 move up a level and then look at the status code.

22 Q But you determined that there were two status codes that  
23 meant mail verification did not succeed; correct?

24 A 4 and 24.

25 Q And what do those codes represent?



1 A Four generally means denied, but it is not the same thing  
2 as the status code denied. It is different. It is having to  
3 do with verification, and then 24 means inactive or -- and you  
4 generally see that when you get a vote -- a vote has occurred.  
5 That doesn't necessarily track with the status code inactive.  
6 So it seems like they should, but they don't.

7 Q Okay. But within this log, inactive and denied, these  
8 numbers that are associated with those two terms are what led  
9 you to result -- led you to conclude that new voter initial  
10 verification had failed?

11 A That is correct.

12 Q And there were three codes that you determined meant that  
13 mail verification succeeded; right?

14 A That is correct.

15 Q And because you were only looking at the first batch in  
16 the verification log, you didn't see the results of any  
17 verification processes subsequent to the new voter initial mail  
18 verification process; right?

19 A I obviously saw them, but I didn't analyze them.

20 Q It wasn't part of what you were looking at?

21 A We were trying to determine, once again, this gatekeeper  
22 function, which is the new voter mail verification process, and  
23 one of the problems with the mixing and matching verification  
24 processes is you have the new voter mail verification process,  
25 which has a very different set of stages to it than the other

1 four. So if you start mixing and matching, you're really  
2 comparing apples and oranges to bananas. There is a lot of  
3 different things in those other verification processes.

4 Q And Ms. Degraffenreid was looking at what happens later in  
5 the process?

6 A She was using those proxies, which would not only be the  
7 most proximate mail verification, but it would also not -- you  
8 couldn't analyze those for removed people as well. So she had  
9 two limitations. Once again, it's just an imperfect analysis  
10 she was doing based on the knowledge she had.

11 Q Do you still have Defendants' Exhibit 16 in front of you?

12 A Yes.

13 Q Can you turn with me to the second paragraph on page 6?

14 A Yes.

15 Q Do you see the sentence, "Indeed, in the 2012 elections,  
16 some counties did not even begin the process of mail  
17 verification of SDR registrants until after the canvas."

18 A I do see that.

19 Q Okay. Your understanding is that the same-day  
20 registration statute, before its repeal, required counties to  
21 send the first mail verification mailing out within 48 hours;  
22 correct?

23 A It does.

24 Q It did?

25 A It did and it --

1 Q And the end of canvas is ten days after the election;  
2 correct?

3 A The county canvas is ten days after the election.

4 Q Right. So some counties weren't sending out that first  
5 mailing until after -- at least after ten days after the  
6 election?

7 A Correct.

8 Q Okay. So let me pose a hypothetical for you. Say that  
9 you have a voter that moved one week after the 2012 election.  
10 You would agree with me that, as a general matter, the further  
11 out after the election that the mailing is sent, the more  
12 likely it is for that mailing to be returned undeliverable in  
13 the case of this voter that's moved; correct?

14 A It depends on a couple of circumstances. If they tell the  
15 county board that they are moving, that would become a voter  
16 change; and, therefore, that would interrupt the new voter mail  
17 verification process. In my analysis, they would be a did not  
18 fail because it was interrupted. If they told the Post Office,  
19 like I said, that would be this exception confirmation card,  
20 where the forwarding address would come back. Even though it  
21 is a nonforwardable piece of mail, the county official would  
22 put the forwarding address into the system. It would then send  
23 a confirmation card to their new address that may result,  
24 depending on whether it is out of county or in county, on the  
25 voter change.

1 Q But in a situation where the voter just moves, doesn't yet  
2 get around to letting the county board know or the Post Office  
3 know, you would agree with me that the further out after the  
4 election that that initial mail verification gets sent, the  
5 more likely it is to be returned in the case of a voter that  
6 moves; right?

7 A If a voter doesn't tell -- either of those people doesn't  
8 tell anybody, then you are correct.

9 Q Okay. And same situation. If a voter dies after the  
10 election, the longer after the election that that initial mail  
11 verification gets sent, the more likely it is that the mailing  
12 might not -- might get returned undeliverable; right?

13 A If the voter dies, you would have to have both --  
14 according to my analysis, you would have to have both mail  
15 verifications come back, be denied, and then the voter dies.  
16 If the voter dies in between any of those circumstances, once  
17 again, that would be a removal with the reason code which  
18 stands for voter died, and then I would look one step up and  
19 that would be an interruption in the new voter mail  
20 verification process. So that would be a did not fail in that  
21 circumstance.

22 But you are correct is if both mail verifications came  
23 back and then the voter died, I would see that obviously as a  
24 failure because it would have been a failure.

25 Q That's assuming you get prompt notification that the voter

1 died; right?

2 A We get updates of that pretty regularly from the DMV, I  
3 believe.

4 Q So you have no data to dispute Dr. Cynthia Duncan's  
5 evidence that just over 15 percent of North Carolina's  
6 population in 2012 lived in a different house than in 2011, do  
7 you?

8 A Say that again. 20 percent lived in a different house --

9 Q 15 percent -- just over 15 percent of North Carolina's  
10 population in 2012 lived in a different house than they did in  
11 2011; correct?

12 A I don't have that knowledge.

13 Q Okay. And that's approximately 1.4 million people, using  
14 2010 census numbers; correct?

15 A Once again, I haven't looked at this. You would be  
16 assuming all those people voted, which is not the case.

17 Q No, I am just talking who moves, not who votes; right?

18 A I don't have -- I haven't studied this.

19 Q Okay. Excellent. Sitting here today, you can't tell us  
20 how many counties did not begin the mail verification process  
21 until after the canvas; correct?

22 A I cannot. It wouldn't affect my analysis.

23 Q And you can't tell us which counties did not begin the  
24 mail verification process until after the canvas; correct?

25 A I cannot.

1 Q And sitting here today, you can't tell us which  
2 counties -- how long after the canvas some of those counties  
3 actually sent out that first mail verification; correct?

4 A So, once again, I cannot, but this would not affect my  
5 analysis because I am looking two years later with the benefit  
6 of hindsight to see if that verification failed. So I don't  
7 expect it would have a major impact whether they waited two  
8 days versus five more days versus ten days. I don't think that  
9 would have a major impact on my analysis.

10 Q But you don't know if it was ten days or two months;  
11 right?

12 A We don't know that with the SDR voters as well and the  
13 non-SDR voters. We don't know -- we would have to do a very  
14 specific analysis to determine between the new voter mail  
15 verification being sent out or the process getting started and  
16 being sent out, what was the date differential between those  
17 two dates, and I have not done that analysis.

18 Q Right. But with the SDR registrants, there was a  
19 requirement that the mailing be sent out within 48 hours;  
20 correct?

21 A I agree legally.

22 Q Yes. And there was no such requirement for non-SDR  
23 registrants?

24 A Right. I am just saying I don't expect it would affect my  
25 analysis.

1 Q Right. I am saying you didn't even know if it was two  
2 months after the election that the county -- that these  
3 counties were sending out the initial mail verification?

4 A I don't think it was all counties. So, once again, I  
5 don't expect this would affect any analysis.

6 Q Right, because you can't tell us the extent to which those  
7 counties didn't comply?

8 A I do not know.

9 Q Okay. So now I want to turn -- if you will turn with me  
10 in your report to pages 4 and 5. In the charts, on both  
11 charts, there is a number of --

12 **THE COURT:** You say his report. Defendants'  
13 Exhibit 16?

14 **MS. RIGGS:** Yeah, Defendants' Exhibit 16, the 2015  
15 State Board report on mail verification rates.

16 **BY MS. RIGGS**

17 Q In both charts, Mr. Neesby, you have listed for the 2012  
18 general election, total failed after voting for SDR, the  
19 number 2,361; correct?

20 A That's correct.

21 Q And as to what that number 2,361 represents, tell me if I  
22 have this right. They are a 2012 registrant. They failed new  
23 voter initial mail verification -- that is, had a Number 4 or a  
24 Number 24 in their verification log -- and the mail  
25 verification process was completed after they voted. Correct?

1 A That is correct.

2 Q Okay. And you weren't concerned for the purposes of this  
3 inquiry if the voter's registration was verified at a later  
4 step in the process?

5 A And they voted. You forgot that, but I --

6 Q And they voted; correct?

7 A But once again, the verification process, as you define by  
8 statute, is this whole new voter mail verification process. If  
9 you mean did I look at other verification processes unrelated  
10 to this mail verification process, I did not.

11 Q Okay.

12 **MS. RIGGS:** Your Honor, may I approach?

13 **THE COURT:** Yes.

14 **MS. RIGGS:** Your Honor, I've handed you and the  
15 witness what's been marked as Plaintiffs' Exhibit 694.

16 **BY MS. RIGGS**

17 Q Mr. Neesby, we discussed this document in your deposition  
18 a little over a week ago. Last month you posted -- actually,  
19 earlier this month, in July, you posted a large file on the  
20 State Board of Elections FTP site entitled  
21 "MailVerificationQuery\_SameDayRegistration\_BobHallRequest."  
22 Correct?

23 A Correct.

24 Q And this was in response to a request from Mr. Hall?

25 A That is correct.



1 Q Okay. And as of your deposition, you couldn't exactly  
2 remember everything that Mr. Hall had asked for, but it  
3 certainly related to the 2015 report; correct?

4 A Yeah. It is the 520,000 people. If you showed me the  
5 chart, I would show you where they are that he requested.

6 Q And a subset of that is the 2,361 voters that we discussed  
7 before in the chart; correct?

8 A That's correct.

9 Q Okay. And so in Plaintiffs' Exhibit 694, I represented to  
10 you that I had culled from that very large file that would have  
11 been 24,000 pages to print off -- I culled the -- that 2,361  
12 list; right?

13 A You did.

14 Q Okay. And you agreed with me that the culled list that I  
15 provided had 2,361 voters on it?

16 A I did.

17 Q Okay. And you had no reason to dispute that that list of  
18 the 2,361 that I culled was an accurate reflection of the  
19 voters that you used SDR in 2012, voted, and had been listed on  
20 your chart as having failed verification; correct?

21 A Correct.

22 Q Okay. First, are you aware that that large file that you  
23 posted on the FTP site, the MailVerificationQuery file, did not  
24 have any same-day registration entries failed or not failed for  
25 Rowan County?

1 A I was not.

2 Q Okay. Are you aware that that file also did not have any  
3 same-day registration entries failed or not failed for Camden  
4 County?

5 A I did not.

6 Q And if that were true, would that cast doubt on the  
7 results of your failure analysis rate, leaving out two of the  
8 100 counties?

9 A I don't think it would. I just don't know how it could be  
10 wrong. I looked at the verification logs themselves and looked  
11 to see if they failed or passed, and so my analysis in that  
12 regard is very simple.

13 Q Do you know 140,000 people live in Rowan County?

14 A I don't know census data.

15 Q Do you think it's plausible that no one in that county  
16 used same-day registration in 2012?

17 A I don't know which -- I don't know that answer.

18 Q Okay. So delving into this 2,361 voter list a little bit  
19 more, you are aware that North Carolina is home to a large  
20 number of military bases; correct?

21 A I am.

22 Q And you did not do any analysis to see how many of these  
23 2,361 registrants had addresses that were on military bases;  
24 correct?

25 A No, I did not.

1 Q And you also did not do any analysis to see how many of  
2 these applicants had addresses that were on college campuses;  
3 correct?

4 A Actually. After the deposition, I did look into that, and  
5 the problem that -- it was inconclusive because what's publicly  
6 available is latitude and longitude points for schools. I  
7 couldn't find anything else that was publicly available.

8 So if you use the ZIP code as the way to measure it,  
9 that's kind of overinclusive, and I saw no change whatsoever.  
10 If you used the geopoint, that's way underinclusive because you  
11 are not even including where the dorms are necessarily. So I  
12 found that there was no very precise way to determine that  
13 analysis.

14 Q If you used the overinclusive ZIP codes, were college  
15 campuses overrepresented on the list?

16 A No, they were not.

17 Q There weren't a large number of college campus numbers?

18 A You mean over on the failed list?

19 Q On the failed list.

20 A No.

21 Q You don't recall that there were 72 entries for the ZIP  
22 Code 27707, which is associated with the North Carolina Central  
23 University campus?

24 A What I did is I took all colleges and universities that  
25 were based in a North Carolina geo website. I then took the

1 ZIP codes of all those college campuses. I then compared the  
2 failure rates of those and found that there was very little  
3 difference. And so, like I said, that's not precise. So I am  
4 not disagreeing because it is overly inclusive, but the  
5 geopoint is way underinclusive. So I would doubt any analysis  
6 that would try to cull that information, except if you got the  
7 actual databases of those schools and those dorms and then did  
8 a matching criteria to that list -- matching algorithm to that  
9 list.

10 Q And you also did not do any analysis to see how many of  
11 these 2,361 registrants had addresses that were homeless  
12 shelters; correct?

13 A I did not.

14 Q And you didn't report on the racial breakdown of the 2,361  
15 voters who failed initial mail verification; correct?

16 A I did not.

17 Q Okay. So let's look at some of these 2,361 voters.  
18 First, can you turn with me to page 14, and I am looking at  
19 entry 778. Do you see that?

20 A 778?

21 Q Yes. The registrant's name is Trena Renee Carter.

22 A Okay.

23 Q And because you didn't do any analysis of the extent to  
24 which addresses on your failure list were addresses were  
25 homeless shelters, you are not aware that 930 North Patterson

1 Avenue in Winston-Salem is the address for the Bethesda Center,  
2 a homeless shelter; correct?

3 A I didn't do any analysis about homeless shelters.

4 Q You don't know how many registrants used that homeless  
5 shelter address to register; correct?

6 A I do not.

7 Q And you are aware that persons experiencing homelessness  
8 who may not have a permanent residential address are still  
9 allowed to vote; correct?

10 A Of course.

11 Q Then turn with me to page 27, entry 1557. Just let me  
12 know when you get there.

13 A Okay.

14 Q The registrant's name is Larry Marshall.

15 A Okay.

16 Q And like with before, you are not aware that 811 Martin  
17 Street in Wilmington is the address for the Good Shepherd  
18 Center, a homeless shelter; correct?

19 A I was not aware of that, no.

20 Q And you don't know how many registrants used that homeless  
21 shelter address to register; right?

22 A I do not.

23 Q Okay. Now, turn with me to page 7, entry 393. Are you  
24 there?

25 A Uh-huh. Yes, ma'am.

1 Q Okay. The registrant's name is Ryan Avery; correct?

2 A It is.

3 Q And his address is listed as being on Fort Bragg, right,  
4 in Cumberland County?

5 A That is correct.

6 Q And because you didn't do any analysis to see how many of  
7 the SDR failures were from addresses that were on military  
8 bases, you don't know how many people on this failure list  
9 there were with addresses on Fort Bragg; correct?

10 A Like I said, I think you would have a similar problem with  
11 the schools. ZIP codes would still be probably overly  
12 inclusive. The only military information I found was U.S.  
13 Defense lands as far as the GEOSTAT data, and so I think you  
14 would have problems culling that down into something that was  
15 reliable.

16 Q You are not aware that the listing of a city being  
17 Fort Bragg is only on a military base?

18 A I know, but I am talking about comparing the failure  
19 rates, which I think is far better than finding individual  
20 voters on that. I am talking about taking the entire list and  
21 saying let's break them out into military and nonmilitary  
22 buckets.

23 Q But you don't know how many were on Fort Bragg?

24 A No, I do not.

25 Q And you also don't know how many entries on this failure

1 list were from addresses associated with Seymour Johnson  
2 Air Force Base in Wayne County; correct?

3 A I do not.

4 Q You also don't know how many entries on this failure list  
5 were from on-base addresses at Camp Lejeune in Onslow County;  
6 right?

7 A Like I said, this was not my analysis. My analysis was  
8 about failure rates between SDR and non-SDR.

9 Q And you don't know how many entries on this failure list  
10 were associated with MCAS Cherry Point in Craven County;  
11 correct?

12 A I do not.

13 Q As such, you have no grounds to dispute these counties  
14 with big military bases are overrepresented on this failure  
15 list when compared to their populations; correct?

16 A Like I said, you would want to actually -- it wouldn't be  
17 the methodology that you should use. You would want to take  
18 all failures for a specific year perhaps and then break them up  
19 into the buckets, military and nonmilitary, and I think you  
20 would have a problem doing that with precision.

21 And you want to do the same thing with school and  
22 nonschool and with homeless shelters and nonhomeless shelters,  
23 and then compare the failure rates between the two buckets.  
24 This is not the proper methodology.

25 Q And then finally turn with me to page 14, entry 765. Are

1 you there?

2 A I am.

3 Q 765 is on the top of the list. This is a registrant named  
4 George Bailey; correct?

5 A It is.

6 Q And he is an active verified voter; correct?

7 A That is his current status.

8 Q Right. And it appears his address, although strange, is  
9 associated with Winston State Salem University [sic]; is that  
10 correct?

11 A It is. And I would remind you that these addresses are  
12 pulled two years later. So Bob Hall wanted the current  
13 address. He didn't want the address at the time of 2012  
14 general election. He asked for the current address.

15 Q Okay.

16 A So that's the reason taking these addresses wouldn't be a  
17 good indicator of any of these things that you've discussed.

18 Q But according to the list, Mr. Bailey failed in 2012  
19 initial mail verification; correct?

20 A He failed. What you have to understand about the  
21 verification status verifying is there are many reasons that  
22 someone that is inactive because they're SDR will get  
23 temporarily reactivated. So if voter history is applied, and  
24 any inactive voter can vote, according to the new voter mail  
25 verification process, they will get reactivated and will be



1 temporarily verified if they pass that 15-day threshold. They  
2 can get later get an undeliverable notice, and they will go  
3 back to inactive undeliverable notice.

4 The other thing is that if they do a voter change, this  
5 could be a separate address that they are being -- that they  
6 are verified on, not the address that was on the 2012 general  
7 election. So this is a whole different verification process.

8 Q Okay. The last entry I want you to look at is on the same  
9 page. It's entry 794. It's for a woman named Daphne Gainey.  
10 Do you see that?

11 A I do not. I was waiting for the screen.

12 Q 794.

13 A I do see it.

14 Q So Ms. Gainey failed initial voter mail verification in  
15 2012; correct?

16 A That is correct.

17 Q And she is currently an active verified voter; correct?

18 A Which means she passed the 15 days.

19 Q Okay. Am I correct that of the 2,361 voters that you've  
20 identified as failing initial mail verification, you don't know  
21 what percentage eventually verified?

22 A If you mean --

23 **MR. FARR:** Objection.

24 **THE WITNESS:** -- how many are verified --

25 **THE COURT:** Hold on just a minute, please.

1           **MR. FARR:** I just objected to form of the question,  
2 Your Honor, because there are different types of verifications.

3           **THE COURT:** Do you want to clarify what verification  
4 you are speaking about?

5 **BY MS. RIGGS**

6 Q       Do you know what percentage -- you don't know what  
7 percentage of these 2,361 voters that you have listed now say,  
8 in SEIMS, verified?

9 A       So I know that on this list that there is 4 and 14. Like  
10 I said, this is four different mail verification processes.  
11 None of these verified under new voter mail verification  
12 process, as far as I can tell.

13 Q       That's not what I asked, though.

14 A       I am getting to it. So there are four different  
15 verification processes: NCOA, admin mailing, list maintenance,  
16 and voter change. So any of these, they could have verified  
17 under a different address.

18       And once again, they would temporarily go verified just  
19 for a second before they go unverified again and before a  
20 returned undeliverable notice is sent. So I don't see evidence  
21 that they verified temporarily. That happens under any  
22 verification process whatsoever. They have to be verified for  
23 a second if they are reactivated.

24 Q       Mr. Neesby, sitting here today, you can't tell me how many  
25 of these 2,361 people on your list are currently listed as

1 verified in SEIMS; correct?

2 A At the date of this, this would be 4 and 14.

3 Q You can't tell me how many are verified in SEIMS right  
4 now?

5 A So two months after this list was generated, I don't know  
6 the exact number, no.

7 Q And you didn't know that number at the time the list was  
8 generated; correct?

9 A I did not.

10 **MS. RIGGS:** No further questions. Pass the witness.

11 CROSS-EXAMINATION

12 **BY MR. COOPER**

13 Q Good morning, Mr. Neesby. Good to see you again. I just  
14 have a couple of follow-up questions. You spoke with Ms. Riggs  
15 about the methodology that you used in your analysis that's  
16 supported in Defendants' Exhibit 16 a new moments ago.

17 A Correct.

18 Q Mr. Neesby, you started working at the State Board of  
19 Elections in October; right?

20 A I did.

21 Q And you didn't previously have -- I know you talked a bit  
22 about your previous database experience. You haven't worked  
23 with a voter registration system before your current position,  
24 have you?

25 A No. Like I said, there was a lot of PeopleSoft data that

1 I worked with, Workday data. So it is very similar. But as  
2 far as an election database, I have not worked with that.

3 Q Okay. And so you aren't an expert in the methodology of  
4 studying mail verification, are you?

5 A Define the term "expert" for me.

6 Q In any way that you would define it.

7 A I think I have a fair amount of expertise now.

8 Q But you are not testifying as an expert here today?

9 A Of course not. I haven't been proffered as an expert.

10 **MR. COOPER:** Thank you. I have no further questions.

11 **THE COURT:** Mr. Kaul.

12 CROSS-EXAMINATION

13 **BY MR. KAUL**

14 Q Good morning, Mr. Neesby.

15 A Good morning.

16 Q You talked at the beginning of your testimony yesterday  
17 about what data analytics is.

18 A Yes, I did.

19 Q And you said it's about taking data, looking at the  
20 assumptions about at the data, connecting the data together  
21 using a code called SQL, and then analyzing the data for what  
22 it means. Is that basically right?

23 A That is right. There's other codes also. Regular  
24 expressions can be used to do certain things to data that will  
25 be helpful. So there's a lot of other codes, CAML queries.

1 But, yes, that's correct.

2 Q You said that SQL is structured query language?

3 A That's right. SQL server uses a variant of that called  
4 TSQL.

5 Q Now, when you use those codes, do you just have a button  
6 you press on your computer, or how does that work?

7 A So you write code in a certain syntax which tells how to  
8 connect various tables together. There's things called LEFT  
9 OUTER JOINS, INNER JOINS, that sort of thing, where you are  
10 correcting tables in fields in a specific way. Once you write  
11 the code -- and it can be pages and pages long -- you then push  
12 F5 in SQL server and it runs the code.

13 Q So you do press a button ultimately, but you have to write  
14 a bunch of code first?

15 A That's correct.

16 Q That's what you do? You write the code?

17 A I write the code; correct.

18 Q And how did you learn how to do data analytics?

19 A At Toyota with my experience there.

20 Q How long did you spend learning how to do that?

21 A Eight and a half years.

22 Q So you didn't graduate law school knowing how to do data  
23 analytics?

24 A I did, because I started law school the same time I  
25 started at Toyota. I did law school at night. So I worked

1 full time at Toyota, and then I learned data analytics at  
2 Toyota.

3 Q So it's because of those years doing data analytics at  
4 Toyota that you are able to do data analytics at the State  
5 Board of Elections?

6 A That's correct.

7 Q Okay. It is not something that somebody can pick up in a  
8 couple of hours?

9 A I wouldn't think so, no.

10 Q You used data analytics in the analyses that we've been  
11 discussing here in your testimony; is that right?

12 A I did.

13 Q I would like to ask you a few questions then about the  
14 analysis that resulted in the preregistration chart.

15 A Yes.

16 Q And if we could bring that up, I'd be grateful. It is not  
17 marked as an exhibit. I believe it is just the chart  
18 showing --

19 A I think it's BN-3.

20 Q Thank you. At the bottom of that page, there are eight  
21 sources sited. Do you see that?

22 A I do.

23 Q And what are those?

24 A Those are different tables within SEIMS that, like I said,  
25 you would connect together to get this result.

1 Q Okay. That's using the data analytics methodology you  
2 were describing before?

3 A I wouldn't call it -- it is using code. I am a -- I do  
4 data analytics. Methodology is how I do data analytics, but,  
5 yes.

6 Q And there are eight -- these are eight different databases  
7 this represents?

8 A These are eight different tables within SEIMS, not  
9 databases. They belong to one database.

10 Q And how many entries are in those databases?

11 A It depends on which database. So entries are in a table,  
12 and each of those tables had various amounts. So VOTER\_REG  
13 table has about 12 million or so records; 6 million are active  
14 or inactive. VERIFICATION\_HISTORY has millions and millions of  
15 records.

16 Q So how many -- we are talking about tens of millions of  
17 records in these eight tables?

18 A That's correct.

19 Q Maybe hundreds of millions?

20 A Perhaps.

21 Q So you didn't count those results by hand; right?

22 A Of course not.

23 Q Okay. You used the code we've been talking about?

24 A I don't know any data analyst who would count things by  
25 hand.

1 Q When did you prepare this analysis?

2 A I prepared this analysis fairly recently, within this  
3 month.

4 Q Okay. And you said yesterday that some of the data in  
5 this analysis was provided to the Plaintiffs in June of 2015;  
6 is that correct?

7 A So let's say six tables that say 20150417 were provided  
8 with the SDR report. Those tables are static tables, meaning  
9 they don't change. So you could use the January snapshot, and  
10 you would get a very similar result. So I just didn't do that  
11 because I had already done this analysis for the SDR report,  
12 and it was easier to start on a very -- on one of my  
13 intermediate stages with the SDR report and simply filter for  
14 preregistered and not preregistered, but you would have about  
15 98 percent of this same data in the January snapshot.

16 Q What about the other two charts or the other two sources?

17 A Those are from the January snapshot.

18 Q So six of the eight are from a snapshot from April, you  
19 said, of 2015?

20 A Right. And let me clarify, they were from the November 4  
21 snapshot, but they were delivered to the Plaintiffs in January.

22 Q Those are the two that you were talking about?

23 A The two.

24 Q But the other six are from the April snapshot, but were  
25 delivered to the Plaintiffs in June?



1 A That's correct.

2 Q And that mail verification report that you just referred  
3 to, that doesn't mention preregistration at all, does it?

4 A It does not.

5 Q And you would agree that the -- neither this chart or the  
6 figures in the chart were provided to the Plaintiffs until  
7 yesterday during your testimony; right?

8 A No, this demonstrative wasn't provided until my testimony.

9 Q So are you agreeing with what I asked, though; right?

10 A Yes.

11 Q And you were deposed in this case 12 days ago; right?

12 A That's correct.

13 Q Had you completed this analysis at that point?

14 A I had not.

15 Q So this was completed within the last 12 days?

16 A That sounds right.

17 **MR. KAUL:** Your Honor, at this point, I would renew  
18 the motion to exclude Mr. Neesby's testimony on this chart and  
19 all testimony relating to it as improper expert opinion  
20 testimony. I think he has established that this is based on  
21 extensive knowledge of source code and years of experience at  
22 Toyota.

23 **THE COURT:** Did you question him at his deposition  
24 about mail verification failure rates for preregistrants?

25 **MR. KAUL:** No.

1           **THE COURT:** Okay. Why don't you finish your  
2 questions. I am going to let them do whatever redirect, and  
3 then I will be glad to hear your argument at that time.

4           **MR. KAUL:** Thank you.

5 **BY MR. KAUL**

6 Q       While I'm on this chart, let me ask you a few more  
7 questions about it then. Now, you used the period from 2010 to  
8 2012; correct?

9 A       I did.

10 Q       And you know that preregistration continued into 2013 for  
11 nine months; right?

12 A       I did not.

13 Q       So you didn't use nine months of the three-year-nine-month  
14 period that preregistration was in effect?

15 A       I just picked three years that I knew preregistration was  
16 in effect. You could extend the dates. You would get a  
17 similar analysis.

18 Q       How do you know that?

19 A       Well, if you have three years of data and they give a  
20 certain analysis, you wouldn't expect that three months, six  
21 months, either way, would change it. You guys have the data,  
22 so feel free to disagree, but I don't expect that it would  
23 change it.

24 Q       We've had this data since yesterday; right?

25 A       You've had the data since January.

1 Q Well, the analysis since yesterday?

2 A My analysis since yesterday, yes.

3 Q And is there anything unique about 2012 from an election  
4 standpoint?

5 A That's a Presidential election year.

6 Q Now, the mail verification process for a regular  
7 registrant begins at the time of registration; right?

8 A The mail verification process -- for -- it is kicked off a  
9 couple of days afterward.

10 Q And what about a preregistrant?

11 A It begins later.

12 Q It begins when the preregistrant becomes eligible to  
13 register in the ordinary course; correct?

14 A That's right, and that's arguably why you see a higher  
15 failure rate.

16 Q For a 16-year-old, it wouldn't start for over year and a  
17 half likely after they've registered; right?

18 A That's correct.

19 Q And you said it is likely that that's why there is a  
20 higher mail verification failure rate; right?

21 A That's one reason, yes.

22 Q In fact, it's almost certainly a reason; right?

23 A I think so.

24 Q Now, the analysis you did for SDR mail verification looked  
25 at failure rates among those who voted; correct?

1 A It did.

2 Q And you said that that was the relevant thing to analyze;  
3 correct?

4 A It was as far as, yes, determining SDR versus non-SDR,  
5 because SDR is unique, as you guys have mentioned, because you  
6 tend to vote. So it is trying to compare apples to apples.

7 Q And you didn't do a similar analysis here, did you?

8 A No. This was just looking at a specific question, which  
9 was do preregistrations fail more often than  
10 non-preregistrations.

11 Q Okay. But the question that you thought was relevant in  
12 the SDR context, you didn't analyze in the preregistration  
13 context; right?

14 A I didn't because, like I said, we felt that SDR -- the  
15 whole purpose of it, as you have mentioned, is to vote. So  
16 that seemed like a valid way to compare those two situations.  
17 It is not that we couldn't do it with this analysis, and I  
18 think you would see a similar phenomenon, but I couldn't be  
19 sure.

20 Q But given how far a preregistrant registers in advance of  
21 when a preregistrant actually gets to vote, given that it  
22 happens at 16 or 17 years old, it would be extremely unusual  
23 for a preregistrant to fail mail verification after voting;  
24 correct?

25 A That's correct. I don't think that was the reason for

1 this analysis. I think part of the analysis is we have to deal  
2 with the fact that a preregistrant will fail and then they will  
3 get denied and then they will be sent a denial letter, and it  
4 might not get to them. So it is actually a disservice to the  
5 young person, is the argument, to make them have to, you  
6 know -- they should -- it is better for them if they register  
7 closer to when they are 18.

8 Q That's the argument, but that's not what this analysis  
9 shows; right?

10 A This analysis is particular to -- it doesn't -- if your  
11 question is did I filter for voting, I did not.

12 Q Now, just to be clear, you are not suggesting that the  
13 2.85 percent of 16- and 17-years-old who use preregistration  
14 are committing registration fraud; right?

15 A I am a data analyst, so I am not making conclusions about  
16 the data. I just show what the data proves, and it just proves  
17 a higher failure rate. That is all this chart represents. The  
18 conclusions are up to other people.

19 Q But you are making decisions about which data to analyze  
20 in the first place; right?

21 A I am making decisions from what I believe to be a precise  
22 way, a precise methodology to determine a specific question,  
23 and the specific question that I was given was do  
24 preregistrations fail more often than non-preregistrations.

25 Q And you were given that assignment by Director Strach?

1 A Yes.

2 Q Let me ask you briefly about the mail verification study  
3 that you were talking about with Ms. Riggs.

4 **THE COURT:** This is Defendants' Exhibit 16?

5 **MR. KAUL:** It is, Your Honor.

6 **BY MR. KAUL**

7 Q My question goes to page 5, and this is Part 2 of the  
8 analysis; correct?

9 A It is. Part 2 of Part 2.

10 Q Part 2 of Part 2. Thank you.

11 A Right.

12 Q And now, in Part 1 of Part 2, you compared the failure  
13 rate for SDR voters who cast ballots versus the failure rate of  
14 non-SDR registrants who cast ballots; correct?

15 A That's a bit imprecise.

16 Q Correct me, please.

17 A So I compared those that failed after voting, which means  
18 they've got voter history. So it's ballots cast. Some people  
19 that cast ballots don't get voter history.

20 Q Now, in Part 2, you compared all non-SDR registrants,  
21 including those who didn't vote, to SDR registrants; correct?

22 A That's incorrect. I compared Part 1, 2012 registrants  
23 that voted. Part 2 was 2012 registrants, not all registrants.

24 Q Irrespective of whether they voted; right?

25 A Correct.

1 Q And obviously anybody who registers through a means that's  
2 not SDR who doesn't vote, by definition, is not going to have  
3 cast a ballot in 2012?

4 A Sorry. Could you repeat the question?

5 Q Yes. I said, by definition, anybody who registers to vote  
6 in 2012 but doesn't cast a ballot is not going to have failed  
7 mail verification that year after having cast a ballot;  
8 correct?

9 A That is correct.

10 Q So --

11 A Do you want me to tell you why we did a second part to  
12 this?

13 Q Please.

14 A This is another way to look at the data. And I think the  
15 argument could be that you would only -- you would want to rely  
16 on Part 1, which is a five-times differential, but then someone  
17 that -- for instance, let's say someone registers in  
18 January 2012, fails mail verification in February, and then is  
19 not allowed to vote because their address doesn't verify. So  
20 mail verification worked, as far as its purposes.

21 You would argue that that could arguably be a mark in  
22 favor of non-SDR being better than SDR as far as mail  
23 verification. So it is just another way to look at it because  
24 it brings those people into the population.

25 Q You would --

1 A I --

2 Q I'm sorry. Go ahead.

3 A And so, once again, I just kind of show here is if you  
4 filtered for voted only, here is if you don't filter for voted,  
5 and I just think it is a different way to look at the data, and  
6 you can draw conclusions from that. You might conclude that  
7 only Part 1 is, you know, something that you want to consider.

8 Q You were saying -- did you say that Part 1 is the better  
9 analysis?

10 A I think Part 1 is one way to look at it. Part 2 is a  
11 different way. It depends whether you buy the argument that  
12 mail verification working for a non-SDR includes that person  
13 who in January registered and February failed and wasn't  
14 allowed to vote. That wouldn't happen with SDR. So it is kind  
15 of unfair to the non-SDR side not to include them in the  
16 population.

17 Q In Part 2, though, you are guaranteed only to get  
18 successes for the non-SDR registrants who didn't vote; correct?

19 A I think -- I don't understand -- you are guaranteed to get  
20 successes for non-SDR?

21 Q Yes, to the extent that they didn't vote, given that you  
22 were considering whether they failed mail verification and  
23 voted.

24 A So someone that registered non-SDR and obviously failed  
25 mail verification, was denied, that's success for non-SDR in



1 that regard.

2 Q But that wouldn't count against the results for the  
3 non-SDR here because that person didn't vote; right?

4 A They would be a did not fail, yes.

5 Q Okay. So it is sort of an apples-and-oranges comparison  
6 in Part 2; right?

7 A I would argue that, like I said, it is depending on how  
8 you articulate the argument. I think both are fine ways to  
9 look at it, and then we can argue which one is a better  
10 comparison.

11 I think some people could argue that Part 2 allows in  
12 those people that really are successes because they weren't  
13 allowed to vote, and that was the purpose of mail verification.  
14 So those are allowed in the analysis.

15 Q You said that your numbers are different from Veronica  
16 Degraffenreid's because you have a different view as to what  
17 the appropriate means is for assessing the status codes in a  
18 database; is that fair?

19 A No. My analysis is different for a couple of reasons.  
20 Like we've said, she is using proxies; I look at the  
21 verification history logs. She isn't permitted -- because  
22 removals don't tell you the verification history, so she can't  
23 look into anyone that's been removed since.

24 And then, finally, I am not limited by snapshot data. I  
25 am looking two years later and with the benefit of hindsight,

1 saying did these people fail, not whether temporarily they were  
2 verified, but whether they actually failed in the end.

3 Q Okay. But you did treat the codes differently?

4 A She used reason code. I didn't use reason code. I used a  
5 whole different field.

6 Q That's because you disagreed with her methodology; is that  
7 right?

8 A I felt it was imprecise.

9 Q And how long has Ms. Degraffenreid worked at the State  
10 Board of Elections?

11 A I don't know that number.

12 Q How long have you worked there?

13 A I have worked there since October, but once again, I have  
14 direct access to SEIMS, which Ms. Degraffenreid doesn't have,  
15 and she agrees with my methodology.

16 **MR. KAUL:** Object to the last statement as hearsay,  
17 Your Honor.

18 **THE COURT:** Sustained.

19 **BY MR. KAUL**

20 Q Now, you talked about college campuses on the mail  
21 verification failure rate analysis with Ms. Riggs. Do you  
22 remember that?

23 A I do.

24 Q And you said that you found that they were not different  
25 from the mail verification failure rates for the population as

1 a whole; is that right?

2 A I found that it was inconclusive. I didn't trust the  
3 methodology. Once again, you are dealing with latitude and  
4 longitude points for schools that are bigger than a latitude  
5 and longitude point. They are also bigger than a geo code,  
6 which is a small area around that latitude and longitude point.  
7 So you have no precise way of determining whether they are in  
8 the schools.

9 The only exception would be if you actually got the  
10 databases of those customers and then did a very -- fairly  
11 complicated matching algorithm to make sure you had the same  
12 people. Other than that, you would -- also could get the  
13 shapefiles of all the schools and the dorms, and shapefiles  
14 will give you a polygon outline of where the dorms are or  
15 perhaps where the school is, and that would be a more precise  
16 way to do it; but those weren't readily available.

17 Q So you are not saying that -- you are not drawing any  
18 conclusion either way about whether college students are  
19 disproportionately represented among the mail verification  
20 failures; is that right?

21 A The only conclusion that I am drawing is that I would want  
22 to test the methodology of someone that did make such a  
23 conclusion because I wasn't able to make such a conclusion. So  
24 I find -- the conclusion that I would draw is that determining  
25 that with precision is very difficult to do, and so anyone who

1 says they did, I would question that.

2 Q You have not drawn a conclusion; correct?

3 A That's correct.

4 Q Let me direct your attention then to Exhibit 344,  
5 Defendants' exhibit. Let me first focus on the -- I guess you  
6 call it a graph, but the age 24 and under figure.

7 A Okay.

8 Q Let me know when you have had a chance to look.

9 A Okay.

10 Q First, why did you decide to focus on voters age 24 and  
11 under?

12 A I was asked to do this, I believe, by -- I don't remember  
13 precisely, but it was either Janet Thornton or Kim or Tom Farr.  
14 I am not really sure which one asked me to do it.

15 Q So this was prepared for litigation?

16 A It was.

17 Q And do you know of any State Board of Elections document  
18 prior to this one that focuses on age 24 and under as a group?

19 A No. Our database generally categorizes them at age, I  
20 think, 25.

21 Q Okay.

22 A So I am not aware.

23 Q So let me direct your attention to 2010 on the chart. It  
24 indicates that the registration -- sorry, the percentage of  
25 total registered voters in North Carolina who are 24 and under

1 was 9.7 percent; is that right?

2 A 9.7 percent is the gray line, which let me just check --

3 Q I misstated that. Let me rephrase it. It indicates that  
4 9.7 percent of voters age 24 and under are registered to  
5 vote -- of either citizens or the total population are  
6 registered to vote.

7 A So that's age 24 that are registered over total  
8 registered, yes.

9 Q I think I confused myself. 9.7 percent of the total  
10 registered voters are 24 and under?

11 A That's correct.

12 Q And that had increased to 10.37 percent by 2014; correct?

13 A That is correct.

14 Q And you would agree that preregistration was in place in  
15 2010, 2011, 2012, and the first nine months of 2013; correct?

16 A The first nine months is something you told me, but, yes,  
17 I have no reason to dispute you.

18 Q So the majority of that period, from 2010 to 2014,  
19 preregistration was in effect?

20 A Yes.

21 Q And it was only in effect for one year before 2010;  
22 correct?

23 A I believe that's right.

24 Q And there's a lag between when an individual preregisters  
25 and when they actually are registered; correct?

1 A Correct.

2 Q Now, this also indicates that turnout for individuals age  
3 24 and under went from 17.55 percent in 2010 to 18.04 percent  
4 in 2014; correct?

5 A That's correct.

6 Q That's an increase of about one half of one percentage  
7 point?

8 A Percentage points, yes.

9 Q And that's a lower increase than the increase in turnout  
10 for the population as a whole from 2010 to 2014; right?

11 A The increase -- I don't have those numbers in front of me.  
12 The total population?

13 Q Yes, in North Carolina.

14 A So this is a -- are you saying census or total registered  
15 that turned out to vote?

16 Q Using the same method you used here.

17 A I don't remember those numbers. I'm sure -- I am not  
18 disputing you.

19 Q And you didn't include information about early voting  
20 statistics here, did you?

21 A I didn't break it out by early voting and non-early  
22 voting, no.

23 Q You did in assessing the data comparing turnout for white  
24 voters and African-American voters; is that right?

25 A Yes, I did a chart that did that comparison.

1 Q Okay. And in that chart, you didn't include 2008 and  
2 2012; correct?

3 A I believe it was just the 2010-2014 comparison.

4 Q But here you did use the Presidential elections; right?

5 A Right. I was asked to look at age 24 in these three  
6 categories over time, so I did the general elections.

7 Q So you are picking which data to analyze based on what you  
8 were asked to analyze; correct?

9 A I am asked to answer specific questions, and so the  
10 question here was what is the turnout proportion of  
11 registration over time using the general elections, and so I  
12 analyzed that question.

13 So you have to understand data analytics is driven by a  
14 precise question. So you ask the question and then build a set  
15 of logic that uses code to answer that question. So questions  
16 are different, and I do different analytics based on the  
17 question.

18 Q All right. Last I want to just take a quick look at  
19 PX689.

20 A You will have to point that one out to me.

21 Q That's the tiny chart with the statewide provisional  
22 results.

23 A Yes. Let me get a paper copy. It is a little fuzzy on  
24 the screen, but I can do my best.

25 Q I would like to focus on the no record of registration

1 line.

2 A Okay.

3 Q And you testified about that line earlier; correct?

4 A I testified about a certain subset of that line, yes.

5 Q And part of your testimony was that in 2010, 45 percent of  
6 the white and African-American population who cast a ballot  
7 that was rejected for no record of registration consists of  
8 African-Americans; right?

9 A That isn't correct actually. It's 45 percent of blacks,  
10 or African-Americans, cast compared to all races that we know,  
11 not just black and white.

12 Q It is -- nine is in the black column; correct?

13 A In this situation, there is no "other," so, yes, you are  
14 correct.

15 Q Well, unknown is 19; right?

16 A That's correct.

17 Q So that means that what I said in the first place is  
18 correct; right?

19 A My -- if there was anything in the "other," you would be  
20 incorrect. I didn't notice that there was a zero in the  
21 "other." So it's just not comparing black and white. I was  
22 comparing all races, subtracting the unknown.

23 Q So, in effect, it's just black and white population you  
24 are looking at; right?

25 A In 2010, that's correct. In 2014, it is not.



1 Q Right. So you would agree that a sample size of 20 is a  
2 very small sample size; correct?

3 A I would.

4 Q And you wouldn't draw conclusions from a sample size of  
5 20, would you?

6 A I wouldn't draw conclusions. I think it was rebutting the  
7 idea of not taking out the unknowns and including counted in  
8 there, which is what Mr. Donovan was doing. I disagreed with  
9 that methodology.

10 Q Do you think rebutting a methodology with a sample size of  
11 20 is an appropriate way of rebutting a methodology?

12 A His sample size wasn't much greater, and he was including  
13 counted and he was also including unknowns, which in a data  
14 analytics perspective is kind of a -- something you don't do.  
15 So I was rebutting that and saying that we don't know what  
16 those unknowns are. He did the same analysis. He just  
17 included the 19 unknowns.

18 Q And the -- those 20 voters we were just talking about who  
19 didn't vote in 2010, you would agree that there's no way that  
20 their votes would have counted in 2014 also; right?

21 A The 20 voters, the 9 and the 11?

22 Q Yes.

23 A If they got registered between 2010 and 2014, they would  
24 count.

25 Q What I mean is if the 2014 legal regime was in effect in

1 2010, their votes still wouldn't have counted; right?

2 A It didn't count in 2012, and it wouldn't count in 2014, as  
3 far as I can know from --

4 Q So H.B. 589 has no impact on those 20 voters you were just  
5 talking about; right?

6 A No, I think the argument was that if there was a  
7 disproportionate -- if there -- is that the race percentage  
8 went down, and so -- after H.B. 589. That was the only  
9 argument.

10 Q One last thing, I know I said last before, but this is  
11 really last. You would agree that there is -- that early  
12 voting is becoming increasingly popular nationwide from  
13 election to election; correct?

14 A I do.

15 Q Have you compared the increase in the popularity of early  
16 voting in North Carolina from 2006 to 2010 versus the increase  
17 from 2010 to 2014?

18 A I have not done that comparison.

19 **MR. KAUL:** No further questions. Thank you.

20 **THE COURT:** All right. Anything further from the  
21 Plaintiffs?

22 **MR. DONOVAN:** No, Your Honor.

23 **THE COURT:** Any redirect?

24 **MR. STRACH:** No, Your Honor, no redirect.

25 **THE COURT:** All right. Mr. Neesby, you may step

1 down.

2 **MR. COOPER:** Your Honor, may I be heard?

3 **THE COURT:** Yes.

4 **MR. COOPER:** We would like to move to exclude  
5 Mr. Neesby's testimony as undisclosed expert testimony. I  
6 think it is clear from --

7 **THE COURT:** Was there a motion filed before trial as  
8 to him being undisclosed expert testimony?

9 **MR. COOPER:** Not with respect to these subjects, but  
10 I think it's clear from his testimony today, his repeated  
11 references to his methodology, his judgment, the questions he  
12 was -- chose to ask, why he asked them, what data he looked at,  
13 and how he used it, I think it's clearly within the realm of  
14 expert opinion.

15 **THE COURT:** Did you depose him in this case?

16 **MR. COOPER:** We have deposed him about some subject  
17 matter in this case.

18 **THE COURT:** How many times did you depose him?

19 **MR. COOPER:** There was a deposition in April, and  
20 then there was the deposition about ten days ago, which  
21 related -- but that was limited specifically to the same-day  
22 registration report.

23 **THE COURT:** What topics did you depose him on? Let  
24 me back up. Why did you choose to depose him? Was he listed  
25 as a fact witness?

1           **MR. COOPER:** He was listed as a fact witness with  
2 knowledge about the same matters as Ms. Strach, which was a  
3 very broad array of matters. We deposed him about matters that  
4 he was working on at the time, which did not include many of  
5 the subjects that came up today in his testimony: Among  
6 others, the NVRA reports -- the NVRA reports that were  
7 discussed yesterday, mail verification, as you know, the  
8 preregistration subject that Mr. Kaul was discussing, as well  
9 as others, the provisional ballot analysis.

10           **THE COURT:** Did you depose him on his analysis of the  
11 SEIMS database?

12           **MR. COOPER:** I mean, we deposed him about certain  
13 things that he told us that he had worked on with respect to  
14 SEIMS, but those things did not include these subjects.

15           **THE COURT:** So what precisely did he testify about  
16 that you say you did not inquire about during the deposition?

17           **MR. COOPER:** Well, so for one thing, we inquired  
18 about the scope of his duties and his work at the State Board  
19 of Elections, and he did not discuss any work he had done on  
20 out-of-precinct provisional ballots. He didn't discuss any  
21 work that he had done on sources of voter registration  
22 applications. He didn't -- as you know, he didn't discuss --  
23 or his mail verification work was inconclusive at that time.

24           **THE COURT:** Did you depose him over Defendants'  
25 Exhibit 16 and his contributions to that analysis?

1           **MR. COOPER:** That was the deposition about ten days  
2 ago.

3           **THE COURT:** Okay.

4           **MR. COOPER:** That was strictly limited to 90 minutes  
5 and to that topic alone.

6           **THE COURT:** All right. Mr. Kaul, do you want to be  
7 heard any further?

8           **MR. KAUL:** I don't need to be heard further, Your  
9 Honor.

10          **THE COURT:** Okay. Mr. Strach?

11          **MR. STRACH:** Your Honor, we'd simply point out that  
12 they did depose Mr. Neesby on April 14, 2015, and, of course,  
13 the things that he testified about were limited to the  
14 questions that they asked. They had a full opportunity. They  
15 had the full seven hours, I think perhaps even more, to ask  
16 Mr. Neesby about anything they wanted to regarding his work for  
17 the Board of Elections.

18                 He did say that part of his job was data analytics  
19 for several different sectors. "So the investigators, I do  
20 data analytics for them, I do data analytics around this  
21 litigation, and I do data analytics for outreach as well." So  
22 it's been very clear since at least April what Mr. Neesby does  
23 at the Board of Elections.

24                 And I would also point out, Your Honor, that the data  
25 that Mr. Neesby is simply querying to produce the information

1 that he's been talking about in court has been available to the  
2 Plaintiffs since at least January of this year. So the  
3 Plaintiffs have had plenty of notice and plenty of  
4 opportunities to depose Mr. Neesby about what he knows about  
5 how the data that he looked at relates to this case.

6           Your Honor, I would also point out that regarding the  
7 NVRA stuff specifically, we didn't get Dr. Lichtman's report  
8 until sometime in June. And so, obviously, Ms. Strach and  
9 Mr. Neesby were only even able to do the analysis for that in  
10 June and, frankly, up to and including through the trial.

11           **THE COURT:** Okay. I think what I am going to do is I  
12 am not doing to decide this right now because there's more to  
13 this than my being able to decide it at this very moment. So  
14 what I am going to do is permit you, after we are done today,  
15 to move to strike whatever portions you think ought to be  
16 struck, and then you can respond to that. So you can have ten  
17 days after today to move to strike him, and you can respond to  
18 that within ten days.

19           But I do want you to focus on precisely what it is  
20 that you think that he's testified to that's outside of his  
21 role as a fact witness in the case, that is, pulling data from  
22 the database. There is no doubt he has to have certain  
23 training to do that, and there was no pretrial motion filed to  
24 exclude him as an expert because of that. So you were on  
25 notice that he was going to testify about pulling information

1 from the database, if I am not mistaken; is that right?

2 Because he did do Defendants' Exhibit 16, and you queried him  
3 about that during the deposition.

4 So I am interested in what it is about what else he's  
5 done that is, in your view, different from what he did that you  
6 didn't object to. So you can argue whatever you want to argue,  
7 but that will be my interest when you file your motion. Okay?

8 **MR. COOPER:** Understood.

9 **THE COURT:** All right. Mr. Strach.

10 **MR. STRACH:** Your Honor, we would like to move in  
11 some exhibits from Mr. Neesby's testimony. It looks like I've  
12 got DX -- Defendants' Exhibit 16, which is the mail  
13 verification report. If it's already in, Your Honor, that's  
14 fine. I couldn't remember if we had already moved that in.

15 **MR. DONOVAN:** I think during Ms. Strach's testimony.  
16 I think that came in under no objection, Your Honor.

17 **THE COURT:** It's admitted.

18 **MR. STRACH:** Defendants' Exhibit 343, which were the  
19 research Mr. Neesby conducted regarding his Susan Schafer  
20 testimony. That was the thick exhibit. The next one --

21 **THE COURT:** She didn't testify live, did she?

22 **MR. STRACH:** No. My understanding is it was  
23 submitted --

24 **MR. DONOVAN:** No, she didn't, Your Honor, but we have  
25 no objection.

1           **THE COURT:** Has her testimony been designated?

2           **MR. DONOVAN:** I think some has been, yes, Your Honor.

3           **THE COURT:** Okay. 343, any objection to that?

4           **MR. DONOVAN:** No objection, Your Honor.

5           **THE COURT:** Admitted.

6           **MR. STRACH:** Defendants' Exhibit 13, Your Honor,  
7 which is the hours comparison, early voting hours comparison  
8 for 2010 and 2014.

9           **MR. DONOVAN:** No objection, Your Honor.

10          **THE COURT:** Admitted.

11          **MR. STRACH:** Defendants' Exhibit 344, which is the  
12 turnout by age chart.

13          **THE COURT:** Any objection?

14          **MR. KAUL:** No, Your Honor.

15          **THE COURT:** All right. Admitted.

16          **MR. STRACH:** Defendants' Exhibit 349, which is the  
17 curbside voting chart.

18          **THE COURT:** Any objection?

19          **MR. DONOVAN:** Not as a demonstrative, Judge, but,  
20 yes, as to substantive evidence. The year was never  
21 established and some other facts, but not as a demonstrative.

22          **THE COURT:** So how is that being admitted? Just as a  
23 demonstrative, is that the motion?

24          **MR. STRACH:** Your Honor, I thought he testified  
25 regarding the year, but if he did, that will be in his



1 testimony. I guess we are fine with it as a demonstrative of  
2 his testimony.

3 **THE COURT:** All right. Admitted for that purpose.

4 **MR. STRACH:** And then I believe, Your Honor -- let me  
5 just -- and then, Your Honor, the final ones would be what we  
6 labeled for demonstrative purposes BN-1, -2, and -3, which were  
7 the charts we looked at yesterday.

8 **THE COURT:** All right. Let me deal with 1 and 2  
9 first. Any objection to those two?

10 **MR. DONOVAN:** I think not as demonstratives, Judge.  
11 I think that's what Mr. Strach said.

12 **MR. STRACH:** Only for demonstrative purposes.

13 **THE COURT:** Admitted.

14 **MR. STRACH:** And then BN-3, which is also for  
15 demonstrative purposes only.

16 **THE COURT:** I will reserve on that, subject to your  
17 objection.

18 **MR. KAUL:** And we do object.

19 **MR. STRACH:** That's all I have from Mr. Neesby's  
20 testimony. I think Mr. McKnight will be asking to move  
21 additional exhibits in.

22 **THE COURT:** All right.

23 **MR. McKNIGHT:** Good morning, Your Honor. We have a  
24 number of exhibits, slightly less than a hundred, that need to  
25 be moved in that -- most of which were not moved in in

1 connection with a witness, but some of them have been used in  
2 cross-examinations, and the Plaintiffs have said they would  
3 prefer for us to wait to move them in in our case.

4 **THE COURT:** Have all they been identified on the  
5 record so far?

6 **MR. McKNIGHT:** The exhibits have been identified, and  
7 disclosures, I have a list of them here, all but a handful are  
8 not objected to.

9 **THE COURT:** For the ones that are not objected to, is  
10 it possible just to refer to exhibit number ranges rather than  
11 having to read the name of each one of them?

12 **MR. McKNIGHT:** Well, some of the exhibits, they skip  
13 numbers. So we go from -- we start, for example, at  
14 Defendants' Exhibit 8 and then it goes to 12 and 14. I am  
15 happy to hand up a list and refer to that and then just talk  
16 about the ones that I think there are objections to, if that  
17 would --

18 **THE COURT:** Why don't you, for the record, just give  
19 me the exhibit numbers; but if there is a range, I don't need  
20 every one in between. You can say, for example, 1 through 10.

21 **MR. McKNIGHT:** Fair enough. The first one is DX8 --  
22 for the help of the clerk, I will hand this up.

23 **THE COURT:** If they have been identified on the  
24 record, then I don't need the name entered in at this point. I  
25 just need the number.

1           **MR. McKNIGHT:** Okay. All right. So I've got DX8,  
2 DX12, DX14, DX15, DX19, DX21, DX23, DX27, DX29, DX33 and 34,  
3 DX39, DX41 and 42, 44, 45, let me see, and then 46 through 54.  
4 And let me back up a minute.

5           On Exhibit 53, the Plaintiffs have requested that  
6 that document be labeled highly confidential. It is expenses  
7 associated with the NAACP's voter empowerment efforts. The  
8 Defendants don't believe that meets the definition of highly  
9 confidential as set forth in the protective order, which only  
10 relates to personally identifiable information.

11           **THE COURT:** Do I need the dollar amounts?

12           **MR. McKNIGHT:** I will defer to Mr. Strach on that.

13           **MR. STRACH:** I think the dollar amounts are  
14 important.

15           **THE COURT:** Okay.

16           **MR. DONOVAN:** Your Honor, to avoid that, can we find  
17 out the basis for that? Because I do think that's an issue.  
18 Obviously, we have concerns on associational privilege. We  
19 don't object to the document. They have to see it, but we do  
20 request that it either goes under seal, which I understand is  
21 an administrative burden, or I would like to understand the  
22 basis for Your Honor, because we don't think -- we don't object  
23 to it, but we don't think it needs to go in, but if it does, we  
24 do request it stay under seal. This information is --

25           **THE COURT:** I understand. Well, I would be inclined

1 to seal it. That's easier said than done. There is a First  
2 Amendment privilege and a common law right. Let's keep moving.

3 **MR. MCKNIGHT:** So I think we got DX54. We'll have  
4 DX55A. That's another one. I think the Plaintiffs are going  
5 to waive their request that that be designated as highly  
6 confidential in exchange for -- they've given us some proposed  
7 redactions. I've just received that. I think we need to look  
8 at that, but we'll probably to do a 55A that will take care of  
9 that.

10 **THE COURT:** I am not going to admit anything that's  
11 not yet agreed to. Let me stop right here. Any objections to  
12 8 through 52 from this list?

13 **MS. O'CONNOR:** Your Honor, I don't believe we have an  
14 objection to that set. I'm just confirming on DX14, that that  
15 was part of our pretrial stipulation on admission; but subject  
16 to that, no, I don't believe we have any objection.

17 **THE COURT:** Can you determine that readily, do you  
18 think?

19 **MS. O'CONNOR:** Yes.

20 **THE COURT:** All right. Before the train gets too far  
21 down the tracks, I would like to stop and make some decisions.

22 **MS. O'CONNOR:** Your Honor, I believe that the  
23 declaration of Ms. Strach that was included in our pretrial  
24 agreement, the stipulation, was her June 2014 declaration, and  
25 so we had agreed that that could come in; but beyond what we

1 had previously agreed to from the preliminary injunction, we  
2 would object to other declarations coming in, since Ms. Strach  
3 was here live to testify and --

4 **THE COURT:** What is 14?

5 **MR. McKNIGHT:** It is a declaration of Kim Strach. It  
6 is dated September 2, 2014.

7 **THE COURT:** Let me ask you to pause just for a  
8 minute. Ms. Engle says that many of these have not been  
9 identified formally in the record. So I am going to want you  
10 to identify them on the record. So this is going to take a  
11 little bit of time.

12 I am going to go ahead and take our morning break and  
13 ask you over the break to put your heads together and agree to  
14 what you can agree, and then we'll go from there, and then I  
15 will go through the process of having you move them all into  
16 the record at that point.

17 Now, after we move the exhibits, anything further  
18 then from the Defendants?

19 **MR. FARR:** We'll be done then, Your Honor.

20 **THE COURT:** So you should have your witness or  
21 witnesses ready.

22 **MR. DONOVAN:** We are ready, yes, Your Honor.

23 **THE COURT:** We'll take our 20-minute break, and then  
24 we'll come back after that.

25 (The Court recessed at 10:25 a.m.)

1 (The Court was called back to order at 10:46 a.m.)

2 **THE COURT:** Mr. McKnight.

3 **MR. MCKNIGHT:** Maybe we'll start over with DX8 and  
4 just read the description quickly. I think we've reached  
5 agreement on a few more items.

6 DX8 is an article by Charles Stewart entitled  
7 "Waiting to Vote" published in the summer of 2013. DX12 is a  
8 BNA article entitled "Expert Evidence Report." We're  
9 withdrawing DX14 that was mentioned earlier. DX15 is an  
10 affidavit of R. Erika Churchill dated June 4, 2015. DX19 is an  
11 affidavit of Janet R. Thornton dated June 15, 2015. DX21 is  
12 Plaintiff Barbee's Chapel Missionary Baptist Church's responses  
13 and specific objections to Defendants' second set of  
14 interrogatories. DX23 is Covenant Presbyterian Church's  
15 responses and objections to the Defendants' second set of  
16 interrogatories.

17 **MS. O'CONNOR:** I'm sorry to interrupt. I'm going to  
18 have to take us back to DX19. And, of course, we didn't have a  
19 description on the Defendants' exhibit list for that. I see  
20 now that that's the Thornton State Court affidavit. We had --  
21 we would object to that as outside this case, not at issue, not  
22 submitted as an expert report in this case. So we do have an  
23 objection to that one.

24 **MR. FARR:** I'm sorry. What report was that?

25 **MS. O'CONNOR:** It looks like it's the Thornton State

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

1 Court affidavit from June of this year.

2 **MR. FARR:** I think we'll withdraw that, Your Honor.

3 That goes to the photo ID issue. We apologize.

4 **THE COURT:** All right.

5 **MR. McKNIGHT:** All right. DX29 is Emmanuel Baptist  
6 Church meeting minutes. DX33 is North Carolina State  
7 Conference of the NAACP's responses and objections to  
8 Defendants' second set of interrogatories. DX34 is NAACP's  
9 2010 manual on branch election procedures. DX39 is the NAACP's  
10 letter to Representative David Lewis regarding voter  
11 suppression tactics of the Republican-led North Carolina  
12 General Assembly.

13 DX41 is an email dated June 1, 2010, regarding 2110  
14 with attachment 2010 hkong action steps for booklet final.  
15 DX42 is a letter to Governor Pat McCrory from the North  
16 Carolina NAACP. DX44 is entitled "Urbanomics Voter Empowerment  
17 Training." DX45 an article entitled "An Election Year Guide  
18 for Faith-based Organizations." DX46 is entitled "Urbanomics  
19 Voter Empowerment Training." DX47 is an email dated June --  
20 I'm sorry, July 25, 2013, regarding the NC NAACP's "Action  
21 Alert: Call your Representative and Say 'NO!' to Voter  
22 Suppression."

23 DX48 is the NC NAACP's immediate release letter  
24 regarding "Partisan Gerrymandering and a Negative Impact on  
25 Section 5 Counties in the Congressional Maps." DX49 is the NC

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

1 NAACP's immediate release letter regarding "On the Day of  
2 Public Hearings, NAACP Questions Incomplete Redistricting  
3 Maps." DX50 is a letter from Dr. Barber. DX51 is entitled  
4 "Forward Together Moral Movement Timeline."

5 I understand that that one is another one that  
6 Plaintiffs want to have designated as highly confidential. Is  
7 that right?

8 **MS. O'CONNOR:** Yes, I believe that is right.

9 **MR. McKNIGHT:** We don't have a problem with that  
10 being filed under seal. I don't think we want to do redactions  
11 on that.

12 **MS. O'CONNOR:** Under seal is fine, one way or the  
13 other. Either way that it protects the information, we are  
14 fine with.

15 **THE COURT:** All right.

16 **MR. McKNIGHT:** DX52 is an email dated December 30th,  
17 2013, regarding "North Carolina must make a choice." DX53 is  
18 the NC NAACP state conference voter empowerment expenses. I  
19 think Your Honor said that will be filed under seal as well.  
20 DX54 is the NC NAACP's press release entitled "My Prayer for  
21 the Heart of our State and Nation."

22 We have a modification to what the clerk has. We are  
23 going to do DX55A. We have done some reactions to that and  
24 agreed to this. That is a document entitled "Realizing  
25 Transformational Movement in the South -- North Carolina NAACP



1 Forward Together! Moral Freedom Summer 2014 -- Strategic  
2 Plan."

3 DX56 is an article entitled "Four Positive Actions  
4 for 2014." DX57 is an article entitled "New Voter Suppression  
5 Law Threatens the Right to Vote in North Carolina." DX58 is an  
6 article entitled "Campaigns/Civic Engagement -- Steps to  
7 Registering Voters." DX59 is a letter from David Lewis to the  
8 NC NAACP dated February 20, 2013.

9 DX61 is an NAACP press release regarding "Open  
10 Letter." DX62 is the NAACP's press release regarding "NC  
11 NAACP's Statement: The Investiture of Justice Wynn." DX65 is  
12 an NC NAACP press release regarding "All Souls to the Polls."  
13 And I believe DX65 was offered and admitted on 7/13. I just  
14 want to make sure that is in the record. It may not need to be  
15 admitted again, but it was listed on page 1 of the Court's  
16 exhibit list.

17 DX66 is a copy of the CD entitled "NC NAACP's Freedom  
18 Fund Banquet" that was played during Reverend Barber's  
19 deposition. DX67 is another document that's been listed as  
20 admitted on July 13. It is a transcript of the CD of the -- it  
21 is a transcript of the NC NAACP Freedom Fund Banquet.

22 DX68 is the NC NAACP press release entitled "North  
23 Carolina NAACP's Statement on Voter ID." DX87 is Plaintiff  
24 Carolyn Coleman's responses and objections to Defendants' first  
25 set of interrogatories. DX109 is an e-mail string dated

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

1 November 12, 2014, to February 28, 2015, and it is entitled  
2 "It's All Fun and Games Until Someone Gets Purged."

3 DX110, various screenshots of Becky Mock's Facebook  
4 postings. DX120 is 2012 elections mail verification analysis  
5 of new voters. DX122 is a copy of the front of Carnell Brown's  
6 ID card. DX123 is a copy of the back of Carnell Brown's ID  
7 card. DX130 is a Google Map from -- I believe this is  
8 Ms. Terrilin Cunningham's home to 331 Corban Avenue in Concord.  
9 DX132 is a declaration of Michael Dickerson.

10 And, Your Honor, the next three exhibits are where we  
11 have a little disagreement. That's DX134, 135, and 136, and  
12 those are the three documents that were handed up when the  
13 deposition testimony of Sergeant Alexander Ealy was played last  
14 week. The Defendants believe that should come in because it's  
15 been authenticated by Sergeant Ealy in his testimony that was  
16 played before the Court. I believe that the Plaintiffs may  
17 have a different perspective on that.

18 **THE COURT:** Well, I am going to hear argument on  
19 this. Just identify them all. What are the three of these?  
20 What's 134?

21 **MR. MCKNIGHT:** DX134 is Mr. Ealy's voter registration  
22 application, DX135 is Mr. Ealy's Cumberland County provisional  
23 voting application, and DX136 is another voter registration  
24 application.

25 **THE COURT:** All right. We'll come back to those.

1 Keep going.

2           **MR. MCKNIGHT:** Okay. DX167 is a transcript of the  
3 November session on the November 24, 2003, redistricting plan.  
4 DX168 is the North Carolina House of Representatives voting  
5 tally. DX169 is one-stop voting tally on House Bill. DX170 is  
6 a Senate vote tally on House Bill 91.

7           DX191 is a copy of the driver's license of Gerrick  
8 Suggs. DX193 is a two-page document that's a screenshot of  
9 voter registrant information. DX200 is a Google Map from  
10 Mr. Timothy Washington's residence to 601 Royal Avenue in  
11 Goldsboro. And DX201 is a Google Map from Mr. Timothy  
12 Washington's residence to the Wayne County Public Library in  
13 Goldsboro. DX202 is provisional voter instructions. DX217 is  
14 the declaration of Carolyn Justice dated June 17, 2014. DX218  
15 are various roll call votes.

16           DX220 is an affidavit of Cherie Poucher. DX221 is  
17 the North Carolina General Assembly Joint Legislative Elections  
18 Oversight Committee transcript of proceedings dated April 2,  
19 2014. DX222 is a Forsyth County Board of Elections meeting  
20 minutes from September 3, 2012. DX223 is the Forsyth County  
21 Board of Elections meeting minutes from October 15, 2013.  
22 DX 224 is a photocopy of a postcard mailing.

23           DX225 are excerpts of the deposition of Gary  
24 Bartlett. DX226 is a declaration of Charles Underwood. DX227  
25 is entitled "One-stop Locations for 2010 General Election."

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

1 DX 228 is a presentation to the Joint Legislative Oversight  
2 Committee. DX229 is a 2012 mail verification report for new  
3 voters. DX230 is a DMV matching report dated January 7, 2013,  
4 and a supplemental analysis dated March 5, 2013. DX231 is an  
5 affidavit of Kim Strach.

6 **MS. O'CONNOR:** Sorry, on DX231, can we just clarify  
7 which affidavit? Is that the June?

8 **MR. McKNIGHT:** I believe so.

9 **THE COURT:** Let me do this. Let me go through all of  
10 these and get the list and then you can --

11 **MS. O'CONNOR:** I think we agree on that, but just for  
12 the clarity of the record, because there are other later  
13 declarations that are not coming in.

14 **MR. McKNIGHT:** I can clarify that right now. It is  
15 actually dated June 18, 2014.

16 **THE COURT:** All right.

17 **MR. McKNIGHT:** DX232 is a North Carolina registration  
18 application. DX233 is an absentee ballot request form. We are  
19 going to have a DX234A, which are exhibits to the March 9,  
20 2015, declaration of Kim Strach. That is listed as admitted by  
21 the Court on July 29, but we want to make sure that's in the  
22 record.

23 **MS. O'CONNOR:** Just again for the record, the exhibit  
24 that was previously referred as DX234 was the affidavit of  
25 Ms. Strach that is not coming into evidence. So only the

1 exhibits to that are coming in as DX234A.

2 **THE COURT:** All right.

3 **MR. McKNIGHT:** DX257 is the declaration of Charles  
4 Underwood. DX258 is required documents schedule. DX261 is an  
5 official sample ballot dated November 6, 2012, from the state  
6 of Florida that was offered on July 21st on the cross-exam of  
7 Dr. Allen, but I don't think moved into evidence at that time.  
8 DX262 is an official ballot from Wake County dated November 2,  
9 2010, that was also handed up to the Court on July 21, but I  
10 don't think moved into evidence. DX263 is the Wake County  
11 ballot -- sample ballot from November 6, 2012.

12 DX292 is Senate Bill 767/Session Law 2000-136. That  
13 was used on July 20 in the cross-examination of Dr. Lawson.  
14 DX294 is Senate Bill 1054/Session Law 2002-158. And DX295 is a  
15 transcript of the session from November 24, 2003, for the House  
16 of Representatives.

17 As I said, 292, 294, and 295 were all offered and  
18 handed up to the Court in the cross-exam of Dr. Lawson on  
19 July 20.

20 DX326 is the declaration of John Davis. DX342A are  
21 redacted finance reports from Emmanuel Baptist Church. DX345  
22 is a SEIMS report. It is a 2010 and 2014 voting comparison  
23 percent change analysis that was used in Dr. Allen's cross-exam  
24 on July 21. There is an article entitled "U.S. State Election  
25 Reform and Turnout Presidential Elections." That's DX346.

1 That was offered and I believe admitted on 7/17 in the  
2 cross-exam of Dr. Gronke.

3 DX348 is an article entitled "Election Laws  
4 Mobilization and Turnout." That was used on July 15 in the  
5 cross-exam of Dr. Burden.

6 DX-- well, DX353 -- we just want to make sure, Your  
7 Honor, that DX353 is the counter-designations that we filed to  
8 Plaintiffs' designations of deposition testimony. That's on  
9 the docket as Exhibit 302. I assume we don't need to move that  
10 in. I understand that the Plaintiffs' position is they have  
11 included our counter-designations in all of the designations  
12 that have been filed, and so as long as all of our  
13 counter-designations have been included, we are fine with that.  
14 We have not a chance to double-check all of the exhibits  
15 they've offered up in terms of designations, but we would like  
16 the opportunity to come back and correct that if we determine  
17 any counter-designations have been left off, but I will not  
18 move that one into evidence if the Court believes that  
19 Defendants' counter-designations to Defendants' [sic]  
20 designations are already in the record.

21 **THE COURT:** All right.

22 **MR. McKNIGHT:** DX355 is a document that was used in  
23 the cross-exam of Dr. Stewart. It is Appendix S-BB of his  
24 expert report. DX356 is a document that was used in the  
25 cross-exam of Dr. Stewart. It's Table 18. DX357 is Table 15

1 from Dr. Stewart's report, and DX358 is Appendix U from  
2 Dr. Stewart's report.

3 And then the other day, I think it was July 23, when  
4 there was a discussion about the stipulations, Your Honor asked  
5 that an email that Phil Strach sent to Josh Kaul be given an  
6 exhibit number, and that exhibit number is DX363. I'm not sure  
7 that it needs to be moved into evidence or not, but that's the  
8 exhibit number for that email.

9 So, Your Honor, we would like to move the previously  
10 listed exhibits into evidence. And I guess maybe before I do  
11 that, we need to resolve the issues with the three exhibits  
12 that Ms. Riggs has an issue with.

13 **THE COURT:** Let me do this. Let me hear objections  
14 to any of these, and I will hear from you as to any objections  
15 you have. Otherwise, then I will rule on those and then I will  
16 admit everything else that's not objected to. So let's start.

17 Ms. Riggs?

18 **MS. RIGGS:** Thank you, Your Honor. Very briefly, we  
19 have authenticity objections to DX134 through 136.

20 **THE COURT:** Hold on just a minute. We are going to  
21 take them one at a time, 134 --

22 **MS. RIGGS:** Okay.

23 **THE COURT:** -- to 136.

24 **MS. RIGGS:** If we could start with 136, that would  
25 actually make more sense. 136 has been altered by someone

1 other than the voter, and that came out in the --

2 **THE COURT:** That's the one that has the little square  
3 on the bottom? It looks like someone may have put a Post-it on  
4 it?

5 **MS. RIGGS:** It's been altered by someone other than  
6 the voter. Because of that, we have authenticity concerns  
7 from -- for all three documents.

8 **THE COURT:** Where did the document come from?

9 **MR. McKNIGHT:** It was requested of the State Board of  
10 Elections. I believe they got it from the Cumberland County  
11 Board of Elections.

12 **THE COURT:** Okay.

13 **MR. McKNIGHT:** If it makes any difference, we are  
14 fine not moving in the part at the bottom that Mr. Ealy could  
15 not authenticate that relates to the Wollaton Park address, but  
16 the rest of the document, I am happy to point to the relevant  
17 sections of --

18 **THE COURT:** You don't need to do that. I remember  
19 the testimony.

20 **MR. McKNIGHT:** Okay.

21 **THE COURT:** How about 134 and 135? Any objections to  
22 those?

23 **MS. RIGGS:** Only to the extent we can't determine  
24 their authenticity because we didn't notice the Post-it note  
25 until later in Sergeant Ealy's testimony anyway.



1           **THE COURT:** Is there any argument that the address in  
2 the Post-it note has anything to do with your positions in this  
3 case?

4           **MR. McKNIGHT:** I don't believe it does. The address  
5 on the Post-it note, as I understand it, is just a -- an E911  
6 address, which I believe was written on there by somebody at  
7 the Cumberland County --

8           **THE COURT:** Let me ask it this way: Is the State or  
9 any of the Defendants going to argue that any of the  
10 information on the area that appears to be where a Post-it note  
11 was, about which the Plaintiffs object, is in any way related  
12 to this case?

13           **MR. McKNIGHT:** I don't think so, Your Honor.

14           **THE COURT:** With that, any objection if I just admit  
15 the document with that understanding, that there will be no  
16 argument or consideration of that?

17           **MS. RIGGS:** Only to the extent that I can't tell what  
18 other parts have been altered, but I am fine with your  
19 decision.

20           **THE COURT:** Okay. So any other objections,  
21 Ms. Riggs, to any of the other documents?

22           **MS. RIGGS:** Nothing, Your Honor.

23           **THE COURT:** Any other Plaintiffs? Mr. Kaul?

24           **MR. KAUL:** 363, Your Honor, is my -- the email from  
25 Mr. Strach to me. I have no objection to that being marked and

1 considered in its appropriate context. I don't think it comes  
2 into evidence.

3 **THE COURT:** Any other Plaintiff have any other  
4 objection to any of these exhibits?

5 **MS. RIGGS:** No, Your Honor. I believe we are good  
6 with the rest of the list.

7 **THE COURT:** I am going to admit all of these exhibits  
8 up through 358. Exhibits 51 and 53, my intention is to admit  
9 those under seal. We have procedures for that in our district.  
10 I can't, as we sit here, tell you all that needs to be done,  
11 but I am going to ask the Defendants to review the procedures  
12 for filing 51 and 53 under seal and to file a formal document  
13 request under seal, which allows the public notice if they want  
14 to object. I don't need extensive analysis, but I want you  
15 just to follow the local procedure; and I will allow it under  
16 seal at this time. Whether it remains under seal will be  
17 whether there is any objection and I have to deal with that.

18 Document 136 will be considered with the limitation  
19 that I just noted. So those are all admitted.

20 Now, 363 is not admitted as substantive evidence, but  
21 it is a court exhibit that's considered for the purpose that I  
22 considered it for, and that was whether the Defendants were  
23 bound by the stipulation in the respect that the Plaintiffs  
24 argue.

25 Mr. Kaul, does that satisfy your concern?

1           **MR. KAUL:** Yes, Your Honor.

2           **MR. McKNIGHT:** Your Honor, the other thing that we  
3 need to do is move in Defendants' deposition designations. At  
4 the same time, we would like to move in the  
5 counter-designations that were provided by the Plaintiffs.  
6 What we have done for that is similar to what the Plaintiffs  
7 have done, is that we've actually taken a transcript that's  
8 been marked by the Plaintiffs that has designations highlighted  
9 from the Plaintiffs and Defendants, and we'll hand that up.

10          **THE COURT:** Are they marked as exhibits?

11          **MR. McKNIGHT:** They are, and they have exhibit  
12 numbers. I believe there are objections to us admitting  
13 deposition designations for some of the deponents. I can tell  
14 you about the ones that I believe are unobjected to first, and  
15 then I guess we can talk about --

16          **THE COURT:** Let's deal with the ones to which there  
17 is no objection.

18          **MR. McKNIGHT:** Defendants' designations of deposition  
19 testimony are found in ECF Document 289 in Case Number 861. I  
20 marked that as DX365.

21          **MS. O'CONNOR:** On that, Your Honor, we don't believe  
22 that the ECF289, or Defendants' Exhibit 365, should be admitted  
23 into evidence. I believe Mr. McKnight will proceed to go to  
24 the individual deposition designations, which are the items  
25 that should be admitted.

1           **THE COURT:** All right. I understand.

2           **MR. McKNIGHT:** That's fine. I can -- so DX366 are  
3 designations and counter-designations of deposition testimony  
4 of Charles Underwood, and that's been filed as ECF304-1 in Case  
5 861. We have Defendants' designations and Plaintiffs'  
6 counter-designations of the deposition testimony of Dean  
7 Roberts. That's been filed as ECF304-2.

8           **THE COURT:** What number are you giving that one?

9           **MR. McKNIGHT:** That would be 367.

10          **THE COURT:** How many of these are there going to be?

11          **MR. McKNIGHT:** I think there is about 11.

12          **THE COURT:** That was for whom? Dean Roberts?

13          **MR. McKNIGHT:** Dean Roberts.

14                 DX368 are Defendants' designations and Plaintiffs'  
15 counter-designations from the deposition of Cherie Poucher.  
16 That was filed as ECF304-3 in Case 861. We have Defendants'  
17 designations and Plaintiffs' counter-designations of the  
18 deposition of Erika Churchill. That's DX369. That was filed  
19 as ECF304-4 in Case 861. I will skip a couple here and come  
20 back to them.

21                 We have DX372 is the Defendants' designations and  
22 Plaintiffs' counter-designations of the deposition of Michael  
23 Dickerson. That was filed as ECF304-7 in Case 861. DX373 is  
24 the Defendants' designations and Plaintiffs'  
25 counter-designations of the deposition of Gary Bartlett. That

1 was filed as ECF304-8 in Case 861. And then we have DX374 is  
2 the Defendants' designations and Plaintiffs'  
3 counter-designations of the deposition of Carolyn Justice.  
4 That was filed as ECF304-9 in Case 861.

5 And then we have four designations that Defendants'  
6 have made that the Plaintiffs have objected to.

7 **THE COURT:** All right. Let me pause. Any objection  
8 to the ones that we've just had mentioned?

9 **MS. O'CONNOR:** No objection.

10 **THE COURT:** All of those will be admitted. Let's go  
11 to the contested ones.

12 **MR. McKNIGHT:** The contested one is DX370. That's  
13 Defendants' designations and counter-designations from the  
14 deposition of Earline Parmon. That was filed as ECF304-5 in  
15 861. The Defendants' designations and Plaintiffs'  
16 counter-designations from the deposition of Rick Glazer, that  
17 was DX371 that was filed as ECF304-6 in Case 861. And then  
18 there's two more. DX375 are designations and  
19 counter-designations from the deposition of James Hope, and  
20 then DX376 are designations and counter-designations from the  
21 deposition of Lottie Hope.

22 **THE COURT:** Lottie?

23 **MR. McKNIGHT:** Yes, L-O-T-T-I-E. And that's it.

24 **THE COURT:** Let me hear from -- unless there's  
25 anything further from you, I'll hear from them as to what the

1 objections are.

2           **MS. O'CONNOR:** Your Honor, as to each of those four,  
3 the general category of objection that we have is that those  
4 witnesses were not unavailable to testify and that they were  
5 within the 100-mile distance of the Court. And certain of  
6 them, with respect to Ms. Parmon and Glazer, those two, I  
7 believe, were both willing to appear had they been asked.

8           Representative Glazer testified in the preliminary  
9 injunction hearing last summer. His testimony is in the  
10 record, and the deposition that they are seeking to admit is --  
11 occurred prior to the preliminary injunction hearing; but,  
12 overall, because these witnesses are not unavailable and could  
13 have come to testify, we do object to their being -- their  
14 designations being admitted.

15           **THE COURT:** Anybody else have any objection they want  
16 to be heard on?

17           **MS. O'CONNOR:** One last note, if I might, Your Honor,  
18 we had reached agreement prior to trial as to certain witnesses  
19 coming in by designation, and there was no agreement sought on  
20 these witnesses; and they could have been brought, but they  
21 were not. That's our objection.

22           **MR. FARR:** Your Honor, I would like to speak to that  
23 when I have a chance.

24           **THE COURT:** Hold on just a minute. What does that  
25 mean, that you reached an agreement and -- I'm not sure I

1 understood that.

2 **MR. DONOVAN:** If I may address it? I'm certain, on  
3 both sides, there were witnesses who were within the 100 miles.  
4 Both sides said, fine, you can move your deposition.

5 Representative Glazer and Ms. Parmon, both  
6 legislators, were willing come to this court as state  
7 legislators and testify, and I told Mr. Farr they were  
8 available. Just let me know when you want them. He knew that  
9 before trial and has never said when he wanted them. So we  
10 maintain that objection, especially in light of the sponsors'  
11 refusal to testify.

12 The Hopes, I believe, are voters that are here in  
13 Winston-Salem. I'm sorry, High Point. So they are available.  
14 So I think under basic evidence, these are not admissible.  
15 Thank you, Your Honor.

16 **THE COURT:** All right.

17 **MR. McKNIGHT:** I guess what I would point out for  
18 this is that we've -- I think there have been 58 deposition  
19 designations that have been admitted. Two of the folks on the  
20 list are folks who have been sitting here in the courtroom the  
21 whole time, Ms. Perry and Ms. Eaton, on the bench behind us.  
22 So they are available, but the Plaintiffs did not call them to  
23 testify; yet, we agreed to allow deposition designations to  
24 come in. We didn't object to that at least.

25 **THE COURT:** Their position is, though, they had a

1 specific agreement as to that, and I guess the argument is,  
2 well, you didn't ask about these people, and they are not going  
3 to agree to it.

4 **MR. McKNIGHT:** I guess --

5 **THE COURT:** Am I right about that?

6 **MS. O'CONNOR:** With one -- I think I did misspeak. I  
7 believe they did seek agreement as to certain of these  
8 individuals; but for these four in particular, we were not  
9 willing to agree as to those four. There were some of the  
10 facts witness that we were able to agree about. One of them  
11 had testified last summer. There was some question as to  
12 whether they needed to come, and they agreed, and there was no  
13 pushback. We did have issues with respect to these four,  
14 especially the legislators.

15 **THE COURT:** Mr. McKnight, are you saying that you had  
16 any reason to believe that they were not going to object to  
17 these?

18 **MR. McKNIGHT:** I mean, when they filed their  
19 objections and that sort of thing, but we assumed that if these  
20 other folks were coming in, that -- and they were available and  
21 they weren't going to call them, I guess I wasn't sure why they  
22 were --

23 **THE COURT:** But did you have a specific agreement as  
24 to these other people coming in?

25 **MR. McKNIGHT:** I think Mr. Farr can address that.



1           **MR. FARR:** I will just address that. I will just say  
2 that -- and, Your Honor, quite frankly, we are going to  
3 withdraw right now our request to submit these designations,  
4 but I do want to say something for the record.

5           When we were preparing for this case, as officers of  
6 the court, we attempted to do everything we could from our side  
7 to facilitate this trial so we wouldn't be here for six weeks;  
8 and I don't know how many depositions that we've agreed to to  
9 come into evidence of people who are available to testify that  
10 we didn't force the Plaintiffs to show any grounds that they  
11 were not available to testify.

12           And while we were filing all sorts of stuff and  
13 arguing about various things, I had an exchange with the  
14 Plaintiffs where I, I guess foolishly, agreed that we would  
15 cooperate with them and allow them to file these depositions of  
16 people, for whom they've made no showing that they are not  
17 available, in exchange for them agreeing to let us file the  
18 deposition of Erika Churchill.

19           I look back on that now, Your Honor, as a very  
20 foolish agreement that I made, but I did make that agreement,  
21 and I did that because I thought that there would be further  
22 corporation between the parties and that there would be some  
23 reciprocity from the Plaintiffs, and I was mistaken in that  
24 assumption, Your Honor. Thank you.

25           **THE COURT:** So these are withdrawn?

1           **MR. FARR:** Yes.

2           **THE COURT:** All right. Anything further from the  
3 Defendants in terms of evidence? So Defendants now rest their  
4 case; is that correct?

5           **MR. FARR:** We do, Your Honor. But I will give you a  
6 heads-up that I don't know if there is something in a trial  
7 called surrebuttal rebuttal, or whatever it will be called, but  
8 there may be some evidence coming in now that we are going to  
9 object to very strongly; and as it comes in, we will explain to  
10 you our objections and may request leave to submit some  
11 additional evidence, assuming this evidence comes in.

12           **THE COURT:** All right. Does anybody want to be heard  
13 any further before we move on?

14           **MR. DONOVAN:** Did they rest then, Your Honor?

15           **MR. FARR:** We rested.

16           **THE COURT:** Mr. Donovan?

17           **MR. DONOVAN:** Your Honor, we are prepared to proceed.

18           **THE COURT:** All right. Do you have any idea how long  
19 your evidence will take?

20           **MR. DONOVAN:** Hopefully our direct will be about 40  
21 minutes. There's four witnesses.

22           **THE COURT:** Direct of all four of them?

23           **MR. DONOVAN:** Yes. So there's two, Your Honor, who  
24 were on Mr. Neesby's lists as supposedly not living there.  
25 They are going to take about five minutes. They are going to

1 get on the stand, and they are going to tell you they live  
2 there. I think the Defendants are going to object to that.

3 The other two is Dr. Stewart to respond to some of  
4 their experts and then Dr. Lichtman to respond to --

5 **THE COURT:** All right. Well, let's take them one by  
6 one, and let's get on with it.

7 **MR. EPPSTEINER:** Good morning, Your Honor. George  
8 Eppsteiner from the Southern Coalition for Social Justice on  
9 behalf of the League of Women Voters Plaintiffs. The  
10 Plaintiffs call Daphne Gainey.

11 **MR. FARR:** Your Honor, we would like to object to  
12 this witness and would like to be heard on it.

13 **THE COURT:** What is the basis?

14 **MR. FARR:** Several points, Your Honor. This witness  
15 has not been disclosed prior to this morning. You will recall  
16 last night we had raised with the Court that we asked the  
17 Plaintiffs to tell us who the rebuttal witnesses are going to  
18 be for a couple of days, and we got no response until this  
19 morning, I think at about 7:00, when we were told that  
20 Dr. Stewart and Dr. Lichtman would testify.

21 I have to tell you that I -- I hope no one takes  
22 offense to this, but I happen to be friends with Dr. Lichtman.  
23 I saw him jogging on the street last night. So I kind of  
24 assumed he wasn't here for the -- although Winston-Salem is a  
25 nice place, I figured he probably was coming back to testify.

1           But these two voter witnesses were not disclosed to  
2 us. You will recall earlier this morning, Your Honor --

3           **THE COURT:** So you are saying they were not disclosed  
4 based on an understanding between the parties to disclose  
5 witnesses as a matter of fairness or as a matter of witness  
6 lists? Because I presume they are rebuttal witnesses to  
7 evidence that you put on.

8           **MR. FARR:** Right. Well, they were not disclosed  
9 previously as witnesses, and they were not disclosed to us as  
10 rebuttal witnesses until the Court asked Ms. Riggs to tell us  
11 who they were at about 10:00 this morning.

12           These witnesses are going to talk about things  
13 related to their residence and voter history, and we have had  
14 no time to research anything about these voters; and if we had  
15 known about them last night, we might have been able to have  
16 time to research the information about these voters.

17           So we are prejudiced by the fact that if the  
18 Plaintiffs knew they were going to call these witnesses -- by  
19 the way, Your Honor, they are from this document that there's  
20 been examination on. This was a document that the State Board  
21 produced for Bob Hall. He's with Democracy North Carolina. It  
22 is obvious he gave this to the Plaintiffs' counsel. We believe  
23 this was produced by the State Board of Elections in late June.  
24 So they've had this since that point in time. They questioned  
25 Ms. Strach and Mr. Neesby about this document last Saturday.

1           We've been asking them about the rebuttal witnesses  
2 for, I think, three days, and the first notice we have of these  
3 two people being called was after the Court instructed them to  
4 disclose the witnesses to us.

5           So we believe we've been prejudiced by this, Your  
6 Honor, and, again, this relates to my statement that, depending  
7 upon what the testimony is, we may wish to introduce some  
8 evidence that might tend to impeach these witnesses.

9           **THE COURT:** Why didn't you tell them last night?

10          **MS. RIGGS:** Your Honor, we weren't sure what  
11 Mr. Neesby -- well, one, they had the names of these lists --

12          **THE COURT:** Well, they have the name of 6 million  
13 people.

14          **MS. RIGGS:** Well, they've had the name of the 2,361  
15 people since Mr. Neesby reported --

16          **THE COURT:** I understand that, but let me ask a  
17 practical matter. They are not going to go check the  
18 residences of 2,361 people. So why didn't you tell them last  
19 night that you were intending to call your witness today, just  
20 as a matter of fundamental fairness?

21          **MS. RIGGS:** Well, we had a number of witnesses. We  
22 were trying to see if they were available. These are  
23 five-minute witnesses who Defendants -- I think, fundamentally,  
24 Defendants have accused in their trial brief these voters of  
25 casting illegal ballots, and so it's perfectly acceptable

1 rebuttal evidence to say to these --

2           **THE COURT:** I am not questioning yet whether they are  
3 reasonable as rebuttal witnesses. I am asking why didn't you  
4 tell them last night so that they would have had at least 12  
5 hours to do a little bit of work? I mean, you do put yourself  
6 in a difficult position when you come in and want to spring  
7 something on somebody, and the only inference that's logical  
8 from that is you didn't tell them because you didn't want them  
9 to know.

10           As an officer of the court, you should be telling  
11 your opponents, as a matter of fairness, who your witnesses  
12 are. I am not here to have people spring evidence on each  
13 other. I am here to find out what the truth is. So I think  
14 the better practice certainly would have been to have told them  
15 before, but I don't understand why you didn't do that.

16           **MS. RIGGS:** We didn't feel like we had foundation to  
17 know if we could call these witnesses until after Mr. Neesby's  
18 testimony. Ultimately, though, we don't believe that these  
19 short, five-minute direct witnesses will offer any prejudice,  
20 and we would ask the Court to hear their testimony.

21           **THE COURT:** Well, I am going to let you put them on,  
22 and I will consider whether I will allow them to testify based  
23 on what it is that they say. Then I will hear you again at the  
24 end of that, Mr. Farr, as to what, if anything, I should do  
25 after that.



1 Q Was that during the early voting period or on Election  
2 Day?

3 A Early voting.

4 Q Did you register to vote at the same time?

5 A I did.

6 Q So you used same-day registration in 2012?

7 A Correct.

8 Q What address do you recall providing when you used  
9 same-day registration in 2012 to register and vote?

10 A At that time, I lived on 4260 Brownsboro Road, Apartment  
11 C34, here in Winston-Salem.

12 Q And that address is also in Forsyth County, North  
13 Carolina; correct?

14 A Yes, it is.

15 Q When did you move to that Brownsboro Road address?

16 A It was around Labor Day, 2012.

17 Q So the very beginning of September 2012?

18 A Uh-huh.

19 Q Is that a yes?

20 A Yes, I'm sorry.

21 Q And you received mail at that Brownsboro Road address?

22 A Yes.

23 Q After the 2012 election that you used same-day  
24 registration, over the next several months, did you receive any  
25 mailings from the State Board of Elections or the Forsyth



1 County Board of Elections confirming your address?

2 A I did not.

3 **THE COURT:** Hold on just a minute, please. Grab his  
4 cell phone, if you would, please. Thank you. You may  
5 continue.

6 **BY MR. EPPSTEINER**

7 Q And you said you didn't receive any mailings from the  
8 State Board of Elections or the Forsyth County Board of  
9 Elections over the next several months after the 2012  
10 elections?

11 A No.

12 Q No, you didn't?

13 A I did not.

14 Q Any idea why you didn't receive those mailings?

15 A I am not sure.

16 Q When did you move from the Brownsboro Road address?

17 A October 2013.

18 Q Since the November 2012 Presidential election, have you  
19 voted in Forsyth County?

20 A I have.

21 Q How many times?

22 A I believe it was the recent Presidential election.

23 Q By "recent Presidential election," do you mean recent --

24 A 2014.

25 Q -- Senate election in November 2014?

1 A Yes.

2 Q Did you have a problem voting at that election?

3 A I did not.

4 **MR. EPPSTEINER:** No further questions at this time,  
5 Your Honor.

6 **THE COURT:** Mr. Farr.

7 **MR. FARR:** Thank you, Your Honor.

8 CROSS-EXAMINATION

9 **BY MR. FARR**

10 Q Ms. Gainey, are you from -- originally from Forsyth  
11 County?

12 A Yes.

13 Q And when did you first register to vote?

14 A I believe I first registered to vote when I was in school,  
15 2008.

16 Q All right. And how did you arrive today at the court?

17 A I drove.

18 Q Do you have a driver's license?

19 A I do.

20 Q Do you have it with you?

21 A I do.

22 Q Can you pull it out, please, and read the address that you  
23 have on your driver's license?

24 A It's in my things. Should I go down to get them?

25 Q No, I won't make you do that. Ms. Gainey, did you ever

1 live at an address of 3712 Stoney Glen Drive, Winston-Salem  
2 27107?

3 A Yes, sir.

4 Q Do you know if -- whether or not you used that address  
5 when you registered to vote for the November 2012 election?

6 A I did not.

7 Q Are you sure about that?

8 A I am sure.

9 Q How are you sure?

10 A Because I moved from that address when I registered to  
11 vote 2012 using the 4260 Brownsboro Road address.

12 Q When did you move?

13 A I moved around September of 2012.

14 Q Now, when you did -- did you do early voting?

15 A Yes.

16 Q In 2012?

17 A Uh-huh.

18 Q And did you sign a form when you did early voting?

19 A I'm sure I did.

20 Q And on that form, did you list the address that you  
21 believed you were living at at the time that you did early  
22 voting?

23 A The 4260 Brownsboro Road.

24 Q And you verified that that was your correct address?

25 A Yes.

1 Q So, Ms. Gainey, what if I told you that the State Board of  
2 Elections has records indicating that you listed the Stoney  
3 Glen Drive address as your residence at the time you voted in  
4 2012?

5 A It should not have been because by that time I moved to  
6 the 4260 Brownsboro, September 2012.

7 Q Did anyone else fill out the form for you?

8 A I filled it.

9 Q So whatever's on that form is the information that you  
10 gave the county board of elections when you voted; is that  
11 right?

12 A Sure.

13 **MR. FARR:** No further questions, Your Honor.

14 **THE COURT:** Any redirect?

15 **MR. EPPSTEINER:** No, Your Honor.

16 **THE COURT:** You may step down, ma'am.

17 Call your next witness, please.

18 **MR. EPPSTEINER:** Your Honor, good morning. George  
19 Eppsteiner again for the record. The Plaintiffs call George  
20 Bailey.

21 **GEORGE O. BAILEY, IV, PLAINTIFFS' WITNESS,** at 11:32 a.m., being  
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 **BY MR. EPPSTEINER**

25 Q Please provide your full name for the Court.

- 1 A George Orenthel Bailey, IV.
- 2 Q Mr. Bailey, how do you spell Orenthel?
- 3 A O-R-E-N-T-H-E-L.
- 4 Q How old are you, Mr. Bailey?
- 5 A Twenty-one.
- 6 Q And what is your race?
- 7 A African-American.
- 8 Q Where do you live?
- 9 A I live in Winston-Salem, North Carolina.
- 10 Q Do you live on campus at a university in Forsyth County?
- 11 A Yes, sir, Winston-Salem State University.
- 12 Q How long have you lived at that address?
- 13 A For three years.
- 14 Q What year are you at Winston-Salem State University?
- 15 A A rising senior.
- 16 Q When did you move to Winston-Salem State University?
- 17 A August 2012.
- 18 Q Mr. Bailey, did you vote in the 2012 Presidential
- 19 election?
- 20 A Yes, sir.
- 21 Q In what county?
- 22 A Forsyth County.
- 23 Q In 2012, did you vote during the early voting period or on
- 24 Election Day?
- 25 A Early voting period.

1 Q Did you also register to vote at the same time?

2 A Yes, sir.

3 Q So you used same-day registration in 2012?

4 A Yes, sir.

5 Q What address do you recall providing when you used  
6 same-day registration in 2012 to register and vote?

7 A 601 South Martin Luther King Jr. Drive, Campus Box 13313.

8 Q Is that in Winston-Salem, North Carolina?

9 A Yes, sir.

10 Q And the ZIP code?

11 A 27110.

12 Q And that address is on the Winston-Salem State University  
13 campus?

14 A Yes, sir.

15 Q The 601 South Martin Luther King Jr. Drive address was  
16 your address for more than 30 days before the election in 2012?

17 A Yes, sir.

18 Q And you can receive mail at that address?

19 A Yes, sir.

20 Q And you have received mail at that address?

21 A Yes, sir.

22 Q Has your address changed since voting in 2012?

23 A No, sir.

24 Q After the 2012 election, over the next several months, did  
25 you receive any mailings from the State Board of Elections or

1 Forsyth County Board of Elections confirming your address?

2 A No, sir.

3 Q Any idea why you didn't receive any mailings?

4 A Not sure.

5 Q Since 2012, have you voted in Forsyth County?

6 A Yes, sir.

7 Q How many times?

8 A Three.

9 Q Do you recall when that was?

10 A September of 2013, that was the recent one, and this  
11 recent past election in 2014.

12 Q When you say the "recent past election in 2014," do you  
13 mean the November general election in 2014?

14 A Yes, sir.

15 Q Do you recall voting also -- you said three times. Do you  
16 recall also voting in a municipal election in November 2013?

17 A Yes, sir.

18 Q Did you have a problem voting at any of those three  
19 elections since 2012?

20 A No.

21 Q And you said the first election that you voted at after  
22 using same-day registration was September 2013, I believe?

23 A Yes, sir.

24 Q After voting at the September 2013 election, did you  
25 receive a mailing from the Forsyth County Board of Elections

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

1 confirming your address?

2 A Yes, sir.

3 **MR. EPPSTEINER:** Your Honor, may I approach?

4 **THE COURT:** Yes.

5 **BY MR. EPPSTEINER**

6 Q For the record, this is marked as PX745. Mr. Bailey, take  
7 a look at that document for a moment. Mr. Bailey, what is this  
8 document?

9 A My voter registration card.

10 Q And what is the print date on the document?

11 A September 30, 2013.

12 Q Did you receive this document after the September 2013  
13 primary election?

14 A Yes, sir.

15 Q What is the address on the card?

16 A WSSU, Winston-Salem, North Carolina 27110.

17 Q And earlier I believe you said that when you voted in  
18 2012, when you used same-day registration, you provided the  
19 address, I believe, Campus Box 13313, 601 South Martin Luther  
20 King Jr. Drive; is that correct?

21 A Correct.

22 Q Did you provide that same campus box address in those  
23 three elections that you voted at after 2012?

24 A Correct.

25 Q So you didn't say your address was WSSU, Winston-Salem,



1 North Carolina 27110 in any of those three elections?

2 **MR. FARR:** Objection.

3 **THE WITNESS:** No, sir.

4 **THE COURT:** Overruled.

5 **BY MR. EPPSTEINER**

6 Q You can answer.

7 A No, sir, I didn't.

8 Q Any idea why your address is listed as WSSU,  
9 Winston-Salem, North Carolina 27110?

10 A No, sir.

11 **MR. EPPSTEINER:** Your Honor, Plaintiffs move into  
12 evidence PX745.

13 **THE COURT:** Admitted.

14 **MR. EPPSTEINER:** No further questions at this time.

15 **THE COURT:** All right. Any cross?

16 CROSS-EXAMINATION

17 **BY MR. FARR**

18 Q Mr. Bailey, have you met the lawyer who just examined you  
19 before today?

20 A Have I met -- can you repeat your question?

21 Q Have you met with this lawyer that questioned you today  
22 before today?

23 A Yes, sir.

24 Q When did you first meet with him?

25 A Last Thursday.

- 1 Q Last Thursday?
- 2 A Yes, sir.
- 3 Q Okay. And where are you from?
- 4 A I'm from Greenville, North Carolina.
- 5 Q How did you get here today?
- 6 A I drove.
- 7 Q Do you have a driver's license?
- 8 A Yes, sir.
- 9 Q Do you have it with you?
- 10 A Yes, sir.
- 11 Q Can you pull it out and read the address on your driver's  
12 license, please?
- 13 A 303 Eastwood Drive, Apartment D, Greenville, North  
14 Carolina 27858.
- 15 Q So what is that address?
- 16 A That's my home address where I receive my driver's  
17 license.
- 18 Q And do you consider that your home?
- 19 A No, sir.
- 20 Q Why did you say it was your home address?
- 21 A Because that's -- you know, that's where I go home to. I  
22 don't spend most of the time there throughout the year.
- 23 Q When you registered to vote, did anyone ever explain to  
24 you what residence meant?
- 25 A I understand what residence means.

1 Q What does it mean to you?

2 A Where you live. Where you stay at.

3 Q Do you think there is any chance you will go back to  
4 Greenville after you graduate from school?

5 A No, sir.

6 Q All right. Have you been in Greenville with your parents  
7 any time during the last four years?

8 A Yes, sir.

9 Q Tell me about that. When were you there and how long?

10 A After my freshman year, I went there for that first summer  
11 after my freshman year in college.

12 Q And what year was that?

13 A 2013.

14 Q Did you leave the campus at Winston-Salem State at any  
15 time during 2012?

16 A Like move off campus?

17 Q No. Did you go back to visit your parents in, say, the  
18 fall of 2012?

19 A Maybe for Christmas.

20 Q So you were gone for spring break -- or winter break?

21 A Yeah, winter break.

22 Q So tell me about this address that you live at. You say  
23 you've lived at the same address -- you live at the same  
24 address today as you did back in 2012; is that correct?

25 A Correct.

1 Q And how are you receiving your mail there?

2 A All my mail comes to campus -- on campus, the 601 South  
3 Martin Luther King Jr. Drive, Campus Box 13313. So whenever I  
4 order something offline, or if I want to receive anything from  
5 my parents, it comes to 601 South Martin Luther King Jr. Drive,  
6 Campus Box 13313.

7 Q Does somebody deliver the mail to you from your box?

8 A No, sir. You go pick it up yourself, but they send you an  
9 email that your mail is there, and you go pick it up.

10 Q Are there ever occasions where you don't go pick up mail?

11 A No.

12 Q You've always picked up every piece of mail that you've  
13 received at that box?

14 A When it's in a box, it sits there until you go get it.  
15 So, yeah, every piece of mail that I get, it's been there.

16 Q Now, Mr. Bailey, how long have you been living at  
17 Winston-Salem State?

18 A Three years.

19 Q Okay. Why haven't you changed the address on your  
20 driver's license?

21 A I never felt no need to. Never had to. Never had no  
22 reason to change it on my driver's license.

23 Q Why was there no need to change it?

24 A I don't know. I don't know.

25 Q You say that's not your residence anymore; right?

1 A Correct.

2 Q Do you know what North Carolina law requires for people  
3 with driver's license in relation to their residence?

4 A Yes, sir.

5 Q What do you know about that?

6 A I actually don't. I didn't know about that law that you  
7 have to have the same exact address on each, because that's  
8 where I got the my driver's license when I was 18 in  
9 Greenville, North Carolina, so I just kept it that. I haven't  
10 had to change my license yet, so I didn't change it.

11 Q Do you know that North Carolina law requires that you have  
12 a driver's license for the residence that you are living at?

13 **MR. EPPSTEINER:** Objection as to foundation. He said  
14 he didn't know.

15 **THE COURT:** Overruled.

16 **THE WITNESS:** Yes, I never had a need to change it,  
17 so I didn't.

18 **BY MR. FARR**

19 Q Well, I didn't ask that question, whether you had a need  
20 to change it. I wanted to know do you know whether or not you  
21 have a legal obligation to change your driver's license to have  
22 the address that you claim to be your residence?

23 **MR. EPPSTEINER:** Same objection.

24 **THE WITNESS:** I didn't know.

25 **THE COURT:** Overruled.

1 **BY MR. FARR**

2 Q What?

3 A I didn't know that.

4 Q Have you ever looked into that?

5 A No, sir.

6 **MR. FARR:** No more questions, Your Honor.

7 **THE COURT:** Any redirect?

8 **MR. EPPSTEINER:** Briefly, Your Honor.

9 REDIRECT EXAMINATION

10 **BY MR. EPPSTEINER**

11 Q Mr. Bailey, did you stay in Forsyth County during the  
12 summer of 2014?

13 A Yes.

14 Q Did you stay in Forsyth County this past summer, the  
15 summer of 2015?

16 A Yes, sir.

17 Q And do you have any -- you said you don't have intent to  
18 return to Greenville after graduation; correct?

19 A Correct.

20 Q Do you want to stay in Forsyth County after graduation?

21 A Yes, sir.

22 Q And I believe you said that the address on your driver's  
23 license was the address when you turned 18; correct?

24 A Correct.

25 Q And you haven't had any opportunity to change your

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

1 driver's license since that time; correct?

2 A Correct.

3 **MR. FARR:** Objection.

4 **THE COURT:** Overruled.

5 **BY MR. EPPSTEINER**

6 Q You can answer.

7 A Correct.

8 **MR. EPPSTEINER:** No further questions, Your Honor.

9 **THE COURT:** Anything further?

10 RE CROSS-EXAMINATION

11 **BY MR. FARR**

12 Q Do you have a car?

13 A Yes, sir.

14 Q Don't -- if you have your own car, don't you have an  
15 opportunity to go to the DMV to change your driver's license?

16 A Yes, sir.

17 **MR. FARR:** No further questions.

18 **THE COURT:** Mr. Bailey, what is 601 South Martin  
19 Luther King Jr. Drive? Is it a house or apartment?

20 **THE WITNESS:** It's a dorm room. So all dorm rooms  
21 are on 601 Martin Luther King Jr. Drive. When you become a  
22 student at Winston-Salem State University, everybody gets a  
23 campus box number. So everybody's address is 601 South Martin  
24 Luther King Jr. Drive with a different campus box number. So  
25 all the mail goes into the same location.

1           **THE COURT:** So is your physical address different  
2 from 601 South Martin Luther King?

3           **THE WITNESS:** No, sir.

4           **THE COURT:** Anybody have any other questions?

5           **MR. EPPSTEINER:** No, Your Honor.

6           **MR. FARR:** No, Your Honor.

7           **THE COURT:** All right. You may step down, sir.  
8 Thank you.

9           All right. As to those two witnesses, anybody want  
10 to be heard any further?

11           **MR. FARR:** Your Honor, we would like to have  
12 permission to put into evidence some documents about the actual  
13 voter history for these two witnesses. We are working on that  
14 right now. And --

15           **THE COURT:** How soon can you file that?

16           **MR. STRACH:** Your Honor, we probably -- if we had the  
17 printing capability, we can probably file it this afternoon  
18 sometime.

19           **THE COURT:** Any chance you can do it before you make  
20 your closing arguments?

21           **MR. STRACH:** We can try to do it at lunch.

22           **THE COURT:** Why don't you try to do it at lunch.

23           **MR. FARR:** Thank you, Your Honor.

24           **THE COURT:** All right. Call your next witness,  
25 please.





1 A Okay.

2 Q First, did you read Dr. Thornton's 2015 trial report for  
3 this case?

4 A Yes, I did.

5 Q In that report at paragraph 93, Dr. Thornton wrote that,  
6 "If the implementation of the shorter early voting period in  
7 2014 did suppress African-American turnout, as Plaintiffs'  
8 experts predicted, then we would expect to find considerably  
9 lower turnout in 2014 compared to 2010."

10 First, Dr. Stewart, did you predict that aggregate turnout  
11 would be lower in 2014 than in 2010?

12 A No.

13 Q What did you predict about turnout in 2014?

14 A The proper prediction is to consider the counterfactual,  
15 which is what turnout would have been in 2014 had H.B. 589 not  
16 passed. So the correct comparison to think about is the actual  
17 turnout that was observed from the counterfactual that would  
18 have occurred had H.B. 589 not passed.

19 Q Okay. So could some voters have had their votes  
20 suppressed in 2014 even if aggregate turnout were up?

21 A Yes.

22 Q Could you give us an example of how that might happen?

23 A Yes. And in thinking about this, let's consider a  
24 decision made in election administration and just for some  
25 variation, consider a situation not related to this case but,

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

1 say, the accessibility of polling places.

2 So imagine -- the hypothetical is imagine in 2010 there is  
3 a small community that has a small precinct, and it's in a  
4 modern building, built at grade. It's accessible to voters  
5 with disabilities. 75 people show up to vote on -- in 2010  
6 with a wide variety of accessibility issues, but because of the  
7 construction of the building, they go in, they vote, no muss,  
8 no fuss, they leave, no problem.

9 Between 2010 and 2014, the election administrators decide  
10 to move the precinct to an older building. Perhaps it is built  
11 on a foundation so that you need to climb stairs to get up to  
12 the polling place. The signage is poor and doesn't indicate  
13 easily where to go to get into the building.

14 In this election, compared to 2010, 100 people come to  
15 this building to vote on that day. Again, a wide variety of  
16 accessibility issues involved. Ninety of those voters are able  
17 to climb the stairs and go and vote. No muss, no fuss, they  
18 leave. There are ten voters who have problems climbing the  
19 stairs. They may be in wheelchairs. They may have arthritic  
20 knees. They can't climb the stairs. They don't see the ramp.  
21 Can't find the signs. They leave, having not voted.

22 So in this example, we had 100 people desiring to vote.  
23 We had ten people in 2010 who were unable to because of  
24 accessibility. Between the two elections, turnout went up  
25 overall; but in the second election, there was a group of

1 people who were unable to vote, who would have voted were it  
2 not for a decision made to change the location of the precinct.

3 Q You explained in your direct examination that even though  
4 aggregate turnout was up in 2014 compared to 2010, we do know  
5 there were individual voters who were burdened by the changes  
6 relating to same-day registration, early voting, and  
7 out-of-precinct provisional balloting. Do you remember that?

8 A Yes.

9 Q How do we know that?

10 A Two ways. First, we've heard testimony from voters who  
11 have described how they were either not able to cast a ballot  
12 in 2014 because of H.B. 589 or cast provisional ballots that  
13 were not counted in 2014 that would have been counted earlier.  
14 We heard that testimony.

15 In addition, I've done analysis in which I show -- and  
16 it's not been refuted -- that African-Americans avail  
17 themselves of the three procedures we've been talking about  
18 here: Early voting, same-day registration, and out-of-precinct  
19 voting. They avail themselves of these procedures at higher  
20 rates than whites do.

21 And I have documented the thousands of voters who would  
22 have had their vote not count in 2010 had H.B. 589 been passed  
23 before then because, say, they had voted an out-of-precinct  
24 ballot. I've also documented that thousands of people -- had  
25 H.B. 589 been adopted before 2010, they would have been

1 required to vote in a compressed early voting period and, at  
2 the very at least, would have experienced a more congested  
3 and -- a more congested voting environment.

4 Q Thank you, Dr. Stewart. I want to transition to another  
5 topic. I am going to ask you just a few questions about  
6 Mr. Trende's testimony.

7 A Okay.

8 Q Have you read the transcript of the testimony he provided  
9 in the courtroom?

10 A Yes.

11 Q Did you read his expert reports for this case?

12 A Yes, I did.

13 Q I want to focus just on one piece of Mr. Trende's  
14 testimony. He testified that he conducted a multi-state  
15 regression analysis to examine whether election laws like the  
16 ones in place in North Carolina before H.B. 589 had any effect  
17 on African-American turnout. And based on his analysis,  
18 Mr. Trende concluded that they did not. Do you remember his  
19 testimony?

20 A Yes.

21 Q In your opinion, does the analysis that Mr. Trende  
22 conducted allow the Court to draw reliable inferences about the  
23 effect of these election laws on African-American turnout?

24 A No.

25 Q Now, Dr. Stewart, you addressed Mr. Trende's analysis in

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

1 detail in your surrebuttal report for the PI proceeding, and I  
2 know this is a topic you could talk about at great length; but  
3 given our limited time, I am going to ask you if you could just  
4 briefly touch on what you consider to be the key shortcomings  
5 of Mr. Trende's analysis.

6 A I would focus on three things. And to bullet them, first  
7 of all, the overall design, the research design is flawed. The  
8 measurement strategy of characterizing election laws is flawed.  
9 And then, finally, he asks of the data what it can't answer.  
10 So it is inadequate data to answer the question he is trying to  
11 address.

12 Q Okay. Let's talk through each of those briefly. The  
13 first one you mentioned was that the research design was  
14 flawed. What do you mean by that?

15 A Well, Mr. Trende is trying to analyze the effects of the  
16 change in policy and the change in law. Over the last two  
17 decades, economists and political scientists have taken  
18 seriously the criticism of a lot of empirical analysis that  
19 correlation is not causation and has begun to design the sort  
20 of research it does to assess things like the consequences of  
21 laws in such a way to try to be serious about making inferences  
22 about causation.

23 And the way they've done that is by drawing on the model  
24 that's kind of the classical natural sciences model where we  
25 start off with a control group, and we have a treated group.

1 We measure those two groups on an outcome variable before the  
2 experiments starts.

3       There is an intervention; so in this case, a policy  
4 intervention, a change in the election law. Some units get the  
5 change; let's say some states. Others don't get that change.  
6 Then after the law has been -- or the intervention has  
7 happened, then we go back and we remeasure on those same  
8 metrics.

9       So measure before, intervene, measure after. We find the  
10 difference in the metrics across time. That's one form of a  
11 difference, and then we take those two differences and we find  
12 the difference there, and that gap becomes a measure of the  
13 causal effect.

14       In the way I've described it, you can see why we call this  
15 a difference-in-differences approach, or diffs-in-diffs. I  
16 believe I heard Dr. Hillygus talk about that, and I'm sure some  
17 others may have as well.

18 Q       So are you saying that Mr. Trende in his analysis did not  
19 follow this particular design?

20 A       His original report was kind of the classic correlational  
21 design that wasn't fundamentally about analyzing differences;  
22 right.

23 Q       So without using this design that you described, is  
24 Mr. Trende able to draw causal inferences about the  
25 relationship between these election laws and African-American

1 turnout?

2 A No.

3 Q Let's move on to the second point that you mentioned. I  
4 think you called it that his measurement strategy for the --  
5 measuring the election laws was flawed. Can you please explain  
6 what you mean by that?

7 A Yes. In the quite large literature on the effect of  
8 voting laws, the practice has been to treat different election  
9 laws qualitatively differently, understanding that if we are  
10 looking at turnout, the effect of, say, an early voting law in  
11 magnitude is likely to be -- if it does exist, it's likely to  
12 be different from the effect of same-day registration, which is  
13 going to be different from, say, varying the number of days of  
14 book closing.

15 And so the standard is to code either the presence or  
16 absence of one of those laws, or sometimes, like with book  
17 closing, how long the period is after the book closing. So the  
18 important thing is to treat each one separately --

19 **THE COURT:** Are you speaking to his ordinal study?

20 **THE WITNESS:** Yes, sir, I am. And so the norm would  
21 be to handle each one individually and do it that way, which he  
22 did not do.

23 **BY MS. RYAN**

24 Q Okay. By lumping the different election practices  
25 together, as Mr. Trende did, does that design systematically



1 reduce the likelihood of finding a statistically significant  
2 relationship between the variables?

3 A Yes, because he's induced measurement error; and it's well  
4 known in the statistical literature that if you have an  
5 independent variable, which this measure is, and you induce  
6 measurement error, what you are going to do is you are going to  
7 what's called attenuating the estimated relationship. There  
8 may be a true relationship if properly measured, but the effect  
9 of the measurement error is to drive the estimate down towards  
10 zero.

11 Q So that makes it much less likely that you would be able  
12 to reject the null hypothesis?

13 A Correct. Compared to if you had -- if there was a  
14 relationship and if the independent variable had been measured  
15 without error, that's correct.

16 Q So let's focus for just a minute on Mr. Trende's 2015  
17 report. The first regression that he presented in that report  
18 lumped all of the relevant election practices together, but he  
19 did some additional regressions where he looked just at the  
20 relationship between early voting laws and African-American  
21 turnout. Do you remember that?

22 A Yes, I do. That's the table with the 48 regressions that  
23 we were talking about.

24 Q Okay. What is your opinion about Mr. Trende's decision to  
25 select early voting as the only practice that he subjected to

1 this individual examination?

2 A Well, let me just back up and just state that of the three  
3 election laws that I have been focusing on, or features of  
4 H.B. 589 I have been focusing on, two of these have been  
5 subject to quite a lot of academic research, early voting and  
6 same-day registration and its effect on turnout.

7 If you review that literature, the literature on same-day  
8 registration generally finds consistently a positive  
9 relationship between same-day registration and turnout.  
10 There's variations and size of that effect, but really the  
11 question is how large is the effect in general.

12 With the case of early voting, some studies find negative  
13 effects, and we've heard some testimony about that. Some  
14 studies find positive effects. Some studies find zero effect.  
15 So there is much greater heterogeneity in the findings in the  
16 early voting literature than in the same-day registration  
17 literature.

18 And so by focusing on early voting, and especially given  
19 the other concerns I have, it's not surprising that in those 42  
20 regressions, we would either get inconsistent results,  
21 sometimes positive, sometimes negative, and always of a small  
22 magnitude because that's, in general, what the literature shows  
23 for that particular reform.

24 Q And so then speaking of the literature on early voting,  
25 what does the variability in the outcomes that you just

1 described suggest to you about what's going on with early  
2 voting?

3 A Well, it suggests to me very strongly that early voting --  
4 the effects of early voting on turnout, if we're looking at  
5 turnout, are very fact driven and are likely to be strongly  
6 influenced by the details of the early voting, things like the  
7 period and, you know, whether you can register during that  
8 period, et cetera. Therefore, in analysis of the effect of  
9 early voting on turnout, what we want to do to is characterize  
10 those details to find out which details tend to drive turnout,  
11 or, you know, be very -- kind of get down in the weeds in  
12 particular jurisdictions and see how they work  
13 administratively; but we need to take in basically the greater  
14 heterogeneity and its effects in our research design.

15 Q Does the literature suggest that early voting could  
16 increase turnout in some jurisdictions but not in others?

17 A There are findings with positive effects and negative  
18 effects, yes.

19 Q So let's turn to the third issue that you identified with  
20 Mr. Trende's regression analysis. I think you said that the  
21 data were inadequate?

22 A Yes.

23 Q Could you tell me what you mean by that?

24 A Yes, and, again, let me just say a sentence about what's  
25 usually done to draw the comparison. So, again, as has been

1 discussed several times during the trial, you know, Mr. Trende  
2 relies on the CPS, and this is a dataset that's been used many  
3 times for many years.

4 And, generally, if you look across all those studies, the  
5 practice is to rely on the entire sample, so all respondents,  
6 and not to break down into subgroups, so all respondents. And  
7 by doing that, we can take advantage of the fact that there are  
8 thousands of respondents per state, and there are ten thousands  
9 of respondents every cycling.

10 When we -- by going to a subset, we have to ask about,  
11 well, what's the subset -- the size of that subset. Within the  
12 CPS, roughly 10 percent of the respondents are  
13 African-American. So the size of the sample has now been  
14 reduced by a factor of ten.

15 By reducing a sample by a factor of ten -- for the moment,  
16 let's just imagine that the effects are of the same magnitude  
17 that we are trying to estimate. We now just have a sample  
18 that's only one-tenth of what it used to be. Then the standard  
19 errors are going to increase three times. They are going to  
20 triple in magnitude, and the confidence intervals that are  
21 calculated directly off the standard errors also will balloon  
22 by a factor of three by looking at the small subset that's of  
23 the size that we are talking about.

24 Q So does this feature of Mr. Trende's analysis, relying on  
25 this smaller dataset -- does that also make it less likely that

1 he would be able to reject the null hypothesis?

2 A Yes.

3 Q So finally on this point, you wrote about Mr. Trende's  
4 2014 analysis at length in your 2014 surrebuttal report. You  
5 have, though, read Mr. Trende's 2015 report; correct?

6 A Yes.

7 Q Did the revisions that Mr. Trende made to his 2014 report  
8 change your judgment about the reliability of his analysis in  
9 this case?

10 A No.

11 Q And, Dr. Stewart, I have just one more topic for you. I  
12 want to ask you a couple of questions about the testimony that  
13 Dr. Thornton provided in court last week.

14 A Yes.

15 Q Have you read the transcript of her testimony?

16 A Yes, I have.

17 Q Okay. I am going to ask you about one of the exhibits  
18 that Dr. Thornton used, but just to refresh your recollection,  
19 Dianne, if you could pull up Plaintiffs' Exhibit 686.

20 Do you see that on your screen, Dr. Stewart?

21 A Yes, it is blurry, but I see it.

22 Q Would you like a paper copy?

23 A I think I am good. I can do it.

24 Q Is Exhibit 686 the demonstrative that you prepared for  
25 your direct testimony?

1 A Yes, it is.

2 Q And what did you use this exhibit to illustrate?

3 A I was intending to illustrate three points. The first one  
4 was just to illustrate the degree of fluidity in election  
5 rolls. You know, if you look at the aggregates, they seem to  
6 change kind of glacially, but if you look below the  
7 aggregates -- and this is what this was intended to illustrate,  
8 that there is actually a fair amount of change -- "churn" is  
9 how I term it here -- within election cycles. So that was the  
10 first thing was just to illustrate the churn within what seems  
11 to be kind of quiescence of overall numbers. That was the  
12 first point.

13 And then the second point was just to notice some -- just  
14 to point out some details about the nature of that fluidity.  
15 So, you know, so the number being removed from the list across  
16 election cycles, say, from the midterm to a Presidential cycle,  
17 it's, you know, to a first approximation the same number, and  
18 so the real business being done in term of fluctuations in the  
19 election laws have to do with new registrants, and the number  
20 of new registrants coming in during a Presidential cycle is  
21 roughly twice the number of new registrants coming in during a  
22 midterm cycle.

23 So fluidity and then kind of the nature of the coming in  
24 and the going out.

25 Q Now I would like to direct your attention to Defendants'

1 Exhibit 359, which is the exhibit that Dr. Thornton used in her  
2 testimony. Defendants' Exhibit 359 reports the same data from  
3 the registration rolls that you reported for 2010 to '12 and  
4 then 2012 to '14, but then Dr. Thornton added an additional row  
5 of data for 2008 to '10. Do you see that?

6 A Yes, I do.

7 Q Now, is the 2008 to 2010 data that Dr. Thornton presented  
8 generally consistent with the data that you presented two weeks  
9 ago in that slide that we were just looking at?

10 A Yes. You know, the pattern of removals and additions,  
11 while the numbers are smaller, they still follow the same  
12 general pattern as the midterm numbers that I showed in the  
13 demonstrative previously, yes.

14 Q Okay. And does adding the 2008 to 2010 data cause you to  
15 change any of the testimony that you gave about fluidity in the  
16 voter rolls?

17 A No, it doesn't. In some ways, it -- to make the points I  
18 was making, the important thing is to take two adjacent  
19 election cycles, and it doesn't particularly matter in this  
20 case if you take the midterm cycle before or the one after to  
21 make the point that I was trying to make.

22 Q Thank you, Dr. Stewart. Those are all the questions that  
23 I have for you right now.

24 **THE COURT:** Any cross?

25 **MR. FARR:** Yes, Your Honor, a few questions.

## 1 CROSS-EXAMINATION

2 **BY MR. FARR**

3 Q Hello again, Dr. Stewart.

4 A Hello, Mr. Farr. Good to see you.

5 Q Good to see you. Look forward to seeing you after this  
6 case is over sometime?

7 A I'm looking forward to that.

8 Q Now, the hypothetical that you gave about the house that  
9 had the stairs and all that sort of stuff --

10 A Yes, sir.

11 Q -- do you know of any example where that happened in North  
12 Carolina?

13 A No. I don't.

14 Q Okay. And in your reports, have you attempted to predict  
15 what the turnout would have been in North Carolina if H.B. 589  
16 had not been enacted?17 A I have not produced -- I have not produced statistical  
18 research on that point, although I would say that my analysis  
19 of the 2010 election was an effort to provide the Court with  
20 information about the nature of the size of the effects of  
21 H.B. 589.22 Q Right. And the effects you were looking at were how many  
23 people used early voting during the first seven days and that  
24 all sort of stuff; right?

25 A Well, the effects of the three and the relative racial

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15



1 disparities and the usage, yes, sir.

2 Q Okay. But you haven't offered a prediction or an opinion  
3 on how much the turnout would have increased in 2014 if  
4 H.B. 589 had not been enacted?

5 A I have not done a statistical analysis on that point.

6 Q Okay. And so, Dr. Stewart, I am trying to remember. We  
7 went over this somewhat in the preliminary injunction hearing,  
8 but when were you first employed by the Department of Justice  
9 in this case?

10 A Oh, my goodness. So that deposition was in the spring of  
11 2014, I believe, and I believe I would have been employed  
12 around Labor Day of 2013.

13 Q So it's going on two years, close to two years since you  
14 were employed by the Justice Department in this case?

15 A I'm afraid so, yes, sir.

16 Q Have you done -- I heard your testimony about Mr. Trende  
17 and his cross-state analysis. Have you ever done a cross-state  
18 analysis?

19 A Of -- have I ever -- ever?

20 Q Yeah, like trying to measure the effect of a voting law on  
21 turnout.

22 A I have not -- leaving aside my concerns with Mr. Trende's  
23 analysis, I have not done the sort of analysis that would be of  
24 that type that I would conduct, no.

25 Q Okay. But if -- you agree if it was done properly,

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

1 according to your standards, that is a good way of attempting  
2 to assess the impact of voting laws on turnout?

3 A Well, so, as I've said, I don't know that turnout is a  
4 good or at least the best measure of these things; but if one  
5 were to want to estimate the effect of these laws on turnout,  
6 then the way I describe the setup and some of the measurement  
7 issues would be the proper way to proceed.

8 Q So the answer is that, yes, to measure the effect of laws  
9 on turnout, it is appropriate to do a cross-state comparison?

10 A That is an appropriate way of doing so.

11 Q You haven't done one in this case?

12 A I have not done one in this case.

13 Q Now, when you said the literature supported the idea that  
14 SDR increases turnout, you didn't really mention the literature  
15 that you are referring to.

16 A I didn't cite to papers. I'm always bad in remembering  
17 citations, but I am aware that that literature has been cited  
18 to in exhibits that have been introduced in the case.

19 Q Okay. So any of the studies on how SDR affects turnout  
20 that you are recalling would have come from law review articles  
21 that have been filed as exhibits in this case?

22 A They could -- the one that I am thinking of particularly  
23 is the Chapter 4 of the Leighley and Nagler book, which I  
24 believe was introduced during Mr. Trende's testimony.

25 Q Okay.

1 A Certainly they make reference to that literature in that  
2 chapter.

3 Q When you make this statement about SDR, the literature  
4 saying it increases turnout, are you combining same-day  
5 registration with Election Day registration?

6 A It's my experience that in the research that does this  
7 that the tendency is to include SDR -- same-day registration,  
8 as done in North Carolina, in with Election Day -- in with  
9 Election Day registration.

10 Q Okay. And so in the one -- the book that you can remember  
11 is -- I can't ever pronounce the name correctly. What was the  
12 name? Leighley and who?

13 A Nagler.

14 Q And your testimony is that that publication says that SDR  
15 alone has a positive impact on turnout?

16 A They run a series of analyses in which they look at  
17 same-day registration, the way they define it, and they include  
18 same-day registration. Actually, they call -- they call both  
19 Election Day registration and same-day registration together as  
20 a class same-day registration.

21 They -- you know, people -- and they actually, you know,  
22 consider this. They end up coding same-day registration as  
23 fitting in the class as what would be Election Day  
24 registration, that is, going on Election Day and registering;  
25 and they have a detailed analysis of the effects of these laws,

1 looked at various ways.

2 Q Are you aware of any study that -- where somebody has just  
3 studied same-day registration alone and concluded that it has a  
4 positive impact on turnout?

5 A I could not cite to a paper right now that looked only at  
6 same-day registration of the sort that's in North Carolina,  
7 probably because North Carolina is unique in that case.

8 Q Well, there is other states that have same-day  
9 registration that don't have Election Day registration, are  
10 there not?

11 A There are a few, yes, sir.

12 **MR. FARR:** Those are all my questions, Your Honor.  
13 Thank you.

14 **THE COURT:** Any redirect?

15 **MS. RYAN:** Just briefly, Your Honor.

16 REDIRECT EXAMINATION

17 **BY MS. RYAN**

18 Q Dr. Stewart, Mr. Farr -- you talked about with Mr. Farr  
19 that you had not done a statistical analysis of the effect of  
20 these particular election practices on turnout of the type that  
21 you were describing on direct. Do you remember that?

22 A Yes, I do.

23 Q You did, though, examine the number of North Carolinians  
24 who used those practices while they were available; is that  
25 right?

1 A That's right.

2 Q I am going to direct you to your preliminary injunction  
3 report, which is the first tab in that binder. It is  
4 Plaintiffs' Exhibit 42.

5 A Okay.

6 Q And if you could please turn to Table 7, which is on  
7 page 46, and just let me know when you are there.

8 A I'm there.

9 Q Okay. Looking at Table 7, could you tell me how many  
10 African-Americans used same-day registration in 2012?

11 A The number appears to be 30,612.

12 Q Now I would like to direct your attention to Figure 14 at  
13 page 65 of that report. Please let me know when you are there.

14 A I'm there.

15 Q Looking at the year 2014, can you tell me what percentage  
16 of African-American voters used early voting during the 2012  
17 Presidential election?

18 A It is roughly three-quarters. Roughly 75 percent.

19 Q And that's compared to roughly 50 percent of white voters  
20 in that election?

21 A Yes, that's what it appears to be.

22 Q Okay. And, Dr. Stewart, if you would finally just look at  
23 Table 14B on page 98 of Exhibit 42.

24 A I'm there.

25 Q Looking at Table 14B and the row for the 2012 election,

1 were African-Americans over twice as likely as whites to cast  
2 an out-of-precinct provisional ballot in that election?

3 A Yes, more than two and a half times.

4 **MS. RYAN:** Thank you, Dr. Stewart.

5 **THE COURT:** Mr. Farr?

6 **MR. FARR:** No questions, Your Honor, from me.

7 **THE COURT:** All right. You can step down, sir.

8 How long is your examination of Dr. Lichtman? Do you  
9 know?

10 **MR. GLICK:** Probably about 15 minutes, Your Honor.

11 **THE COURT:** All right.

12 **MR. GLICK:** We would like to call Dr. Allan Lichtman.

13 **ALLAN J. LICHTMAN, PH.D., PLAINTIFFS' WITNESS, at 12:19 p.m.,**  
14 being first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 **BY MR. GLICK**

17 Q Welcome back, Dr. Lichtman.

18 A It seems like I never left.

19 Q Last week when you were here, Dr. Lichtman, you were  
20 tendered as an expert in American political history, electoral  
21 analysis, and historical and quantitative methodology; is that  
22 right?

23 A Yes.

24 Q And you offered testimony related to both evidence  
25 available before the enactment of H.B. 589 in 2013 and some

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

1 analysis that you conducted of events after the enactment of  
2 H.B. 589; is that right?

3 A Yes, I did both.

4 Q I want to follow up on a couple of items today. I want to  
5 start with the issue of mail verification and the testimony we  
6 heard from Ms. Strach and Mr. Neesby of the SBOE. You were  
7 here for that testimony?

8 A Yes.

9 Q And you also reviewed Mr. Neesby's deposition from last  
10 Saturday; correct?

11 A Yes.

12 Q You understand that the June 2015 mail verification  
13 analysis was based on a review of registrants from the 2012  
14 primary and general election; correct?

15 A Yes, registrants and voters.

16 Q If we could pull that up. I believe it's Defendants'  
17 Exhibit 16.

18 Now, I will represent to you, Dr. Lichtman, it says  
19 May 2015 on it, but Ms. Strach testified that it was not  
20 prepared and was not produced to the Plaintiffs in this case  
21 until June of this year. Did you review this report and the  
22 related testimony?

23 A I did.

24 Q And in light of that report, were you asked to conduct any  
25 analysis?

1 A I was.

2 Q And what did you do?

3 A What I was asked to do was to conduct an analysis of  
4 registered voters who were new registrants in 2014 and who  
5 voted in 2014; none of whom, of course, were same-day  
6 registrants.

7 Q Why was that?

8 A Because same-day registration was abolished by H.B. 589.

9 Q And did you compare the results of that analysis with the  
10 results that are here in DX16?

11 A Yes. What I looked at in that analysis was those who did  
12 not pass mail verification among the 2014 registrants, none  
13 were new, but not same-day, who voted, and I compared that with  
14 the percentage of those who did not pass mail verification  
15 among those who registered and voted same day in 2012.

16 **MR. FARR:** Your Honor, I am going to object because  
17 this is not rebuttal evidence. This is a new expert report on  
18 an entirely different subject.

19 **MR. GLICK:** I'm going to disagree, Your Honor. The  
20 testimony that's come in over the past few days has been about  
21 mail verification and the fact that same-day registrants fail  
22 mail verification at a higher rate -- the Defendants have put  
23 on, at a higher rate in 2012, based on their revised report.

24 **THE COURT:** But you are now asking him about 2014;  
25 right?



1           **MR. GLICK:** To disabuse the notion that --

2           **THE COURT:** I understand what you are trying to  
3 disabuse, but, I mean, that's not the -- that's not the same  
4 dataset that's in Defendants' 16, which is 2012 data; correct?

5           **MR. GLICK:** Yes, but as a principle, the concept  
6 that's demonstrated here, if you look at page 4 of DX16, the  
7 redone analysis of the 2012 election, is that same-day  
8 registrants fail at a higher rate. And the testimony that  
9 Dr. Lichtman is prepared to provide today is that based on  
10 analysis of the 2014 election, where same-day registration was  
11 not available and all of the registrants were non-SDR voters,  
12 the mail verification rate was quite high. In fact, higher --

13           **THE COURT:** I don't need to get into the details. I  
14 understand where it's going. My question, I guess, is what's  
15 the history of this -- this report was made available to the  
16 Plaintiffs when?

17           **MR. DONOVAN:** Excuse me, if I may. So, Judge, this  
18 was what was subject to a motion to exclude, if you remember,  
19 because it was well after the discovery date. This was in  
20 June. We just had the depositions of Mr. Neesby and Ms. Strach  
21 last weekend or the weekend before. I can't remember. And  
22 then I cross-examined Ms. Strach about the email where  
23 Mr. Neesby did a preliminary analysis about 2014 that she  
24 didn't know anything about.

25           And what Dr. Lichtman is going to do is kind of like

1 Mr. Neesby. This is publicly available data on the SBOE  
2 website. So if Mr. Neesby can come in and say I ran  
3 analyses -- we are responding to the point that they tried to  
4 say this is so low, and it's not. So I think that's their  
5 point. It is fair to rebut that with their own information,  
6 especially since their witness just prepared this form.

7 **THE COURT:** Mr. Farr?

8 **MR. FARR:** Well, Your Honor, the testimony that was  
9 given in the case was about the failure rate in the 2012  
10 election. There's not been any testimony whatsoever about  
11 2014, and 2014 isn't a good comparison because we didn't have  
12 same-day registration.

13 This is information that Dr. Lichtman could have  
14 presented during their case-in-chief, and it is not rebutting  
15 anything that's been presented by the Defendants in this case;  
16 and it's highly prejudicial because we will have no time  
17 whatsoever to study any of the information, the programs, the  
18 coding, whatever it is Dr. Lichtman --

19 **THE COURT:** Did Mr. Neesby testify to any of the 2014  
20 data?

21 **MR. FARR:** He did not.

22 **MR. DONOVAN:** He did not. Ms. Strach I used the  
23 email with, where Mr. Neesby did a preliminary analysis right  
24 after the '14 election.

25 **THE COURT:** So why could you all not have done this

1 before now?

2           **MR. GLICK:** I would note that Dr. Lichtman testified  
3 on Friday, July 17th, and Mr. Neesby was not deposed until  
4 Saturday, July 18th, and gave testimony. He was done with his  
5 direct examination --

6           **THE COURT:** I understand that, but you are asking him  
7 about 2014 now, Dr. Lichtman. And Neesby was deposed about  
8 what?

9           **MR. GLICK:** He was deposed about 2012, but he was  
10 deposed in part about how he conducted that analysis and what  
11 source codes he used.

12           **THE COURT:** I understand that, but you are trying to  
13 now make a new argument based on 2014 data; correct?

14           **MR. GLICK:** Well, I don't know that it's a new  
15 argument. It's the same source code that Dr. Lichtman will  
16 testify that he applied in his analysis of the 2014 data --

17           **MR. DONOVAN:** Yeah, hold on --

18           **MR. GLICK:** -- and he needed the deposition testimony  
19 where Mr. Neesby explained how he conducted this redone  
20 analysis in DX16.

21           **MR. DONOVAN:** Your Honor, if I may? It is not to  
22 show 2014. It is to rebut 2012, because let's remember what  
23 they are trying to say is that there is a substantive  
24 difference between SDR and non-SDR.

25           **THE COURT:** Why couldn't you have done this analysis

1 before today?

2 **MR. DONOVAN:** Why couldn't we? Because we weren't  
3 going to do 2014, but then they kind of raised 2012 --

4 **THE COURT:** Well, they raised 2012 --

5 **MR. DONOVAN:** Yeah, after the close of discovery;  
6 that's right. That's why it isn't part of his expert reports.  
7 I agree with that. But that's kind of the goose-gander. This  
8 was part of their late-breaking reports. So, therefore, we  
9 had, after the deposition, Mr. Lichtman do this very analysis  
10 on 2014.

11 **THE COURT:** Hold on just a minute.

12 (Pause in the proceedings.)

13 My understanding is what happened is that Defendants'  
14 16 was produced. The Plaintiffs are arguing that it was late,  
15 and so Mr. Neesby was made available for deposition, and you  
16 deposed him to find out how it was he did this exhibit. Am I  
17 right so far?

18 **MR. DONOVAN:** You're right so far, yes, Your Honor.

19 **THE COURT:** And so any prejudice as a result of that  
20 was at least ameliorated by your opportunity to cross him.

21 **MR. DONOVAN:** I would disagree with that, Your Honor,  
22 because if this was produced during the normal course of  
23 discovery, we would have had Dr. Lichtman do this in his expert  
24 report. So we kind of get this late. We object and file a  
25 motion. The resolution was -- during this trial was to take

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

1 Mr. Neesby's deposition during this trial, and, after that,  
2 after giving the deposition, we then got the deposition  
3 transcript, talked with Dr. Lichtman, and we had him do this  
4 analysis.

5 **THE COURT:** I understand what you are saying, but it  
6 sounds to me like you are trying to go a step further now than  
7 what the Defendants did. The Defendants went back and looked  
8 at their data, and, as I understand it, Mr. Neesby went in and  
9 re- -- used different codes, if you will --

10 **MR. DONOVAN:** Different analysis.

11 **THE COURT:** -- to look at the same analysis, but try  
12 to, if you will, as a data analyst, look at the same thing  
13 Ms. Degraffenreid looked at, came up with those numbers, they  
14 came out a little differently, but they all involved 2012.

15 And so what the Plaintiffs are saying is, gee, had we  
16 known they were going to that, we would have thought of this  
17 argument now, and we would like to present Dr. Lichtman to look  
18 at 2014 and compare it to what happened in 2012 in light of the  
19 analysis that Mr. Neesby has now done. Am I right?

20 **MR. DONOVAN:** Well, but it's two points. One, it is  
21 to show that -- actually, it's going to the credibility of when  
22 you pick the date, because what it shows is data changes all  
23 the time. So kind of the State's argument, they had in 2013  
24 told the legislature it was this low. You run it a different  
25 date, they move. If you run 2014, which is on their website,

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

1 you get different results. You actually get a higher rate.

2 But it is not so much to establish 2014. It is to  
3 show the State's new argument, drafted by their lawyers of this  
4 report, that this isn't what they did back then. If you run it  
5 at different times, you get different results.

6 **THE COURT:** What is the methodology Dr. Lichtman is  
7 using? Is it the methodology used in Defendants' Exhibit 16,  
8 or is it the methodology used by Ms. Degraffenreid?

9 **MR. GLICK:** Dr. Lichtman can testify, but I think he  
10 is going to tell you that it was the same methodology that he  
11 confirmed, based on Mr. Neesby's deposition of last Saturday,  
12 applied to the 2014 data.

13 **THE COURT:** I don't know what that means. Does that  
14 mean --

15 **MR. GLICK:** A comparison of the DX16 applying to the  
16 2014 data using a snapshot from April of 2015. So DX16 is a  
17 2012 analysis based on March 2013, and the analysis that  
18 Dr. Lichtman is prepared to present today is an analysis of  
19 2014 using publicly available April 2015 data. So in both  
20 circumstances, a snapshot, if you will, of a voter file five to  
21 six months after the election.

22 **THE COURT:** But is he using the data sources that  
23 Mr. Neesby used, or is he using the proxies that  
24 Ms. Degraffenreid used? What is the answer to that?

25 **THE WITNESS:** You can't replicate Mr. Neesby's

1 because he designed his own unique code.

2 **THE COURT:** So are you using Ms. Degraffenreid's?

3 **THE WITNESS:** Yes, that's Part 1 here, but the  
4 results are virtually identical between Ms. Degraffenreid and  
5 Mr. Neesby.

6 **THE COURT:** So now my question: Why couldn't this  
7 have been done earlier if you're relying on Ms. Degraffenreid's  
8 analysis, which was made available well before this memo came  
9 out, if I'm not mistaken?

10 **MR. DONOVAN:** No, no, no. So in 2013, Your Honor,  
11 that's what the legislature had, if you look at DX1, the first  
12 chart was -- then Mr. Neesby went in and said he kind of worked  
13 with the database. Then she -- they produced a second one she  
14 did and then the third one.

15 So you've got the Ms. Degraffenreid with Neesby  
16 assistance. Those are new. Those are both new we got there,  
17 and then Mr. Neesby's new data, new analysis, new code is -- if  
18 you bring DX16 up and you walk through -- go to page 2, please.  
19 So this on page 2, Your Honor, was the original  
20 Ms. Degraffenreid --

21 **THE COURT:** That's from the 2013 memo?

22 **MR. DONOVAN:** Yes, it is. They just copied it.  
23 That's what the legislature had.

24 So then let's go to the next page. So this was then  
25 Ms. Degraffenreid and Mr. Neesby ran a new analysis with a

1 different snapshot date, and the argument is, aha, if you use  
2 that, the numbers went up, which may or not be true, but it's a  
3 different date, and they then divided it by voters at the  
4 bottom.

5           Then if you go to the next page, what was all  
6 Mr. Neesby's work were these next two pages --

7           **THE COURT:** Pages 4 and 5?

8           **MR. DONOVAN:** Yes, Your Honor.

9           **THE COURT:** So what is his rebutting?

10          **MR. DONOVAN:** His --

11          **THE COURT:** "His" being Dr. Lichtman.

12          **MR. DONOVAN:** Yeah. Go back to the page. It is  
13 rebutting both because actually --

14          **THE COURT:** I'm sorry? Both on page 3?

15          **MR. DONOVAN:** Both on page 3 and 4 and 5, because  
16 Dr. Lichtman's point, Judge, the undeliverable rates don't  
17 really change that much. What changes is when they divide it,  
18 because they use all traditional registrants, which is a huge  
19 number, and divide it. So by matter of math, it becomes very  
20 small. As we've talked, about SDR registrants, since they all  
21 vote, the number stays pretty much constant.

22                 So that's kind of what he's rebutting to show if you  
23 pick a different date and pick a year without SDR, the number  
24 in his analysis is, in fact, higher than these other dates.  
25 That's all the testimony is going to be.



1           **THE COURT:** All right. Mr. Farr?

2           **MR. FARR:** Your Honor, Dr. Stewart came and testified  
3 and criticized the testimony that was given by our expert  
4 witnesses. Dr. Lichtman is being offered to present completely  
5 new testimony on the 2014 election, which there's been no  
6 testimony on that whatsoever. It is highly prejudicial to the  
7 Defendants that this evidence come in without us having a  
8 chance to depose Dr. Lichtman to find out what his expertise  
9 is.

10           **THE COURT:** Let me ask: When you all decided to make  
11 Mr. Neesby available, was that by agreement?

12           **MR. FARR:** Yes, it was.

13           **THE COURT:** Was there any discussion at that time  
14 that your expert Dr. Lichtman may want to do some analysis?

15           **MR. FARR:** No, sir, there was not.

16           **MR. DONOVAN:** We didn't know what Mr. Neesby was  
17 going to say, Your Honor, so I'm not sure that would --

18           **MR. FARR:** Well, they knew what he was going to say  
19 when they took his deposition --

20           **THE COURT:** When you deposed him, you deposed him  
21 over Defendants' Exhibit 16, did you not?

22           **MR. DONOVAN:** I did, on last Saturday here in  
23 Winston-Salem, and then we got the transcript, I think, on  
24 Sunday; and we sent it to Dr. Lichtman once he was done with  
25 his testimony with Mr. Glick, and he did this analysis. It is

1 a very simple analysis, Judge.

2 **THE COURT:** I understand that, but it is expert  
3 opinion, and now they don't have the opportunity to analyze.

4 **MR. DONOVAN:** Well, Judge, this goes back to the  
5 Mr. Neesby point. I don't have an objection to Mr. Neesby  
6 coming in, but this is real goose-gander.

7 They hire a database person. Okay? They hire him  
8 for this case. Okay? He's State Board of Elections. He's  
9 been running litigation reports filed after the close of  
10 discovery, which, fine, I'm a big boy. We'll play that. But  
11 you can't do that and then preclude my expert, because I don't  
12 have a data analytics person.

13 I get the data analytics person to do it, and now  
14 they are claiming foul. So I don't understand why, if they can  
15 bring a data analytics person in to do it, I can't respond to  
16 that. That's really -- I am not objecting to Mr. Neesby. I  
17 know some others are, but I will object to I can't have my data  
18 analytics expert respond to it.

19 **THE COURT:** All right. How long is his exam going to  
20 be? I think I asked you that earlier.

21 **MR. GLICK:** I think that most of the predicates of  
22 Dr. Lichtman's analysis have come out through this debate. It  
23 will only be a few more questions. Then I have three other  
24 very brief topics.

25 **THE COURT:** All right. Go ahead and do the

1 examination. I am going to figure out whether I am going to  
2 consider it. I am not sure I am, but go ahead.

3 **BY MR. GLICK**

4 Q Dr. Lichtman, if we look back here on DX 16, you  
5 understand that the analysis on DX16 was based on a snapshot  
6 taken in March of 2013?

7 A That is absolutely true of the analysis on page 3;  
8 correct.

9 Q So that's about four to five months after the  
10 November 2012 general election?

11 A That is correct.

12 Q And if we look at the table on page 4 briefly, if we look  
13 at the line for SDR, what are the -- what does that reflect?

14 A That is same-day registrants who -- it is looking at those  
15 who voted and did not pass mail verification.

16 Q And what are the numbers for both the 2012 primary and  
17 2012 general election for registrants who voted in those  
18 elections but did not pass mail verification after voting?

19 A 2.19 percent and 2.44 percent. As I said, slightly higher  
20 than the percentages on page 3, but not materially different.

21 Q Did you calculate a weighted average of these voters?

22 A Yes.

23 Q And what was that percentage?

24 A 2.40.

25 Q And if we could go to Dr. Lichtman's slides.

1           You said that you conducted an analysis of the 2014  
2 registrants as well?

3   A       Correct.

4   Q       And we said none of those were same-day registrants;  
5 correct?

6   A       That's right.

7   Q       What snapshot did you use for that analysis?

8   A       April 2015.

9   Q       And why did you pick that date?

10   A       It was available, and it's fairly comparable to the  
11 March 22, 2013, date that was used to analyze the 2012 general  
12 election.

13   Q       When you say it was available, where was it available  
14 from?

15   A       This is all State Board of Elections data on their  
16 website.

17   Q       And if we -- and what did your analysis of the 2014  
18 non-same-day registrants reflect, Dr. Lichtman?

19   A       It reflected, in fact, that when you looked at the voters  
20 who did not pass mail verification as of April 2015, and these  
21 were new registrants who voted, 3.63 percent did not pass mail  
22 verification. That is about 50 percent higher than the  
23 findings from Dr. Neesby's analysis for same-day registrants  
24 from 2012, and it is yet higher if you were to use the earlier  
25 page 3 analysis presented in this May 19, 2015, report where

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

1 the weighted average was 2.17.

2 Q Thank you, Dr. Lichtman. I want to move on to a different  
3 topic. In his testimony on Tuesday, Dr. Hofeller referenced a  
4 comparison between partisan affiliation and race when it came  
5 to out-of-precinct ballots. Did you review that testimony?

6 A I did.

7 Q And when you testified here back on July 17, you  
8 referenced an analysis that you had conducted on the photo ID  
9 provisions of H.B. 589, holding party constant and looking only  
10 at race. Do you recall that?

11 A That's correct.

12 Q That was the slide that you presented that's on our screen  
13 now, AL-18?

14 A Yes.

15 Q Dr. Lichtman, have you performed a similar analysis,  
16 holding party constant and analyzing the nonphoto ID provisions  
17 of H.B. 589?

18 A Yes, I performed an analysis based on exactly the same  
19 methodology, except looking at three nonphoto ID provisions of  
20 H.B. 589.

21 Q And have you prepared a slide on that?

22 A I have.

23 Q And is that on the screen right now, AL-20?

24 A It is.

25 Q Can you just briefly describe the results of that

1 analysis?

2 **THE COURT:** Was this disclosed previously?

3 **MR. STRACH:** Your Honor, while Dr. Stewart was  
4 testifying, we were provided a copy of these slides. That was  
5 the first time --

6 **THE COURT:** Is this topic one that was covered  
7 earlier when he was deposed?

8 **MR. GLICK:** I don't believe it was. It was related  
9 to the -- it is a rebuttal to Dr. Hofeller's testimony.  
10 Dr. Lichtman had previously done an analysis of the photo ID  
11 provision, again holding party constant and analyzing race, and  
12 this is a similar analysis for the other three.

13 **MR. FARR:** Wait a second, Your Honor. May I be  
14 heard, please?

15 **THE COURT:** Yes.

16 **MR. FARR:** Dr. Hofeller didn't testify about photo  
17 ID. So I have no idea why this is rebuttal evidence.

18 **MR. GLICK:** The photo ID portion was only to show  
19 what he had done previously. As I said at the beginning of the  
20 questioning on this particular topic, Dr. Hofeller did testify  
21 as to an analysis he performed for out-of-precinct ballots,  
22 again holding party constant and analyzing that versus race. I  
23 am just asking Dr. Lichtman if he performed a similar analysis  
24 in rebuttal to that.

25 **MR. FARR:** What does that have to do with what

1 Dr. Hofeller talked about?

2 **THE COURT:** Well, no, my question, which is the one I  
3 want you guys to answer, is is what Dr. Lichtman is being asked  
4 about now something that he was disclosed on in his expert --

5 **MR. DONOVAN:** I think the answer is yes, Your Honor.  
6 Your Honor, the prior slide was in his expert report, this. So  
7 he talked about kind of there -- here, actually,  
8 African-Americans, even if you hold all the Democrats --

9 **THE COURT:** AL-18 has been disclosed?

10 **MR. DONOVAN:** Yeah.

11 **THE COURT:** All right.

12 **MR. DONOVAN:** And then what he did is update it and  
13 did the same analysis in light of Dr. Hofeller, who came in  
14 talking about kind of race, and this is not really -- excuse  
15 me, politics, not race.

16 **MR. FARR:** What number is that?

17 **THE COURT:** What slide is that?

18 **MR. DONOVAN:** I'm sorry?

19 **THE COURT:** What's the update?

20 **MR. DONOVAN:** The update is this slide.

21 **MR. GLICK:** AL-20.

22 **THE COURT:** And my question is did he provide his  
23 AL-20 analysis prior to this moment in time?

24 **MR. GLICK:** He did not.

25 **THE COURT:** All right.

1           **MR. GLICK:** It's rebuttal opinions, Your Honor.

2           **THE COURT:** Well, I understand that, but it's new  
3 expert analysis.

4           **MR. GLICK:** Again, publicly available --

5           **THE COURT:** It's one thing for an expert witness to  
6 come in and criticize somebody else. It's another thing for an  
7 expert to come in and say, well, I did what they did, but I  
8 added three more things to it, and look at what this looks  
9 like, which is a new analysis.

10           **MR. GLICK:** It is a new analysis, Your Honor, but of  
11 publicly data available in rebuttal to testimony we heard on  
12 Tuesday.

13           **MR. DONOVAN:** Your Honor, I'm sorry, I'm not  
14 following, because Dr. Hofeller came in and was giving  
15 testimony on kind of, I think, the location of one-stop and  
16 suggesting at least that that had something to do with politics  
17 and not race.

18           Dr. Lichtman had disclosed and had done this  
19 previously; it was in his report and got deposed on it. All  
20 he's doing is doing the same thing now, since Dr. Hofeller, I  
21 think, was focused on out-of-precinct --

22           **THE COURT:** My understanding, though, from what you  
23 all said was Dr. Hofeller's opinions that he gave on the stand  
24 were previously disclosed?

25           **MR. DONOVAN:** That's correct, yes, Your Honor.



1           **THE COURT:** And that Dr. Lichtman's opinion he's  
2 about to give is a rebuttal opinion that was not previously  
3 disclosed because he's done some slightly different analysis?

4           **MR. FARR:** That's correct.

5           **MR. GLICK:** With regard to these three provisions,  
6 yes.

7           **THE COURT:** Is there a motion?

8           **MR. FARR:** Yes, Your Honor.

9           **THE COURT:** Granted. Let's move on.

10 **BY MR. GLICK**

11 Q     Dr. Lichtman, you offered opinions when you were here for  
12 your direct examination regarding voter registration at North  
13 Carolina's public assistance offices?

14 A     I did.

15 Q     And you were here yesterday for Ms. Strach's testimony and  
16 Mr. Neesby's testimony regarding your report?

17 A     Yes.

18 Q     Do you have any reaction to the explanations that these  
19 witnesses provided for the decline in public assistance  
20 registrations here in North Carolina?

21 A     Yes. First of all, they did not challenge my findings  
22 with respect to new public assistance registrations of an  
23 abrupt, significant, and sustained decline following 2012. Nor  
24 did they challenge my findings that this decline had a  
25 substantial disproportionate effect on minorities.

1 And I looked at new registrations because those have the  
2 most impact upon the opportunities to vote, and I used data  
3 reported to the NVRA. What they did attempt to do was try to  
4 evoke reasons for that abrupt, sustained, and significant  
5 decline.

6 Q One of the reasons they gave was the introduction of  
7 online methods of registering for public assistance. Have you  
8 formed any opinions on that?

9 A Yes. First of all, although Mr. Neesby, the data analyst,  
10 did testify about the timing of the introduction of those  
11 online options, he was unable to indicate how many public  
12 assistance applicants used online methods rather than showing  
13 up at public assistance offices. In addition, the chart he  
14 presented to try to demonstrate the relationship between --

15 Q Can I just pause you for one second?

16 A Yep.

17 Q Can you bring up BN-1, please?

18 And, Dr. Lichtman, BN-1 was disclosed for the first time  
19 yesterday?

20 A Yes, first time I saw it.

21 Q Can you continue?

22 A This, of course, is not new registrants. This is  
23 registration applications, but it shows overall precisely the  
24 same pattern as my tables, a high and sustained number in 2010,  
25 2011, and 2012, and much lower numbers following 2012.

1 His explanation was that around the time of the 2012  
2 election, turnout went up. It then dropped immediately after  
3 the 2012 election, and then you got the introduction of these  
4 online methods that prevented it from going up again.

5 The problem is the chart does not show that, and the  
6 reason it does not show that, if you look down at the bottom,  
7 just past to the right of the 2012, you see the indication  
8 "11/15." The chart then jumps to 3/15. In other words, it  
9 provides no data whatsoever on the three critical months of  
10 December 2012, January 2013 and February 2013.

11 And contrary to Mr. Neesby's theory, in fact, after the  
12 election of 2012, in December of 2012, the number of new public  
13 assistance registration goes up. It goes up again in January  
14 and then plunges in February, not immediately after the  
15 election, and plunges again in March before the implementation  
16 of any online options by the State of North Carolina.

17 Q Finally, Dr. Lichtman, Mr. Neesby testified that a number  
18 of states, not only North Carolina, experienced a decline in  
19 public assistance registrations in the time period due to these  
20 online options being introduced. Have you formed any opinions  
21 on that?

22 A Yes. He was referencing the biannual reports of --  
23 relating to NVRA data, one for the 2011-2012 cycle, the next  
24 one for the 2013 and 2014 cycle, but he didn't actually provide  
25 any statistical analysis.

1 Q Have you looked at that analysis?

2 A I did. I took all 25 states that had at least a thousand  
3 new public assistance registrants in the 2011-2012 cycle, and I  
4 then compared percentage increases and decreases in public  
5 assistance registrations for those states, for the 2011-2012 as  
6 compared to the 2013 to 2014 cycle based on the official NVRA  
7 reports.

8 What I found was that the State of North Carolina during  
9 this period -- their new public assistance registrations  
10 declined by 64 percent, which was consistent with my results  
11 and was the largest decline of any one of the 25 states.

12 Q I just have one last topic, Dr. Lichtman, and it relates  
13 to some testimony that Dr. Hood provided on Tuesday, and  
14 specifically Tables 14 and 15 of Dr. Hood's report.

15 A Okay.

16 Q Let's start with Table 15. While we are pulling it up,  
17 this is from DX375. Dr. Lichtman, what does Dr. Hood's  
18 analysis in Table 15 purport to show?

19 A Yes. This is looking at the midterm turnout by race, and  
20 that's the middle set of rows; and on the far right, he  
21 combines turnout in 2010 and 2014, in other words, combining an  
22 election before the adoption of H.B. 589 with an election after  
23 the adoption of H.B. 589.

24 That turnout rate is 4.93 percent, which actually  
25 represents the differential between whites and blacks. In

1 other words, the turnout rate for whites, when averaging 2010  
2 and 2014, is 4.93 percentage points higher than the turnout  
3 rate for African-Americans.

4 He then compares that with two other elections that are  
5 midterms that are combined together, and that is the 2002 and  
6 2006 midterm elections, which show a higher  
7 white/African-American differential in turnout.

8 Q And, Dr. Lichtman, have you formed any opinions on  
9 performing a midterm election analysis combining elections in  
10 this manner?

11 A Yes. I think the problem with combining elections in this  
12 manner is that it does not give you a precise indication of the  
13 timing of the changes in the differential between white and  
14 African-American turnout, and timing is critical in  
15 understanding turnout changes.

16 Q Have you performed an analysis that would take that timing  
17 into account?

18 A Yes.

19 Q Let's go back to Dr. Hood's Table 14, which we've  
20 replicated here. I want to focus on the black/white turnout  
21 difference for 2006, 2010, and 2014, okay?

22 A Yes.

23 Q First, Dr. Lichtman, what is the black/white turnout  
24 difference in 2006?

25 A 10.76 percentage points from Dr. Hood's table.

1 Q Let add that to our chart. And then let's look at what  
2 happens in 2010. What is the black/white turnout difference  
3 for that year?

4 A 5.28 percentage points.

5 Q And, Dr. Lichtman, not to state the obvious, but how does  
6 that compare to 2006?

7 A It indicates that the differential in turnout between  
8 whites and African-Americans is cut in half between the  
9 midterms of 2006 and 2010. The differential drops by more than  
10 five percentage points.

11 Q And, Dr. Lichtman, finally, what happens in 2014?

12 A In 2014, the differential is 4.59 percentage points, not  
13 much different from that in 2010, less than a one percentage  
14 point difference. In other words, the real change, the real  
15 cutback in the white/African-American differential occurs  
16 between 2006 and 2010 and then slows down very substantially  
17 between 2010 and 2014, but you couldn't see that from the  
18 analysis on Dr. Hood's Table 15.

19 Q And what do you take away from that, Dr. Lichtman?

20 A Yeah, well, you know, I testified you cannot reason  
21 causally about the effect of an electoral provision from just  
22 looking at turnout. Nonetheless, Defendants' experts in this  
23 litigation have focused on looking at turnout and turnout  
24 differentials between 2010 to 2014 with the implication that  
25 the adoption of H.B. 589 did not have a dampening effect on

1 African-American relative to white turnout.

2 But when you broaden the analysis, you get a very  
3 different perspective here. The perspective that you get is  
4 that, in fact, after the adoption of H.B. 589, the differential  
5 in turnout slowed down to a crawl. So a more plausible  
6 hypothesis is, in fact, that H.B. 589 did have an effect of  
7 slowing down what had been a rapid catch-up on the part of  
8 African-Americans.

9 Q Dr. Lichtman, my last question relates back just very  
10 briefly to the DX16 issue and the 2012 mail verification  
11 analysis. This morning Mr. Neesby testified that there were no  
12 entries in for a couple of counties in North Carolina when he  
13 conducted his analysis of mail verification in 2012. Were you  
14 here for that?

15 A I was.

16 Q Have you formed any opinions on the effects of omitting  
17 certain counties from an analysis like that?

18 A Well, clearly that's not a random effect. That is a  
19 systematic effect which casts doubt on the entire methodology  
20 if you are going to be excluding counties, including a county  
21 with 140,000 persons. There's got to be some issue with the  
22 methodology. And systematic effects like that can also bias  
23 the results. We don't know how much because the analysis  
24 doesn't include it.

25 **MR. GLICK:** Your Honor, I have no further questions,

1 and I thank the Court for the time this morning.

2 **THE COURT:** Do you know how long your cross is?

3 **MR. FARR:** Your Honor, first of all, the cross is  
4 going to be lengthy. We would like to have a break to review  
5 some of this. I think there will a lengthy cross, and I think  
6 it also calls into question whether or not we can have closing  
7 arguments today.

8 We were told this was going to be a 45-minute  
9 presentation today, and --

10 **THE COURT:** Apart from the arguing, it might have  
11 been.

12 **MR. DONOVAN:** I think it was.

13 **THE COURT:** All right. Why don't we take our break.  
14 Can we start back at 2:00?

15 **MR. FARR:** Yes, Your Honor, but can we have some  
16 idea -- are you still going to expect us to do closings today?

17 **THE COURT:** How much long longer do you have with  
18 him?

19 **MR. FARR:** I would say 45 minutes at least, maybe  
20 longer, and then we were planning on taking our break to get  
21 our thoughts together for the closing argument.

22 **THE COURT:** Do we have anything --

23 **MR. DONOVAN:** That's it.

24 **THE COURT:** -- further after that?

25 **MR. DONOVAN:** No. I think there's a couple of



1 exhibit issues, but I think the direct -- he can obviously do  
2 whatever, but I assume it's within the scope. I mean, 45  
3 minutes for --

4 **THE COURT:** Okay. All right. Well, let's do this  
5 then. Why don't we start back at 2:00. If you -- well, you  
6 want to know whether you can have some time to prepare, I  
7 guess, is what you're asking?

8 **MR. FARR:** Yes, sir.

9 **THE COURT:** We'll do the closings tomorrow then.  
10 We'll do them at 9:00, but I want to talk to you about how much  
11 time because I don't want them going all day. I don't need an  
12 all-day argument in the case, as much as you may want to do  
13 that.

14 **MR. FARR:** Thank you, Your Honor.

15 **THE COURT:** So why don't we take a break, and I'll  
16 see you all back then at 2:00.

17 Let me say, while you are out, if you want to move in  
18 any exhibits as to those two witnesses, and if you both  
19 decide -- you've got an issue with Neesby. You have an issue  
20 with his 2014 analysis. There is a relationship between the  
21 two. If you decide to work something out, you might avoid a  
22 motion on your side. So you all consider that over the lunch  
23 hour, if you would.

24 (The Court recessed at 12:57 p.m.)

25 (The Court was called back to order at 2:04 p.m.)

1           **MR. STRACH:** Your Honor, we have an exhibit we would  
2 like to move in from our earlier conversation regarding the  
3 testimony of Daphne Gainey.

4           **THE COURT:** I think what I am tempted to do is -- is  
5 this in rebuttal to her testimony?

6           **MR. STRACH:** Yes, more or less.

7           **THE COURT:** I think what I would like to do, unless  
8 there is an objection, I would let them finish their case with  
9 Dr. Lichtman and any other witnesses, and then you can put in  
10 it, if you will, as a surrebuttal. Any objection to that?

11           **MR. DONOVAN:** No, or they could do it now. I would  
12 like to see the document.

13           **THE COURT:** Have you shared it with them?

14           **MR. STRACH:** I would be happy to do that.

15           (Off-the-record discussion.)

16           **MR. STRACH:** Your Honor, we have one document we  
17 would like to move in.

18           **MR. DONOVAN:** I don't object. Her testimony --  
19 again, it wasn't my witness, but she has since done multiple  
20 registrations. So I think it is a bit misleading to have one  
21 and not all of her registrations, but I have no objection to  
22 this document, provided they all --

23           **THE COURT:** Well, they get to move in whatever they  
24 want to move in. So if they want to move in one document, any  
25 objection to that?



1 until the advent of Mr. Neesby.

2 Q All right. So would you agree that you used the status  
3 codes as a proxy for whether someone failed or succeeded mail  
4 verification?

5 A I don't like to use the word "proxy." I'm not sure what  
6 that represents, but I used the status code as of April 2015,  
7 yes.

8 Q All right. Could you list all the status codes that you  
9 are aware of in the SEIMS database for tracking mail  
10 verification?

11 A I didn't go through all the status codes. Like previous  
12 SBOE methodology, I counted as having succeeded in mail  
13 verification only if you had a status code "active verified."  
14 There were various other codes, but that was the unique code  
15 for those who, as of April 2015, had passed.

16 Q What does the code "active verified" mean?

17 A It means you are an active registered voter who has been  
18 verified through the mail process.

19 Q What is the mail process that you are referring to?

20 A The mail undeliverable process and confirmation process.

21 Q All right. Which process are you referring to?

22 A Any process by which a voter would have been confirmed in  
23 April 2015, but have a status code of AV.

24 Q You used the word "confirmed." What do you mean by  
25 confirmed?

1 A I understand that a confirming mailing can go out if a  
2 first undeliverable was not returned.

3 Q Are you referring, Dr. Lichtman, to a confirmation  
4 mailing?

5 A Possibly, but my basic point is by any means a voter got  
6 confirmed, they would be AV.

7 Q So does that mean you would count -- were you also  
8 analyzing data regarding confirmation mailings in the list  
9 maintenance process?

10 A No. I was just analyzing the snapshot as of April 2015,  
11 the same way the State Board analyzed the snapshot as of  
12 March 2013.

13 Q All right. What does the term -- status code "active  
14 unverified" mean?

15 A I didn't -- don't recall seeing that status code exactly  
16 in the -- as I said, I didn't go beyond the AVs. So I am not  
17 absolutely certain what the other status codes mean.

18 Q All right. What does the status code "inactive  
19 confirmation not returned" mean?

20 A As I said, I simply looked at AV and the other status  
21 codes. I did not distinguish among the status codes that were  
22 not active verified.

23 Q All right. So you don't know what the term status code  
24 "inactive confirmation returned undeliverable" means?

25 A I think I do know what it means, but as I said, that was

1 not part of my analysis.

2 Q Did you -- let me ask you this: What data exactly did you  
3 use to prepare the chart that's labeled AL-19?

4 A I think I already said the April 2015 snapshot, and the  
5 2.40 was in the 2015 State Board of Elections report. They  
6 actually had two numbers. They were very, very close, one  
7 based on the same methodology that I used, which was 2.17, and  
8 the other based on Mr. Neesby's methodology, which could not be  
9 replicated, which was 2.40.

10 So I used the higher number to be conservative to diminish  
11 the comparison. Had I done a straight apples-to-apples  
12 comparison and used a number based on the March 2013 snapshot,  
13 the differential between the failure rate for same-day  
14 registrants in 2012 and all registrants who voted -- it is also  
15 same-day registrants who voted -- in 2014 would have been  
16 greater.

17 Q Now, the snapshot that you used contained data out of the  
18 SEIMS database; correct?

19 A I think that's correct.

20 Q Did you personally go in and extract the data for your  
21 report, or did someone else do that?

22 A As I explained, I don't extract data. David Ely, the  
23 president of COMPASS Demographics, who I've discussed  
24 extensively in my report and who I talked about in my direct  
25 testimony, does the data work for me. As I explained in my

1 direct testimony, I've worked with him for, gosh, almost 30  
2 years.

3 Q So where is Mr. Ely today?

4 A Where is Mr. Ely today? COMPASS Demographics is in  
5 California.

6 Q He's not in Winston-Salem today?

7 A Not that I know of.

8 Q As far as you know, he is not available to testify here  
9 today?

10 A Not that I know of.

11 Q So if we wanted to ask questions about the actual -- how  
12 the data was pulled for your report, we would have to rely on  
13 Mr. Ely, who is not here today?

14 A Well, you can pull it yourself. It's your data. It is  
15 not my data.

16 Q But you did not pull it yourself personally?

17 A No, I didn't go into the data file and pull it myself  
18 personally, but you can certainly do that and see if the 3.63  
19 number is correct.

20 In fact, I was kind of surprised that the State Board  
21 didn't do a 2014 analysis, as that would have been a natural  
22 way of testing impact of eliminating same-day registration on  
23 mail verification, a much better way than rehashing 2012.

24 Q When did Mr. Ely begin his analysis that resulted in your  
25 slide AL-19?

1 A I believe it was after -- I don't remember exactly, but I  
2 believe it was after I read Mr. Neesby's deposition.

3 Q And when was that?

4 A Dates are blurring. A week, ten days ago.

5 Q All right. Do you know if Mr. Ely actually reviewed the  
6 voter verification log for each voter that is referenced in  
7 AL-19?

8 A As I explained in my report and my direct testimony, I did  
9 not rely on Mr. Ely for judgment calls, legal opinions,  
10 historical analysis, expert analysis; simply for extracting and  
11 compiling data. That's all he did.

12 Q In compiling the data, do you know if he looked at or  
13 relied at all on the voter verification history logs in SEIMS?

14 A I think he just pulled the April 2015 snapshot. If you  
15 are asking me did he attempt to go through the exercise that  
16 Mr. Neesby described in his direct testimony this morning,  
17 absolutely not.

18 As I testified earlier, you can't replicate what  
19 Mr. Neesby did. It's his own unique set of codes that he  
20 talked about, and it's got serious problems, such as leaving  
21 out a major county.

22 Q Okay. So did you even -- you had the snapshot. Did you  
23 ever actually ever even open that up and look at the data?

24 A Absolutely. Mr. David Ely extracted it, and then I looked  
25 at the data.



1 Q You looked at his results?

2 A These aren't results. These are just compilations taken  
3 right off the April 2015 snapshot. He didn't do any analytical  
4 work with that material. As I said, the analysis is really  
5 pretty simple that we did, just as the State Board had done  
6 previously and also in this report.

7 Q Do you understand that when you are trying to extract data  
8 from SEIMS, which table you use is important for the validity  
9 of the data you are looking for?

10 A I frankly don't understand the question.

11 Q Do you know which table out of SEIMS that Mr. Ely used to  
12 determine whether the mail verification process had failed or  
13 succeeded?

14 A He used the April 17, 2015, snapshot, which separated out  
15 those who were active verified from those with other statuses;  
16 and I simply took the percentages who were not active verified,  
17 which is what I understand the State Board had done.

18 Q Did you query the data at all in the snapshot?

19 A I don't understand that question either. Sorry.

20 Q Do you not know what I mean when I say "query"?

21 A No, there are various interpretations of that. If you  
22 could be a little clearer, I'll answer your question.

23 Q Do you have any -- what do you think it means?

24 A I think it means -- it could mean in one sense you look  
25 behind the data. It could be, in the other sense, you compile

1 the data. I didn't look behind the data, but we did simply  
2 take the April 2015 snapshot, and it is what it is.

3 Q Did you create any queries to extract data from the  
4 snapshot?

5 A I think, as I explained, I did not extract the data from  
6 the snapshot. I asked David Ely to extract the data from the  
7 snapshot. He's had 30 years of expertise in doing that, and  
8 all I wanted to know was how many were AV and how many were  
9 not.

10 Q All right. Do you know if Mr. Ely used a code called SQL?

11 A I don't know what codes Mr. Ely used.

12 Q Do you know what a pivot table is?

13 A I have some idea.

14 Q Do you know what a CSV file is?

15 A I don't. I don't do this data extraction myself. I rely  
16 on someone who has expertise in that area.

17 Q Do you know how many verification processes there are in  
18 SEIMS total?

19 A I don't.

20 Q Do you know whether your analysis was restricted to one  
21 process or another?

22 A Again, I'll give you my same answer. I simply looked at  
23 those who the State Board had coded AV, active verified,  
24 following what had been a long-established SBOE procedure and  
25 one of the procedures used in the 2015 report.

1 Q And so you determined success or failure of mail  
2 verification solely by looking at the AV code, "active  
3 verified"?

4 A Correct.

5 Q How did you handle manual removals or someone who was  
6 manually marked as denied or inactive in SEIMS?

7 A I didn't deal with manual removals. I simply, as I said,  
8 looked at those who were AV and those who were not; and we have  
9 an apples-to-apples comparison with that procedure in the State  
10 Board, and it shows a much higher rate of those who did not  
11 pass mail verification for all registrants in 2014 as compared  
12 to the SDR registrants who voted. Of course, we are dealing  
13 with voters in both cases in 2012.

14 Q Of course, your analysis was of non-SDR registrants in  
15 2014; correct?

16 A Absolutely.

17 Q And that's because SDR, same-day registration, was not  
18 available in 2014; correct?

19 A Exactly. So it was kind of a natural experiment. The  
20 implication of the 2012 report was that elimination of same-day  
21 registration would reduce mail verification problems, but it  
22 didn't actually look at what actually happened after the  
23 abolition of same-day registration, which I thought was very  
24 odd, particularly since so many of Defendants' experts stressed  
25 the 2014 experience. Here was a real chance to do a test, and

1 somehow, for some reason, it was never done.

2 Q Now, you agree with me, Dr. Lichtman, that it would be  
3 impossible to do a comparison of verification rates in 2014 for  
4 non-SDR registrants and SDR registrants; correct?

5 A Of course. I mean, that's, you know, a truism. Since you  
6 didn't have SDR in 2014, you can't do that comparison, but you  
7 can do the comparison between what happened when you eliminated  
8 SDR -- so no one had that option -- as compared to what the  
9 experience was when voters had and used that option in 2012.  
10 It's the same kind of analysis we've seen on early voting or  
11 overall turnout.

12 Q How long have you or Mr. Ely had access to the snapshot  
13 data that's been produced in this case?

14 A You mean when was the snapshot produced? It is dated  
15 April 17, 2015, but I don't know -- I can't tell you when it  
16 actually went online.

17 Q But Mr. Ely did not begin his analysis of the 2014 mail  
18 verification until a week or ten days ago?

19 A Something like that, yeah, because, frankly, you know,  
20 until I read this report and began to understand the processes  
21 and procedures, I really was not yet in a position to do this  
22 kind of analysis.

23 In fact, I learned things, you know, reading the Neesby  
24 deposition, which I think was dated July 18, 2015, because this  
25 report is not crystal clear.

1 Q Did you read Mr. Neesby's deposition taken in April of  
2 2015?

3 A I don't recall reading that.

4 Q Did you conduct any analysis of registrants in 2014 -- you  
5 did -- who voted. How did you determine whether someone voted  
6 and then failed mail verification?

7 A It is in the April 17, 2015, snapshot.

8 Q Do you know how Mr. Ely pulled that information?

9 A I think we've already gone through that. The information  
10 is there. It's just a matter of extraction. Mr. Ely did not  
11 do any analysis of the information. He simply extracted it for  
12 me.

13 Q So you don't know which table in SEIMS or tables Mr. Ely  
14 would have used to try to compile that information?

15 A I know he compiled the information on those who are AV and  
16 those who were not.

17 Q Did you make any attempt to remove duplicates from your  
18 analysis?

19 A I simply looked at the numbers that were on the snapshot.  
20 And I recall, also important in reading Mr. Neesby's  
21 deposition, that duplicates were an insignificant factor in the  
22 analysis. There are only a very tiny number of duplicates, you  
23 know, in the tiny fractions of 1 percent. So that would not  
24 have been a significant issue.

25 Q All right. Have you reported the number of duplicates

1 anywhere?

2 A No, and I don't believe they do on the official State  
3 Board of Elections report either. That's why I had to go to  
4 Mr. Neesby's deposition to learn something about that.

5 Q Is it fair to say that what you know about the mail  
6 verification process in SEIMS you've learned through  
7 Mr. Neesby?

8 A Not entirely. I have also read this report. I've read  
9 earlier reports. So I certainly listened to Mr. Neesby.  
10 Primarily, of course, I was interested in what the State Board  
11 of Elections had done and had not done, but he's not my sole  
12 source of information.

13 Q If I use the term -- the data analytics term "INNER JOIN,"  
14 do you know what that means?

15 A Inner what?

16 Q INNER JOIN.

17 A I don't exactly.

18 Q Do you know what the term "LEFT OUTER JOIN" means?

19 A Are we talking about physical therapy or data analytics  
20 here?

21 Q Whatever is most relevant to you, Dr. Lichtman.

22 A I don't know what it means.

23 Q Do you know what the term in data analytics "RIGHT OUTER  
24 JOIN" means?

25 A No, I don't know what these particular terms mean.

1 Q Do you know if Mr. Ely knows what these terms mean?

2 A I don't know if he does. There's a fair chance he does  
3 because he does this kind of thing. I don't.

4 Q Do you know which of these he used in querying the data in  
5 SEIMS?

6 A All he did was extract the data as it exists in SEIMS. As  
7 I said, he didn't do any pivoting or anything like that. I do  
8 know what a pivot is.

9 Q You said you do know what a pivot is?

10 A I do.

11 Q What is it?

12 A It's where you pivot the data so that you're pivoting it  
13 on some particular characteristic within the data.

14 Q And you could do that in an Excel spreadsheet; correct?

15 A I would imagine that you could do that probably in lots of  
16 programs.

17 Q Dr. Lichtman, let me change topics to NVRA.

18 A Okay.

19 Q Isn't it true that in the chart that you prepared on the  
20 decline in public assistance applications, you grouped the data  
21 by year?

22 A Yes, and I also, however, examined the month-by-month data  
23 and testified about that in my rebuttal this morning and also  
24 testified about it when queried about it by Mr. Farr in --  
25 after my direct testimony during cross.

1 Q And you are aware that Mr. Neesby in his chart grouped the  
2 data in increments of three months?

3 A Yes. That was the problem with the chart, because his  
4 interpretation pivoted on what happened December, January, and  
5 February, that is, December of 2012, January of 2013, and  
6 February of 2013. And his chart conceals what's going on  
7 there. And I testified in my rebuttal that what actually went  
8 on there was quite different than what is on this chart.

9 Q But because your chart grouped the data by year, it  
10 concealed all of the trends by month; correct?

11 A As I testified, the trends, you know, vary a lot month by  
12 month, but the year averages are quite conclusive; and I did  
13 indicate, with respect to the month-by-month variations in that  
14 crucial period that Mr. Neesby believes explains this dramatic  
15 drop in new voter registrations, that the data doesn't show  
16 what he says at all.

17 In fact, I jotted down the monthly numbers. 591 at the  
18 time of the general election of 2012. It then goes up to 928  
19 in December 2012; up to 1,430 in January of 2013; and then the  
20 plunge starts. It goes down 30 percent to 1,026 in February  
21 and another 20 percent to 839 in March before the introduction  
22 of any of these online options, and continues to be low and  
23 lower over a two-and-a-half-year period.

24 Q This is BN-1. This is Mr. Neesby's chart regarding Source  
25 01 applications over time. Do you see that this chart, in



1 fact, begins to track -- provide an explanation beginning with  
2 March of 2013, the NC FAST case management system fully rolled  
3 out?

4 A That's exactly what I was talking about, that his  
5 accounting of that is not sustained by this chart and is  
6 contradicted when you look at the month-by-month results. And,  
7 of course, my month-by-month results are not for applications,  
8 they are for actual registrations.

9 Q And you said the drop began in February; correct?

10 A Correct. Which is concealed here because this chart  
11 doesn't have December, January, or February on it. It leaps  
12 from 11/15 to 3/15.

13 Q Isn't it true that February is the month just before  
14 March?

15 A As far as I know, unless they do something different.

16 Q And do you know whether the data would be as of the end of  
17 February or the beginning of February?

18 A It is for the entire month of February. So it covered  
19 that entire month. It is monthly data. It is not data at any  
20 given point in time.

21 Q All right. You testified about some analysis you did of  
22 other states' changes in registration applications of NVRA; is  
23 that correct?

24 A I did not testify about changes in registration  
25 applications. I testified about changes in new registrations,

1 which was the focus of my analysis. Applications do not  
2 necessarily result in registrations.

3 Q So you focused on new registrations only?

4 A Yes, I think I explained that pretty thoroughly.

5 Q Is it your understanding that the obligation of a public  
6 assistance agency is to offer voter registration services  
7 anytime someone comes in for services?

8 A Yes.

9 Q So that would include -- that could also encompass changes  
10 to registration and other types of registrations, couldn't it?

11 A Yes. But as I explained, first of all, the new  
12 registrations are far and away the largest category and the  
13 ones with the greatest impact on voting. Moreover, even if you  
14 add in the relatively smaller number of changes and duplicates,  
15 the pattern I observed would not change.

16 Q But could you have included in your analysis the changes  
17 in duplicates?

18 A Certainly. But, as I said, I focused on new registrations  
19 because those are the most significant and the most comparable  
20 also from state to state.

21 Q You could have also done an analysis that focused  
22 separately on changes and duplicates to confirm the point that  
23 you're alleging now, couldn't you?

24 A It would neither confirm nor deny the point, since  
25 regardless of what's going on with changes in duplicates the

1 pattern with respect to new registrations that I established  
2 and was not challenged still stood.

3 And as I said, I did look at changes in duplicates, and if  
4 you added them, the fundamental pattern would not change. In  
5 fact, leaving aside the problem of leapings from month to  
6 month, even the applications pattern shows essentially the same  
7 pattern that my data showed on new registrations.

8 Q All right. I may not be recalling this correctly, but  
9 correct me if I am not. Did you say the analysis you did of  
10 the EAC report involved 25 states?

11 A Yes.

12 Q Of the 25 states that you included in your analysis, how  
13 many of those were on the federally facilitated ACA exchange  
14 and how many of those were state exchanges?

15 A I didn't separate them out for the simple reason that I  
16 did a much more stringent analysis than that. I analyzed every  
17 state where it was possible to do the analysis because the  
18 numbers were big enough. So no state was excluded regardless  
19 of its position. And considering every state that you can  
20 analyze, the decline in percentage terms was the largest in  
21 Maryland (sic). Maryland (sic) went from about 50,000 all the  
22 way down to 18,000, losing some 32,000, or 64 percent.

23 Q Now, do you agree, Dr. Lichtman, that when someone goes  
24 onto a federal -- the federal exchange through the  
25 HealthCare.gov website, that if they want to register to vote,

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

1 it directs them to the federal registration form that's put out  
2 by the EAC?

3 A I believe they can do that. That's right.

4 Q All right. Did you do any analysis comparing the drop in  
5 voter registrations of -- between the federal exchange states  
6 versus the states that have state exchanges?

7 A I did not do that analysis, no.

8 Q Of the federally facilitated exchanges, do you know how  
9 many of those reported a decline in voter registrations through  
10 public assistance agencies?

11 A I wasn't looking at the federal data; only at the data for  
12 the state of North Carolina.

13 Q So the answer is you don't know the answer to that  
14 question?

15 A I don't know the answer to that question, but I don't  
16 believe you would have the same time period for the federal  
17 exchange, which I believe comes in only late in the period. So  
18 there is no comparability to replicate the analysis that I did.

19 **MR. STRACH:** May I have a moment, Your Honor?

20 **THE COURT:** Yes.

21 (Off-the-record discussion.)

22 **BY MR. STRACH**

23 Q Dr. Lichtman, let me return back to the same-day  
24 registration report.

25 A Certainly.

1 Q In particular, your Exhibit AL-19.

2 A Okay.

3 Q With respect to the 2014 chart, do you know how many of  
4 the voters that you identified here failed their initial mail  
5 verification after they voted?

6 A All of these were people who were not verified after  
7 voting.

8 Q I'm sorry. Could you repeat that?

9 A I said, all of these 4,512 were people who had not  
10 verified after voting.

11 Q Did you look at whether they failed their initial mail  
12 verification after voting?

13 A All I looked at was, to be comparable with what the State  
14 Board did, the status as of the snapshot. I did not attempt to  
15 replicate Mr. Neesby's analysis where you ferret through all of  
16 the individual voter files and try to sum up the number who  
17 failed the initial mail verification. That's not replicable,  
18 and that's certainly a problem, and, as I indicated, it's got  
19 issues.

20 Q Okay. Why is it not replicable if you've got the data?

21 A Because it's his unique code, and he went through  
22 extensive explanations explaining how he uniquely devised this  
23 code a few months ago. Without knowing what the code was, you  
24 wouldn't know how to replicate his analysis precisely.

25 Q Now, do you know if these are codes that are his codes or

1 they're SEIMS codes?

2 A As I understand it -- of course, they are SEIMS codes,  
3 but, as I understand it, he wrote computer code -- he even  
4 talked about it, writing computer code to perform this  
5 multi-step analysis that he went through and then rebuild  
6 all -- I guess he talked about 520,000 voter records to create  
7 his analysis.

8 Interestingly, too, as I said, after going through that  
9 exercise, he produces very similar results to the results of  
10 the much simpler exercise of just looking at the snapshot.  
11 The -- those who didn't pass verification, the rates differ by  
12 slightly over two-tenths of 1 percent. In fact, he testified  
13 in his deposition that the two methods give you very similar  
14 results.

15 Q You mentioned that Mr. Neesby talked about using code. Do  
16 you have any idea what he was using -- what he meant "code" by  
17 when he was using that word?

18 A Yes. As I understand it, I listened to his testimony, he  
19 wrote a computer program to perform the analysis that generated  
20 this 2.40 percent rate of those who did not pass mail  
21 verification; whereas, the other methodology doesn't require  
22 you to go write your own computer code and try to rebuild the  
23 data one by one by one. We know when you do that, when you are  
24 going through hundreds of thousands of individual data records,  
25 there is a potential for problems.

1 Q All right. So you think that he wrote a computer program  
2 to extract this data? That's your belief of what he did?

3 A I believe he wrote or utilized -- I don't know if he wrote  
4 it personally -- a program to query each individual voter file  
5 to try to find out what happened with the initial mail  
6 verification. That's how I heard his testimony. I just heard  
7 it today, so I haven't had much time to reflect on it.

8 Q Do you have any idea of whether this querying process is a  
9 common way of extracting data from SEIMS?

10 A I haven't seen it used before here, so I don't think so.

11 Q All right. Getting back to the AL-19, regarding the 2014  
12 folks -- voters on this chart, do you know if any of these  
13 voters were subject to other verification processes, other  
14 verification mailings after their first mailing?

15 A I think I've already gone through that. All I did was  
16 look at those who were not verified as of April 2015,  
17 replicating the State Board of Elections' methodology or  
18 methodology that produced results nearly identical to  
19 Mr. Neesby's methodology. Mr. Neesby's methodology actually  
20 produces a higher rate of those who did not pass mail  
21 verification than did the more straightforward methodology.

22 Q So you don't know then why each voter is listed as active  
23 when they are listed as active?

24 A I did not look behind the data.

25 Q All right. And the same is true for inactive voters who

1 are listed that way?

2 A Same answer. I did the same thing that the State Board  
3 did, and that produced results nearly identical to the much  
4 more complex process.

5 Q You don't know when these voters actually failed mail  
6 verification or how many times?

7 A I think I will give you the same answer. I didn't look  
8 behind the data.

9 Q Did you attempt to do any comparison of the failure rate  
10 of these voters before or -- versus after Election Day?

11 A The comparison I did was between my 3.63 rate and for all  
12 those who registered in 2014 and voted -- two things in the  
13 State Board's report: One, the apples-to-apples directly  
14 comparable methodology, which found a much lower rate of  
15 2.17 percent for SDR registrants and voters, and then to the  
16 more comparable -- to the less comparable or more complex  
17 methodology that produced a slightly higher rate.

18 So no matter which comparison you do, the failure rate is  
19 higher for the 2014 registrants who voted, none of whom, of  
20 course, are SDR. As I said, this is a much more natural  
21 experiment than that performed by the Board in kind of redoing  
22 2012.

23 **MR. STRACH:** Thank you, Your Honor. That's all I  
24 have for now.

25 **THE COURT:** Any redirect?



1 REDIRECT EXAMINATION

2 **BY MR. GLICK**

3 Q Just one brief point, Dr. Lichtman. I believe when you  
4 were talking about the decline in public assistance  
5 registrations, comparing North Carolina to other states -- and  
6 for the record, for the court reporter's benefit, I believe it  
7 was somewhere in the transcript around 2:35 p.m. -- you  
8 referenced the state of Maryland.

9 A I can't believe I did that.

10 Q Did you mean the state of North Carolina, sir?

11 A Of course. And I apologize.

12 **MR. GLICK:** No questions, Your Honor.

13 **THE COURT:** Hold on just a minute, please.

14 Dr. Lichtman, you said that Mr. Ely began his  
15 analysis on what was, I guess, AL-19; is that right?

16 **THE WITNESS:** Yes.

17 **THE COURT:** Did you say about ten days ago?

18 **THE WITNESS:** Yeah, although I don't, frankly,  
19 remember exactly.

20 **THE COURT:** When did he share his results with you?

21 **THE WITNESS:** I don't remember exactly. Maybe a week  
22 ago.

23 **THE COURT:** All right. Anybody have anything  
24 further?

25 **MR. STRACH:** Not from us.

1           **MR. GLICK:** Nothing from us, Your Honor.

2           **THE COURT:** You may step down. Thank you.

3           **THE WITNESS:** Thank you, Your Honor.

4           **THE COURT:** All right. Anything further as to his  
5 testimony from the Defendants?

6           **MR. STRACH:** Your Honor, based on the testimony  
7 Dr. Lichtman has given, we believe that the testimony on his  
8 mail verification analysis should be excluded for two reasons.

9           Number one, it does not appear that Dr. Lichtman did  
10 the analysis himself, and, number two, it was done well in  
11 advance, at least enough time to disclose it to us in time to  
12 have enough time to react to it other than today.

13           We don't -- but primarily because it does not appear  
14 that he actually pulled the data himself, and we don't have  
15 access to Mr. Ely, so we can't subject Mr. Ely to  
16 cross-examination about the assumptions he made in pulling the  
17 data, it would be very unfair for the Court to consider the  
18 evidence.

19           **THE COURT:** Do you want to be heard?

20           **MR. DONOVAN:** Your Honor, two points. One is  
21 Mr. Ely, just like Mr. Burris, who never appeared here, who did  
22 pull -- compile the data, Mr. Ely didn't do the analysis. He  
23 just takes it out of the extraction from the website.  
24 Dr. Lichtman did all the analysis. He only got the data a week  
25 ago.

1           So the analysis is that -- Dr. Lichtman takes the  
2 data and then ran the report or the analysis to generate this.  
3 Mr. Ely has to compile the data. So that's first of all. And  
4 Mr. Ely did this for years for him, just like Mr. Burris, who  
5 did it for Ms. Degraffenreid.

6           I forget the second point, Your Honor.

7           **THE COURT:** The other point was you've had it for a  
8 week. Why didn't you all -- he said he had this for a week.

9           **MR. DONOVAN:** He got the data from Mr. Ely a week  
10 ago, and then he had to do his work. We were waiting to see  
11 what Mr. Neesby would testify about it, Your Honor. I also  
12 tried to get into this with Ms. Strach with the email where  
13 Mr. Ely -- or, no, excuse me, Mr. Neesby had done a preliminary  
14 analysis in 2014. She didn't know anything about it.

15           So, Your Honor, I think this is fair. He had the  
16 cross-examination. Same way we had with Mr. Neesby, and my  
17 cocounsel did.

18           **THE COURT:** My concerns about it are a couple. One  
19 of them is it seems to me to be rebutting generally the notion  
20 of failure rates and same-day registration, and to the extent  
21 it is a general attack on mail failure on same-day registration  
22 versus traditional registration, that kind of analysis could  
23 have been thought about and done much earlier.

24           My other concern is the data that makes up any of  
25 these analyses is what's going to control the outcome, and I am

1 sympathetic to the charge that they have no idea how to cross  
2 if they don't know what data he pulled because he doesn't know  
3 because he just asked Mr. Ely to go in there and find it.

4 **MR. DONOVAN:** Your Honor, I don't think that's quite  
5 true. Just like if you remember this morning when there was an  
6 overruling of Mr. Kaul's objection because Mr. Neesby had at  
7 the bottom "data on the website" -- that's all it is. It is  
8 data on the State Board of Elections website. They put the  
9 data up there.

10 So here the SBOE say they didn't know what data it  
11 was. That's our very point, Your Honor. It's not to create a  
12 new issue. It is to the rebut the 2012. The implication by  
13 these people they hired after these lawsuit to do new analyses  
14 is to say the natural thing you would have done is looked at  
15 the next election because the testimony in this case has been,  
16 depending when you run this --

17 **THE COURT:** But that's the point I have trouble with.  
18 That's the point that could have been done earlier. You could  
19 have looked -- if Dr. Lichtman wanted to come in and say that  
20 the analysis from the 2013 memo is really not looking at the  
21 right thing, because you should be looking at 2014, this same  
22 problem occurs in 2014; therefore, don't buy the argument.  
23 That's where I am having some trouble.

24 **MR. DONOVAN:** I see your point. The 2013, we are  
25 fine with. That's what the legislature relied on. SDR was the

1 lowest in that. We are also fine with Ms. Degraffenreid -- the  
2 second one, when they fixed it. It's this new report by  
3 Mr. Neesby that, remember, was late filed. We had the motion,  
4 and then we worked it out by the deposition. So after we have  
5 the deposition, we now know, and we tried to determine how do  
6 we rebut --

7 **THE COURT:** I understood that Dr. Lichtman's  
8 testimony is rebutting the prior points made in the prior  
9 reports that -- about failure rates.

10 **MR. DONOVAN:** No, no, no. We like those, Judge.  
11 That's what I am going to ask you to rely upon. That's what  
12 the legislature relied upon.

13 What we are rebutting is Mr. Neesby, because,  
14 remember, in 2013, the legislature had -- when they voted on  
15 this, they had a report that said SDR was lower than all of  
16 them. Then, as part of this case, they hire Mr. Neesby, who,  
17 after the close of discovery, produced this report. We  
18 objected; I agree, and then we worked it out by having his  
19 deposition. So only at that point am I in the position to  
20 challenge Mr. Neesby and his new report.

21 **THE COURT:** All right. Here is what I am going to  
22 do. I am going to do the same thing I did with Mr. Neesby.  
23 There is a technical aspect of this, and I don't feel  
24 comfortable ruling right now without knowing the technical  
25 problems.

1           So same situation. The testimony is done. If you  
2 want to write a brief in support of a motion to preclude it, I  
3 will reserve ruling. You can respond. So you have ten days to  
4 file your brief, ten days to respond.

5           And as I said, if you determine that they're  
6 intertwined with each other and you can work out a deal as to  
7 how much of this you think is fair to consider, all, none,  
8 whatever, you all put your heads together. Otherwise, I will  
9 make a decision on the motions when I write up my decision.

10           **MR. DONOVAN:** We'll talk. Thank you. Your Honor, I  
11 think we --

12           **THE COURT:** There is a lesson to be learned in all of  
13 this, and, that is, as officers of the court, and I mean -- I  
14 don't mean to suggest that anybody didn't do what they should  
15 have done. I'm just saying you are always better off to share  
16 with your opponent at the earliest possible time so that  
17 everybody has a heads-up of what is about to come. So I am not  
18 saying you didn't. I am just saying that's always the  
19 preferable way to go. It helps avoid these situations, but in  
20 any event -- okay.

21           **MR. DONOVAN:** So I think we are done with our  
22 rebuttal case. We have a couple of exhibits to move in.  
23 Otherwise, there's no more witnesses, Your Honor.

24           **THE COURT:** Okay.

25           **MS. RIGGS:** Your Honor, I would like to move into

1 evidence PX694, which was the big 11-by-17 chart that I went  
2 through with Mr. Neesby.

3 **THE COURT:** All right. Any objection?

4 **MR. STRACH:** No, Your Honor.

5 **THE COURT:** Admitted.

6 **MS. RIGGS:** And then with regard to the motion for  
7 judicial notice that the League of Women Voters Plaintiffs  
8 filed last week, we've come to resolution with Defendants on  
9 that.

10 **THE COURT:** Excellent.

11 **MS. RIGGS:** And Mr. Strach should correct me if I get  
12 this wrong. They were stipulating to the NC FAST chart on --  
13 it is a sheet -- a page on their website -- DHHS website on  
14 rollout.

15 And then with regard to the monthly NVRA data, the  
16 State is stipulating only to the fact that that data is on the  
17 website and that what we've produced is an accurate  
18 representation of what's on the website, not the accuracy of  
19 the data itself.

20 **MR. STRACH:** That's correct, Your Honor.

21 **THE COURT:** All right.

22 **MS. RIGGS:** And then, finally, the demonstrative I  
23 used with Ms. Strach, based on that data that wasn't admitted  
24 at the time, is PX -- so -- I'm sorry, the monthly reports are  
25 going to be marked PX748. The NC FAST rollout information is

1 PX749. And for demonstrative purposes only, the demonstrative  
2 I used with Ms. Strach will be PX747. May I approach?

3 **THE COURT:** Yes. So those three are admitted by  
4 agreement; is that correct? That is, no objection?

5 **MR. STRACH:** I'm sorry, 748, 749, and 747?

6 **THE COURT:** Yes.

7 **MR. STRACH:** Yes, Your Honor.

8 **THE COURT:** Those are admitted.

9 **MR. DONOVAN:** Your Honor, for demonstrative purposes  
10 only, we are marking Plaintiffs' Exhibit 826 -- as Plaintiffs'  
11 Exhibit 826 the demonstratives used, AL-19, AL-22, and AL-23.

12 **MR. STRACH:** We've got no objection to their usage  
13 coming in as demonstrative only.

14 **THE COURT:** All right.

15 **MR. DONOVAN:** May I approach, Your Honor?

16 **THE COURT:** They are admitted. Yes.

17 **MR. DONOVAN:** Your Honor, I gave Mr. Strach a copy of  
18 this. What we have -- we move for the admission of Plaintiffs'  
19 Exhibit 491 and Plaintiffs' Exhibit 744. PX491 is is an email  
20 internal at the SBOE, if you look at the bottom right, produced  
21 by the State Board of Elections. It is a November 25, 2014,  
22 email among State Board of Election employees --

23 **THE COURT:** Excuse me. Did you just hand me one of  
24 these?

25 **MR. DONOVAN:** I did. I handed the clerk. There are



1 two documents. The first is an email, Your Honor, and on the  
2 receipt of this email, if you look at the third name is Brian  
3 LiVecchi. That's the State Board of Elections lawyer that was  
4 hired recently that wrote the wait times report, if you  
5 remember was examined with Ms. Strach, and at that time, there  
6 was an objection that this is attaching a link and commenting  
7 on the Democracy North Carolina report on the 2014 election.

8           And then the initial report is behind, that is  
9 Plaintiffs' Exhibit 744. I am moving this in only for notice  
10 and credibility going to the -- Mr. LiVecchi, the SBOE lawyer  
11 who drafted the wait times report. That's the purpose we'd  
12 offer it is when he drafted that report, he was aware and had  
13 notice of the Democracy North Carolina report, Your Honor.  
14 Thank you.

15           **MR. STRACH:** Your Honor, we don't -- number one,  
16 Ms. Strach's name is not anywhere on this email nor is it  
17 anywhere mentioned in the email. So there is no notice to her,  
18 and attempting to use Mr. LiVecchi, who did a wait time report,  
19 is just simply a backdoor way of trying to get something in  
20 that's already been excluded earlier.

21           We don't see the relevance of notice to Mr. LiVecchi  
22 of anything, particularly as it relates to a wait time report.  
23 That, Your Honor, it was testified was a report of the State  
24 Board, not Mr. LiVecchi.

25           **MR. DONOVAN:** Well, Your Honor, Ms. Strach testified

1 she didn't draft it. Mr. LiVecchi, the lawyer, did kind of in  
2 the middle of this case, and this does go to some of his  
3 statements in the report. I think it is fair to be in the  
4 record, again, just for notice that the author of that report,  
5 Mr. LiVecchi, the lawyer for the SBOE hired during this case,  
6 at least had notice, and there was an internal discussion,  
7 about the Democracy North Carolina report discussing the issues  
8 of the 2014 --

9 **THE COURT:** What would I use it for? To draw what  
10 inference?

11 **MR. DONOVAN:** Well, I think there could be  
12 inferences, Your Honor. Again, there hasn't been much  
13 discussion. I don't know what the Defendants are going to  
14 argue, but again, this was not a report drafted by Ms. Strach.  
15 It was by Mr. LiVecchi. And depending on what statements from  
16 that report they try to use, this shows that he was aware of  
17 many more problems than he reported and, therefore, the  
18 credibility -- it goes to really the credibility of the  
19 LiVecchi report. So that's what we are offering it for, Your  
20 Honor.

21 **MR. STRACH:** But, Your Honor, if Ms. Strach is going  
22 to approve the report, and she's the one who reviewed it gave  
23 the final okay, what notice was to Mr. LiVecchi is irrelevant.  
24 He was not the final author of the complaint -- I mean, of the  
25 wait time report, and I think's that been established. So we

1 fail to see why any notice of anything to Mr. LiVecchi would be  
2 probative on anything.

3 **THE COURT:** All right. I am going to exclude it. I  
4 think it would be -- it would invite me to speculate pretty  
5 highly to try to determine what this might have meant to  
6 Mr. LiVecchi based on this. Presumably, you had the  
7 opportunity to ask him about that. I don't know if you chose  
8 to or chose not to.

9 **MR. STRACH:** Mr. LiVecchi was deposed.

10 **THE COURT:** So his testimony -- you could have put it  
11 in, and if he had then admitted some things, that could have  
12 been in the record. So I am afraid it would require me to  
13 speculate as to how this might go toward his intent in drafting  
14 a report without any further foundation.

15 **MR. DONOVAN:** Your Honor, just to correct the record,  
16 Ms. Strach did testify she did not draft it. She may -- she  
17 also didn't talk to any of the county boards. So she may have  
18 approved it, but I don't want the impression left that she  
19 really knows or did the report. It was Mr. LiVecchi.

20 **THE COURT:** Well, I understand the argument. I think  
21 if you'd tried to get it in through that witness, then that  
22 might be a different story, but I would have to speculate as to  
23 what that would mean, and so I am not going to do that. So I  
24 am going to exclude PX491 and 744.

25 Any further evidence?

1           **MR. DONOVAN:** Your Honor, with that, the Plaintiffs  
2 rest.

3           **MR. STRACH:** Your Honor, I think we got this moved in  
4 earlier.

5           **THE COURT:** You did.

6           **MR. STRACH:** I think I heard you say admitted.

7           **THE COURT:** Yes.

8           **MR. STRACH:** That was 377. I believe that's all we  
9 have.

10          **THE COURT:** All right. Have you all met with  
11 Ms. Engle to confirm that what you think is in evidence is in  
12 evidence?

13          **MR. DONOVAN:** We probably should do it afterwards.  
14 Sounds like both Mr. McKnight and Ms. O'Connor have.

15          **THE COURT:** Mr. Farr?

16          **MR. FARR:** Your Honor, I can't resist. I have to say  
17 one thing. I've heard several times during the course of this  
18 case that Mr. LiVecchi and Mr. Neesby were hired for this  
19 lawsuit. That's simply not correct. They were hired to be  
20 full-time employees at the State Board of Elections.

21          **THE COURT:** They are employees. I am going to treat  
22 them as employees.

23          **MR. FARR:** Thank you.

24          **THE COURT:** Let me talk with you just a minute about  
25 where we go from here then. You all wanted to -- at least the

1 Defendants wanted more time and wanted to do this tomorrow. I  
2 am prepared to do that. On the other hand, I guess, if you  
3 want to start this afternoon with your openings, that's your  
4 call. I've already told you I would start tomorrow, so if  
5 you'd rather do that --

6 **MR. DONOVAN:** We are fine with 9:00 a.m.

7 **THE COURT:** So we'll start tomorrow at 9:00. Now, I  
8 know I asked you this once before, but what is your best  
9 estimate of how you want to proceed?

10 **MR. DONOVAN:** Sure. Your Honor, we conferred at the  
11 break. I think two hours for the four groups would be  
12 sufficient, and some people have said yes, but I think we  
13 should stick with two hours to be safe for planning. So that  
14 would be our proposal.

15 **MR. FARR:** Your Honor, I think we only need an hour.

16 **THE COURT:** An hour?

17 **MR. FARR:** Yes sir.

18 **THE COURT:** Okay. And then you'll have, if you want  
19 it, some rebuttal after that?

20 **MR. DONOVAN:** Yeah, fifteen minutes.

21 **THE COURT:** Okay. Now, do you wish to use exhibits  
22 or PowerPoints or demonstratives?

23 **MR. DONOVAN:** We do, Your Honor.

24 **THE COURT:** I was going to have the IT people hook  
25 something up so everybody can see that. It will either be the

1 screen there or a monitor or both.

2 Anybody have any further issues or questions? I do  
3 have one more question, and, that is, I want to make sure I  
4 understand what you think are the issues that are still  
5 outstanding for my decision.

6 I have the issue with Mr. Trende, Opinion Number 2,  
7 that I've reserved ruling on. I have the Neesby issue, subject  
8 to the written paperwork. I have the issue as to  
9 Dr. Lichtman's rebuttal testimony as to the April -- well, I  
10 just call it the 2014 analysis, however you want to call it.  
11 Give me just a minute.

12 Let me stop there. Are there other issues that you  
13 think that you're expecting me to have reserved ruling on that  
14 you remember now?

15 **MR. DONOVAN:** Not for the Plaintiffs, Your Honor.

16 **MR. STRACH:** The only other thing I can think of are,  
17 Your Honor, the objections that we had to the two voter  
18 witnesses testifying today.

19 **THE COURT:** Okay. I understand.

20 **MR. DONOVAN:** The only other thing, and it may just  
21 go to your decision, I know that both sides have filed *Daubert*  
22 motions, and all those witnesses have testified, but I know --  
23 I was reminded they are outstanding, but I think it just goes  
24 all in with your decision is my understanding of what you were  
25 reserving on. Those, I think, are technically still out there,

NAACP, et al. v. NC, et al. - Trial Day 14 - 7/30/15

1 Your Honor, on both sides.

2 **THE COURT:** Okay. I will take a closer look. I  
3 thought some of the *Daubert* motions were limited to the voter  
4 ID portion and now have been removed.

5 **MR. DONOVAN:** Your Honor, I would have to check. I  
6 know you are right in part. I'm just not sure if that's  
7 completely true or just in pieces.

8 **THE COURT:** Let me ask you to do this. Before you  
9 start your openings tomorrow, would you check your notes. Put  
10 all your heads together, we have lots of them, and tell me what  
11 you think you are expecting me to have reserved on. I will  
12 check my notes and review the transcript carefully, but I would  
13 like to make sure that what's on your list is at least on my  
14 list.

15 Anything else?

16 **MR. DONOVAN:** The only other question might be,  
17 Judge, is if there is any -- it was helpful when you gave us  
18 some questions because we could caucus and kind of divide up.  
19 I don't know if there is any other. Obviously, if there's not,  
20 we are happy to prepare, but just wanted to raise that.

21 **THE COURT:** No, I have a lot of questions, but I  
22 think I will wait until tomorrow. I'm not sure it would be  
23 productive really. I can appreciate the concern, but I think  
24 it would be better just to do it in the scope of the arguments  
25 probably.

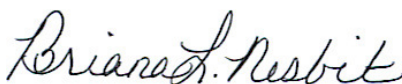




1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF NORTH CAROLINA  
3 CERTIFICATE OF REPORTER  
4  
5

6 I, Briana L. Nesbit, Official Court Reporter,  
7 certify that the foregoing transcript is a true and correct  
8 transcript of the proceedings in the above-entitled matter.  
9

10 Dated this 12th day of August 2015.  
11

12   
13

14 Briana L. Nesbit, RPR  
15 Official Court Reporter  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25