

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

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

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

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16 UNITED STATES OF AMERICA, ) CASE NO. 1:13CV861  
17                   Plaintiff, )  
18 V. )  
19 STATE OF NORTH CAROLINA, et al., ) Winston-Salem, North Carolina  
20                   Defendants. ) July 21, 2015  
  ) 9:09 a.m.

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22                   TRANSCRIPT OF THE **TRIAL/DAY SEVEN**  
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.

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

3           **MR. DONOVAN:** Good morning, Your Honor. I just want  
4 to update you. We ended our discussion yesterday talking about  
5 exhibits, and there were five; and just to summarize it, the  
6 issues have been narrowed. We talked about Plaintiffs'  
7 Exhibit 77, the Senator Tillis statements. That's coming in  
8 through PX533, the video.

9           **THE COURT:** Let me catch up with you. Give me a  
10 minute. Okay.

11           **MR. DONOVAN:** So just this for a summary for you.  
12 Plaintiffs' Exhibit 77, which was a Senator Tillis' statement,  
13 has already been admitted as the video, PX533.

14           **THE COURT:** So 77, is that still in evidence, or are  
15 you saying you don't need it because you have the video?

16           **MR. DONOVAN:** I believe it's duplicative. I don't  
17 know if they have an objection to it. I believe it's easier to  
18 refer to that.

19           **THE COURT:** Is it going to be in the record as an  
20 exhibit, or is it no longer an exhibit?

21           **MR. DONOVAN:** I believe it still is an exhibit, PX77.

22           **THE COURT:** So are the Defendants admitting that 77  
23 can come into evidence because it's duplicative of Senator  
24 Tillis' video?

25           **MR. FARR:** Your Honor, I must apologize. I am not

1 totally clear what we are talking about. We don't have any  
2 objection to the video that was played; but if there is a  
3 published news story about the video, we do object to that.

4 **THE COURT:** Okay. That seems to frame the issue,  
5 then. So are you still moving it in, or are you resting on the  
6 video?

7 **MR. DONOVAN:** We would move it in, even in a redacted  
8 form, so it shows the statements in written form, and this is  
9 really for ease of citation and the like.

10 **THE COURT:** I understand.

11 **MR. DONOVAN:** Plaintiffs' Exhibit 81, that was  
12 Mr. Apodaca's statement, that's video 714, and we cut that so  
13 it's just the statement, as best we can.

14 **THE COURT:** The video is Exhibit 714?

15 **MR. DONOVAN:** Correct.

16 **THE COURT:** Now, the Defendants did not object to the  
17 video, as I recall. So what becomes of Plaintiffs' Exhibit 81,  
18 the paper copy?

19 **MR. DONOVAN:** I don't think we have any need for  
20 that.

21 **THE COURT:** So you are withdrawing 81?

22 **MR. DONOVAN:** Yes.

23 **THE COURT:** Okay.

24 **MR. DONOVAN:** Plaintiffs' Exhibit 104 that we talked  
25 about, Governor McCrory's statements...

1           **THE COURT:** That's from -- it appears to be from his  
2 website.

3           **MR. DONOVAN:** I talked to Mr. Bowers this morning.  
4 They have withdrawn their objection to it. So at this time, we  
5 move Plaintiffs' Exhibit 104 into evidence.

6           **THE COURT:** Admitted.

7           **MR. DONOVAN:** May I approach?

8           **THE COURT:** Yes.

9           **MR. DONOVAN:** So, Your Honor, that does leave  
10 Plaintiffs' Exhibit 79 and 91.

11           **THE COURT:** Is this different from the one that I had  
12 yesterday?

13           **MR. DONOVAN:** I don't believe so. It shouldn't be.

14           **THE COURT:** Okay. I don't need extra papers. So if  
15 you don't mind, I have one.

16           **MR. DONOVAN:** I don't blame you. That leaves for  
17 your consideration Plaintiffs' Exhibits 79 and 91 pursuant to  
18 the stipulation.

19           **THE COURT:** What happened to 528?

20           **MR. DONOVAN:** I need to look at that one, Your Honor.

21           **THE COURT:** All right.

22           **MR. FARR:** Your Honor, may I say something while  
23 Mr. Donovan is looking?

24           **THE COURT:** Yes.

25           **MR. FARR:** On the video from Senator Apodaca, we do

1 not object to the recorded statements of Senator Apodaca, but  
2 there is commentary by a reporter.

3 **THE COURT:** My understanding is they've removed that.  
4 Is that correct?

5 **MR. DONOVAN:** That's correct.

6 **THE COURT:** So it won't be considered because it  
7 won't be in the exhibit. 528 appears to be an article from  
8 North Carolina Capital quoting Senator Tillis. It looks like  
9 this.

10 **MR. DONOVAN:** Yes, Your Honor. We are still moving  
11 that in. Again, the same way, would be willing to -- these are  
12 quotes taken from the video. We would be willing to redact any  
13 other commentary, but we do want the statements in their  
14 printed form in Plaintiffs' Exhibit --

15 **THE COURT:** Is there any statement in 528 that's not  
16 in the video, to your knowledge?

17 **MR. DONOVAN:** I was told no, but I need to confirm  
18 that still; but my understanding is, no, they are all from this  
19 interview.

20 Your Honor, I was just told I need to -- earlier I  
21 said we are withdrawing 81. I need to look back at that. I  
22 was told that there was some statements in there that I need to  
23 review that may have more statements than the video. So 81 I  
24 just need to review to give you the basis.

25 **THE COURT:** Can you do that now?

1           **MR. DONOVAN:** I sure can.

2           **MR. FARR:** Your Honor?

3           **THE COURT:** Yes.

4           **MR. FARR:** The articles that are supposed to  
5 duplicate the videos, if they are exact quotes of what's in the  
6 video, then we have no objection to that. We haven't been able  
7 to determine that.

8           **MR. DONOVAN:** We can confer on that one, Your Honor,  
9 and report back. I believe it is, but I want to make sure that  
10 I can represent that to Mr. Farr.

11           **THE COURT:** Plaintiffs' Exhibit 81 seems to quote  
12 Senator Apodaca at least twice, once in the fourth paragraph,  
13 and once in the seventh paragraph. There may be more, but  
14 those are the two that I see.

15           **MR. FARR:** But, Your Honor, the point is we are  
16 agreeing to let the videos come in where he is actually videoed  
17 and you see him speaking. We are not agreeing to quotes in  
18 newspaper articles that may or may not be accurate unless we  
19 can confirm that they say the exact same thing that he is seen  
20 saying on the videos.

21           **THE COURT:** Okay. I understand. All right. So are  
22 we continuing to work on this or -- I am confused as to whether  
23 it is ripe.

24           **MR. DONOVAN:** So I believe with respect to -- I would  
25 defer on 81, because Mr. Farr and I can confer since we already

1 have the video. Just defer. We are done with 77, and we are  
2 done with 104. On 79 --

3 **THE COURT:** I don't know. 77, they said, I thought,  
4 there was an objection --

5 **MR. DONOVAN:** They said provided it's just the  
6 statements. We redact everything else. The written -- as long  
7 as it's a quote from the interview, there is no objection.

8 **MR. FARR:** Right. Your Honor, again, the point is if  
9 the newspaper article is exactly quoting what is on the video,  
10 then we would not object, but, again, I don't know for sure  
11 that that's the case.

12 **THE COURT:** So you need to work that out and then  
13 report back?

14 **MR. DONOVAN:** We will do that.

15 **THE COURT:** I am going to reserve on 77. I am  
16 reserving on 81 because you are looking at those.

17 **MR. DONOVAN:** Yes.

18 **THE COURT:** All right. So 79, 91.

19 **MR. DONOVAN:** Those are the two that are still for  
20 your consideration.

21 **THE COURT:** And what happened to 528?

22 **MR. DONOVAN:** We are going to do the same thing, is  
23 they're the direct quotes from the interview. I am going to  
24 review and then confer with Mr. Farr.

25 **THE COURT:** Would it make sense for me to wait and

1 hear back from you before we go further?

2 **MR. DONOVAN:** My only concern is the other two have a  
3 relationship to the subpoena from Mr. Cook. So I think we need  
4 a ruling on those two. And I believe the other ones are  
5 resolved, all but the ministerial duties of us confirming the  
6 statements are in the videos.

7 **THE COURT:** All right. So the two at issue are 91  
8 and 79?

9 **MR. DONOVAN:** Yes, sir.

10 **THE COURT:** Now, am I to assume that every quote from  
11 Senator Cook or Senator -- Representative Blust is what's at  
12 issue?

13 **MR. DONOVAN:** Yes.

14 **THE COURT:** All right. Do you want to be heard any  
15 further as to the issue of the stipulation and the email?

16 **MR. FARR:** Only to repeat, Your Honor, that if you  
17 look at the stipulation, there is no agreement that the  
18 newspaper articles would come into evidence and that we had  
19 waived our right to assert hearsay objections.

20 Mr. Donovan gave you a letter -- or an email that I  
21 sent him on June 5th, and we were discussing the preliminary  
22 injunction stipulation, Your Honor; and if you see what I  
23 proposed, a lot of what I proposed is not reflected in the  
24 final stipulation. So this was just preliminary discussion  
25 between the parties. I don't think there is anything in what I

1 proposed that would indicate -- I don't know what exhibit  
2 number they put on this.

3 **MR. DONOVAN:** I need to mark it still.

4 **MR. FARR:** It is a June 5th exchange, Your Honor.  
5 Mr. Donovan handed this up to you yesterday. I don't think  
6 there is anything in here, Your Honor, in a preliminary  
7 exchange or discussions about trying to negotiate a stipulation  
8 on the preliminary injunction materials that indicates that we  
9 agreed or that there was an agreement reached on newspaper  
10 articles coming into evidence despite the potential hearsay  
11 objection.

12 You will note, Your Honor, that some of the things  
13 that I proposed in here were not in the preliminary injunction  
14 stipulation, such as we were talking about depositions that had  
15 been submitted. That was not agreed to eventually. This was a  
16 preliminary discussion. It does not show anyone reaching an  
17 agreement on newspaper articles coming in over hearsay  
18 objection.

19 And then if you look at the stipulation itself, it  
20 merely says that the parties agree that the exhibits -- and,  
21 Your Honor, this is Document Number 259, which is the  
22 preliminary injunction stipulation. Paragraph 2 merely says  
23 that the documentary evidence shall be incorporated into the  
24 record as trial exhibits, but it doesn't say that we were  
25 waiving our objections to hearsay. And the Plaintiffs have



1 known for quite some time that we were opposed to the newspaper  
2 articles coming in. We filed a motion in limine to exclude the  
3 newspaper articles on June 30th, 2015.

4           When it came time for us to file our objections to  
5 exhibits, which I believe was July 8th, we noted objections to  
6 the newspaper articles as hearsay. So, Your Honor, we don't  
7 think that there was any clear and unambiguous agreement that  
8 newspaper articles could come in over hearsay objections, and  
9 that certainly was not our intention.

10           **THE COURT:** Well, what was your intention as to the  
11 language in paragraph 2, that the parties agree that the  
12 exhibits identified in Exhibit A shall be incorporated into the  
13 trial record as trial exhibits?

14           **MR. FARR:** Well, Your Honor, we heard that historians  
15 use all sorts of stuff that may be hearsay for all sorts of  
16 reasons. So there may be some other reason for the newspaper  
17 article to come in, you know, other than for the truth of the  
18 matter asserted within the newspaper article.

19           **THE COURT:** Okay. I understand. I think I've heard  
20 sufficient argument on this. As to the argument on the  
21 stipulation, I am not going to find that the Defendants have  
22 waived their hearsay objection by the language of the  
23 stipulation.

24           While that certainly may have been what was  
25 contemplated and hoped for by the parties when they were

1 discussing this issue, a stipulation has to be agreed to  
2 knowingly; and as an officer of the Court, the Defendants are  
3 telling me that it was not their intention to waive the hearsay  
4 objection with a stipulation.

5 I am hard-pressed to find that, under these  
6 circumstances, the Defendants purposefully waived their hearsay  
7 objection to the materials that were used during the  
8 preliminary injunction hearing.

9 Having said that, in looking at the schedule then  
10 that followed that, the Defendants did object to the exhibits  
11 in question on grounds of hearsay in their objections as part  
12 of the pretrial process which followed the June 12th, 2015,  
13 stipulation.

14 So that leaves me, I believe, with an issue of  
15 whether the Defendants are now prejudiced because of the  
16 reliance they say -- I'm sorry, the Plaintiffs are prejudiced  
17 because of the reliance they say they had on the stipulation.

18 In looking back over this case, the latest order from  
19 the magistrate judge had set the close of fact witness  
20 designations or disclosures by May 22, 2015, with all fact  
21 witness depositions to be taken on June 5, 2015. Now, that may  
22 have been extended by agreement, but in an April 28, 2015,  
23 order, the parties had been trying to close discovery, which  
24 had been ongoing now for at least a year and a half, and then  
25 Mr. Farr's email that's cited here is dated June 5, 2015, which

1 comes after what would have been the disclosure of any fact  
2 witnesses.

3           So from my perspective, the prejudice that's then  
4 argued is that the Plaintiffs would have either tried to depose  
5 the legislators or noticed them for trial via trial subpoena  
6 and/or would have arranged to depose some of the reporters to  
7 get one of the levels of hearsay out of these double hearsay  
8 pieces.

9           Given the fact that this has been going on for almost  
10 two years in discovery, I have to say I am a little frustrated  
11 that this wasn't resolved earlier, because the magistrate judge  
12 and I spent considerable time trying to deal with the ground  
13 rules for discover, particularly involving the legislators, and  
14 this is very late in the day for this issue to be arising.

15           It would appear to me that the issue is arising  
16 because the Plaintiffs appear to have wanted to rely on some of  
17 these statements by getting them in through their historians,  
18 who would then rely on them as, quote, reliable hearsay, closed  
19 quote, and the Defendants have been objecting to that and, in  
20 light of that, this issue now has reared its head.

21           That seems to be a strategy call on how these were  
22 going to come into evidence, and there may have been procedures  
23 during discovery when the parties could have worked this out if  
24 this was that critical to their case. I assume it was  
25 important to their case because intent is a key issue in the

1 case, and we had one -- I think two appeals of the issue of  
2 legislative privilege, if I am not mistaken, from the  
3 magistrate judge. So I know it's been going on for quite some  
4 time.

5           So I am not inclined to find on this record that  
6 there is substantial prejudice to the Plaintiffs as a result of  
7 reliance on the stipulation because the stipulation, again, was  
8 signed after the discovery period had closed, and I don't have  
9 any record from the parties that substantially in advance of  
10 the stipulation the Plaintiffs were led to believe that they  
11 could rely on this information. The earliest date I have is  
12 June 5, 2015, and that came after the discovery had already  
13 been, for all intents and purposes, closed and certainly was  
14 being engaged in only for the purpose of taking affected voter  
15 depositions.

16           Now, having said that, I do have the issue of whether  
17 these are hearsay and whether they are offered for the truth of  
18 the matter asserted; and I would be glad to address that issue  
19 and to address the issue of the subpoena, unless that issue is  
20 still being delayed for some reason. Where do we stand on the  
21 subpoena issue, Mr. Kaul?

22           **MR. KAUL:** Thank you, Your Honor. The subpoena issue  
23 is still pending. With respect to Exhibit 79, which is the  
24 exhibit that relates to the subpoena, we intend to introduce  
25 evidence between now and the end of this week in video form

1 from the deposition of a witness that we believe provides  
2 significant corroboration to the statements included here.

3           Given that it likely makes the most sense for the  
4 Court to rule on the admissibility of 79 following the  
5 introduction of that video, the one complication that that  
6 creates is that it would give Senator Cook shorter notice if he  
7 were to require to appear.

8           It is our understanding that the legislature is  
9 scheduled to close its session this week Thursday and that the  
10 legislature won't be in session Friday. We anticipate putting  
11 the evidence I'm referring to into evidence on Thursday. So my  
12 suggestion would be to wait until Thursday until that video has  
13 been played, and then we can present this issue. Defense  
14 counsel hopefully can make Senator Cook aware that to the  
15 extent that he would be asked to come, it would likely be  
16 Friday. That's how I would suggest proceeding with 79. I will  
17 let the Defendants address that, if they want to, before I move  
18 to 91.

19           **THE COURT:** Are you only the party that has an issue  
20 with 79?

21           **MR. KAUL:** Yes.

22           **THE COURT:** So that's the Duke Intervenors only.  
23 That's your exhibit?

24           **MR. KAUL:** That's correct.

25           **THE COURT:** All right. Mr. Strach?

1           **MR. STRACH:** Your Honor, I point out that the  
2 legislature is actually in session until they adjourn. They  
3 still have work to do even on Fridays when they're not  
4 technically on the floor of the Senate. So Senator Cook will  
5 be busy with legislative business for the entire week and the  
6 foreseeable next few weeks.

7           We certainly don't have a problem with deferring the  
8 discussion, but I don't think it is fair to Senator Cook for  
9 him to be -- on a moment's notice have to come up Thursday,  
10 Friday, or whatever.

11           **THE COURT:** Okay. I understand. Well, if you want  
12 to defer him, I will. I have to be candid with you, I think it  
13 is a steep, steep uphill climb on your effort to have Senator  
14 Cook come in to testify, based on the case law that I've  
15 reviewed.

16           **MR. KAUL:** That's fine, Your Honor. We're happy as  
17 long as the Court is happy to address that later in the week.

18           **THE COURT:** I would be glad to, but I need to tell  
19 you it is likely going to be quashed.

20           **MR. KAUL:** I understand.

21           **THE COURT:** The case law seems to me to be  
22 extraordinarily supportive of my quashing that.

23           **MR. KAUL:** Your Honor, the -- 91, I think -- I don't  
24 think there is any reason we need to defer. That one I believe  
25 all the Plaintiffs are in support of moving it. That's the one

1 with the email exchange involving Representative Blust.

2 **THE COURT:** Okay.

3 **MR. KAUL:** On that one, I would make just a couple of  
4 points. One is that because this is the reprint of an email  
5 exchange, it addresses to a significant extent, I think, the  
6 Court's concern that you've raised about someone being quoted  
7 out of context. Here we have the context because we have the  
8 email exchange that's reprinted in the article.

9 And then, Your Honor, we would also note that the  
10 residual hearsay exception, Rule 807, appears to apply with  
11 significant force with respect to this email.

12 First of all, there's indicia of reliability for a  
13 few reasons. Number one, this is a news article by a respected  
14 publication; and as the Court is aware, legislators, if they  
15 are quoted out of context, are more than happy to correct the  
16 record. There's been no evidence that Representative Blust at  
17 any point has addressed this issue or sought any correction.  
18 There is no other way to get this evidence in due to the  
19 privilege that Representative Blust has.

20 And, finally, Your Honor, this goes directly to the  
21 process that was used in the legislature to pass the bill. The  
22 critical quote is the reference by Representative Blust, his  
23 acknowledgment that the process used was not one that -- was  
24 one that could be fairly criticized.

25 **THE COURT:** Well, what part of this are you seeking

1 to have used? Is it all of it? Is it some part of it?

2 **MR. KAUL:** It is a part, Your Honor. I am looking  
3 for it. I apologize. I was focused on the other --

4 **THE COURT:** I think you are on the bottom of page 2,  
5 top of page 3, if I understand your previous briefing.

6 **MR. KAUL:** That's correct. It is the reference to  
7 "It was received by the House only at 6:11 p.m. on the last  
8 night of the session for concurrence only. I readily admit  
9 that is not good practice. That is something we can be justly  
10 criticized for doing."

11 **THE COURT:** Just so that I am clear, are you seeking  
12 to have all of it admitted, just that portion, or something  
13 else?

14 **MR. KAUL:** Just that portion, Your Honor. I don't  
15 think any other Plaintiffs disagree, although I will let them  
16 address that, including the reference to the election law bill,  
17 so that it is clear what the context for the statement is.

18 And then, Your Honor, there is also the reference, I  
19 believe, in here to --

20 **THE COURT:** This is part of my frustration is that I  
21 don't know exactly what's being offered, and there are a lot of  
22 statements in newspaper articles; and if you are asking for the  
23 whole thing to be in, I understand that argument. If you want  
24 part of it, I understand that, but I need to know which parts,  
25 and that will be important if somebody later wants to challenge



1 my decision so that it is clear what it was that was before me.

2 **MR. KAUL:** Your Honor, I believe it's just that  
3 statement in this news article.

4 **THE COURT:** All right. Is there any corroboration of  
5 that statement? Do you have any other evidence that  
6 corroborates that?

7 **MR. KAUL:** Well, there is the actual legislative  
8 record, Your Honor, which establishes that this is precisely  
9 what the process was.

10 **THE COURT:** I understand. Part of that's based on  
11 interpretation and characterization of what happened.

12 **MR. KAUL:** There's an extent to which I think that's  
13 right, Your Honor, but I don't think there is any dispute  
14 that -- that the process was one in which the bill was  
15 submitted late in the day for concurrence only. So there is  
16 clear corroboration of that piece of it.

17 **THE COURT:** Okay. All right. Do you all want to be  
18 heard on that one?

19 **MR. STRACH:** Yes, Your Honor, briefly. I am not  
20 aware of any case law, Your Honor, that says that just because  
21 it is in a respected newspaper and the legislator didn't  
22 specifically seek out a correction means that it can come in  
23 for purposes of the residual hearsay exception.

24 I think, more importantly, this particular statement  
25 is not a statement that goes to the legislative process. It is

1 a statement of a rank and file -- one rank and file  
2 legislator's opinion, characterization of the process, and the  
3 process in only one minor respect, and that is that they  
4 supposedly received the bill at 6:11 p.m. on the night before.

5           So even if Representative Blust was here testifying,  
6 Your Honor, I don't think that would be relevant evidence to  
7 what the Court has to consider because Representative Blust's  
8 opinion about what time the bill was received and whether that  
9 was fair or unfair would in no way establish the intent of the  
10 legislature in enacting the bill.

11           So we don't see, Your Honor, given the double hearsay  
12 nature of the statement -- it's so not probative of the issues  
13 that the Court is to consider, we don't see where the -- how  
14 that -- we think the weight -- the prejudice to the Defendants  
15 and the double hearsay substantially outweighs any possible  
16 probative value this could have on the issues in the case.

17           **THE COURT:** All right. Thank you.

18           **MR. KAUL:** Your Honor, just briefly, having had a  
19 chance to look at this, I want to clarify for the record there  
20 is one other statement that I meant to refer to before. Near  
21 the top of page 2 in the first full paragraph, there is a  
22 statement, "But I can tell you I have for years heard  
23 complaints that college students ought to vote in their  
24 hometowns." Thank you, Your Honor.

25           **MR. FISHER:** And, Your Honor, I just want to -- I

1 mentioned this before Dr. Lawson's testimony yesterday morning,  
2 and what Josh Kaul has said, we agree with. I would just point  
3 out, just to respond to Defendant's argument, in their  
4 cross-examination of some of the witnesses here, they have  
5 asked if individual members of the legislature raised a point  
6 of order. And this is what we see as kind of the flip side of  
7 that, in that a supporter of H.B. 589 in this quote indicated  
8 that there was a problem with the process of the concurrence  
9 vote in the House.

10           If you look at Dr. Lawson's report, we don't think  
11 that that was inconsequential at all. I referenced the Court  
12 to that paragraph yesterday.

13           **THE COURT:** Thank you.

14           **MR. FISHER:** Thank you.

15           **THE COURT:** Is this going to be used any more with  
16 anybody else, or is it just now being moved in as evidence?

17           **MR. DONOVAN:** I believe that's right, Your Honor.

18           **THE COURT:** Okay. Here is my proposition. Report  
19 back to me by after lunch as to where you are on the other  
20 ones, and then I will give you my ruling on that one at the  
21 same time.

22           **MR. DONOVAN:** We will do that.

23           **THE COURT:** All right. Thank you very much.

24           **MR. DONOVAN:** Are you ready to proceed with  
25 witnesses?

1           **THE COURT:** Yes.

2           **MR. HO:** Good morning, Your Honor. The League of  
3 Women Voters Plaintiffs call Dr. Theodore Allen.

4           **THEODORE ALLEN, PH.D., PLAINTIFFS' WITNESS,** at 9:39 a.m., being  
5 first duly sworn, testified as follows:

6    DIRECT EXAMINATION

7           **BY MR. HO**

8           Q     Good morning, Dr. Allen.

9           A     Good morning, Mr. Ho.

10          Q     Could you please state your full name for the record.

11          A     My name is Theodore T. Allen, A-L-L-E-N.

12          Q     And what is your current job title, Dr. Allen?

13          A     I'm an associate professor of Integrated Systems  
14 Engineering at the Ohio State University.

15          Q     I am going to call the Ohio State University OSU, if  
16 that's okay. How long have you been on the faculty of OSU?

17          A     Nineteen years.

18          Q     Do you have tenure?

19          A     Yes, sir.

20          Q     Can you briefly describe your educational background.

21          A     I received an AB degree in physics and a certificate in  
22 engineering physics from Princeton. Then I received a master's  
23 in physics from UCLA, and then I received a Ph.D. in industrial  
24 and operations engineering from the University of Michigan, Ann  
25 Arbor.

1 Q Can you briefly describe what exactly industrial and  
2 operations engineering is?

3 A Yes. We are the science and practice of better, faster,  
4 cheaper. We seek to take systems and make them more efficient  
5 and have higher quality.

6 Q And have you published in any peer-reviewed journals in  
7 the field of industrial engineering?

8 A Yes.

9 Q Roughly, how many peer-reviewed publications do you have?

10 A Over 50, including two textbooks.

11 Q Do you serve as an editor of any peer-reviewed journals in  
12 the field of industrial engineering?

13 A Yes. I am an associate editor of *Quality Approaches in*  
14 *Higher Education*. I am also on three advisory boards, and I am  
15 the reviewer for numerous journals.

16 Q Are you a member of any professional associations in  
17 industrial engineering?

18 A Yes.

19 Q And what are some of them?

20 A I am a fellow of the American Society for Quality. I am  
21 an officer of the Institute of Operations Research and  
22 Management Science, and until recently, I was an officer of the  
23 American Statistical Association.

24 Q Have you worked as a consultant for private companies in  
25 the field of industrial engineering?

1 A Yes.

2 Q What are some examples?

3 A This year it's been unusual. I worked on, with students,  
4 17 industrial projects. Some of those projects -- many of them  
5 relate to waiting systems. For example, helping to reengineer  
6 the people waiting at nationwide call centers on the phone,  
7 helping to reengineer people -- parts waiting at Honda North  
8 America, helping to reengineer waiting at Jeni's Ice Cream,  
9 many other's examples, including at law firms.

10 Q In your work in industrial engineering, have you heard the  
11 term "line-waiting analysis"?

12 A Yes.

13 Q And, briefly, what is line-waiting analysis?

14 A Line-waiting analysis is the study and application of  
15 modeling waiting, including the average waiting times and the  
16 average number in queue as it depends on system inputs.

17 Q Are there any synonyms for line-waiting analysis?

18 A Yes. Queuing theory or queuing analysis is a synonym.

19 Q Is line-waiting analysis among the list of subjects that  
20 you teach in any of your classes?

21 A Yes.

22 Q Do any of your peer-reviewed publications concern  
23 line-waiting analysis in the context of elections?

24 A Yes, several.

25 Q Can you give me some examples?

1 A Yes. So I have a fairly prestigious publication in  
2 production in operations management, which attempts to give the  
3 operations management inputs to election officials about  
4 machine allocation. I have publications in the Winter  
5 Simulation Conference that attempt to characterize the 2012  
6 election in central Florida. And I have a publication in  
7 *Chance Magazine* that describes the 2004 election in central  
8 Ohio, where I live.

9 Q And you have a textbook on line-waiting analysis?

10 A Yes.

11 Q And is there anything in that textbook about elections?

12 A Yes. Elections systems are the primary example, and there  
13 is a chapter in there where I have a case study describing the  
14 impact of election laws in Ohio in recent years.

15 Q Have you ever applied line-waiting analysis to elections  
16 administration in the real world, Dr. Allen?

17 A Yes.

18 Q In what capacity?

19 A I have served as a paid consultant for three counties.

20 Q Which counties are those?

21 A They are Franklin County, where Columbus is, where I live,  
22 Cuyahoga County, where Cleveland is, and Onondaga County where  
23 Syracuse, New York, is.

24 Q Let's focus on Franklin County. To the best of your  
25 understanding, why were you retained by Franklin County?

1 A In Franklin County, we had a very embarrassing election in  
2 2004. Lines were reported over seven hours long.  
3 African-Americans were reported to have waited over 30 minutes  
4 longer than others.

5 Q After you consulted with Franklin County, did they  
6 continue to have similar problems with long waiting times?

7 A No.

8 Q What was the biggest factor in reducing waiting times to  
9 vote in Franklin County?

10 A Well, I was very proud of the machine allocation that I  
11 helped them implement that takes into account the ballot length  
12 disparity. But I have to admit in the analysis that I did for  
13 my textbook that early voting was by far a bigger factor in  
14 reducing waiting times in the 2006 and 2008 elections.

15 Q Why was early voting a factor in reducing waiting times in  
16 the 2008 election in Ohio?

17 A Well, after the 2004 election, the legislators and  
18 administrators were concerned and they worked to address the  
19 problem, and including hiring me; but they also roughly doubled  
20 the number of machines, but the machines were much slower to  
21 vote on. So it is a very good thing that a third of the  
22 electoral was taken out by the absentee ballot.

23 Q Have you ever served as an expert witness in an elections  
24 case?

25 A Yes.



1 Q Is that *Fleming v. Gutierrez* in the Federal District Court  
2 of New Mexico?

3 A Yes.

4 Q Did you testify in that case?

5 A Yes.

6 Q Did the Court in that case describe you as an expert in  
7 line-waiting analysis who has experience in both planning for  
8 elections and also reviewing previous elections in terms of  
9 minimizing waiting times and explaining the causes of excessive  
10 lines during elections?

11 A Yes.

12 Q Did the District Court rely on your work in issuing its  
13 ruling in that case?

14 A Yes.

15 **MR. HO:** Your Honor, for the record, this case that  
16 Dr. Allen is referring to is referenced in his initial report.  
17 It is *Fleming v. Gutierrez* in the District Court of New Mexico,  
18 which is in the docket -- which has Docket Number 13-CV-222.  
19 The District Court's opinion referencing Dr. Allen was not  
20 filed at the time of Dr. Allen's initial report in this case,  
21 but we have copies of it for the Court and for the parties.  
22 Permission to approach?

23 **THE COURT:** Yes.

24 **MR. HO:** For the record, it is on ECF. It's Document  
25 Number 111, and Dr. Allen is referenced on page 7.

1           At this time, Your Honor, we would move to qualify  
2 Dr. Allen as an expert in industrial engineering, applied  
3 waiting-line analysis, and the application of line-waiting  
4 analysis in the context of elections.

5           **MR. BOWERS:** No objection, Your Honor.

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

7 **BY MR. HO**

8 Q       Dr. Allen, at a very high level, what were you asked to do  
9 in this case?

10 A       I was asked to analyze the 2012 election in North Carolina  
11 to investigate what the impacts of key provisions in H.B. 589  
12 would have had if they had been implemented in that election in  
13 terms of the waiting times increased possibilities and the  
14 deterred voters -- the number of deterred voters possible  
15 increases.

16 Q       And among those provisions -- was among those provisions  
17 the early voting reductions implemented by H.B. 589?

18 A       Yes, the seven days that were no longer part of -- are no  
19 longer part of the early voting period.

20 Q       Did you form an opinion in this case about the effect that  
21 a reduction in the early voting period by seven days would have  
22 had on waiting times to vote in the 2012 election in North  
23 Carolina?

24 A       Yes, I did.

25 Q       And very briefly, what was that opinion?

1 A My opinion is that had the seven days been eliminated, the  
2 almost 900,000 people -- many of them would likely have voted  
3 on Election Day. The lines would have been notably longer, and  
4 many thousands of people would have been deterred from voting.

5 Q You said 900,000 people. Which 900,000 people are you  
6 referring to?

7 A The almost 900,000 people who voted on the seven days that  
8 now have been eliminated from the early voting period.

9 Q Now, Dr. Allen, you prepared expert reports in this case?

10 A Yes.

11 **MR. HO:** I would like to hand the witness a binder  
12 with those exhibits. Permission to approach?

13 **THE COURT:** Yes.

14 **BY MR. HO**

15 Q Dr. Allen, could you turn to Tab 1 in the binder, PX49.  
16 Is this your first expert report in this case dated April 11,  
17 2014?

18 A Yes.

19 **MR. HO:** And for the record, Your Honor, this exhibit  
20 has already been admitted pursuant to stipulation of the  
21 parties as part of the preliminary injunction record.

22 **THE COURT:** Okay.

23 **BY MR. HO**

24 Q Could you turn to Tab 2, Dr. Allen, PX233. Is this your  
25 second report in this case dated February 12, 2015?

1 A Yes.

2 Q And could you turn to Tab 3, PX246. Is this your  
3 surrebuttal report dated March 24, 2015?

4 A Yes.

5 Q Do these reports accurately describe the analysis that you  
6 undertook in this case?

7 A Yes.

8 Q And do they summarize your findings and conclusions?

9 A Yes.

10 Q And did you sign them under oath?

11 A Yes.

12 **MR. HO:** Your Honor, at this time we would move to  
13 admit Plaintiffs' Exhibit 233 and 246.

14 **MR. BOWERS:** No objection.

15 **THE COURT:** Admitted.

16 **BY MR. HO**

17 Q Dr. Allen, let's talk about the line-waiting analysis for  
18 a moment. What, if anything, does the line-waiting analysis  
19 tell us are the principal factors that affect waiting times?  
20 Can you tell us?

21 A Yes. A queue forms relating to the arrival of people, or  
22 entities to the queue, the service process, and the number of  
23 resources or servers.

24 Q So three factors?

25 A Yes.

1 Q And what do you mean by "service process"?

2 A So in election systems, the service process could be the  
3 booth, the check-in. These are service processes. Also, the  
4 scan machine, that's a service process.

5 Q And what do you mean by "number of resources"?

6 A So there can be five booths or ten booths. Those are  
7 resources, and that's the number.

8 Q Could we turn on the projector?

9 And could I ask you to turn to Tab 1 in your binder,  
10 Dr. Allen, PX49. And can we put page 8 of the PDF on the  
11 screen?

12 Dr. Allen, I would like you to turn to page 7 in your  
13 report, and specifically what's been labeled A within your  
14 report. Is there an illustration of waiting at a polling  
15 place?

16 A Yes.

17 Q Now, briefly, can you explain how the three variables that  
18 determine waiting times are represented here?

19 A Yes. So in this picture, in this depiction, people are  
20 coming in potentially from the parking lot and then queuing,  
21 and then they are going to the bottleneck service process,  
22 which is depicted as a DRE machine, and then they are being  
23 served by the machine and potentially by a poll worker who is  
24 accompanying them, and then they exit the system.

25 Q Now, I would like to ask how changes to the three basic

1 variables could potentially affect waiting times to vote. So  
2 you mentioned resources, Dr. Allen, or servers.

3 What happens if we add more servers or voting machines?  
4 What does that do to waiting times?

5 A So if the -- if we are considering a bottleneck system or  
6 the key system, then increasing the number of machines will  
7 reduce the average waiting times and reduce the average line  
8 lengths, all other things held equal.

9 Q What if we increase the service process, say the time it  
10 takes a voter to cast a ballot? What does that do to waiting  
11 times?

12 A Then all other things held equal, that will also  
13 increase -- that would increase the average waiting times and  
14 the average number in queue.

15 Q And what if we increase the arrival rate? If we have more  
16 voters showing up within a given period of time, what would  
17 that do to waiting times?

18 A That would increase the expected or average arrival rate  
19 and -- I'm sorry, that would increase the expected or average  
20 service time -- I mean, average time number in queue and the  
21 average waiting time.

22 Q So same thing as if we have more people trying to enter  
23 the courthouse at a given period of time?

24 A Yes.

25 Q I would like to ask you something about the relationship

1 between these variables. Can the relationship between these  
2 variables on the one hand and waiting times to vote on the  
3 other hand be represented mathematically?

4 A Yes.

5 Q Could you turn to the next page in your report, Dr. Allen.  
6 This is page 10 of the PDF, page 9 of your report.

7 A Yes.

8 Q What do these equations on this page refer to, Dr. Allen?

9 A So these equations refer to an approximate way to predict  
10 the expected waiting time of voters in an election system. The  
11 bottom equation has two parts. The first relates to precincts  
12 or polling places that are run not in overload, and then the  
13 bottom part relates to cases where the system is in overload.

14 Q Now, are these equations generally accepted and widely  
15 used in the field of industrial engineering?

16 A Well, these equations appear in our "Production and  
17 Operations Management" journal article, which was  
18 peer-reviewed. So I would say that particularly the top part  
19 is widely used.

20 Q Have you tested the accuracy of these equations in terms  
21 of predicting average waiting times to vote with data from  
22 actual elections?

23 A Yes.

24 Q And how did that work out?

25 A Well, in the two elections for which there were extremely

1 long waiting times, I feel that the -- this equation was  
2 reasonably confirmed or reasonably supported.

3 Q Which two elections were those, Dr. Allen?

4 A The 2004 election in Franklin County, Ohio, and the 2012  
5 election in central Florida.

6 Q Now, did you use these equations to analyze the effect of  
7 waiting times to vote as a result of the reduction of seven  
8 days of the early voting period?

9 A Yes.

10 Q Now, how does early voting affect the variables that  
11 determine waiting times?

12 A Well, my focus was on Election Day, and on Election Day, I  
13 explored possibilities that of the almost 900,000 people, some  
14 fraction would arrive on Election Day. So they would logically  
15 increase to some extent the arrival rate on Election Day.

16 Q Can we put page 17 of the PDF on the screen?

17 And this is page 16 of your report, Dr. Allen, at the  
18 table labeled Exhibit C. What is this, Dr. Allen?

19 A So this is -- these are counts of the number of people who  
20 were reported to have voted on different days in the 2012  
21 election in North Carolina.

22 Q And what did you do with this data?

23 A So the red portion shows the days that were eliminated by  
24 H.B. 589. So if you sum the number of people who voted, you  
25 see that it's almost 900,000. So that was used to generate



1 scenarios relating to the possible effects of H.B. 589 on a  
2 hypothetical election.

3 Q I would like to turn now to your second report, Tab 2 in  
4 your binder, PX233.

5 Could we put page 5 of the PDF on the screen?

6 Dr. Allen, I would like you to turn to page 4 in your  
7 report, Table A. What does Table A represent?

8 A Table A shows four scenarios relating to the possible  
9 number of people -- from the almost 900,000, what number would  
10 potentially have shown up on Election Day.

11 Q Let's walk through one of the scenarios that you  
12 considered. So 900,000 people voted on the eliminated days;  
13 right, Dr. Allen?

14 A Correct.

15 Q Now, what happens if 34,000 of those voters shift to  
16 Election Day?

17 A So that would be the second line -- second row in the  
18 table. So moving left to right, so that we start with the  
19 34,397, that is, 3.8 percent, of the number of voters from the  
20 eliminated days. Then moving to the right, that would have  
21 represented a 2 percent increase on Election Day, and that  
22 would have reasonably -- or have changed the average arrival  
23 rate from, let's say, 100 per hour to 102 per hour in this  
24 representative location, and that would have, by Equation 2,  
25 almost doubled the way -- average waiting times to

1 22.5 minutes.

2 Q So I just want to make sure we understand this scenario,  
3 Dr. Allen. In this scenario, you are looking at what would  
4 happen if just under 4 percent of the voters from the  
5 eliminated days switched to Election Day in 2012?

6 A Correct.

7 Q And that would increase the number of voters appearing on  
8 Election Day by just 2 percent?

9 A That's right.

10 Q And that would cause waiting times, in your estimation,  
11 almost to double?

12 A Right.

13 Q Now, let's talk about the worst-case scenario listed at  
14 the bottom of your table. What would happen if almost 900,000  
15 voters, the ones who voted on the eliminated days, all shifted  
16 to Election Day? What would that do to waiting times?

17 A Well, in this approximate model, the waiting times would  
18 have gone on average to almost three hours.

19 Q Now, in your report you say that your estimates as to  
20 average waiting times are conservative. Do you remember that,  
21 Dr. Allen?

22 A Yes.

23 Q In what ways are your estimates conservative?

24 A Well, it is my understanding that H.B. 589 has potentially  
25 caused issues at check-in such that in some locations there may

1 become new waiting issues that this model does not address.

2 That's one example of the conservatism built into the

3 waiting-line model.

4 Q What do you mean when you say "issues at check-in"?

5 A So this model is focused only on the bottleneck system,

6 which is generally imagined in most locations in North Carolina

7 to be the voting booth before the scanning and after the

8 check-in, so --

9 Q But are you saying there could be additional waits at  
10 check-in?

11 A That's right.

12 Q As a result of H.B. 589?

13 A Yes, in some locations.

14 Q How?

15 A Well, voters can come and be frustrated in their inability

16 to either register, since they are not allowed to do that

17 anymore, or they could be frustrated that they are not allowed

18 to vote because they are not sure on the rules, and then they

19 might submit -- they might also try to present identification

20 such that they would then -- that would not be valid without

21 filling out a lot of paperwork. So that would take

22 considerable time potentially and cause a formation of a

23 qualitatively or a different type of line than was present

24 before.

25 Q Is there anything in H.B. 589 that might affect the

1 service time, the actual time it takes voters to cast a ballot?

2 A Yes.

3 Q What is that?

4 A The elimination of straight-ticket voting will  
5 generally -- I mean quite reasonably be expected to increase  
6 the service times considerably.

7 Q And what would that do to waiting times?

8 A With all other factors held constant, it would tend to  
9 increase the waiting times, average waiting times.

10 Q Now, based on your analysis of the scenarios in Table A,  
11 did you form an opinion as to what would have happened to  
12 waiting times to vote on Election Day in 2012 if seven days of  
13 the early voting period had been eliminated?

14 A Yes.

15 Q And what is that opinion?

16 A My opinion is that the average waiting time would have  
17 gone from around 11.7 minutes up considerably.

18 Q What, if anything, does that suggest to you about the  
19 effect of eliminating seven days of early voting in the next  
20 Presidential election?

21 A Yeah, I honestly expect that the waiting lines will be  
22 longer to a reasonably substantial degree.

23 Q Now, some states like New York, Dr. Allen, have no early  
24 voting at all. You are aware of that?

25 A Yes.

1 Q Why don't states like New York have these kinds of  
2 extensive waiting line problems in every election?

3 A Well, I mean, New York actually does have considerable  
4 waiting time issues. I've worked for New York, and I warned  
5 them that, as they convert to HAVA compliance, they are going  
6 to have very -- I mean, they haven't even completed, as I  
7 understand it, their conversion in all locations, and they do  
8 have considerable lines in New York.

9 Q My question wasn't about New York specifically, Dr. Allen,  
10 but just about states that have no early voting. Why don't  
11 they have these kinds of extensive waiting line problems in  
12 every election?

13 A Well, for one thing, North Carolina has much greater  
14 reliance on in-person early voting, and there is clearer track  
15 record and an interest in the population of North Carolina for  
16 in-person early voting that is not present in other locations  
17 that I have studied.

18 Q Now, in your report, why did you focus on data from the  
19 2012 Presidential election?

20 A Because at that time I predicted that there wouldn't be  
21 particularly -- there wouldn't be considerable lines during  
22 off-year elections. So I expected that there would be  
23 relatively small losses from election lines in non-Presidential  
24 elections.

25 Q What accounts for that difference between Presidential and

1 midterm elections in your predictions about waiting times?

2 A The arrival process. For example, in here -- in 2012,  
3 there were 4.3 million people voting; whereas, in 2014, there  
4 were 2.9 million voting.

5 Q Now, in this report, Dr. Allen, did you make any  
6 predictions about waiting times in the 2014 midterm?

7 A No.

8 Q Now, based on your analysis, had you expected there to be  
9 significant problems with waiting times during the 2014  
10 midterm?

11 A No.

12 Q Now, did you see any testimony, Dr. Allen, from Bob  
13 Phillips indicating that on Election Day in the 2014 midterm,  
14 he personally witnessed voters waiting more than 90 minutes  
15 after the scheduled poll closing time to cast a ballot?

16 A Yes.

17 Q Did you witness testimony and video yesterday from a  
18 voter, Ms. Abercrombie, who testified that she waited three  
19 hours to vote on Election Day?

20 A Yes.

21 Q What, if anything, do those examples tell you about the  
22 2014 midterm?

23 A That waiting lines were a significant issue in North  
24 Carolina, and they did likely deter many thousands of voters  
25 from voting.

1 Q The problem was worse than you would have predicted even?

2 A Yes, honestly, it is worse than I would have predicted.

3 Q Now, in your work on modeling waiting times to vote, have  
4 you studied the effect that waiting times have on causing  
5 voters to not vote?

6 A Yes.

7 Q Have you ever tried to quantify the effect that waiting  
8 times have on voters in that regard?

9 A Yes.

10 Q And what have you found?

11 A I found from studying two extreme cases where there were  
12 extremely long lines, that predictably people do give up and  
13 stop and don't vote. And, in fact, I developed a simple  
14 regression model that I, in the report, call "The 2 Percent  
15 Rule," but it's really more like a 3.8 percent rule. But that  
16 rule helps you to understand how every hour the polls close --  
17 open late, causes some number of fraction of the eligible  
18 population to give up and not vote.

19 Q When you say "2 Percent Rule," what do you mean by that?

20 A So every hour, you lose 2 percent. So in the elections in  
21 central Ohio and in central Florida, they had these lines that  
22 were over five hours long. They had polls closing over five  
23 hours late, and they had losses of between 10 and 16 percent of  
24 the eligible voters at the locations that have the long lines.

25 Q So for every hour of waiting, you lose 2 percent of

1 voters?

2 A Yeah, that's a conservative estimate.

3 Q Is there a confidence interval associated with the  
4 2 Percent Rule?

5 A Yes.

6 Q Is the confidence interval such that you can exclude a  
7 null hypothesis here?

8 A Yes.

9 Q Now, have you tested your 2 Percent Rule with data from  
10 actual elections?

11 A Yeah, I built it. In fact, I put in the report the data  
12 that you can use to fit the 2 Percent Rule yourself. And for  
13 those two elections, the confidence intervals, according to my  
14 memory, were 2.7 to 4 for us dedicated Ohioans and around over  
15 3 percent to around 5 percent for the central Floridians.

16 Q So 2 percent is actually a low estimate?

17 A Correct.

18 Q Now, according to your calculations, how many voters were  
19 deterred from voting in Florida as a result of long lines on  
20 Election Day in the 2012 Presidential election?

21 A Over 200,000.

22 Q I'm sorry. Was that central Florida specifically or  
23 statewide?

24 A Statewide, I think.

25 Q Now, did you apply this 2 Percent Rule to your analysis of



1 waiting times to vote in this case?

2 A Yes.

3 Q I would like to turn back to your second report at Tab 2.

4 And can we put page 6 of the PDF on the screen?

5 Dr. Allen, can you turn to page 5 of the report.

6 A Okay.

7 Q Table B. Very briefly, what is represented in Table B?

8 A So Table B takes the same scenarios that we earlier  
9 discussed and then starts with the predictions from Equation 2  
10 in terms of the waiting times and then looks at the  
11 implications of the extremely conservative 2 Percent Rule to  
12 predict the number of deterred voters.

13 Q So let's use that first scenario that we discussed  
14 previously, Dr. Allen. If you shifted 34,000 of the 900,000  
15 voters from the eliminated days to Election Day, that would  
16 increase the number of voters appearing on Election Day by  
17 2 percent. What effect would the increase in waiting times to  
18 vote on Election Day have in terms of deterred voters?

19 A So .8 percent of the eligible voters would likely be  
20 deterred, probably more, and that would be 28,838 people.

21 Q And let's take that worst-case scenario where we shifted  
22 almost all of the voters from the eliminated early voting days  
23 to Election Day. I believe you testified before that would  
24 make average waits about three hours?

25 A Correct.

1 Q And how many voters would be deterred as a result of that?

2 A In this conservative estimate, 227,235.

3 Q Now, based on the figures in Table B, did you form an  
4 opinion as to the effect that the early voting reductions would  
5 have had on Election Day voters had they been in place in the  
6 2012 Presidential election?

7 A Yes.

8 Q And what is that?

9 A Likely tens of thousands of them would have been deterred  
10 from voting because of the lines.

11 Q Do you have an opinion as to the likely effect of early  
12 voting reductions on voters in the upcoming Presidential  
13 election?

14 A Yes.

15 Q And what is that?

16 A The same, likely tens of thousands will be deterred in  
17 future elections.

18 **MR. HO:** Thank you very much, Dr. Allen. I have no  
19 further questions at this time.

20 **THE COURT:** Any cross?

21 **MR. BOWERS:** Yes, Your Honor.

22 CROSS-EXAMINATION

23 **BY MR. BOWERS**

24 Q Good morning, Dr. Allen.

25 A Good morning, Mr. Bowers.

1 Q Dr. Allen, in conducting your analysis, you looked -- I  
2 think you testified in response to questions from Mr. Ho that  
3 you looked at the impact of the elimination of seven days of  
4 early voting in H.B. 589; is that correct?

5 A Correct.

6 Q In your analysis, did you take into account the fact that  
7 counties have the ability to provide the same number of hours  
8 in the ten days as were available?

9 A Yes.

10 Q Okay. You did take that into account?

11 A I did.

12 Q Where is that in your report?

13 A So it is my understanding that the number of hours  
14 available after H.B. 589 is a comparable, almost the same, even  
15 though there is some petition potential to reduce the number of  
16 hours in some cases, but there are also increases, but that the  
17 number of hours from Dr. Stewart's report, many of the new  
18 hours are not used very much. And there is evidence that  
19 people are just voting more in the hours that they were already  
20 voting and such that the scenarios in which a sizable fraction  
21 of the people that shift to Election Day are quite viable, in  
22 my opinion.

23 Q And that evidence that you just referred to, is that --  
24 are you --

25 A Dr. Stewart's report.

1 Q Did you do any independent verification or analysis of  
2 turnout on the -- during early voting for 2014?

3 A No.

4 Q In conducting your analysis, Dr. Allen, you testified that  
5 you used the 2004 election in Franklin County, Ohio; correct?

6 A Yes.

7 Q And also the 2012 election in central Florida; right?

8 A Right.

9 Q And you used those to validate your analysis and  
10 predictions for North Carolina; correct?

11 A Right. And also my experience that I wasn't able to talk  
12 about at that time in central New Mexico also has been factored  
13 in.

14 Q Okay. But in Franklin County, Ohio, in 2004, they had no  
15 early voting; correct?

16 A Right.

17 Q Okay. So all voters showed up on the same day in Franklin  
18 County, Ohio, in 2004?

19 A I know, yes.

20 Q That's correct; right?

21 A Correct.

22 **MR. BOWERS:** Your Honor, may I approach?

23 **THE COURT:** Yes.

24 **BY MR. BOWERS**

25 Q Dr. Allen, I've handed you what's been marked as Defense

1 Exhibit 261. Have you seen this document before?

2 A Yeah, I think I have.

3 Q Please tell the Court what it is.

4 A It's the ballots used in Miami-Dade County during the 2012  
5 Presidential election.

6 Q Okay. How many pages is this ballot?

7 A Could you tell me? It says here 12.

8 Q Sir?

9 A Is it 12? Okay. Then 12.

10 Q Go ahead and count them for us, please.

11 A Okay. I will. Twelve.

12 Q It takes a little bit extra time to go through every one  
13 of those pages, does it not?

14 A It is like taking an exam. I'm with you.

15 Q But it is like taking an exam in three different  
16 languages; correct?

17 A Yeah. Well, you see which one you're supposed to pay  
18 attention to, but, yes.

19 Q But you see what I am getting at? How many different  
20 languages are reflected in this ballot from Florida in 2012?

21 A I believe there are three.

22 Q And then are all 12 pages consumed with slates of  
23 candidates running for office, or are there multiple referenda?

24 A Most of it is referenda.

25 Q And the referenda is lengthy text, is it not?

1 A Correct.

2 Q Set that aside for a moment.

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

4 **THE COURT:** Yes.

5 **BY MR. BOWERS**

6 Q Dr. Allen, I've handed you what's been marked as Defense  
7 Exhibit 262. Have you seen this document before?

8 A I may have seen this. I mean, I have seen quite similar  
9 documents.

10 Q Okay. I'll represent to you that this is the 2012 Wake  
11 County ballot in North Carolina. Do you have any reason to  
12 dispute that?

13 A Yeah. No offense, it is the 2010 ballot.

14 Q 2010 ballot. Thank you. I misspoke. But it is the 2010  
15 ballot from Wake County, North Carolina; correct?

16 A Yes.

17 Q And how many pages is that?

18 A It is one.

19 Q Okay. You would agree with me that most voters would  
20 likely complete this Wake County ballot more quickly than the  
21 Florida ballot; correct?

22 A Correct.

23 Q So ballot length is important; right?

24 A It is.

25 Q And it is very important in determining wait time;

1 correct?

2 A I agree.

3 Q Okay. But, Dr. Allen, for your definition of long lines,  
4 isn't it true that you initially used 30 minutes based on a  
5 speech from the President?

6 A Yes.

7 Q Okay. And haven't you acknowledged, however, that two  
8 hours is a wait time that has some legal standing?

9 A I have.

10 Q Dr. Allen, in your report, you refer to a principled  
11 approach to allocating voting machines; correct?

12 A Yes.

13 Q Have you talked to anyone or did you talk to anyone in  
14 compiling your report from the North Carolina State Board of  
15 Elections about how voting machines are allocated in this  
16 state?

17 A I did.

18 Q You did?

19 A Yeah, I did because I called them up and I called up the  
20 Board of Elections to try to get some data at different times.

21 Q And?

22 A And I talked to them about my work and -- I talked to the  
23 person on the phone. So, I mean, just to be honest, I did talk  
24 to some people. I didn't talk to necessarily that -- the  
25 people that I've talked to in other systems, but I did talk to

1 some people.

2 Q Did you receive any data about how voting machines are  
3 allocated in North Carolina?

4 A I did get some, yeah, from the website. Not from those  
5 people.

6 Q Who did you talk to?

7 A I called the Board of Elections once, and I talked to the  
8 people who answered the phones there, and it was sort of a dead  
9 end. I am just trying to be honest that I did talk to  
10 somebody.

11 Q I appreciate your honesty. But it was a dead end. So you  
12 don't know how voting machines are allocated in North Carolina,  
13 do you?

14 A I do have some knowledge about early voting, so I also did  
15 some studies about early voting here, and I found out on the  
16 website that they do publish allocation information for early  
17 voting.

18 Q I am talking about for Election Day.

19 A Yeah, I couldn't find Election Day literature.

20 Q Okay. Dr. Allen, did you talk to anyone with the county  
21 board of elections in North Carolina about the allocation of  
22 voting machines?

23 A I'm not sure honestly. I might have talked to some people  
24 on the phone, but I didn't talk to any high officials for sure.

25 Q Okay. Dr. Allen, isn't it true that your primary critique



1 of service time in elections is based on voting machine  
2 allocation?

3 A I'm not sure -- I mean, I don't mean to be argumentative,  
4 but what do you mean by that? My primary -- could you repeat  
5 that question, please?

6 Q Sure. It is true that service time -- that your critique  
7 of service time in elections is based, at least in part, on the  
8 allocation of voting machines; correct?

9 A You mean that I criticized some officials, I hate to say,  
10 for doing poor voting machine allocations? Yes, I have done  
11 that.

12 Q And that is a big reason that creates an impact on long  
13 waiting lines?

14 A I agree with that.

15 Q Okay. Thank you. Dr. Allen, in your initial report, you  
16 didn't have any actual arrival data for North Carolina, did  
17 you, when people arrived at the polls?

18 A I mean, in a way, I did have -- I mean, I know how many  
19 people arrived, I know when they arrived, I mean, what days  
20 they arrived on that. So -- and I know the arrivals are  
21 generally uncoordinated. So I do have quite a lot of  
22 information about the arrival process in North Carolina.

23 Q You still have your report up there; right?

24 A Yeah.

25 Q Where is that in your report?

1 A So the Equation 2 is based on what's called the arrival  
2 process, which is the uncoordinated arrival process. So if you  
3 know how many people on average have to arrive or are going to  
4 arrive over a period of time, you can estimate and fit the  
5 parameters for Equation 2. So, I mean, I am not trying to be  
6 argumentative, but I do have quite a lot of information about  
7 arrivals in North Carolina.

8 Q Where is Equation 2?

9 A It is in the first report. It is on page -- I think it is  
10 on page 7 -- page 9.

11 Q Is that paragraph 19?

12 A Yeah.

13 Q Okay. Where in this paragraph 19 do you have arrival data  
14 for North Carolina voters?

15 A Well, this equation -- that the arrivals are related in  
16 this parameter row. So the row is the arrival rate divided by  
17 the service rate. So if you know how many people are going to  
18 typically arrive in an average hour or a time period, then  
19 you -- and you know how many can be served in a time period,  
20 then you know row.

21 Q Dr. Allen, maybe I'm just slow, but I don't see any  
22 arrival data in this.

23 A Oh, you mean the data?

24 Q Yes.

25 A Well, the data -- I see. The data was used in the

1 scenario. So the data would be in the scenario generation  
2 later in the report.

3 Q Okay. Where is that?

4 A Well, we already went through Exhibit C. So in a way,  
5 that's a source of data, and then so that's on page 16.

6 Q I am going to ask you some questions about that in a  
7 minute. That shows the days that people -- and maybe my  
8 question was inartful, so let me start over.

9 That shows the days that people -- the total number of  
10 people that showed up on each day during early voting in 2012;  
11 correct?

12 A That's correct.

13 Q Okay. But it doesn't show an hour-by-hour breakdown?

14 A Right.

15 Q And you don't have any data about that, do you?

16 A Not specifically from North Carolina, but I have data from  
17 other places.

18 Q Okay. But I am asking about North Carolina.

19 A Okay.

20 Q And you don't have that?

21 A No.

22 Q Dr. Allen, you're not an expert on human behaviors, are  
23 you?

24 A No. No.

25 Q Okay. So you don't know what might motivate people to

1 show up at certain times to vote, do you?

2 A Well, I am expert on just one part of the -- part of the  
3 many things that can deter people from voting. One part of  
4 that -- of many things that can deter people from voting -- and  
5 I heard from Dr. Levine and others about other things that I'm  
6 not an expert in, but the part that I do know about has to do  
7 with lines, and the lines can deter people -- their awareness  
8 of the local line conditions can deter them from voting.

9 Q Dr. Allen, that's not what I --

10 A But that is human behavior.

11 Q I didn't ask you about deterrence. I asked you about what  
12 might motivate people to vote, not to vote.

13 A Yeah, that's what I am saying, that I'm an expert on just  
14 part of the motivations related not to voting.

15 Q And I'm asking you: Do you have any knowledge or  
16 expertise on what motivates people to vote?

17 A Okay. I see what you are saying.

18 Q Good.

19 A I see what you are saying. The absence of lines can --  
20 I'm an expert on the absence of lines. I mean, I'm not trying  
21 to be flippant about this. I'm honestly true that the absence  
22 of lines can be viewed as a motivation for voting.

23 Q Okay. Dr. Allen, in your report, you didn't conduct any  
24 analysis of the number of poll workers assigned to precincts  
25 throughout North Carolina, did you?

1 A I'm sorry. I didn't hear what you said.

2 Q I'll repeat it. In your report, you did not conduct any  
3 analysis of the number of poll workers assigned to precincts  
4 throughout North Carolina; correct?

5 A No, I didn't.

6 Q Okay. And you would acknowledge that the number of poll  
7 workers assigned to a particular precinct would have an impact  
8 on wait times?

9 A In the three elections that I've studied carefully, I  
10 would argue that the number of poll workers, you know, varied  
11 within reasonable range, would have almost no impact.

12 Q What are the three elections that you've studied?

13 A So I've studied the Franklin County election in 2004, the  
14 central Florida election in 2012, and the central -- or the Rio  
15 Rancho election in New Mexico in 2012. In all three cases,  
16 there was a bottle tech (sic) system. There's evidence --  
17 empirical evidence that the bottleneck -- and so, you know,  
18 adding resources to non-bottlenecks would not have logically  
19 had any effect on the average waiting times.

20 Q D.r Allen, I think you've acknowledged that you didn't use  
21 the New Mexico election to validate your analysis in your  
22 report, did you?

23 A Right. Because I wasn't at that time --

24 Q So you only used Florida and Ohio, the elections that  
25 we've already discussed; correct?

1 A That's right.

2 Q And in Florida, they had a 12-page ballot with -- in three  
3 different languages with multiple referenda; correct?

4 A They did.

5 Q And in Franklin County, Ohio, they had no early voting;  
6 correct?

7 A Yes.

8 Q And they also had a long ballot, too?

9 A Correct. But it is true that I have, since this, been  
10 able to -- the election has been public data, and I have been  
11 able to analyze the election in central New Mexico, which is --  
12 it is arguably similar to the elections here in North Carolina.

13 Q So assuming that the ballots are essentially the same  
14 length in North Carolina, isn't it more likely that 17 days of  
15 early voting with one precinct worker and two machines would  
16 cause longer lines than 10 days of early voting with properly  
17 allocated machines and precinct workers?

18 A I agree with that.

19 Q Dr. Allen, isn't it true that the elimination of same-day  
20 registration could result in shorter wait times in North  
21 Carolina?

22 A Honestly, it could. However, for the people who aren't  
23 allowed to vote, their waiting times are arguably infinite,  
24 since they never get to vote. So it could also, in a sense,  
25 greatly reduce the system quality.

1 Q But you would agree that the elimination of SDR can reduce  
2 wait times; correct?

3 A Honestly -- I mean, honestly, it is an empirical question.  
4 And my experience studying -- you know, in the 2014 election,  
5 the lines, in my opinion, are about ten minutes long, a little  
6 bit longer in early voting, and very possibly, you know, with  
7 only 2.9 million people voting compared to the 4.3, I don't  
8 think it was a sterling performance, and part of the  
9 contributor may have been the same-day registration issues.

10 Q Dr. Allen, allowing out-of-precinct voters to cast  
11 provisional ballots could increase wait times; correct?

12 A Allowing out-of-precinct voters to vote -- yes, so  
13 allowing out-of-precinct voters could make -- yes, it could  
14 make the local quality measure of waiting lines worse; but on  
15 the other hand, other quality measures related to sort of total  
16 system performance could be better, because, for example, some  
17 people who wouldn't be able to vote otherwise could then vote,  
18 such as that gentleman who testified yesterday.

19 Q And your report doesn't evaluate how the elimination of  
20 out-of-precinct voting might reduce wait times in North  
21 Carolina, does it?

22 A No, it doesn't.

23 Q Okay.

24 **MR. BOWERS:** Your Honor, I probably have 15 or 20  
25 more minutes. I am happy to stop now or keep going, whatever

1 the Court prefers.

2 **THE COURT:** If you think you can finish in 15 minutes  
3 or so, why don't we do that.

4 **MR. FARR:** Your Honor, I will also have some  
5 questions.

6 **MR. BOWERS:** I can finish in 15 minutes.

7 **THE COURT:** All right.

8 **BY MR. BOWERS**

9 Q Dr. Allen, please turn to page 23 of your initial report.  
10 Are you there?

11 A I am.

12 Q I am looking at paragraph 39, and -- which includes a  
13 reference to Exhibit G. In paragraph 39, you state that a  
14 low-end scenario predicts almost 18,000 more deterred voters.  
15 Do you see that? It is about midway through paragraph 39.

16 A Right.

17 Q So 18,000 more deterred voters should translate into a  
18 decline in turnout of that same number; correct?

19 A Yeah.

20 Q Is that right?

21 A Well, you know, I amended this report in the second  
22 report. So I would rather -- I mean, this report had -- but,  
23 anyway, so I am not sure that this is my -- you know, that's  
24 why I did the second report.

25 Q Let's move on to your second report, and show me where you



1 amended it in your second report.

2 A It is on page -- amended or changed, more accurately. So  
3 it is on page 5 of the report two. So the analogous is called  
4 paragraph 8.

5 Q Okay.

6 A Yes. So this -- the earlier report had an issue that --  
7 unfortunate issue that I -- I wasn't as careful as I should  
8 have been to interpret Dr. Stewart's report, and that was one  
9 of the issues. So that's partly why I did this.

10 Q Okay, Dr. Allen. Let's go with your amended report from  
11 2015.

12 A Thank you.

13 Q And I think in the first bullet, it says the low-end  
14 scenario would represent a net increase of 13,000 more deterred  
15 voters; is that right?

16 A Yes.

17 Q So wouldn't that translate into a decline in turnout of  
18 13,000 voters?

19 A Yes.

20 Q Okay. Are you aware that turnout actually increased in  
21 2014?

22 A Yes.

23 Q Okay. Are you aware that it increased more for  
24 African-Americans voters than it did for white voters?

25 A I am, but I honestly believe that quite a few people were

1 deterred because of the lines. So, in other words, the turnout  
2 could have been considerably by higher.

3 Q Let me ask you this, speaking of that: If turnout had  
4 decreased in 2014, you certainly would have used that to -- as  
5 evidence to support your theory of deterrence, would you not  
6 have?

7 A I don't know. I mean, honestly, I admit that this issue  
8 of being deterred from voting because of lines is comparatively  
9 a small issue in the big picture of election systems. And, you  
10 know, there were two -- three elections that I've studied where  
11 it was the dominant issue. In most elections, I don't think it  
12 is the dominant issue. I think that voting behavior relates to  
13 things that I am not an expert in.

14 Q Okay. Turn back to your first report, please, sir, on  
15 page 16.

16 A Okay.

17 Q Exhibit C. You've already talked about that a few minutes  
18 ago. Now, your second report doesn't change this chart, does  
19 it?

20 A No.

21 Q Okay.

22 **MR. BOWERS:** Beg the Court's indulgence.

23 Your Honor, may I approach?

24 **THE COURT:** Yes.

25

1 **BY MR. BOWERS**

2 Q Dr. Allen, I hate to go Tom Farr on you, but I've got a  
3 calculator for you and a pad and a pen.

4 A Thank you.

5 Q This won't take but a moment. Before we start  
6 calculating, the document I've just handed you is Defendant's  
7 Exhibit 345, which shows -- it's a document from the State  
8 Board of Elections which shows turnout data. Do you see that?

9 A Yes, I do.

10 Q Have you seen this document before?

11 A I have seen this data before, but not in this particular  
12 format.

13 Q But you have seen this data before?

14 A Yes.

15 Q And before we start doing that, Mr. Ho asked you a  
16 question about states that have no early voting, and he asked  
17 you about New York, and you talked about problems in New York;  
18 but I don't want to focus on that.

19 Did I understand you to say correctly that North Carolina  
20 has a track record and a preference for in-person early voting?

21 A Correct.

22 Q Okay. Let's dig into the numbers.

23 A Okay.

24 Q All right. So first let's look at Exhibit C from your  
25 report, and the total early voting number is 2,556,228. Do you

1 see that?

2 A Yes.

3 Q Okay. Will you write that number down. And then the  
4 total Election Day is 1,719,853. Do you see that?

5 A Yep.

6 Q Okay. Will you add those two numbers together.

7 A I already know it's 4.3 million. Right? Is that right?

8 Q That's close.

9 A If you want the real number --

10 Q I want the real number.

11 A Okay. Deal. Yes.

12 Q What do you get?

13 A 4,276,081.

14 Q Okay. I get the same thing. That's good. Now, what I  
15 want you to do is tell me the percentage of early voters as  
16 compared to the total number of voters in 2012.

17 A Okay. That's the percentage as compared to the total?

18 Q Yes.

19 A This thing doesn't have a one over X, does it? Trying to  
20 break me down here. All right. Fine.

21 Q How about this. Just divide the 2.5 million number by the  
22 4.2 million number.

23 A Yeah, I know, but that means I have to type it all in.

24 Q It takes longer when you have to go through the whole  
25 motions, doesn't it, Dr. Allen?

1 A I'm with you, but I can do it. I'm in.

2 Q What do you get?

3 A 59.7 percent, or .8 percent.

4 Q That's what I get, too. Now, let's look at the State  
5 Board numbers from 2014. I will acknowledge -- you will agree  
6 with me that for purposes of comparison, 2012, as a  
7 Presidential election, had greater turnout than a midterm  
8 election in 2014; right?

9 A Yeah, it did.

10 Q These are numbers are still illustrative. In 2014, there  
11 were 1,174,236 early voters. Do you see that?

12 A Yep.

13 Q And Election Day voters, 1,755,800; correct?

14 A Yep.

15 Q Okay. Add those two numbers together.

16 A And it's not here already. All right. Fine.

17 Q No, it's not.

18 A All right. 2,930,036.

19 Q Okay. Now, with the 2012 data, I asked you to calculate  
20 the percentage of early voting as compared to the whole. Now I  
21 am going to ask you to calculate the percentage of Election Day  
22 voting from 2014 as a percentage of the whole.

23 A Okay. Okay. I got it.

24 Q And what's that number?

25 A 59.9 -- actually, it is 60 percent. 60.0 percent.

1 Q Okay. So, in essence, the numbers flipped from 2012 to  
2 2014. Do you see that?

3 A Yes.

4 Q So in 2012, 59.8 percent of the voters voted during early  
5 voting?

6 A Right.

7 Q But in 2014, almost the exact same percentage voted on  
8 Election Day; right?

9 A Yeah.

10 Q So doesn't that tell you, Dr. Allen, that the voters  
11 acclimated themselves to the new rules in 2014 and turned out  
12 in larger numbers on Election Day?

13 A Honestly, I don't agree with that conclusion, seriously.

14 Q You don't agree with that conclusion?

15 A No, because I honestly -- I mean, in my heart, I believe  
16 that this election was, you know, not that hard of an election  
17 with 2.9 million voters, and they had ten-minute, on average,  
18 lines. So quite a few people were deterred. You know, it  
19 could have been a bigger turnout. I know it is hard to  
20 believe, but, honestly, it could have been a bigger turnout.

21 So I don't necessarily draw that conclusion. I know everybody  
22 is like, oh, my gosh, it was a big turnout. And it was for an  
23 off-year election, but it could have been considerably higher.

24 I mean, let me tell you why I draw that conclusion. The  
25 reason why I draw the conclusion is the 2 Percent Rule I

1 figured out by realizing that actually the places with the  
2 longest waits sometimes had the lowest turnout, and nobody  
3 would have thought that, but it's true. That's because of  
4 people being deterred.

5       So I am just saying that it is not as obvious as you are  
6 making it out that, oh, you know, we did it, you know. To me,  
7 this wasn't that hard of an election, and there were  
8 considerably long lines and other issues. The turnout was  
9 high, but, honestly, it could have been considerably higher.

10 Q     But the numbers don't lie, do they?

11 A     This is part of the picture, and it is an interesting part  
12 of the picture, I grant you that.

13 Q     And you grant that in 2012, 60 percent of the voters cast  
14 ballots during early voting; right?

15 A     Yeah, 2012 there were more in early voting. It was a  
16 longer period, yeah.

17 Q     In 2014, it flipped?

18 A     Exactly. Like I said, I mean, that's why all my scenarios  
19 are that people are going to start showing up on Election Day  
20 and cause lines, and it kind of did.

21 Q     But they turned out in greater numbers than they did in  
22 2010; right?

23 A     They turned out in greater numbers -- what do you mean?  
24 2.9 versus 4.3.

25 Q     No, in 2010.

1 A Oh, in 2010.

2 Q Compare midterm to midterm. The turnout -- you've already  
3 acknowledged and admitted that the turnout was greater in 2014  
4 than as compared to 2010.

5 A I agree with that.

6 Q So you still believe that turnout could have even been  
7 greater?

8 A Seriously, I do.

9 Q Okay. But the numbers don't lie, do they?

10 A Yes, I believe that -- I mean, it could be wrong.  
11 Everybody makes mistakes, and I believe that the Board of  
12 Elections has high integrity, sure.

13 Q And look at the raw numbers. We've talked about  
14 percentages. Look at the raw numbers, Election Day turnout in  
15 2014 versus Election Day turnout 2012.

16 A Okay.

17 Q And we know, obviously, turnout is much -- overall turnout  
18 is much greater in 2012.

19 A Right.

20 Q But look at the raw numbers.

21 A Total --

22 Q Election Day turnout in 2014 is greater than Election Day  
23 turnout --

24 A In 2012.

25 Q -- in 2012 in raw numbers; correct?



1 A That's right.

2 Q That's correct, isn't it?

3 A That is correct.

4 Q Okay. Dr. Allen, isn't it true that actual data is more  
5 reliable than projections?

6 A Well, you know, I mean, there is biases with actual data.  
7 For example, estimating the Census could be done better with  
8 protections based on a sample than with complete attempted and  
9 imperfect complete inspection.

10 We teach the same thing when it comes to inspecting --  
11 x-ray inspection of airplane parts, yeah. Not always true that  
12 what seems to be data is more helpful than what a model can  
13 predict honestly.

14 I mean, it's a really important issue. I'm not just  
15 making it up. I mean, there is a lot of systems for which I  
16 would put my money on a model prediction over what appears to  
17 be data, because sometimes when you are trying to spec data,  
18 you don't -- there is bias built into the data. And the census  
19 is a great example. I think there is a lot of bias built into  
20 the census.

21 Q Did you do any personal analysis of wait times in the 2014  
22 election?

23 A Not in these reports.

24 Q Okay.

25 **MR. BOWERS:** Your Honor, I don't have any further

1 questions. I will turn it over to Mr. Farr.

2 **THE COURT:** Why don't we take our morning break for  
3 20 minutes. Then we'll pick up from there.

4 (The Court recessed at 10:48 p.m.)

5 (The Court was called back to order at 11:10 a.m.)

6 CROSS-EXAMINATION

7 **BY MR. FARR**

8 Q Dr. Allen.

9 A Good morning, Mr. Farr.

10 Q Good to see you again. An Ohio State fan. Good to have a  
11 few of us here in North Carolina; there's not many of us.

12 A Go Bucks.

13 Q I want to ask you a few questions, Dr. Allen. In your  
14 reports, did you -- you relied on Dr. Stewart's surveys  
15 concerning reported wait times in North Carolina?

16 A I did.

17 Q And did you do any surveys yourself similar to what  
18 Dr. Stewart did?

19 A No.

20 Q So as far as actually surveying North Carolina voters, you  
21 relied on what Dr. Stewart did?

22 A Not exclusively. I also have data from the Board of  
23 Elections and I -- the Board of Elections -- so I corroborated  
24 that with information from the Board of Elections, but, yes.  
25 For example, I have data about how many locations waited longer

1 than an hour from the Board of Elections.

2 Q Is that a report that the State Board of Elections did?

3 A Correct.

4 Q What do you know about how that report was performed?

5 A I learned that some have questioned the self-reporting  
6 nature and that it was a bit after the fact, and so that it may  
7 not be a perfect source of information; but data is generally  
8 something to look into and be interested in, I feel.

9 Q So you would agree that the State Board of Elections wait  
10 time report is meaningful data that could shed light on wait  
11 times in North Carolina?

12 A I honestly don't know what the word "meaningful" means to  
13 you, but definitely it's something that I would take into  
14 account as I think about the recent experiences.

15 Q Okay. You would take it into account because?

16 A Because it's information, you know. Maybe it's biased  
17 information, but it's information.

18 Q Okay. And did that State Board of Elections report report  
19 any wait times anywhere in the state of over two hours?

20 A The one that I looked at and the parts that I studied only  
21 reported whether it was over one hour. There was no  
22 specificity under -- just like Dr. Stewart's work, related to  
23 much longer waits.

24 Q So the only two reports you looked at for wait time were  
25 Dr. Stewart's report and the report done by the State Board of

1 Elections?

2 A Let me also mention that I did study ABC video of the  
3 election, the 2014 election, and I did read newspaper accounts,  
4 and I also was present for the last week in this trial. So I  
5 am aware of eyewitness testimony about waiting times.

6 Q You heard one lady who testified there was a two-hour wait  
7 time in Wilmington?

8 A Yeah. And there was -- I believe it was Ms. Abercrombie  
9 yesterday who said that she waited three hours, and then there  
10 was Mr. Phillips who said that he waited over an hour and a  
11 half or that he observed poll closing well after 9:00.

12 Q Do you remember what counties those people were testifying  
13 about?

14 A I apologize, but I don't.

15 Q So you didn't check to see whether or not their testimony  
16 is consistent with what the State Board of Elections reported?

17 A No, I didn't.

18 Q Okay. Now, I think you said that you looked at  
19 Dr. Stewart's report for information on the days and times that  
20 people did early voting in 2014?

21 A That was one reason I looked at it, yes.

22 Q Okay. What do you recall about that?

23 A I recall that there was evidence that I find compelling  
24 that many of the hours that were added were not well utilized.

25 Q How would you define "well utilized"?

1 A Well, of course, the increase in those hours was nonzero,  
2 but it was not to the extent that one might expect compared to  
3 hours that were already well utilized.

4 Q I don't understand that, Dr. Allen.

5 A So what I am saying is that the -- there is an exhibit in  
6 Dr. Stewart's report, that if we want we can try and find, that  
7 suggests that the greatest increases in utilization of the  
8 hours were for well-utilized hours already.

9 Q Do you know if in 2014 there was an increase in the number  
10 of evening hours, say, after 5:00 as compared to 2014?

11 A I believe that there was.

12 Q Do you recall whether those were well utilized, as you  
13 would use that term?

14 A My recall of this is not as great as I would like  
15 honestly. It would be helpful if we just brought out the  
16 report and all looked at it together.

17 Q I am not sure I've got it right with me. So I'll just ask  
18 you a few more questions and maybe if I can find it later, I'll  
19 bring it to you. We have it.

20 **MR. FARR:** Excuse me, Your Honor, let me try to find  
21 this table I am looking for.

22 **THE COURT:** All right.

23 **MR. FARR:** May I approach, Your Honor?

24 **THE COURT:** Yes.

25 **MR. FARR:** Your Honor, since I have one copy of this,

1 do you mind if I stay up with the witness as I walk him through  
2 this?

3 **THE COURT:** That's fine.

4 **MR. DONOVAN:** Do you want it on the screen, Tom?

5 **MR. FARR:** Yeah, if you guys have it.

6 (Off-the-record discussion.)

7 **BY MR. FARR**

8 Q Dr. Allen, I am going to show you what's been marked as  
9 Plaintiffs' Exhibit 242. I am just going to show you the first  
10 page. Can you confirm that's Dr. Stewart's report?

11 A Yes, I confirm that.

12 Q And then I am going to flip to Exhibit AA. Do you see  
13 that says "Distribution of Available Early Voting Times, 2010  
14 through 2014"?

15 A Yes.

16 Q Okay. And do you see -- would you agree that Dr. Stewart  
17 reports that in 2014, there were more weekend hours than in  
18 2010?

19 A Okay. Thank you. Okay. So there are more weekend hours  
20 in 2014 than there were in 2010. Oh, I see what you are  
21 saying. Yes, I confirm that.

22 Q Okay. And let me flip the page. Appendix BB, have you  
23 seen this before?

24 A I didn't look at it in this format. Sorry. I looked at a  
25 different part of the report that had the visual summary.

1 Q Did you look to see the total number of voters that voted  
2 in each time slot in 2010 versus 2014?

3 A I did.

4 Q And do you agree that Dr. Stewart reports that the total  
5 number of voters in each time slot in 2014 was greater than the  
6 equivalent time slot in 2010?

7 A I mean, every time slot is higher than every other time  
8 slot; that's what you want me to verify?

9 Q Yes.

10 A I mean, obviously the time slots that don't exist were  
11 less, though; right? I mean, no offense, but there were some  
12 time slots that were in 2010 that weren't; but of the time  
13 slots that are in this thing, yes, 2014 dominates 2010.

14 Q Then if we turn back to Appendix AA, do you see where  
15 he's -- Dr. Stewart is reporting the total number of hours for  
16 evening hours?

17 Let me explain a little bit.

18 A Yeah, thank you.

19 Q This is a military clock that he is using here; right?

20 A So it's down here.

21 Q Right. So 1200 would be noon, 1300 would be 1:00 and so  
22 forth; 1400, 2:00; 1500, 3:00; 1600, 4:00; 1700, 5:00?

23 A Yes.

24 Q In looking at this exhibit, wouldn't you agree that  
25 Dr. Stewart reports the total number of evening hours in 2014

1 increased from 2010?

2 A So you are asking me to add up all the evening hours that  
3 were lost from the seven eliminated days and then add in these  
4 ones and see if it compensates; right? That's basically what  
5 you're asking me?

6 Q He's calculated all the evening hours in 2010.

7 A I see.

8 Q And he's calculated all the evening hours in 2014.

9 A Even including the seven eliminated days?

10 Q Yes.

11 A Okay. Thank you for checking. I will assume that you are  
12 right about that. So then I agree with your statement.

13 Q Right. So the number of evening hours in 2014 increased  
14 versus 2010?

15 A Assuming that this -- I mean, I haven't -- I apologize,  
16 but I am not familiar enough with this report; but assuming  
17 that you are right that this is the total period, including the  
18 eliminated days accounted for, yes.

19 Q And you agree, do you not, Dr. Allen, that a popular time  
20 for people to go vote is after they stop working at 5:00?

21 A I agree with that.

22 **MR. FARR:** Okay. Your Honor, may I ask the Court for  
23 some assistance? I would like to ask Dr. Allen about his case  
24 in New Mexico, and, apparently, the only copies that are left  
25 have been handed to the clerk. Can we borrow that for a



1 second?

2 **THE COURT:** Yes.

3 **MR. FARR:** Thank you.

4 **BY MR. FARR**

5 Q Dr. Allen, I am going to hand you a copy of this decision  
6 in the New Mexico case. I think the Plaintiffs -- first  
7 Plaintiff's name is Teresa Fleming?

8 A Correct.

9 Q Is that the case you testified in?

10 A That's right.

11 Q I haven't seen this before today, Dr. Allen, but I just  
12 have a couple questions I want to ask you about this.

13 A Sure.

14 Q Do you recall what the -- there was some claim in this  
15 case that there had been long lines in a particular county in  
16 New Mexico in the 2012 election?

17 A Correct.

18 Q And you were called to be an expert witness in that case  
19 by whom?

20 A So there were multiple Plaintiffs who had lost the -- the  
21 Republicans who lost the election and they were -- they -- the  
22 Democrats that administered the election had argued -- arguably  
23 put too few machines and caused extremely long lines in Rio  
24 Rancho, which is predominantly Republican. And so they were  
25 seeking to show that the poor election administration had

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1 essentially cost them the election and that the administrators  
2 were incompetent and needed to be -- have Court injunction.

3 Q Okay. And who hired you?

4 A These Republican -- Ms. Papponi and the others, they hired  
5 me.

6 Q Okay. And what data did you look at to give your  
7 testimony in this case?

8 A Okay. So in that case, the -- we had poll closing times  
9 for all these locations. We had the number of machines for all  
10 the locations. We had the number of people who voted, both  
11 throughout Sandoval County and also in Rio Rancho, which is  
12 part of Sandoval County. And that was the data, that primary  
13 data.

14 Q So I want to make sure I got all this. You had the number  
15 of machines in the precincts where there was -- where there  
16 were long lines?

17 A Right.

18 Q And you had the number of people who voted?

19 A That's right.

20 Q And what else did you have?

21 A They were called easy voting centers, so they weren't  
22 technically precincts. But, yes, so I just said I had the  
23 number who voted, the number of machines, the poll closing  
24 times.

25 Q Okay. Now, do you know what I mean -- I think you and I

1 will know this, but tell the judge what is meant by a check-in  
2 station.

3 A Okay. So after there's parking or some kind of process to  
4 get to the location, then there's a check-in in which they  
5 attempt to verify that you are properly registered; and then  
6 after that, then you go into the primary service where you  
7 vote.

8 Q Did you know the number of check-in stations at this  
9 voting area where there was a line?

10 A No.

11 Q You didn't ask to determine that?

12 A Honestly, I didn't.

13 Q Okay. Can the number of check-in stations have an impact  
14 on whether there is a long line?

15 A It could be. But in this case, it was pretty obvious that  
16 there was a single bottleneck with the optical scanning  
17 machines, and that I would have recommended at least 11 or 12  
18 machines, and they only had 5; and so that's basically the main  
19 source of waiting in that system.

20 Q So you looked at the election after it had taken place and  
21 you looked at actual data for this voting center, and you  
22 concluded that the line problem was because they didn't have  
23 enough voting machines at the precinct?

24 A Correct.

25 Q And if they had had enough voting machines at the

1 precinct, is it your testimony that they would not have had the  
2 long lines?

3 A Yes. Well, not nearly to the extent that they did.

4 Q Okay.

5 A But you are correct in thinking that, you know, if they  
6 relieved that part of the system, theoretically, some other  
7 part could have become an issue, and I have no data or  
8 knowledge of those other parts.

9 Q Now, clarify for me, Dr. Allen, did you testify in a case  
10 in Florida?

11 A No, I didn't.

12 Q And did you testify in a case in Ohio?

13 A No -- well, no, I didn't.

14 Q Okay. And I want to point you to page 10 of this opinion  
15 that I just handed you.

16 A Okay.

17 Q Do you see the first full paragraph which starts, "In  
18 spite of the fact"?

19 A Yes.

20 Q Could you read that first sentence into the record,  
21 please?

22 A "In spite of the fact that straight-party voting had been  
23 eliminated statewide and other counties had utilized VCCs for  
24 the first time, Rio Rancho was the only city in New Mexico that  
25 experienced severe voting problems on Election Day in 2012."

1 Q So your understanding was New Mexico had eliminated  
2 straight-ticket voting for this election?

3 A Yes.

4 Q And what does VCC stand for?

5 A Voting convenience center.

6 Q Okay.

7 A What it basically means is that it was like  
8 out-of-precinct voting. They allowed out-of-precinct voting.  
9 That's what voting convenience center is.

10 Q All right. Could you go down to the bottom of page 10.

11 A Uh-huh.

12 Q Do you see where it starts, "In the 2008 election"?

13 A Yes.

14 Q Could you read -- start there and read the rest of that  
15 paragraph into the record, please?

16 A In 2008 -- "In the 2008 election, there were little over  
17 12,000 voters on Election Day in Rio Rancho. In 2012, there  
18 were approximately" -- do you want me to keep reading?

19 Q Yes.

20 A -- "7,500 voters in Rio Rancho on Election Day. There was  
21 a reduction of 5,300 voters between 2008 and 2012."

22 Q And then please read the next sentence, and then we can  
23 stop.

24 A Okay. "This rate of decrease was not experienced in the  
25 rest of the state."

1 Q All right, sir. So is it fair to say that in this  
2 decision, the Court, in determining the impact of the limited  
3 number of voting machines at the voting convenience center,  
4 looked at actual turnout statistics for that area?

5 A Yes.

6 **MR. HO:** Objection to the extent it calls for a legal  
7 conclusion about the basis of the Court's reasoning.

8 **THE COURT:** Overruled.

9 **BY MR. FARR**

10 Q Dr. Allen, I've read this opinion, and if it's in here,  
11 please point it to me; but did this Court accept your theory  
12 about deterred voters that you've testified about in this case?

13 A I don't think I told him about the theory of deterred  
14 voters. It just wasn't part of my role in the case. So it  
15 didn't actually come up.

16 Q So your theory on deterred voters that you've testified  
17 about in this case has never before been accepted by a Court?

18 A Well, yeah, I mean, this is the only Court that I have  
19 ever done. So if I didn't put it in that case -- because I  
20 don't think I did. My -- what I was doing was examining mostly  
21 the process at which they used and the level of competence of  
22 the officials.

23 Q Okay. Now, I've got a few more questions for you,  
24 Dr. Allen. Your study in Ohio was based upon Franklin County?

25 A If you'd allow me, I will just make a comment about the

1 2 Percent Rule.

2 Q If you don't mind, Dr. Allen, I will let your attorney ask  
3 you that question.

4 A Okay. Deal.

5 Q Now, your study in Ohio and Florida were based upon  
6 certain counties; right?

7 A Yes.

8 Q Did you ever compare the population size of the county  
9 that you studied in Ohio or the counties in Florida with any  
10 county in North Carolina in making your report?

11 A Yes.

12 Q You did?

13 A Yeah, totally.

14 Q Could you tell me where you did that?

15 A I mean, is it in the report? I mean, did I do it in  
16 preparing the report? I did.

17 Q Is it in your report is what I meant to say.

18 A You meant, is it in the report?

19 Q Yeah.

20 A I don't think there's a comparison, no, but I did do it in  
21 preparation.

22 Q All right. Did you compare the sizes of early voting  
23 centers in North Carolina against the sizes of early voting  
24 centers in Florida, the number of people that voted there?

25 A No, I didn't.

1 Q And Ohio didn't have early voting in 2004, which was the  
2 basis of your study?

3 A Right. I did do two projects with them, so one of them  
4 they did.

5 Q Okay. And then in your report, did you compare the number  
6 of people assigned to or who voted in precincts in North  
7 Carolina against any precinct in Ohio or Florida or New Mexico  
8 for that matter?

9 A In preparing the report, yes, I did.

10 Q Is it in your report?

11 A No.

12 Q Did you compare the number of voting machines -- I will  
13 call it voting machines. Do you understand what I mean by  
14 that?

15 A Yes.

16 Q In your report, did you compare the number of voting  
17 machines in any early voting center in North Carolina or in any  
18 precinct against any early voting center or precinct in Ohio,  
19 Florida or New Mexico?

20 A Not in the report, but I did in preparing.

21 Q Okay. And did you compare the hours of operation of any  
22 early voting center or precinct in North Carolina against an  
23 early voting center or a precinct in Ohio, Florida, or New  
24 Mexico?

25 A I mean, not in the report, but in my analysis, yes.



1 Q Okay. And did you compare the number -- in your report,  
2 the number of check-in stations in any early voting center or  
3 any precinct in North Carolina as compared to a precinct or  
4 early voting center in Ohio, Florida, or New Mexico?

5 A Not in the report, but in my preparation, I did.

6 Q Did you compare the physical locations or the physical  
7 attributes of any precinct or early voting center in Ohio  
8 versus an early voting center or a precinct in Ohio, New  
9 Mexico, or Florida? And by that I mean, Dr. Allen, the size of  
10 the building or the parking facilities?

11 A No, I didn't do that even in my preparations, and it's not  
12 in my report.

13 Q Did you ever attempt to evaluate unused capacity for any  
14 precinct in North Carolina on Election Day?

15 A I mean, the model in Equation 2 is all about capacity  
16 being utilized and unutilized and bunches of voters sometimes  
17 coming and sometimes not coming; and if you apply it on a  
18 statewide basis, it predicts some places will have almost no  
19 lines and most voters won't have any lines. So, yeah, it's all  
20 about the issue of over-resourcing and, you know, the need for  
21 that in the context of waiting systems.

22 Q Does your report describe the number of check-in  
23 facilities at any early voting center or precinct in North  
24 Carolina?

25 A It is not in the report.

1 Q Does your report describe the number of machines, voting  
2 machines in any precinct or early voting center?

3 A Yes. I developed a representative location, and I studied  
4 that -- the performance of this model in Equation 2 for this  
5 representative location with arrival and service, influenced by  
6 data from North Carolina.

7 Q Okay. But you don't know how many voting machines there  
8 are in a single precinct in North Carolina?

9 A That's not true. I do actually.

10 Q Which -- where in your report did you report the number of  
11 voting machines in a precinct in North Carolina?

12 A I didn't report it, but I do know it.

13 Q But you didn't put it in your report?

14 A Correct.

15 Q In your report, you didn't put the number of voting  
16 machines in any early voting center in North Carolina?

17 A Correct. My report was not about the early voting system;  
18 it was about Election Day.

19 Q Your report is not about the early voting system or how  
20 many voting machines are in a precinct even though you agree  
21 that those factors can have a significant effect on wait time?

22 A I do agree, but my report was focused on what would have  
23 happened in 2012 had H.B. 589 been implemented on Election Day.

24 Q But you made that opinion without knowing how many voting  
25 machines are in any precinct in North Carolina?

1 A Again, that's not true. I did do research and I did find  
2 out how many voting machines there were in some locations. It  
3 was hard to find that data, but I did find some.

4 Q Did you calculate, on any particular precinct, how the  
5 number of voting machines would have an impact on either  
6 decreasing or increasing wait time?

7 A I did do calculations, yes.

8 Q Did you do any for a specific North Carolina precinct?

9 A No, I used a representative precinct.

10 Q Okay. Did you compare the number of early voting hours in  
11 North Carolina in 2012 to 2014?

12 A The number of early voting hours in 2012 to 2014?

13 Q Right.

14 A Not in my report.

15 Q Right. You just looked at the days?

16 A Correct.

17 Q Okay. And did you compare the number of early voting  
18 hours in 2010 in North Carolina versus 2014?

19 A Yeah, I did. I wrote and documented that the hours are  
20 approximately the same for both 2010 and -- no. Yeah. Yes, I  
21 did.

22 Q All right. Did you compare the number of early voting  
23 centers in North Carolina between 2010 and 2014?

24 A Not in my report, but I am not sure that that is relevant  
25 to what I was trying to conclude. So that's why I didn't do

1 it.

2 Q I'll accept that, Dr. Allen. And in Ohio, Dr. Allen,  
3 after the 2004 election, did Ohio adopt the concept of early  
4 voting?

5 A Yes.

6 Q How many early voting centers are there in Ohio per  
7 county?

8 A I only work for two counties, and so I am not -- my  
9 knowledge is not about the total of Ohio, but in Ohio, most of  
10 the early voting is done by mail. They have about a third of  
11 the population voting by mail. The early in-person voting is a  
12 relatively small issue. And as I understand it, in Franklin  
13 County where I live, they used to have, I think, several, but  
14 now I think they just have one. I'm not sure how many they  
15 have.

16 Q Your recollection right now, there is only one early  
17 voting center in Franklin County?

18 A I am honestly not sure, to be honest. I haven't -- I vote  
19 my mail, and I haven't been involved with them since -- for  
20 several years.

21 **MR. FARR:** Excuse me for one second, Your Honor.

22 (Conferred with co-counsel.)

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

24 **THE COURT:** All right. Any redirect?

25 **MR. HO:** Yes, Your Honor. Before I begin, it's come

1 to my attention I've misstated something during the direct  
2 examination. I stated that Plaintiffs' Exhibit 49 had already  
3 been admitted pursuant to stipulation, but the parties -- I now  
4 understand that's not correct. That is Dr. Allen's first  
5 report located in Tab 1 of the binder, and we'd move to admit  
6 that at this time.

7 **MR. FARR:** We have no objections, Your Honor.

8 **THE COURT:** Admitted.

9 REDIRECT EXAMINATION

10 **BY MR. HO**

11 Q Dr. Allen, I just have a few questions for you starting  
12 first with the New Mexico case in which you testified  
13 previously. The Plaintiffs in that case were Republican  
14 candidates for office?

15 A Correct.

16 Q And you testified on their behalf?

17 A Correct.

18 Q And the Court granted their request for a preliminary  
19 injunction?

20 A Yes.

21 Q And cited your testimony favorably?

22 A Yes.

23 Q Dr. Allen, Mr. Farr asked you to read a portion of that  
24 opinion that referenced a decline in turnout in that county in  
25 New Mexico in 2012 as compared to 2008. Do you remember that?

1 A Yes.

2 Q Is that decline in turnout in New Mexico in that  
3 particular county consistent with your view that long lines  
4 cause voters not to vote?

5 A Yes, very consistent. In fact, I've subsequently done a  
6 careful analysis of the 2 percent, or really 3.8 percent rule,  
7 and it fits the data quite well, along with more calculated  
8 models that we studied.

9 Q Now, I would like to ask you a few questions about  
10 Dr. Stewart's survey data. Now, in your calculations in this  
11 case, you used 11.7 minutes as a starting point for average  
12 waiting times to vote in North Carolina in recent Presidential  
13 elections; right, Dr. Allen?

14 A Yes, I did.

15 Q And that's based on Dr. Stewart's survey?

16 A Correct.

17 Q Is it generally accepted within the field of industrial  
18 engineering when conducting line-waiting analysis to use survey  
19 data of that sort?

20 A Yes.

21 Q Now, what if you were to learn that average waiting times  
22 to vote in recent Presidential elections were somewhat  
23 different than what was reported in Dr. Stewart's survey?  
24 Let's say, for instance, that average waiting times weren't  
25 11.7 minutes, but they were 8.7 minutes. Would that change

1 your overall opinion in this case that reducing the early  
2 voting period by 7 days would cause average waiting times to  
3 vote to increase on Election Day in a Presidential election?

4 A No, it wouldn't change.

5 Q I want to ask you now a few questions about the turnout  
6 data from 2014, which counsel for the defense has asked you  
7 about.

8 Dr. Allen, do you consider yourself an expert in all of  
9 the factors that can affect voter turnout in an election?

10 A No, I don't.

11 Q In your report, did you make predictions about the total  
12 overall turnout level in any particular election in North  
13 Carolina?

14 A No.

15 Q Did you make any predictions about what turnout was going  
16 to be overall in the 2014 midterm?

17 A No.

18 Q When you say in your report that voters will be deterred  
19 as a result of longer lines in an election, are you making a  
20 turnout comparison in that election to a previous election?

21 A No.

22 Q So what are you saying exactly when you say that some  
23 voters are going to be deterred?

24 A I am saying that there are many factors that affect  
25 turnout. One factor is an awareness of the local lines. That

1 awareness can cause people to be deterred, as you might expect.  
2 If you ask them to wait a long time, they give up in some  
3 fraction. That's what I am saying.

4 Q I want to ask you about one of the defense exhibits that  
5 Mr. Bowers presented to you. That's DX345, if we can turn the  
6 screens on and bring it up on the screen.

7 Now, I just want to note -- do you see on this table any  
8 listing for absentee votes by mail?

9 A No.

10 Q Does it appear that they are lumped in with the early  
11 votes?

12 A Yes, it does seem to be.

13 Q Now, when you calculated turnout numbers with Mr. Bowers,  
14 I believe you calculated turnout as a percentage of registered  
15 voters; was that right?

16 A Yeah, eligible voters, yeah, which are registered voters.

17 Q Well, some people could be eligible, but not registered;  
18 right, Dr. Allen?

19 A That's true.

20 Q And you didn't calculate the turnout numbers as a  
21 percentage of the eligible population?

22 A Yeah, I agree with you that I was conservative,  
23 underestimating in that sense.

24 Q Do you remember when Mr. Bowers asked you about the  
25 numbers flipping here, that there was a larger percentage of



1 the electorate in 2014 that voted on Election Day instead of  
2 during the early voting period as compared to another recent  
3 election?

4 A Yes.

5 Q Is that consistent with your view in this report that the  
6 elimination of certain days of early voting will cause some  
7 voters to shift to Election Day?

8 A Yeah, and that's what the whole report is about in a way.  
9 I mean, that's the main point of the report.

10 Q If voters shift from the early voting period to Election  
11 Day, what does that do to arrival rates on Election Day?

12 A All other factors held constant, it increases the arrival  
13 rate.

14 Q And increasing arrival rates, what does that do to waiting  
15 times?

16 A Average waiting times or expected waiting times increase.  
17 Average line lengths increase.

18 Q And if average line lengths and waiting times increase,  
19 what does that do to voters in terms of deterrence?

20 A More voters will be deterred.

21 Q Now, you mentioned all other factors being equal. So one  
22 of the factors -- the other factors here would be the number of  
23 resources available for voting and the time it takes to vote?

24 A Correct.

25 Q Now, does H.B. 589 affect the amount of resources

1 available on Election Day, to your knowledge?

2 A Not to my knowledge, no.

3 Q So H.B. 589 essentially leaves that factor constant?

4 A To my understanding of the law; correct.

5 Q And what about service processes? You mentioned a feature  
6 of H.B. 589 that might make the service time longer.

7 A Yes. The elimination of straight-ticket voting could  
8 quite significantly increase the average service times.

9 Q And what would that do to waits?

10 A That would increase the waits.

11 Q Dr. Allen, you were asked about the elimination of  
12 same-day registration. Now, to the best of your understanding,  
13 the elimination of same-day registration doesn't prevent voters  
14 from arriving at the polls and discovering that they are  
15 unregistered or trying to register at the polls during early  
16 voting; is that right?

17 A Correct.

18 Q The law doesn't prevent voters from doing that?

19 A No, it doesn't.

20 Q So if the voters do show up and discover that they cannot  
21 register at the early voting period, the arrival rate remains  
22 unchanged; right, Dr. Allen?

23 A So there is the arrival rate at the bottleneck and then  
24 there is the arrival rate at check-in. So the additional  
25 voters would tend to increase the arrival rate at check-in but

1 not necessarily at the bottleneck. In some situations, it  
2 could create a new bottleneck that was not present in the  
3 system previous to H.B. 589.

4 Q Based on what you know, Dr. Allen, do you think it is  
5 accurate to say that the elimination of same-day registration  
6 will decrease waiting times on average?

7 A The elimination of same-day registration will -- I do not  
8 feel that -- I mean, it depends on what -- it is an empirical  
9 discussion. It could increase; it could decrease. For the  
10 people who are unable to vote, their waiting time goes  
11 effectively to infinity. So how we account for that matters,  
12 too.

13 Q Now, the prohibition on out-of-precinct voting doesn't  
14 prevent voters from presenting at the wrong precinct; right,  
15 Dr. Allen?

16 A Yes. It doesn't present -- yes.

17 Q And it doesn't change the legal requirement that voters  
18 must still be given a provisional ballot even if they are at  
19 the wrong precinct; right, Dr. Allen?

20 A As my understanding of the law; correct. Yes.

21 Q It just prevents that ballot from being counted?

22 A Correct.

23 Q So is there any reason to believe that the elimination of  
24 out-of-precinct voting will decrease the arrival rates?

25 A You know, it could. It might not. It is an empirical

1 question. It might or might not. So it is unclear to me.

2 Q I want to ask you some questions about the Florida ballot  
3 that Mr. Bowers showed you. It is DX131 (sic), I believe.

4 Now, was your analysis in this case based on ballots in  
5 Florida?

6 A No.

7 Q Did you inspect ballots used in recent North Carolina  
8 elections when arriving at your opinion?

9 A I did.

10 Q Now, just taking this Florida ballot, your understanding  
11 is that this ballot is from Miami-Dade County?

12 A Uh-huh.

13 Q You testified earlier that you have conducted an analysis  
14 of elections in central Florida; right, Dr. Allen?

15 A I focused on central Florida, but I did look at all the  
16 counties.

17 Q Is Miami-Dade County part of those central Florida  
18 locations that you conducted your analysis of?

19 A Not that I focused on, no.

20 Q Do you know, Dr. Allen, if the -- sorry. So this 12-page  
21 ballot in three languages was not used in central Florida;  
22 right, Dr. Allen?

23 A Not this one, no.

24 Q If you were trying to use this ballot, Dr. Allen, would  
25 you try to read it in all three languages?

1 A No.

2 Q You'd just read it in your one language; right?

3 A Correct.

4 Q There were a few questions about changes to the hours  
5 offered during the early voting period. Now, I just want to  
6 ask you, first of all, is it your understanding that H.B. 589  
7 increases or decreases the number of hours on Election Day  
8 itself?

9 A It is my understanding it doesn't change the number of  
10 hours on Election Day.

11 Q So does the change in early voting hours that could be  
12 occasioned by H.B. 589 -- does that in any way change your  
13 analysis about the effect of the early voting reductions on  
14 waiting times to vote on Election Day?

15 A It could, but given that -- my knowledge from what  
16 happened in 2014, I feel that the scenarios I considered are  
17 quite relevant, so, no.

18 Q So you would expect at least some voters to shift to  
19 Election Day?

20 A Yes, and, in fact, as the data we discussed earlier, quite  
21 a few voters. I mean, it went from 60 percent not on Election  
22 Day to 60 percent on Election Day, so, yes.

23 Q And what would that do to waiting times on Election Day?

24 A It would tend to increase the waiting times on Election  
25 Day.

1 Q I would like to ask about some of the data from  
2 Dr. Stewart's report that defense counsel asked you about.  
3 It's PX242. Let's look at page 83 of the report, which is  
4 page 87 of the PDF. So it's here.

5 This is a chart that contains Dr. Stewart's numbers for  
6 the change in the number of voters on each hour of the early  
7 voting period comparing 2010 and 2014; right, Dr. Allen?

8 A Yes.

9 Q And there were more hours per each hour of the day during  
10 the early voting period in 2014 compared to 2010; right,  
11 Dr. Allen?

12 A Yes.

13 Q Now, where were most of those increases? Were they in the  
14 additional evening hours, like at 7:00 and 8:00 p.m., or were  
15 they earlier in the day?

16 A Earlier in the day.

17 Q Now, is that consistent with your view that eliminating  
18 seven days of early voting will increase arrival rates during  
19 the remaining voting periods?

20 A Yes.

21 Q And what will increasing the arrival rates do to waiting  
22 times to vote during the early voting period?

23 A That would also cause lines during early voting.

24 Q Now, you provided us with estimates earlier about the  
25 number of voters who would be deterred as a result of longer

1 lines on Election Day; right, Dr. Allen?

2 A Yes.

3 Q Those estimates did not include the possibility of longer  
4 waits during the early voting period; right, Dr. Allen?

5 A Yeah, I didn't include -- I didn't include those, but  
6 there could be losses there. I suspect the losses there could  
7 be quite significant.

8 Q So we may even have more deterred voters than the numbers  
9 that you predicted?

10 A Yeah, I'm pretty sure we will, yes.

11 Q Now, could we look at a different page in this report,  
12 page 89 of the PDF, which is Page 85 of the report? Can we  
13 bring that on the screen? Maybe that's the wrong page number.

14 **MR. HO:** Could I have a moment, Your Honor?

15 **THE COURT:** Yes.

16 **BY MR. HO**

17 Q It looks like we have it now. So I am looking at  
18 Table 16. This is Dr. Stewart's survey data for waiting times  
19 to vote in the 2014 midterm.

20 A Right.

21 Q Have you looked at this data, Dr. Allen?

22 A Yes.

23 Q And, roughly, what was the average waiting time to vote in  
24 the 2014 election on Election Day?

25 A Around ten minutes --

1           **MR. FARR:** Objection. He should say "based on this  
2 survey."

3 **BY MR. HO**

4 Q       Yeah, sure. Based upon this survey.

5 A       Right. Taking the survey as given and making some  
6 assumptions that I described in my report, I estimate ten  
7 minutes.

8 Q       And how does that compare to average waiting times to vote  
9 in North Carolina in recent Presidential elections?

10 A       It is close. You know, around -- it was 11.7, using the  
11 same approach with his -- again, conditioned on his data being  
12 correct for 2012.

13 Q       Now, what, if anything, does it tell you that the survey  
14 data indicates that the fact that waiting times to vote in the  
15 2014 midterm, after the early voting reductions were  
16 implemented, was about the same as waiting times to vote in  
17 recent Presidential elections, despite the fact that there were  
18 far fewer voters in the 2014 midterm?

19 A       Yeah. To me, it means that the election system has lost  
20 quality and that the 2014 election indicates quite likely that  
21 there will be significant waiting times in future elections.

22 Q       And what does it tell you about Presidential elections and  
23 the potential for waiting times in North Carolina in future  
24 Presidential elections in particular?

25 A       That it will be a real concern. That North Carolina has

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1 had a history of generally being fairly high quality with  
2 respect to waiting lines, but that history may be changing.

3 **MR. HO:** Thank you, Dr. Allen. I don't have any  
4 further questions right now.

5 **THE COURT:** Anything further from the defense?

6 **MR. BOWERS:** Yes, Your Honor.

7 RECROSS-EXAMINATION

8 **BY MR. BOWERS**

9 Q Dr. Allen, briefly. Mr. Ho asked you about the Florida  
10 ballot, and it is true that in conducting your analysis, you  
11 used the 2012 election from central Florida to validate your  
12 analysis and predictions in North Carolina; correct?

13 A Yes.

14 Q But it is also true that you considered -- in conducting  
15 your analysis in Florida, you considered all counties,  
16 including Dade County; correct?

17 A Not for the 2 Percent Rule. I only did the central  
18 Florida ones because it's a very laborious process of getting,  
19 one by one, all the counts of referenda at all the locations.  
20 So just to keep the process manageable, I only focused on that.  
21 However, for other parts of an article that I wrote, I did look  
22 at other parts of the state.

23 Q Including Miami-Dade County?

24 A Right. But not related to the 2 Percent Rule.

25 **MR. BOWERS:** Nothing further.

1           **MR. FARR:** Your Honor, I just a couple of questions.  
2 Could you all put up Figure 12 from Dr. Stewart's report,  
3 please.

4           May I approach, Your Honor?

5           **THE COURT:** Yes.

6                               REXCROSS-EXAMINATION

7 **BY MR. FARR**

8 Q       Dr. Allen, I am going to show you Figure 12 from  
9 Dr. Stewart's report, and you can look on the screen if it's  
10 easier for you. Does that figure explain, in Dr. Stewart's  
11 view, the aggregate change in early voting hours between 2010  
12 and 2014?

13 A       That's what it is, yes.

14 Q       Okay. The first part of that chart is weekdays?

15 A       I'm sorry. So the first part of that chart is weekdays  
16 and then weekends on the bottom.

17 Q       Right. And so it is fair to say that the number of hours  
18 in 2014 increased from the 7:00 a.m. to 8:00 p.m. slot?

19 A       I think that's what this says. These first two bars?

20 Q       Yes, sir.

21 A       And then the last bars.

22 Q       And then from what he describes as the 9:00 a.m. to the  
23 4:00 p.m. slot, the number of early voting hours in North  
24 Carolina decreased in 2014 as compared to 2010?

25 A       Yes.

1 Q And then in Dr. Stewart's report, Figure 12, the number of  
2 early voting hours in 2014 increased from 5:00 p.m. until the  
3 8:00 p.m. slots; is that right?

4 A Yes.

5 Q And then if you go to the weekend section, Figure 12,  
6 Dr. Stewart reports that in 2014 in all time slots, the number  
7 of hours for early voting increased during all time slots on a  
8 weekend?

9 A Yes.

10 Q All right. Now, let's turn to Figure, if you don't mind,  
11 13. If you can put that up on the screen, please. Do you see  
12 that?

13 A Yes, I do.

14 Q And this is kind of a different way of looking at what we  
15 looked at before, is it not, Dr. Allen? Doesn't Dr. Stewart  
16 show here that the number of early voters in 2014 as compared  
17 to 2012 increased in all time slots?

18 A Yes.

19 Q And I think counsel asked you about increases in -- I  
20 don't mean to misstate what he asked you, but I seem to recall  
21 that he asked you about increases in early voting during  
22 weekdays after 8:00.

23 **MR. FARR:** If I got that wrong, I apologize, Your  
24 Honor. I may be misstating that.

25

1 **BY MR. FARR**

2 Q Let's just be more direct about it. Would you agree,  
3 Dr. Allen, that there is quite a substantial increase in the  
4 number of early voters in 2014 that voted from the 5:00 p.m. to  
5 the 6:00 p.m. time slot?

6 A Yes.

7 Q And also there is a substantial increase in the number of  
8 early voters in 2014 who voted during the 6:00 p.m. to  
9 7:00 p.m. time slot?

10 A Yes.

11 Q And you agreed with me already that those would be  
12 convenient time slots for people to go vote because a lot of  
13 people get off of work at 5:00; is that right?

14 A Well, what I agreed with you is that in my understanding  
15 about arrival rates in general elections from studying several  
16 other elections that, yes, Americans often show up at that  
17 time. My specific knowledge of North Carolina is not profound.

18 Q But based on your knowledge, people like to vote after  
19 they get off of work at 5:00?

20 A Generally around America, that is true.

21 **MR. FARR:** That's all, Your Honor.

22 **THE COURT:** I just had a couple of questions, sir.

23 You talked about the number of hours being added in 2014 when  
24 the seven days had been cut. Were hours added simply at the  
25 same location, or are there some hours that are added by adding

1 new locations as well?

2 **THE WITNESS:** There were some new locations as well.

3 **THE COURT:** When you testified about arrival times,  
4 did you analyze whether the addition of new locations affected  
5 the analysis?

6 **THE WITNESS:** I didn't, but I can comment on that.  
7 So it depends on how you add the new locations. If they are in  
8 irrelevant places, of course, they won't help. Also, if you  
9 take the same resources and you spread them out, that also  
10 hurts. It's a little counterintuitive, but if you take the  
11 same -- if you have ten machines, you put five here, five  
12 there, it actually makes the waiting times worse, but -- so it  
13 mattered -- the details matter, but, in general, adding  
14 resources is a good idea.

15 **THE COURT:** Did you look at those issues of whether  
16 they, in adding extra hours at a new location, were adding  
17 additional machines or were simply splitting machines from  
18 prior locations?

19 **THE WITNESS:** I am unaware of the details about that  
20 in general across the state. I apologize.

21 **THE COURT:** You were asked about the ballot used in  
22 Miami-Dade and how it was not the ballot used in central  
23 Florida that you analyzed. Can you tell me what the ballot was  
24 in central Florida as compared to the one used in Miami-Dade?

25 **THE WITNESS:** Well, the number of issues was quite

1 comparable, the number of referenda, as we described; but the  
2 issue about language was reduced. So, you know, to the extent  
3 that -- I mean, of course, there were several counties that I  
4 looked at, and they are not all the same and not all locations  
5 are the same; but, generally speaking, the ballots appeared  
6 shorter, while if you think about the total processing time,  
7 they probably were comparable, a little less, a little shorter  
8 because of this language --

9 **THE COURT:** They were comparable -- what is  
10 comparable to what?

11 **THE WITNESS:** Comparable to the Miami-Dade one. Just  
12 a little shorter because they didn't have so many languages  
13 spreading things out.

14 **THE COURT:** So you are talking about central Florida  
15 versus lower Florida, Miami-Dade?

16 **THE WITNESS:** Yeah. There are many counties, and  
17 there are different experiences in many different counties.  
18 Miami-Dade had a negative experience.

19 **THE COURT:** Okay. Anybody have any further questions  
20 in light of my questions?

21 **MR. HO:** Just a few.

22 REDIRECT EXAMINATION

23 **BY MR. HO**

24 Q Dr. Allen, you were asked about the addition of more  
25 voting locations after H.B. 589. To your understanding, does

1 H.B. 589 increase the number of locations on Election Day?

2 A Yeah. To my understanding, it doesn't explicitly affect  
3 that, no.

4 Q Does it affect the amount of resources available on  
5 Election Day at all?

6 A Not directly, no.

7 Q So if some voters moved from the early voting period to  
8 Election Day, after H.B. 589, that increases the arrival rate?

9 A Right. It could. I mean, it definitely increases the  
10 arrival rate, yes.

11 Q But it makes no change in terms of resources?

12 A Not by itself, no.

13 Q When you put those two things together, what does that  
14 mean for lines on Election Day?

15 A It means that unless there is some -- all holding  
16 constant, the resources, the lines are going to increase and  
17 the number of deterred voters will also likely increase.

18 **MR. HO:** Thank you, Dr. Allen.

19 **THE COURT:** Anything further?

20 **MR. FARR:** Just one question, Your Honor.

21 RECROSS-EXAMINATION

22 **BY MR. FARR**

23 Q Dr. Allen, did you actually look at any voter history to  
24 see if any voters in North Carolina changed from early voting  
25 to Election Day as part of your report?

1 A Not as part of the report. As we discussed, I did look at  
2 it and I am aware of it. In fact, you just yourself made me  
3 aware of the major change from 60 percent early voting to  
4 60 percent on Election Day voting, so -- but not in the report.

5 Q I think you misunderstood my question. Did you ever look  
6 at the voting history of any particular voter to see if they  
7 changed from early voting to Election Day?

8 A There was testimony last week about that voter who changed  
9 from early voting to Election Day, but not in preparing the  
10 report, no.

11 Q You didn't look at that in preparing your report?

12 A No, not in preparing my report, no.

13 **THE COURT:** Thank you, sir. You may step down.

14 **MR. DONOVAN:** Your Honor, we have one witness, a  
15 witness on behalf of the Duke Intervenors. We would like to  
16 get it done before lunch. I think it would be pretty quick.

17 **THE COURT:** All right.

18 **MR. BOWERS:** Your Honor, may I approach to retrieve  
19 the calculator?

20 **THE COURT:** Yes.

21 **MS. CALLAIS:** Good afternoon, Your Honor. Amanda  
22 Callais on behalf of the Duke Intervenors, and we call Ebony  
23 West.

24 **EBONY N. WEST**, PLAINTIFFS' WITNESS, at 12:08 p.m., being first  
25 duly sworn, testified as follows:

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## 1 DIRECT EXAMINATION

2 **BY MS. CALLAIS**

3 Q Ms. West, could you please state your name.

4 A Yeah, my name is Ebony Nicole West.

5 Q How old are you?

6 A I'm 20 years old.

7 Q And where do you currently live?

8 A I currently live in Greenville, North Carolina.

9 Q Is that in Pitt County?

10 A Yes.

11 Q And have you always lived in Greenville?

12 A I have not.

13 Q Where did you live prior to Greenville?

14 A I lived in Charlotte.

15 Q Who did you live with in Charlotte?

16 A I lived with my parents.

17 Q And what brought you from Charlotte to Greenville, North

18 Carolina?

19 A I went to school at East Carolina University.

20 Q Okay. How long have you been in Greenville?

21 A Going on three years.

22 Q Okay. So that would make you a rising senior in

23 Greenville?

24 A Yes.

25 Q Not at Greenville, at East Carolina.

1 And what are you studying, Ms. West?

2 A I am studying interpersonal and organizational  
3 communications and political science.

4 Q And do you also work on campus?

5 A Yes, I do.

6 Q And where do you work?

7 A I currently hold two positions. Over the summer, I work  
8 in the 1 Card Office, and during the year, I work in the Center  
9 for Student Leadership and Engagement.

10 Q Have you had any internships since starting college?

11 A Yes, I have. I've had two. I've interned with Democracy  
12 North Carolina, and I've also interned with -- in the office of  
13 Congressman G.K. Butterfield.

14 Q And, Ms. West, do you have any plans for after college?

15 A Yeah, I am interested in pursuing my MPA.

16 Q Are you looking at universities in North Carolina?

17 A I am.

18 Q And just one more question. In the time that -- the three  
19 years that you've lived in Greenville, have you always lived at  
20 the same address?

21 A I have not.

22 Q And how many times have you moved?

23 A I've moved three times, and I'm actually moving again next  
24 week.

25 Q Well, good luck with that.

1 Ms. West, I would like to go just briefly over your voter  
2 registration and your voting history. Are you currently  
3 registered to vote?

4 A Yes, ma'am.

5 Q And where are you registered at?

6 A I'm registered at my current address in Greenville, North  
7 Carolina.

8 Q Have you always been registered at that address?

9 A I have not.

10 Q Where did you first register to vote?

11 A I first registered back in high school in Charlotte.

12 Q Okay. Did you register -- how old were you when you  
13 registered?

14 A I was 17 years old.

15 Q And did you register -- you said you registered in high  
16 school. Were you actually at your high school when you  
17 registered?

18 A Yeah, I was actually in the cafeteria. We had a voter  
19 registration drive put on by a class.

20 Q And were 16-years-olds and 17-year-olds participating in  
21 the registration drive?

22 A Yes.

23 Q And how did the students -- what was the atmosphere like  
24 surrounding the voter registration drive at your high school?

25 A Yeah. There was a lot of excitement surrounding it just

1 because that was -- the 2012 elections were coming up. So, for  
2 instance, for me in particular, that would have been the first  
3 election I could vote in. There was a lot of excitement. It  
4 generated a lot of discussion amongst the students on who each  
5 other was supporting.

6 Q Ms. West, if you could just slow down a little bit. I  
7 know we are getting close to lunch.

8 So you said that it generated a lot of excitement among  
9 the students. Based on your experience before that  
10 registration drive and then during the registration drive, do  
11 you think that excitement would have been there without the  
12 drive?

13 A Yeah, I definitely don't think it would have been there.  
14 There was -- it kind of set the -- it kind of, like, prepared  
15 the students and made us think more about the election just  
16 because they were doing voter registration there. So I think  
17 it definitely helped generate the discussion.

18 Q And, Ms. West, you said you were excited because you would  
19 be able to vote in the 2012 elections. Did you have friends  
20 who registered to vote who were 16?

21 A Yes, I did.

22 Q And were they also excited?

23 A Yeah. They were very excited, too, even though they  
24 weren't able to vote in that next election. They were able to,  
25 you know, discuss the issues. They were more aware of, you

1 know, the election coming up, and so they were participating in  
2 the conversation as well.

3 Q So in the fall of 2012, did you -- is that when you moved  
4 to Greenville to go to college?

5 A Yes.

6 Q And did you remain registered at home, or did you  
7 reregister?

8 A I reregistered to my dorm address.

9 Q Okay. And how did you reregister?

10 A I actually -- there was a voter registration drive on  
11 campus, and I had -- the two students came up to me and asked  
12 me if I needed to reregister to vote, and I said, yeah, I  
13 needed to update my address.

14 Q And did your prior preregistration or your experience with  
15 preregistering -- did that influence your later decision to  
16 reregister?

17 A Yes, I think it definitely did. I was very comfortable  
18 once they came up to me and -- with the process. I kind of  
19 knew more about the election, and I knew why they were coming  
20 up to me. So when I had, you know, to fill out the form again,  
21 it was just a real quick and easy process.

22 Q How did you vote in the 2012 election, what mechanism did  
23 you use?

24 A I did early voting.

25 Q And was that center on campus?

1 A Yes, it was.

2 Q Okay. So after the 2012 general election, did you  
3 reregister at another address?

4 A Yes.

5 Q And when was that?

6 A I reregistered in the fall of 2013.

7 Q Okay. And how did you reregister?

8 A I actually did same-day registration.

9 Q What election was it that you were voting in?

10 A It was the municipal election, so local city council  
11 elections.

12 Q And was it important for you to vote in that election?

13 A It was.

14 Q And why is that?

15 A There's a really good saying that all politics is local.  
16 And so, obviously, you know, a lot goes on at the national  
17 level. A lot goes on at the state level, but, you know a lot  
18 of the issues that are really at the heart of government do  
19 happen in city council and local elections. So I definitely  
20 thought it was important to, you know, have my voice in  
21 government.

22 Q And then did you stay registered at that address, or did  
23 you later reregister?

24 A I had to reregister again.

25 Q Okay. And that was -- when did you reregister?

1 A I reregistered in the fall of 2014.

2 Q Okay. And how did you reregister?

3 A I actually was holding a voter registration drive myself,  
4 so I just reregistered myself to vote.

5 Q And that voter registration drive, is that part of an  
6 organization that you were involved?

7 A It was.

8 Q What organization was that?

9 A It was part of the College Democrats.

10 Q Okay. And the 2014 general election, did you vote in  
11 that?

12 A Yes, I did.

13 Q Okay. And what was your experience on campus during the  
14 2014 election? Were there -- did you witness any campaigns or  
15 candidates interacting with students or encouraging them to  
16 vote?

17 A Yeah. There was a huge presence on campus from both sides  
18 of -- you know, from state campaigns to, you know, for  
19 instance, the U.S. Senate campaigns on campus just encouraging  
20 to students to vote, handing out material, doing voter  
21 registration themselves. I know I actually participated -- the  
22 Kay Hagan for Senate campaign held a student outreach training  
23 in Greensboro, so I did attend that. And just from, you know,  
24 talking to my peers within the -- from talking to my peers on  
25 the other side, I know they had that as well.

1 Q And, Ms. West, how did you vote -- what mechanism did you  
2 vote during the 2014 elections?

3 A I used early voting.

4 Q And were you able to vote on campus again?

5 A Not in 2014 and not in 2013.

6 Q Okay. So how did you reach the location where you voted?

7 A So in the fall of 2013, I actually had to walk from  
8 14th Street to 1st Street where our polling location was. And  
9 then the fall of 2014, I did have a car on campus, so I drove.

10 Q And did you drive by yourself, or did you bring other  
11 people?

12 A Yeah. In the fall 2014, I actually carpooled with some  
13 friends.

14 Q Did those friends have access to transportation?

15 A They did not.

16 Q So, Ms. West, I think you've mentioned just briefly that  
17 you were involved in some voter registration activities and  
18 some Get Out the Vote activities. So I would like focus in on  
19 that.

20 You mentioned that you had interned for Democracy North  
21 Carolina. Can you tell me what you did as part of your  
22 internship with Democracy North Carolina?

23 A Yeah. So a lot of what I did was just centered around  
24 voter education and voter registration.

25 Q Okay. And what sort of voter registration activities did



1 you do?

2 A Yeah. So part of my internship was in Charlotte and the  
3 other half was in Greenville. So we would just reach out to  
4 different organizations either on campus or in the community  
5 and just walk them through the process of voter registration  
6 and, you know, the methods that they can just engage voters.  
7 We also walked them through the new laws under VIVA and how  
8 that would potentially affect voters as well.

9 Q And you said that you walked them through the new law  
10 under VIVA. Which laws or which provisions specifically did  
11 you walk them through?

12 A So we walked them through the provision of there being a  
13 cut to early voting. So it went from 17 to 10 days. We talked  
14 them -- we walked them a little bit through the same-day  
15 registration, how that no longer would be allowed. We also  
16 walked them through, you know, the deadline, which is  
17 October 10, and we prepped them for 2016 where there would be  
18 voter ID.

19 Q Is this part of your registration and education  
20 activities?

21 A Yes.

22 Q And, Ms. West, you've also mentioned that you're part of  
23 the College Democrats. Can you tell me about your voter  
24 registration activities as part of College Democrats?

25 A Yeah. So what we would do is on each campus, we would do

1 something called tabling, and, basically, what tabling is is  
2 that we have to reserve tables on campus as student  
3 organizations in order to do voter registration; and so we  
4 would just set up shop in one of the busiest places on campus,  
5 and we would have voter registration forms, pens, clipboards  
6 and ask students if they needed to update their voter  
7 registration or if they needed to register to vote.

8 Q In the process of those voter registration activities, did  
9 you also participate in any education activities or conduct any  
10 education activities?

11 A Yeah. So along with voter registration, the voter  
12 education aspect of it was more so us walking them through the  
13 new provisions under VIVA.

14 Q Okay. And was that something you had to do before as part  
15 of your voter registration activities, walk the students  
16 through the laws?

17 A It was not.

18 Q Okay. And why did you feel that that was necessary in  
19 2014?

20 A I think it was specifically necessary only because it is  
21 something that we didn't deal with before. So, you know, when  
22 we were doing our tabling, we would get a lot of questions  
23 surrounding, you know, the new laws, how would it affect the  
24 students, and so that's definitely something we wanted to, you  
25 know, educate them on. We also realized that we had kind of a

1 small time scale.

2 We could only start tabling after Labor Day, which was,  
3 you know, September. So, you know, around September 9 is when  
4 we can actually start tabling. So if the voter registration  
5 deadline is October 10th, we have a month, you know, to  
6 register as many voters as we can on campus and also educate  
7 them.

8 Q Did you also participate in any Get Out the Vote  
9 activities?

10 A Yeah. So a lot of the Get Out the Vote activities that we  
11 did were more so -- once students did register with us, we  
12 would generate the conversation, if they knew where they were  
13 going to vote, if they needed rides to the polls, and so we  
14 would just set up that mechanism.

15 Q In your experience, did students often need rides to the  
16 polls?

17 A Very often, they do. A lot of freshmen have to park off  
18 campus, like you have to take buses to your cars. So a lot of  
19 them don't have access to their cars. I know my freshman year,  
20 I didn't have a car. So we do have to offer them  
21 transportation sometimes.

22 Q And in 2014, about how many individuals did you take to  
23 the polls?

24 A We took a little over 50 students to the polls.

25 Q And how did you organize these rides to the polls?

1 A Yeah. So during our tabling process, we would have a  
2 sheet of paper. If students indicated that they did need a  
3 ride to the polls, we would take down their name and number and  
4 just follow up with them, give them a call to see if they still  
5 needed a ride, and then just basically schedule that.

6 Q And did all of those students vote at the same polling  
7 location? Was there a polling location on campus?

8 A There was actually not a polling place directly on campus,  
9 and then we also have off-campus apartments. So most of the  
10 students that we did carpool or take to the polls lived at  
11 completely different precincts.

12 Q And for the students that lived on campus, were they all  
13 in one precinct?

14 A No. Our university is actually split in half. So  
15 students on west campus are in a completely different precinct  
16 than students on the other side of campus.

17 Q Now, Ms. West, I would like to focus a little bit in on  
18 how VIVA affected your voter registration, voter education, and  
19 Get Out the Vote activities. Let's talk specifically about  
20 same-day registration. What effect did the repeal of same-day  
21 registration have, in your opinion, on voter registration  
22 activities?

23 A Yeah. So like I said earlier, we had a really short  
24 amount of time to do voter registration on campus. We can only  
25 start tabling that second week in September, and, obviously,

1 the voter registration deadline was on October 10. So we  
2 weren't able to register students in that timetable. It was  
3 really difficult for us afterwards because we would have  
4 students come up to us saying, hey, I do want to register to  
5 vote, and, you know, we weren't sure if we -- we weren't sure  
6 if they would have access to voter registration, and we also  
7 didn't know if they would have access to same-day registration.

8 Q So in 2014, just to make sure I am clear on what you said,  
9 you encountered voters or students after the October 10  
10 deadline who wanted to register to vote in the election but  
11 were not able to?

12 A Yes.

13 Q And, Ms. West, how did the reduction in the days of early  
14 voting affect your voter registration and education activities?

15 A Yeah. It definitely affected our Get Out the Vote  
16 efforts, only because we -- when we are doing our carpooling,  
17 obviously, there is a -- we needed a longer time to schedule.  
18 It was really hard to schedule people to get them to the polls.  
19 Not only do you have to, you know, work with the schedule of  
20 the people that are driving people to the polls, but also  
21 working with the schedule of those that need a ride to the  
22 polls. And so having that long amount of time was just really  
23 convenient in trying to figure out when we could take people.

24 Q Ms. West, did you ever encounter any issues with  
25 out-of-precinct voting whenever you were conducting your voter

1 registration and Get Out the Vote activities?

2 A Yeah. I know personally in particular there were -- there  
3 was a time when I was doing -- on Election Day I was giving  
4 rides to polls, and I had three students in my car. And  
5 usually when we do rides to the polls, we just look up on the  
6 State Board of Elections website where their polling location  
7 is; and, obviously, I found two of the students' polling  
8 locations via the State Board of Elections website, but I  
9 couldn't find the other girl's, and so I kind of just got her  
10 address and had to figure out where her polling location was.  
11 And so I basically had to travel to, you know, three different  
12 polling sites, for one, just to make sure that they could all  
13 vote, and also I had to find hers. And, luckily, it was the  
14 right polling site for her, but that was just some difficulty  
15 we had with the out-of-precinct voting provision.

16 Q And the difficulty was that her information was not on the  
17 State Board of Elections site?

18 A Yes.

19 Q But you were able to guess where her polling location was?

20 A Yeah, based on just working with various students that  
21 lived in the apartment complex that she had, I kind of just  
22 guessed where her polling site; and we went and we found it,  
23 luckily.

24 Q And that was because you had done this before?

25 A Yes.

1 Q And, Ms. West, how specifically did VIVA and the  
2 provisions in VIVA impact your voter education activities?

3 A Yeah. It really made it harder to engage students. I  
4 know, for instance, when I first preregistered in high school,  
5 it was kind of just, you know, you walk me through the process  
6 of, you know, the voter registration form and then registered  
7 to vote, and then, you know, I can vote on Election Day coming  
8 up. That was something that was really exciting and, you know,  
9 I was really pumped.

10 But, you know, now circling back to what I have to do for  
11 other students, it's, like, well, I do the voter registration  
12 process and, you know, then I tell you you can vote, but then I  
13 have to ask you these additional questions, you know, do you  
14 know when you're supposed to vote, do you know the voter  
15 registration deadline, do you know that you can't do  
16 out-of-precinct voting on Election Day, do you have a photo ID.  
17 Like, it's just a lot of extra steps added to the process  
18 that's made it really difficult to engage students to want to  
19 vote.

20 Q And, Ms. West, do you plan to continue working with these  
21 organizations and registering young voters in the future?

22 A Absolutely. It is something that's really important to  
23 me. I know how I view voting and I know it's my voice in  
24 government, and I really hope to engage other students in it as  
25 well.

1 Q And I just had a couple more questions. Now, I just  
2 wanted to clarify. You weren't able to vote on campus in 2014  
3 because the polling location had been moved; correct?

4 A Yes.

5 Q So, Ms. West, based on your experience as a young voter  
6 and an organizer of young voters, do you believe that the  
7 enactment of VIVA has made it harder for young people to vote?

8 A I definitely think it's made it harder. It's  
9 definitely -- you know, the provisions put in place have kind  
10 of disengaged students from wanting to vote. I know, for  
11 instance, when I did preregistration when I was in high school,  
12 you know, starting off that early, it made it seem like I was  
13 being encouraged to vote, you know, that they wanted young  
14 people to have a voice in government. But I think now -- or  
15 more so now, you know, there are so many provisions that we  
16 have to tell students to remember once they are going to vote  
17 that it's really not just engaging them. It is -- they are  
18 becoming a lot more apathetic as well.

19 Q And you were personally able to vote in 2014?

20 A Yes, I was.

21 Q So how would you say that the provisions of VIVA have  
22 personally affected you?

23 A It's really personally affected, you know, something  
24 important to me, which is engaging other students on campus. I  
25 realize that, you know, voting has been really to important to



1 me over the past three years. You know, I started off in 2012,  
2 as soon as I turned 18, and I continue to vote now, and I  
3 understand the importance that it is to have a voice in  
4 government. And so I do want to engage students, and it's  
5 something that's really important to me. And so I think I'll  
6 continue to do this work, and I want to continue to work with  
7 other students to make sure that they do have a voice in  
8 government.

9 Q And VIVA makes it more difficult for you to do that; is  
10 that what you're saying?

11 A Yeah, it does make it more difficult.

12 Q And having enactment of VIVA, has it affected your own  
13 perception of North Carolina's election system, North  
14 Carolina's government?

15 A Yes, it has kind of affected my perception of it. You  
16 know, there was a time where I felt like it would be easier for  
17 students to have a say in government, you know. We were  
18 being -- we had preregistration that was encouraging students  
19 to get involved. You know, students use same-day registration  
20 a lot, which is encouraging, you know, students to get  
21 involved; but since these changes have been put in place, you  
22 know, we are just not seeing, you know, that push to get  
23 students more involved.

24 **MS. CALLAIS:** Thank you, Your Honor. No further  
25 questions.



1 2014 because of the elimination of same-day registration, can  
2 you?

3 A Although I can't name anybody in particular, I have worked  
4 immensely in the voter education and voter registration that I  
5 did, and I know countless people that have been affected by the  
6 new laws.

7 Q But you can't name a single name, can you?

8 A No.

9 Q And you can't name anyone who was unable to vote in 2014  
10 because of the shortening of the early voting period from 17  
11 days to 10, can you?

12 A No, but I know personally, when working with students to  
13 do rides to polls, that it was more difficult to just schedule  
14 them in that short amount of time. So it affected them by, you  
15 know, affecting us in our work that we could do with them.

16 Q But you can't name anybody who was unable to vote because  
17 of that, can you?

18 A No.

19 Q And you can't identify any specific person who was unable  
20 to vote in either the primary or the general election in 2014  
21 because of any provision of VIVA, can you?

22 A No.

23 Q And before VIVA, isn't it true that you would have had to  
24 educate people about when they could vote and the deadlines for  
25 voting?

1 A That is true. However, because of the VIVA, and that is a  
2 new law, that there have been provisions that we have to  
3 educate them more. So we've had to take, you know, more steps  
4 in educating them on the newer laws and how that's changed the  
5 old laws.

6 Q And so after VIVA, you can still educate people on how  
7 they need to vote and when they can vote; the message is just  
8 different. Is that right?

9 A Yes, it's a much longer message now.

10 Q Okay. And when you originally registered to vote  
11 during -- I think you said the spring of your senior year in  
12 high school; is that right?

13 A Yes.

14 Q And that was around April of 2012?

15 A It was actually probably March, April, yeah.

16 Q But you were 17 years old at that time; is that right?

17 A Yes.

18 Q And you turned 18, I believe, in September of 2012?

19 A Yes.

20 Q And so you were 18 at the time of the November 2012  
21 general election?

22 A Yes, I was.

23 Q Okay. And you understand that had VIVA been the law in  
24 2012, you still could have registered to vote in the spring of  
25 your senior year at 17 years old just as you did; is that

1 right?

2 A Yeah, I do understand that. I would be able to vote, but  
3 the people that I was sitting with may not have been given the  
4 chance to vote under VIVA.

5 Q Okay. Let's talk about the time when you moved to  
6 Greenville to go to school at East Carolina. You said you had  
7 to register to vote again there; right?

8 A Yes.

9 Q And then I think you said you had moved at least maybe  
10 three times since you've been in school at East Carolina; is  
11 that right?

12 A That's correct.

13 Q And when you reregistered, I think you said you  
14 reregistered, I guess, using paper forms, is that right, that  
15 you mailed into the Board of Elections?

16 A What election cycle is this?

17 Q Well, any of the times that you had to reregister when you  
18 lived in Greenville.

19 A Two of the times, I did, like, register. The first time,  
20 the fall of 2013, I registered via a registration drive. The  
21 second time around, which I believe is the fall of 2013, I used  
22 the same-day registration. And then fall of 2014, I had a  
23 voter registration drive, and I just did it myself.

24 Q Now, each time that you moved -- well, let me back up for  
25 a minute. Do you have a North Carolina driver's license?

1 A I do.

2 Q And do you drive while you're in school in Greenville?

3 A I do now. I did not the first year.

4 Q Okay. And -- but each time that you moved, did you update  
5 the address on your driver's license?

6 A No.

7 Q What is the address on your driver's license?

8 A It is my address at home in Charlotte.

9 Q Okay. And so why did you not change the address on your  
10 driver's license to the address in Greenville?

11 A I just haven't had the chance to. I probably -- it was  
12 just not something that I did.

13 Q You understand if you updated the address on your driver's  
14 license, you could have reregistered to vote and updated your  
15 address at DMV; is that right?

16 A Can you repeat the statement?

17 Q Yes, ma'am. If you had updated the address on your  
18 driver's license, you could have updated your voter  
19 registration address at DMV; correct?

20 A Yes.

21 Q Okay. All right. In terms of your voting experience,  
22 you've been able to vote in every election since you were first  
23 registered in the spring of 2012; is that right?

24 A Yes.

25 Q And to your knowledge, your vote was counted each time you

1 voted?

2 A Yes, it was.

3 **MR. MCKNIGHT:** I have no further questions for  
4 Ms. West at this time.

5 **THE COURT:** Any redirect?

6 REDIRECT EXAMINATION

7 **BY MS. CALLAIS**

8 Q Ms. West, I just had one question. Counsel asked you  
9 about whether you personally knew people who were affected by  
10 VIVA. And you mentioned on direct that during the 2014 cycle,  
11 in the process while you were conducting voter registration,  
12 that after the October 10th deadline, you encountered students  
13 who still wanted to register to vote in 2014; is that correct?

14 A Yeah, we had countless students come up to us after the  
15 October deadline interested in doing voter registration, but we  
16 were unable to register them, obviously, because of that  
17 deadline. And also we couldn't, you know, explain to them  
18 about same-day registration because that was also cut.

19 We had a few organizations on campus that were interested  
20 in doing voter registration drives with us, including the  
21 student government association, they wanted to do a drive with  
22 us, and they wanted to do it later, but we had to push it  
23 forward. We have, you know, countless organizations after that  
24 October 10th deadline interested in doing voter registration  
25 that we couldn't help them with.

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1 Q Those individuals that you mentioned who wanted to  
2 register to vote in 2014 after the October 10th deadline, you  
3 didn't take any of their names down, did you?

4 A No.

5 **MS. CALLAIS:** Thank you. No further questions,  
6 Your Honor.

7 **THE COURT:** Thank you, ma'am. You may step down.

8 **MS. RIGGS:** Your Honor, quick housekeeping before we  
9 finish Dr. Lichtman. Yesterday we played the video of Quisha  
10 Mallette, and I promised to have for you a copy of the  
11 deposition highlighted with the video portions that we played.  
12 This is marked as Plaintiffs' Exhibit 792, and the League of  
13 Women Voters Plaintiffs move for admission of Plaintiffs'  
14 Exhibit 792.

15 **THE COURT:** Any objection? Have you shared this with  
16 your --

17 **MS. RIGGS:** It's the same thing, the transcript from  
18 yesterday. It's just the highlighted version.

19 **MR. FARR:** Your Honor, I am sure Ms. Riggs will get  
20 us a copy, and I doubt there will be any problem and right now  
21 we don't object. If there is a problem with it, we'll let you  
22 know, but I doubt there will be.

23 **THE COURT:** Are you saying you don't object?

24 **MR. FARR:** We don't, Your Honor, but I don't have a  
25 copy of it right now. When I get a copy, if there is a



1 problem, I will let you know.

2 **THE COURT:** Okay. It's a little unorthodox. Why  
3 don't you read it and let me know. And remember, Ms. Riggs, to  
4 remind me. I will keep a note here.

5 **MR. DONOVAN:** Your Honor, at this time we'd complete  
6 the testimony of Dr. Lichtman.

7 **THE COURT:** All right.

8 CROSS-EXAMINATION (continued)

9 **BY MR. FARR**

10 Q Good afternoon, Dr. Lichtman. How are you today?

11 A I am doing well. As Yogi Berra once said, "déjà vu all  
12 over again."

13 Q I think I am going to ask you mainly about PX257.

14 A What is that?

15 Q That's your June 9th, 2015, report about the NVRA.

16 A Okay.

17 Q So if you can just turn to that. I think that's going to  
18 be pretty much what I'm going to be asking you about today.

19 A Okay. I have it. June 9, 2015.

20 Q Great. Thank you, Dr. Lichtman.

21 Dr. Lichtman, do you know of a website service called  
22 NC FAST?

23 A I've heard of it, but I couldn't tell you any more than  
24 that.

25 Q You don't know what it is?

1 A Not exactly. I don't think I've used it.

2 Q You haven't used that, okay.

3 A Not that I can recall. I mean, I have done a lot over the  
4 years in this case.

5 Q So you don't know the purpose of NC FAST?

6 A Not off the top of my head.

7 Q All right. And are you familiar with the Affordable Care  
8 Act? I call it ObamaCare but --

9 A Roughly, I am familiar with it, yes. I can't say I am  
10 expert in it. I'm not sure anyone is.

11 Q Do you know if the individual -- is there a web page for  
12 the Affordable Care Act?

13 A It's been quite famous, yes.

14 Q And do you know if individuals can apply for Social  
15 Services benefits through the Affordable Care Act?

16 A I don't know.

17 Q Now, do you know -- there is various Social Services  
18 agencies in the state of North Carolina. Have you checked to  
19 see if there is any differences in the number of people who are  
20 actually coming in to these offices in person to apply for  
21 benefits in 2013, 2014 as compared to earlier years?

22 A No, it is not what I did.

23 Q Okay. I want to -- I want you to turn to your Footnote 3.

24 A Okay.

25 Q And I wanted you to tell me, if you could again, what --

1 in Footnote 3, what data are you looking at to make this report  
2 that we are talking about right now?

3 A The State NVRA reports, which are reported at the site of  
4 the State Board of Elections. I believe we talked about that  
5 last time, that prior to 2013, the State used to publish a very  
6 simple report, yearly report. That stopped in 2013. Instead,  
7 they do monthly reports in CVS format, which requires an expert  
8 to translate and convert into terms anyone can understand.

9 Q Okay. And did you look at those reports yourself, or did  
10 you have this other gentleman look at the reports?

11 A I looked at the reports myself, but I did not do the  
12 translation. I don't do database translations. It took David  
13 Ely, president of COMPASS Demographics, to do that.

14 Q And your testimony is David Ely relied upon the reports  
15 that you just described that were available on the SBOE web  
16 page?

17 A That's my understanding, yes.

18 Q Do you know -- did you review any of his work product and  
19 have a -- analyze the reports?

20 A I did review his work product, and his results were  
21 consistent over time. In other words -- well, I didn't get  
22 into the CVS files. As you can see, if you look at my charts,  
23 it is not as if there wasn't an established pattern before 2013  
24 that abruptly changed in 2013; but in terms of taking the  
25 State's files and turning them into Excel tables, David Ely did

1 that, as he had done all the data compilation work that I've  
2 cited in many of my reports. I've cited him several times.

3 Q Tell me about Mr. Ely. What's his background?

4 A He's president of COMPASS Demographics. He specializes in  
5 database management, and I've worked with him since the *Garza*  
6 case in the late 1980s when I was retained by -- as an expert  
7 by the United States Department of Justice. This was in the  
8 late '80s that led to the landmark *Garza* decision that for the  
9 first time created an Hispanic opportunity district in the  
10 County of Los Angeles, and he was the expert that the  
11 Department of Justice relied upon and with whom I worked; and  
12 I've worked with him on other projects as well. So my  
13 relationship with him goes back a very long time, and he did  
14 have the imprimatur of the U.S. Department of Justice, and I  
15 found his work to be reliable.

16 Q Okay. Now, do you know -- the reports you looked at, do  
17 you know what data on the State Board of Elections SEIMS  
18 database is used to create those reports?

19 A My understanding is that these reports are the reports  
20 under law that are filed for the NVRA. And as I testified --

21 Q Sorry, Dr. Lichtman.

22 A -- last week, I looked at the biannual NVRA reports, the  
23 reports officially produced by the Federal Government for 2011,  
24 '12, and then 2013, 2014 as a check on my findings, and they  
25 were very consistent. The -- this was applications. Mine was

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1 registrations. But pattern was identical. In the 2011 to 2012  
2 cycle, about 50,000 applications were reported by the NVRA.  
3 That fell in the 2013 to 2014 cycle to about 18,000. So more  
4 than a 60 percent decline, quite consistent with what I found  
5 independently for new registrations. So I did another check.

6 Q Thank you for your summary of your report, Dr. Lichtman.

7 It really wasn't the question I asked you. I wanted to know --

8 A That's not in my report because the June 30th, 2015,  
9 report just came out a couple, three weeks ago.

10 Q Well, thanks for that amendment to your report.

11 A No problem.

12 Q I didn't ask that question, though. I asked you if the  
13 reports that Mr. Ely used -- do you know where that data came  
14 from in the SEIMS database?

15 A It came from the State.

16 Q Do you know the table that it came from?

17 A Do I know where the State got it from?

18 Q No. Do you know what table in the SEIMS database that  
19 those reports were based upon?

20 A I have the URL under Footnote Number 3.

21 Q Okay. Did you look -- did you ever look at the -- hang on  
22 for a second.

23 Did you see a SEIMS data dictionary that was produced by  
24 the State to the Plaintiffs in this case? Did you ever review  
25 that in doing any of your work?

1 A I don't recall it off the top of my head, no.

2 Q Do you know if you looked at a table that would be  
3 described as NVRA\_STAT table?

4 A I am not familiar with that. As I said, I got this right  
5 off the Board of Elections website.

6 Q But you looked at the reports that were published on the  
7 website?

8 A That is correct, which I understand are the official  
9 reports that went to the NVRA, which is why I double-checked it  
10 with the NVRA reports.

11 Q But you didn't look at the table from which the reports  
12 were created?

13 A I do not know if this table you cited to me is the table  
14 from which these reports are created. I looked at the reports  
15 themselves.

16 Q All right. Now, Dr. Lichtman, do you agree that there is  
17 some months of the year where the applications are higher than  
18 other months?

19 A Yes. That's why I looked at averages.

20 Q And you testified that you were missing -- that there were  
21 missing reports for -- during the period that you looked at?

22 A There are some missing reports, yes. For the most part,  
23 the reports are there.

24 Q Do you know whether or not there are four reports missing  
25 in any of the years that you looked at, any of the single years

1 that you looked at?

2 A I believe it was 2010 and '11.

3 Q There were four reports missing in both of those years?

4 A I believe that's right.

5 Q So your testimony is based upon reports for 66 percent of  
6 the months involved in those two years?

7 A That's only those two years. You can see 2012, where  
8 there aren't missing reports, even has higher monthly, and  
9 that's the critical year because that's the year from which the  
10 decline precedes.

11 Q Would you think it would have been better if you had the  
12 reports that were missing?

13 A I can only work with the data that I have from the State.

14 Q Okay. But would it have been better if you had all the  
15 reports?

16 A It would have been better; but as I said, I had them for  
17 2012, which is even higher, and that's the year in which things  
18 turned.

19 Q Now, I think -- is it fair to say that you don't know  
20 where the data described in these reports comes from in the  
21 SEIMS database?

22 A All I know is this is the official report given to the  
23 NVRA, and it is consistent with what the NVRA has reported in  
24 its biannual annual reports. I didn't go beyond what the State  
25 reported.

1 Q Do you know how the State tracks public assistance  
2 registration applications?

3 A Not with precision. I just know what they report.

4 Q Do you know if the State changed any codes that were used  
5 to track public assistance registration applications during the  
6 time frame you looked at?

7 A I do not know, but I did explore that issue a little bit.  
8 I know they had a new system for tracking public assistance  
9 applications. It was first started as a pilot and then as a  
10 full system; and I did look and see if there was any  
11 correlation between changes in public assistance registrations  
12 and this new system, and I found none.

13 Q Okay. Now, I think you said you didn't look to see if  
14 they were any --

15 A Go ahead. I think that was NC FAST now that I think about  
16 it. That new system -- I knew that rang a bell with me. I  
17 believe that was NC FAST.

18 Q You kind of lost me there, Dr. Lichtman. So I will just  
19 keep asking my questions.

20 A Okay. You had asked me earlier about NC FAST. That's  
21 all. Now I remember the connection.

22 Q Did you ever check to see how many applications came in  
23 from NC FAST?

24 A I did check to see how many applications before and after  
25 to see if that accounted for a sudden plummeting of

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1 applications, and I found it did not. There was not such a  
2 correlation.

3 Q Right. You looked at -- how many came in before and after  
4 looking at the reports that were published?

5 A Yes.

6 Q Did you look to see if there were any other different  
7 sources for tracking applications from NC FAST?

8 A I just looked at the results, and the results did not  
9 correlate with the introduction of NC FAST as a new system.

10 Q Dr. Lichtman, do you know if the published reports include  
11 applications that came in from NC FAST?

12 A The best of my knowledge, the public reports include all  
13 public assistance registrations that the State records and  
14 that, as I said, I found no correlation with the -- either as a  
15 pilot or as a permanent project, the installation of NC FAST.  
16 So that is not responsible for the pattern you see in Chart 1.

17 Q How do you know the published reports have all the  
18 applications that came in via NC FAST?

19 A If they don't, you would expect to see the introduction of  
20 NC FAST produce some break in the data. It is called an  
21 interrupted time series; that is, if you introduce something  
22 new that has a major effect, it's going to change the pattern;  
23 and since it didn't change the pattern, I was confident NC FAST  
24 does not account for the plummeting of these public assistance  
25 registrations after 2012.

1 Q Do you know if SBOE has a different source code for  
2 NC FAST applications than the source codes used to create the  
3 reports that you examined?

4 A I don't, but, again, I am looking at the final product and  
5 seeing if there's any influence on the final product. I'm not  
6 looking at source codes.

7 Q But you don't know if the applications from NC FAST are  
8 included in the reports that you looked at?

9 A As I said, I don't know of the source codes; but, one,  
10 there is no break with the introduction of NC FAST. So if  
11 NC FAST accounted for any of this enormous decline, you would  
12 see it. Two, it's not just a sudden and temporary decline.  
13 It's a decline sustained over almost a two-and-a-half-year  
14 period.

15 Q But, Dr. Lichtman, NC FAST, you know, if it had no effect  
16 and it was included in the report, your testimony might be  
17 right; but do you know if the NC FAST applications are included  
18 in the reports that you looked at? Do you know that for sure  
19 one way or the other?

20 A I already said I have not gone beyond the reports, but I  
21 have looked at whether the introduction of NC FAST made a  
22 change in the pattern. If there were a significant number of  
23 reports omitted because of the introduction NC FAST, you would  
24 have seen a break in the pattern at the time of the  
25 introduction of NC FAST.

1 I checked that both when it was introduced as a pilot,  
2 which was back in 2012 when you had this very large number, and  
3 then later when it was introduced as a more permanent system,  
4 and there's no correlation with the pattern of public  
5 assistance registrations and the introduction of NC FAST.

6 Q Okay. Do you know if the reports you looked at include  
7 registration applications that may have been generated off the  
8 Affordable Care Act?

9 A As I said, I looked at new registrations.

10 Q I think I --

11 A Not registration applications.

12 Q Okay. Well, did you look to see how many new  
13 registrations -- or do you know if the reports you looked at  
14 include new registrations that originated off the Affordable  
15 Care Act web page?

16 A The reports I looked at simply said public assistance  
17 registration. They didn't differentiate them into an  
18 Affordable Care Act or other sources. It was just all public  
19 assistance registrations.

20 Q Right. But you don't know -- you can't confirm that that  
21 includes registrations that originated from the Affordable Care  
22 Act, can you?

23 A I can't differentiate particular sources, but the NVRA  
24 reports indicate that these are the public assistance  
25 registrations that came in from that month, regardless of the

1 origin.

2 Q That is your assumption?

3 A Unless the State deliberately left something out, which I  
4 doubt.

5 Q Okay. And do you know how registration services are  
6 offered to applicants for benefits on NC FAST? Did you ever  
7 look at that?

8 A No, I just looked at NC FAST to see if it broke patterns,  
9 and it didn't.

10 Q But you didn't go on an NC FAST screen to see how  
11 registration opportunities, including changes of registrations  
12 or declinations, are offered to the person applying through the  
13 NC FAST web page?

14 A No. That wasn't necessary because there was no  
15 correlation in public registrations and NC FAST.

16 Q Did you look at the Affordable Care Act to see how  
17 registration applications or declinations or changes are  
18 offered to applicants for social welfare benefits on the  
19 Affordable Care Act web page?

20 A Same answer; I did not go beyond the State's reports and  
21 public assistance registrations.

22 Q Okay. Do you know what type of registration forms are  
23 available to individuals who are applying for benefits online  
24 either at the NC FAST web page or the Affordable Care Act web  
25 page?

1 A Same answer; I did not go beyond the State reports.

2 Q Do you know if those registration forms offered to  
3 applicants on NC FAST or the Affordable Care Act -- do those  
4 forms have a source code on them?

5 A I haven't look at any source codes.

6 Q Have you looked at whether or not applications for  
7 registration or registration changes given to people who appear  
8 in person at a North Carolina Social Services agency -- do you  
9 know whether or not those registration forms had a source code  
10 on them?

11 A I will give you the same answer, I have not looked at any  
12 source codes.

13 Q Okay. And do you know if all of the county Social  
14 Services agencies in North Carolina where people apply for  
15 benefits and have an opportunity to register or change their  
16 registrations or decline -- do you know if all those county  
17 agencies use the same source code for the registration forms  
18 that they offer people?

19 A I don't, but I did check to see whether this was a  
20 county-specific phenomenon, and it was not. This plummeting  
21 and sustained plummeting in public assistance registrations was  
22 across the board for virtually every single county at virtually  
23 the same time in the state of North Carolina. So differences  
24 from one county to another do not account for this pattern.

25 Q Okay. But you don't know if county Social Service

1 agencies in North Carolina have used the same hard copy  
2 registration forms with the same source codes?

3 A Same answer; no source codes that I looked at.

4 Q And I think that we touched upon this a little bit the  
5 last time you were here, but your report is based on new  
6 registrations; is that right?

7 A Yes.

8 Q And you didn't look at changes of registrations or  
9 declinations?

10 A No.

11 Q In this context, Dr. Lichtman, do you know what the term  
12 "duplicate" mean?

13 A A duplicate registration.

14 Q That's the extent of your knowledge?

15 A Yes. I have seen duplicates, and these were with new  
16 registrations.

17 Q So you didn't look at the SEIMS database to look at the  
18 entire list of source codes for registrations -- changes in  
19 registration or declinations from Social Service agencies? You  
20 didn't attempt to determine how many difference source codes  
21 those types of registration applications may have fallen into?

22 A I already said I have not looked at any source codes.

23 Q Okay. In the second part of your testimony, you looked  
24 at -- what does FNS stand for?

25 A Food and Nutrition Services.

1 Q What did you do with that -- how did you develop that  
2 information for your report?

3 A I took the monthly number of Food and Nutrition Services  
4 applications as the denominator of my analysis, and the  
5 numerator was the number of public assistance registrations;  
6 and the point of the analysis was to see if the sharp and  
7 sustained decline in public assistance registrations could be  
8 due to a similar decline in public assistance applications.  
9 And as you can see from Chart 3 of my report, that is not the  
10 case, that the pattern looks almost exactly the same when you  
11 control for the number of Food and Nutrition Services  
12 applications.

13 Q But you looked at only FNS applications, not all public  
14 assistance applications?

15 A Right, because that's the great bulk of public assistance  
16 applications in the state of North Carolina and others would,  
17 in fact, be duplicative to a great extent.

18 Q Does your report list all the other public assistance  
19 application categories?

20 A It does not.

21 Q Does your report compare which one of those is the  
22 greatest or the largest number?

23 A We can see that from the census that we talked about  
24 previously. Overwhelmingly, people in North Carolina are  
25 getting this kind of in-kind assistance, not cash assistance.

1 That's much, much rarer.

2 Q You didn't compare the different programs and the number  
3 of applications for the different programs in North Carolina  
4 against the FNS applications in your report?

5 A No, not every single one, but this is, as I said, the  
6 great bulk of applications.

7 Q All right. Are you familiar with something called the  
8 Energy Assistance Program?

9 A I am.

10 Q And is that included within FNS?

11 A No, but those likely to qualify for FNS are also likely to  
12 qualify for other forms of welfare.

13 Q Energy Assistance is a public assistance program?

14 A As far as I know, but, you know, don't quote me on that.

15 Q And that's not included within the Food and Nutrition  
16 Services, is it?

17 A I think I made clear what's included there and why I  
18 picked it.

19 Q Is there something called Emergency Assistance that's a  
20 public assistance program?

21 **THE COURT REPORTER:** I'm sorry --

22 **THE WITNESS:** Yes, and I looked at that, and it's a  
23 very, very tiny fraction of FNS.

24 **BY MR. FARR**

25 Q Sorry, I'll repeat the question. And you can go ahead and



1 give another answer, Dr. Lichtman, for the court reporter.

2 A Sorry, I thought you were asking me about that program.

3 Q I am, but the court reporter didn't get my question. So  
4 my question is is Emergency Assistance a public assistance  
5 program?

6 A Yes.

7 Q That's not included in FNS, is it?

8 A I didn't look at that because the NVRA reports, in  
9 addition to Food and Nutrition, also looks at ESC, and it is a  
10 tiny, tiny fraction of the total public assistance.

11 Q Okay.

12 A Right.

13 Q You don't have in that your report, those comparisons?

14 A No.

15 Q What about Pregnancy Services? Is that a public  
16 assistance program?

17 A I am not familiar with that one in North Carolina.

18 Q Okay. What about Work First Family Assistance? Have you  
19 ever heard of that?

20 A I am not familiar with that either.

21 Q So you don't know if that's a public assistance program?

22 A I don't know it.

23 Q What about Women, Infants, and Children? I think the  
24 acronym there is WIC.

25 A Yeah, I am familiar with the WIC program, and those

1 qualifying for WIC would also be within the Food and Nutrition  
2 Services, as far as I know.

3 Q Did you track to see if that was the actually the case, if  
4 the people that you looked at for FNS were also included within  
5 WIC?

6 A No. You have to do individual-level analysis, but it is  
7 the same type of persons; and the Food and Nutrition  
8 applications are very, very large.

9 Q But there could be people on WIC who might not be included  
10 in FNS; right?

11 A You, but you wouldn't expect the pattern to change. In  
12 other words, even if there were some folks who were getting  
13 some other type of assistance, and there are probably very few  
14 who weren't also getting FNS, that would not change the pattern  
15 unless somehow the smaller number was doing something  
16 fundamentally different from what was going on in these very  
17 large number of FNS applications. As you can see, the number  
18 of public assistance registrations is just a small fraction of  
19 the much, much larger FNS applications.

20 Q Okay. But you didn't look at the WIC applications?

21 A I looked at what's here, and I think it's more than  
22 enough.

23 Q You looked at FNS, but you didn't look at the WIC  
24 applications?

25 A That's correct.

1 Q What about Medicaid? Did you look at Medicaid  
2 applications?

3 A No.

4 Q Is that a pretty big number of people who might apply for  
5 Medicaid?

6 A Yeah, but, again, it's the same kind of people who would  
7 qualify for Medicaid that would also qualify for FNS.

8 Q Do you know how many people who apply for Medicaid today  
9 are -- since the Affordable Care Act adopted its web page, do  
10 you know how many of those people are now applying for those  
11 benefits online compared to going into offices in North  
12 Carolina?

13 A No, I don't.

14 Q Does FNS applicants include people who are not citizens?

15 A I am not certain of that.

16 Q Does an FNS application include felons that are still  
17 serving probation?

18 A I am not certain of that either.

19 Q Does FNS applicants include people who were rejected  
20 because they don't live in the state of North Carolina?

21 A People who were rejected? In what sense rejected?

22 Q Because they are nonresidents of North Carolina.

23 A I would presume, but I haven't gone into the study, that  
24 if you are going to get FNS from the State of North Carolina,  
25 you have to be a resident of North Carolina. But again -- go

1 ahead.

2 Q Okay. Dr. Lichtman, could you turn to -- my copy of your  
3 report doesn't have page numbers on it. It is in your  
4 appendix. It is table -- Chart Number 1 is what I want to look  
5 at.

6 A Chart Number 1?

7 Q Yes.

8 A Okay.

9 Q And is it fair to say that looking at Chart Number 1 --  
10 what is that? Instead of me trying to describe it, you tell me  
11 what it is.

12 A It is the chart we have been talking about for some time.  
13 The mean number of public assistance voter registrations at  
14 public assistance offices, and it tracks that from 2010, I  
15 think, through the first few months of 2015, which I had data.

16 Q Okay. Now, do you know when the NC FAST web page for  
17 applying for public assistance benefits came online?

18 A I can't tell you the exact month, but I did look at this.  
19 It came on as a pilot project in 2012 and I believe as a more  
20 permanent project in the summer of 2013.

21 Q Do you know when the Affordable Care Act web page that can  
22 be used by people to apply for public assistance benefits -- do  
23 you know when that came online?

24 A Not exactly, but sometime before that.

25 Q Okay. And the dropoff that you are describing here on

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1 Chart 1 begins in 2012?

2 A No, it begins in the first month of 2013.

3 Q So I am looking at that sloped line.

4 A You can see the line starts to go down sharply right after  
5 the red line, which is the end of 2012, and it goes down -- you  
6 know, these are lines connecting years. So there are obviously  
7 fluctuations in between, but regardless of the fluctuations, it  
8 goes down dramatically, not only from 2012, but 2011 and 2010.

9 And as I said, in one year alone, it goes down 58 percent,  
10 then another 29 percent before slightly upticking in the first  
11 few months of 2015. So by the time you get to 2014, it is  
12 30 percent of what it had been, and even in 2015, it's only  
13 33 percent. So these are not subtle patterns.

14 Q Dr. Lichtman, is there -- in your report, do you track the  
15 decline from -- is there anything in your report that tracks  
16 the decline from 2012 to 2013 on a monthly basis?

17 A I don't understand your question. These are all monthly  
18 averages.

19 Q I am looking -- well, show me where -- in your report  
20 where you start tracking the decline by month beginning in  
21 2012.

22 A The report does not go month by month. It goes year by  
23 year, but the decline begins at the beginning of 2013 and goes  
24 on steadily. There are lots of fluctuations month by month,  
25 which is why you are looking at the total for the entire year.

1 That sums up, regardless of fluctuations, how many public  
2 assistance applications are being issued each month, or if you  
3 want the yearly total, you can simply multiply it by 12, and it  
4 will give you exactly the same pattern, just with different  
5 numbers.

6 Q So, Dr. Lichtman, you are saying that if we pull out the  
7 monthly -- month-by-month reports starting in 2012, are you  
8 saying that there is no decline in these applications that  
9 occurred during 2012?

10 A I didn't say that at all. In fact, I said quite the  
11 opposite. I said there are monthly fluctuations going on all  
12 the time, which is why you can't look at month-to-month  
13 changes. You've got to smooth them out and average it over the  
14 year.

15 Q Isn't it true --

16 A Just as there are month-to-month fluctuations day to day  
17 in rainfall, you take averages.

18 Q Dr. Lichtman, if we actually looked at the numbers in  
19 2012, wouldn't we discover that the monthly decline commenced  
20 in 2012 toward --

21 A No, I don't think so.

22 Q You don't?

23 A I think you would see fluctuations, but you would not see  
24 a straight downward pattern between 2011 and 2012 when you  
25 smooth out those fluctuations.

1 Q And you're positive about that?

2 A When you smooth out the yearly fluctuations, that's right.

3 Q I am not asking about smoothing out the fluctuations. I  
4 am talking about if we looked at the months of, say, like  
5 October, November, and December of 2012, would we see a decline  
6 in those months as compared to the numbers in those same months  
7 in prior years?

8 A You might. There are variations month to month. I don't  
9 recall the exact month-to-month statistics; but if you want to  
10 show them to me, I would look at them.

11 Q Then I want to look -- this is my last question, I think,  
12 Dr. Lichtman. Could you turn to page 4 and your conclusions.

13 A Yep.

14 Q And I want you to explain to me what you mean by a net  
15 loss of 4,907 African-Americans and 870 Hispanic registrations  
16 because I don't understand that.

17 A Okay. You are looking at two things. You are looking at  
18 the decline in public assistance registrations, which is  
19 documented in Chart 1. Then you are looking at the racial  
20 disparities in public assistance registrations; and when you  
21 combine the racial disparities in public assistance  
22 registration, which I believe are documented in Table 6 and are  
23 very substantial, with the number of public assistance  
24 registrations that are lost, that gives you the  
25 disproportionate loss among African-Americans.

1 Q Okay. So I am not quite sure I know what that means, but  
2 I am going to try to ask you. Does that mean that there were  
3 4,907 more African-Americans who didn't submit registrations  
4 under your analysis than whites?

5 A No.

6 Q Okay. So I still don't understand.

7 A That means if public assistance registrations had not  
8 declined the way they declined after 2012, there would have  
9 been an additional 4,907 African-American registrations and 870  
10 Hispanic registrations. This is net of the increase in whites.

11 Q Okay. So you are saying if the applications that you  
12 studied on the published reports had stayed at the same levels,  
13 there would be an additional 4,907 African-American  
14 registrants?

15 A An additional net above and beyond what there had been if  
16 there had been no racial disparities.

17 Q Dr. Lichtman, is there anything else that you looked at to  
18 prepare this report that is not noted or footnoted in this  
19 report?

20 A Yes. As I already testified, I looked at the last two  
21 NVRA reports for the 2011-2012 cycle and the one that just came  
22 out a few weeks ago for the 2013 and 2014 report. And these  
23 report applications and, as I said, the decline in applications  
24 was reasonably comparable to the decline in new voter  
25 registrations that I reported, and this is the official report



1 by the NVRA.

2 Q The official report that the State published on its --

3 A No, the Federal Government publishes this. The National  
4 Voter Registration Administration publishes every two years  
5 their report, and I was looking at the North Carolina numbers  
6 for the NVRA.

7 Q Do you know what North Carolina data that the Federal  
8 Government uses to create that report?

9 A As far as I understand, the reports to the NVRA from the  
10 State of North Carolina, the official State reports.

11 Q So the federal report that you just referenced would have  
12 been based upon the same reports that you looked at on the  
13 North Carolina SBOE web page?

14 A I can't say that for 100 percent certain, but presumably  
15 they would be the same or similar, yes.

16 Q Okay. Can you think of anything else that you looked at  
17 in preparing this report?

18 A We talked about NC FAST. We talked about the  
19 county-by-county changes. I can't recall off the top of my  
20 head right now anything else that I looked at.

21 **MR. FARR:** Your Honor, can you just give me a second?

22 **THE COURT:** All right.

23 (Conferred with co-counsel.)

24 **THE WITNESS:** One more thing. I think I mentioned  
25 previously the State had published yearly reports, and I looked

1 at those which were published until 2013.

2 **BY MR. FARR**

3 Q Did you make any other studies based upon this report  
4 which would indicate a disparate impact on minorities other  
5 than what you've explained in this report?

6 A I'm not sure I understand the question. Are you saying  
7 have I analyzed the disparate impact on minorities of the  
8 decline in public assistance registrations other than what's in  
9 the report?

10 Q Yes, sir.

11 A No, it's in this report.

12 Q Okay.

13 **MR. FARR:** No questions at this time, Your Honor. I  
14 guess I am done.

15 **THE COURT:** All right.

16 **MR. GLICK:** Your Honor, we have no redirect for  
17 Dr. Lichtman, but we did want to move to introduce -- or admit  
18 the exhibits that we had used with Dr. Lichtman on Friday, some  
19 of which were admitted yesterday.

20 **THE COURT:** All right.

21 **MR. GLICK:** We move to move to admit PX68A, which is  
22 just a color version of PX68, which I understand was admitted  
23 yesterday.

24 **THE COURT:** If things were admitted, do we need to  
25 admit them again?

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1           **MR. DONOVAN:** No.

2           **MR. GLICK:** 334, 425, 533, 534, 535, and then the  
3 reports, which were 231, 245 and 257. And then we had moved at  
4 the end of the examination on Friday, the direct examination,  
5 to label the slides, and we would at this time move to admit  
6 the slides as PX716. Each of those were used in the  
7 examination on Friday without objection.

8           **THE COURT:** Any objection?

9           **MR. FARR:** Your Honor, the only thing that we would  
10 object to is to the extent that Dr. Lichtman's report  
11 references newspaper articles within the discussion of the  
12 various exchanges we've had involving quotes from North  
13 Carolina legislators.

14           **THE COURT:** Does he do that?

15           **MR. DONOVAN:** Not really. There are some references  
16 Your Honor, but I go back to the stipulation again. We are not  
17 moving those in as substantive evidence, but I go back to the  
18 stipulation where, for the report purposes, paragraph 3, "The  
19 parties agree to waive authenticity and hearsay objections to  
20 the admissibility of expert reports." We are not moving the  
21 footnotes in as substantive evidence. The report is coming in  
22 by agreement.

23           So, again, I don't want to go down this trail --

24           **THE COURT:** Well, the footnote is a footnote to the  
25 report, though; right?



1 Carolina Senate?

2 A I was elected in 2008 and was sworn in in January of 2009.

3 Q And what district do you represent?

4 A I represent Senate District 16, which is about a third of  
5 Raleigh, half of Cary, and all of Mooresville and western Wake  
6 County.

7 Q When were you last re-elected?

8 A I was elected in 2014.

9 Q Do you recall the percentage of the vote that you gained  
10 in that election?

11 A Just over two-thirds of the vote.

12 Q Do you serve on any committees in the Senate?

13 A I serve on a number of committees. I serve on the  
14 Appropriation Subcommittee on General Government and  
15 Information Technology. I serve on the Commerce Committee, the  
16 Education Committee, the Finance Committee, the Judiciary I  
17 Committee, the Committee on Rules and Operations of the Senate,  
18 and I serve on a couple of other oversight committees.

19 Q And, Senator Stein, can you explain your educational  
20 background?

21 A I graduated from Chapel Hill High School in 1984. I  
22 attended and graduated from Dartmouth College in 1988. Then I  
23 have a joint law and public policy degree from Harvard granted  
24 in 1995.

25 Q And, Senator Stein, what is your professional background?

1 A I am a lawyer.

2 Q You submitted a declaration in this case prior to the  
3 Court's PI hearing last summer; is that correct?

4 A I did.

5 **MR. FISHER:** I would like to hand up PX18A, and this  
6 has been previously admitted. I am not handing it up for  
7 admission of evidence, but only for the Court's reliance during  
8 his testimony.

9 **BY MR. FISHER**

10 Q Is this a copy of the declaration that you submitted in  
11 this matter, Senator Stein?

12 A It is.

13 Q And I don't want to cover all the same ground that's in  
14 the declaration or all the same information the Court has  
15 already heard from other legislators, but I do have a few  
16 questions for you about the election law changes passed in 2013  
17 by the General Assembly. Do you recall H.B. 589?

18 A I recall it very well.

19 Q Where did H.B. 589 originate?

20 A It originated in the House. That's why it's H.B. instead  
21 of S.B.

22 Q What do you remember as H.B. 589 as it existed in the  
23 House?

24 A In the House, it was exclusively a voter identification  
25 requirement bill, about 16 -- 15, 16 pages.

1 Q And did the bill pass the House?

2 A It did.

3 Q And what happened after the bill passed the House?

4 A Well, in the House, it was subject to a number of  
5 committee hearings and extensive debate. Then it came to the  
6 Senate, where it sat for a few months.

7 Q What is your understanding of why it sat for a few months  
8 in the Senate?

9 A It is my understanding that it sat because the Senate was  
10 waiting to find out what the United States Supreme Court  
11 determined --

12 **MR. BOWERS:** Objection, Your Honor.

13 **THE COURT:** Hold on just a minute, please. I am  
14 going to sustain without further foundation.

15 **BY MR. FISHER**

16 Q And you are aware that the bill sat in the Senate; is that  
17 correct?

18 A I am aware that it sat.

19 Q And do you have any understanding of why the bill sat in  
20 the Senate?

21 A The Senate Rules Committee chairman said that --

22 **MR. STRACH:** Your Honor, hearsay. And we don't  
23 believe that Senator Stein can testify or waive another  
24 legislator's legislative immunity by testifying about  
25 statements he or she may have made in Court.

1           **MR. FISHER:** Your Honor, we are talking about Senator  
2 Stein's. We've laid the foundation. He was there. We are  
3 talking about his personal experience in the Senate, and he's  
4 explaining what happened in the Senate while he was there while  
5 this bill was being considered or while -- in this case, while  
6 it was sitting waiting to be considered.

7           **THE COURT:** It is still hearsay. Sustained.

8 **BY MR. FISHER**

9 Q       You mentioned the *Shelby County* case; is that correct?

10 A       Yes, sir.

11 Q       And what is your understanding of the significance of  
12 *Shelby* with regard to H.B. 589?

13 A       Well, the Supreme Court in *Shelby* determined that the  
14 criteria by which covered jurisdictions were identified under  
15 Section 4 were invalid, and, therefore, North Carolina, which  
16 previously for 40 counties was subject to the Section 5  
17 preclearance requirements, were no longer subject to Section 5;  
18 and, therefore, any election law changes would become law as  
19 opposed to being submitted to the Department of Justice for  
20 review.

21 Q       I want to turn to the procedure for consideration of  
22 H.B. 589 in the Senate. You were there for this; correct?

23 A       I was.

24 Q       Okay. And what committee was assigned to review H.B. 589  
25 in the Senate?



1 A The Senate Rules and Operations Committee.

2 Q You mentioned earlier that you serve on this committee; is  
3 that correct?

4 A I do.

5 Q Does the Rules Committee have technical expertise about  
6 election law matters?

7 A Very abnormal for the Rules Committee to take an election  
8 law bill. In the prior session, '11 and '12, the big bill that  
9 was election law related was the voter identification law that  
10 had been considered -- bill that had been considered that  
11 session. It went through the Judiciary I Committee. In 2009,  
12 there was a major elections bill that dealt with the  
13 preregistration of high school students, among other issues.  
14 That went through Judiciary Committee. The typical place for a  
15 bill of this sort would be Judiciary I, not Rules and  
16 Operations.

17 Q And do you recall a previous attempt by the General  
18 Assembly to pass a photo voter ID bill in 2011?

19 A Yes, the one that I just referenced.

20 Q And do you recall to which committee that was assigned?

21 A The Judiciary I Committee in the Senate.

22 Q As a member of the Rules Committee, when was the first  
23 time that you were able to review the Senate's version of  
24 H.B. 589?

25 A It was on Monday night, I believe July 22nd, sometime

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1 after 9:00 p.m., between 9:00 and 10:00 p.m.

2 Q Was this typical procedure in the Rules Committee?

3 A The typical procedure, both in Rules Committee and all  
4 other committees, is that when -- a bill is noticed the day  
5 before for a committee consideration. If there are changes to  
6 that bill, there is a process in the North Carolina legislature  
7 called a Proposed Committee Substitute, and that is where  
8 whatever changes are made gets sent out a day before the  
9 committee considers it so there is an opportunity to review.

10 So the fact that we got the PCSs there then, the day  
11 before, is per the rules. However, such a dramatic rewrite of  
12 a bill where a bill turns from a single issue, 16-page bill to  
13 a multi-faceted 57-page bill is quite irregular.

14 Q You mentioned a dramatic rewrite. What did the bill that  
15 you were presented with look like?

16 A It looked very much akin to the final law. There were  
17 some changes along the way, but essentially it shrunk early  
18 voting by a week and eliminated same-day registration. It  
19 eliminated preregistration of high students. It eliminated  
20 straight-ticket voting. It made a number of changes to  
21 campaign finance laws. So it was essentially -- it was the  
22 most dramatic rewrite of North Carolina election laws, I think,  
23 in a generation.

24 Q And for a bill of this size, the bill that you just  
25 described, is this typical procedure in the Rules Committee?

1 A No, not in Rules Committees nor any other committee.

2 Q What was the result of this procedure for you?

3 A Great frustration and alarm. I regularly check my email  
4 late at night just to see what bills have been changed. We  
5 don't know, when a bill is noticed in committee, whether it is  
6 going to come out the way that it came to that committee,  
7 whether it came from the House or from another Senate  
8 committee, or whether there is going to be a Proposed Committee  
9 Substitute. So as a rule, I try to, the night before, check my  
10 computer before I go to bed to make sure that nothing has  
11 happened.

12 When I opened up the email and realized that this was now  
13 a 50-page bill that dramatically rewrites and restricted  
14 people's opportunity to vote, I was alarmed. I studied it as  
15 best I could. I actually did a post on Facebook to let the  
16 world know because, otherwise, there is no way that any citizen  
17 could have possibly have known what was in store in committee  
18 the next day.

19 Q I think you just mentioned 9:00 p.m., is that correct,  
20 when you saw the bill?

21 A After 9:00, yes.

22 Q Okay. Your other fellow senators on the Rules Committee,  
23 are you aware that they are up on their computers at 9:00 p.m.  
24 typically?

25 A My fellow senators are older and less computer facile than

1 I am as a mean, as a general rule.

2 Q And that's a tactful way of putting it. I understand why  
3 you are a senator.

4 Now, what could you have done differently if you had had  
5 more time?

6 A If I had more time, I could have -- one, more people, more  
7 citizens could have known, and so there could have been greater  
8 opportunity for public engagement, which when doing a law of  
9 this import, size and scope, it is imperative that the people  
10 have an opportunity to be heard since it was going to  
11 dramatically affect their most fundamental political right,  
12 their right to vote.

13 But I personally would have taken the time to do a better  
14 job engaging the State Board of Elections, the Wake County  
15 Board of Elections to get more data, to get more input. For  
16 instance, the bill eliminated both straight-ticket voting and  
17 shrunk early voting, the effect of which was to both compress  
18 the voting period and to extend the amount of time each person  
19 had to spend in the voting booth in order to cast their ballot.  
20 And I wanted to know what analysis had been done by those  
21 entities on voter -- electoral administration and was not --  
22 unfortunately, didn't have the opportunity to engage those  
23 parties or, for that matter, really to engage not only citizens  
24 but advocacy groups that had developed expertise in this area  
25 over the course of time.

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1 Q And in terms of the time that you needed to review the  
2 bill, does it matter that H.B. 589 was, for the most part,  
3 changing existing law or eliminating existing law versus  
4 creating new provisions?

5 A I mean, it matters only in that if a provision were being  
6 eliminated, we're eliminating same-day registration, in the  
7 bill that may only take up a paragraph of language because it  
8 doesn't take much to get rid of a part of the law, but in terms  
9 of what its impact is throughout the general statutes, it can  
10 have far reaching and, frankly, complex effects; and at first  
11 blush, I didn't have that ability to understand it, and I don't  
12 believe the legislature had adequate time to consider all those  
13 ramifications.

14 Q And you mentioned the proceedings in the House prior to  
15 the bill coming over to the Senate. Did what happened in the  
16 North Carolina House prior to the bill moving over to the  
17 Senate -- did that help inform your judgment about the Senate  
18 version of the bill that you saw?

19 A It did. I think it brought into stark contrast the poor  
20 process that occurred in the Senate. The House had a number of  
21 committee hearings and a full deliberation in which, frankly,  
22 the majority and minority party were able to work together to  
23 amend the bill in a number of ways. And, frankly, although I  
24 thought the bill as it came out of the House still went too far  
25 in terms of having the impact of affecting the ability of

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1 African-Americans and other minorities, young people and  
2 seniors from voting, that it at least was not the most  
3 stringent form of voter identification that any state had  
4 considered, unlike the Senate version that ultimately became  
5 law.

6 Q Prior to H.B. 589, the Senate version that you saw, do you  
7 recall any debate in the North Carolina Senate concerning  
8 restricting the early voting period?

9 A No.

10 Q Do you recall any debate in the North Carolina Senate  
11 concerning eliminating same-day registration?

12 A No.

13 Q Do you recall any debate in the North Carolina Senate  
14 concerning eliminating out-of-precinct provisional ballot?

15 A No.

16 Q Let's talk about your participation in the Rules Committee  
17 hearing. So what happened in the Rules Committee hearing when  
18 the bill was presented?

19 A What happened was that the bill sponsor, who was  
20 Senator Rucho, or the bill manager, presented generally what he  
21 understood the bill to do. And then as is typical in a long  
22 technical detailed bill like this with many, many parts, staff  
23 then presented what the import was briefly, what the import was  
24 of each of those parts; and then the committee was opened up to  
25 questions by members.

1 Q And did you bring anything with you that day?

2 A I did.

3 Q Okay. What did you bring?

4 A I had had some data on the -- on early voting and on  
5 same-day registration, and I brought that with me.

6 Q And is that reflected on Exhibit A of Plaintiffs'  
7 Exhibit 18, that declaration that you have in front of you?

8 A It is.

9 Q Is Exhibit A this chart that you brought with you to the  
10 Rules Committee hearing?

11 A It is.

12 Q Where did you get that chart?

13 A The chart is derived from data by -- from -- of data by  
14 the State Board of Elections, and so it is an Excel  
15 spreadsheet, and it is branded the Southern Coalition for  
16 Southern Justice. And what I don't remember, frankly, was  
17 whether I got it from the Southern Coalition or I got it from  
18 Democracy North Carolina, but those were two groups that I had  
19 tried to reach out to the morning of the Rules Committee  
20 meeting.

21 Q Okay. So you requested this the morning of the Rules  
22 Committee hearing; is that right?

23 A Yes, the best of my recollection.

24 Q Do you often get information from the Southern Coalition  
25 or from Democracy now?

1 A I do. More commonly from Democracy North Carolina. They  
2 are just there more, and they deal with campaign finance issues  
3 as well as voting rights issues, but certainly I meet with both  
4 groups.

5 Q And have you found information from both of those groups  
6 to be reliable?

7 A Very reliable, because it is all derived from public data  
8 from the State Board of Elections or from the Department of  
9 Motor Vehicles.

10 Q And can you just talk generally about what Exhibit A  
11 shows?

12 A It shows a number of things. Most importantly, it shows  
13 the extent of early voting and the occurrence of early voting  
14 over the 17-day period and the demographic breakdown of voting  
15 by day over that time. It also shows the utilization of  
16 same-day registration over the period during which same-day  
17 registration was authorized, again broken down by day and  
18 demographically.

19 Q Okay. So if we bring up page 2 of Exhibit A -- and I am  
20 going to hand up Plaintiffs' Exhibit 717, which is just page 2  
21 of Exhibit A in color.

22 A Uh-huh.

23 Q Senator Stein, does this represent -- Plaintiffs'  
24 Exhibit 171, does that represent page 2 of Exhibit A of your  
25 declaration?



1 A It does.

2 Q What does that show?

3 A It shows over the 17 days of early voting, the total  
4 amount of votes cast each day and, again, broken down by race.  
5 And then it's demonstrated graphically the use by white North  
6 Carolinians of early voting and by African-American North  
7 Carolinians of early voting.

8 Q And, Senator Stein, this chart represents the early voting  
9 period as it existed in 2012; is that right?

10 A Yes. It is of 2012 general election data, so correct.

11 Q Okay. I am going to bring one more thing up to you. It  
12 is not a calculator. It's a Sharpie.

13 So, Senator Stein, could you take a look at Plaintiffs'  
14 Exhibit 717. And I am going to ask you to make a line on that  
15 chart and, while you are doing it, describe where you are  
16 making that line, hold it up for us after you're done.

17 Can you make a line on that chart showing me the days of  
18 early voting that H.B. 589 would have eliminated from the 2012  
19 election early voting period?

20 A My handwriting is less than ideal, but it is between the  
21 Wednesday and Thursday, the 24th and 25th. The first week is  
22 no more.

23 Q Okay. Can you take a look at the monitor and see if that  
24 represents the same line that you just drew on your version?

25 A It does.

1 Q Okay. So what do we see on the chart before the line that  
2 you drew? And that would be representing the portion of early  
3 voting eliminated by H.B. 589; correct?

4 A Correct. What we see -- well, we see two things. One is  
5 the red-dotted horizontal line shows the average over the  
6 period of African-American utilization of early voting, and it  
7 is about -- it is 34 -- no, 29 percent, excuse me, 29 percent.  
8 And what the first 7 days show, because the red line is above  
9 that dotted line, that even though African-Americans vote  
10 early, disproportionately did in November 2012, they voted at  
11 an even greater rate than they did over the average period of  
12 time of early voting in that first 7 days.

13 Q Okay. And the portion after the red line, which is the  
14 portion of early voting retained by H.B. 589, what does that  
15 portion of the graph show?

16 A It shows that over that period of time, that the  
17 performance by whites exceeded what their overall performance  
18 was in early vote and African-Americans voted at a lower rate  
19 than they did over the overall course of early voting.

20 Q And is this information that you communicated to your  
21 fellow senators?

22 A I did.

23 Q Okay. And what was the response of your fellow senators  
24 to this information?

25 A There was not --

1           **MR. STRACH:** Your Honor, we are going to object to  
2 this testimony just to the extent that it attempts to describe  
3 anything outside of what's already been transcribed in the  
4 legislative record.

5           **THE COURT:** Sustained. You can limit your comments  
6 to what occurred on the floor of the Senate.

7           **THE WITNESS:** I can do that.

8 **BY MR. FISHER**

9 Q       I can ask it again. What was the response on the record,  
10 on the legislative record, of your fellow senators to this  
11 information?

12 A       There was really no -- there was no substantive response  
13 other than that administratively it was -- 17 days was too long  
14 and that there was inconsistency among counties in early  
15 voting.

16 Q       Any response to the disproportionate impact on  
17 African-Americans?

18 A       None.

19 Q       Did you discuss in-person voting fraud during the Rules  
20 Committee hearing?

21 A       I did.

22 Q       And what do you know, if anything, about the prevalence of  
23 voter fraud in North Carolina?

24 A       I had -- during the 2011 debate on voter identification  
25 requirements, I had asked the State Board of Elections for

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1 their data of in-person voter fraud, and they provided that  
2 for -- from 2000 to 2010. And then in 2013, I asked them to  
3 amend it giving the data from 2012, and what it showed was that  
4 of 40 million votes cast in primary and general elections, in  
5 just the even years, not the municipal elections, that there  
6 were two instances of reported in-person voter fraud.

7 Q Now, over the last week, we've heard about a study by the  
8 SBOE concerning voter ID possession rates. Were you aware of  
9 that study?

10 A I was.

11 Q And what did that study show?

12 A It showed that African-Americans disproportionately who  
13 were registered voters did not have a driver's license or a  
14 state identification card. I believe the percentage was  
15 34 percent; whereas, their voting percentage is 22, 23 percent.

16 Q Were your fellow senators aware of this study?

17 A Yes.

18 Q Did any members of the public testify at the Rules  
19 Committee hearing?

20 A There were. There were about ten.

21 Q What did they say?

22 A They said a variety of things. I mean, they were  
23 unanimously and vigorously opposed to the bill. No one spoke  
24 in favor of the bill. Two of them spoke to the  
25 disproportionate racial impact of --

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1           **MR. STRACH:** Objection, Your Honor, hearsay.

2           **THE COURT:** If it's part of the public record.

3           **MR. STRACH:** We don't object if it's in the  
4 legislative record. I am not recalling this offhand, but we  
5 want to object to the extent it is not in the public  
6 legislative record.

7           **THE COURT:** If you can limit your response to what  
8 your recall in the legislative record. Ultimately, the record  
9 is already before me. I know I've read it because I read it  
10 several times a year ago. So, ultimately, I will be guided by  
11 what's in the public record.

12 **BY MR. FISHER**

13 Q       What did the Rules Committee ultimately do, Senator Stein?

14 A       The Rules Committee ultimately reported favorably the  
15 Proposed Committee Substitute as amended. That's the technical  
16 term. What it meant is it voted it out to be referred to the  
17 floor.

18 Q       And what happens after a bill is voted out of the  
19 committee?

20 A       If it has a serial referral, it will go to the other  
21 committee. This bill had no serial referral, so it went  
22 straight to the floor.

23 Q       Let's move to the proceedings on the Senate floor. Could  
24 you describe your role in the Senate floor debates on H.B. 589?

25 A       I was an active participant during the debates.

1 Q Did you propose any amendments?

2 A I proposed an amendment, yes.

3 Q And why did you propose this amendment?

4 A I was very concerned about the impact on North Carolinians  
5 about this reduction in early voting, and Senator Rucho had  
6 made a comment or two about counties being able to extend their  
7 hours, but there was no requirement that they do so.

8 And so my amendment had the effect of requiring that  
9 however many hours a county had in aggregate in 2010, they had  
10 to have at least that many in aggregate -- over 17 days, they  
11 had to have that many over 10 days in off-year elections; and  
12 however many there were in 2012 in the Presidential years, they  
13 had to have that number in a future Presidential year.

14 Q What ultimately happened with that amendment?

15 A It ultimately passed.

16 Q Okay. Were there any other amendments passed that had an  
17 effect on that amendment?

18 A Yes. There was an amendment offered by Senator Rucho that  
19 fixed some problems with the language as drafted, but it also  
20 served to allow counties an out; whereas, my amendment didn't  
21 have that. So in one way it improved the language; in another  
22 way it weakened it.

23 Q Were any amendments offered that would have mitigated  
24 H.B. 589's effect on minority voters for that purpose?

25 A They were a number of amendments offered that -- amendment

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1 offered by Senator McKissick to require a 17-day early voting  
2 period in a Presidential general year, so just that one  
3 November period. That was defeated. An amendment offered by  
4 Senator Kinnaird to have a -- put the sunset on this so that we  
5 could see what the effect was and then it would go away after  
6 time and then -- unless the legislature reconsidered it and  
7 deemed it worthwhile.

8       There was an amendment by Senator Robinson to make  
9 parallel the identification requirements of voting absentee,  
10 which -- in which fraud occurs at a thousand times the rate as  
11 it does in in-person, but have the in-person requirements match  
12 those, which are less, and, frankly, is very similar to what  
13 the legislature just passed a few weeks ago on voter  
14 identification.

15       There was an amendment by Senator Bryant to retain  
16 straight-ticket voting, and there was an amendment by  
17 Senator Graham to preserve preregistration of high school  
18 voters and to allow college identifications in voter ID.

19       And in each of those amendments, there was extended debate  
20 on each, but Senator Robinson talked about the disparate racial  
21 impact of voter ID. Senator Bryant talked about how  
22 African-Americans utilized straight-ticket voting at a higher  
23 rate than white voters.

24       And throughout, I addressed the racial impact of the voter  
25 ID requirement, the same-day registration, the early voting,

1 and straight-ticket voting and the disparate impact on young  
2 people for the same-day registration, the preregistration, and  
3 the fact that the Senate, unlike the House, no longer permitted  
4 college identifications as a suitable form of ID.

5 Q What else might happen to all those amendments that you've  
6 described?

7 A All those amendments were defeated.

8 Q Did you inform the full Senate on the floor, as you did  
9 the Rules Committee, of the impact that H.B. 589 would have on  
10 voters?

11 A I did. I both did it in my statements and I also  
12 submitted for the record -- the legislature, a couple years  
13 ago, Your Honor, went from paper to electronic, and we have a  
14 screen, a common screen which is only available to members  
15 called the Dashboard. And on the Dashboard is the bill or if  
16 there's an amendment that's being considered, whatever the  
17 current item is, and you can also submit for the Dashboard any  
18 documents to which you refer. So there's no longer paper  
19 that's being circulated on the floor.

20 And I submitted four pages of my declaration, the pages  
21 that showed the disproportionate racial impact of eliminating  
22 early voting and the disproportionate racial impact of same-day  
23 registration.

24 Q Okay. And you are referring to the pages from  
25 Exhibit A --



1 A That's correct.

2 Q -- being put on Dashboard for the other senators to look  
3 at; is that right?

4 A Correct. It's available to them for review. It's pulled  
5 up when I am discussing it, but it's also there as a permanent  
6 record for them to review.

7 Q Let's take a look at some of your statements on the first  
8 day of the floor debates, July 24th, if we could.

9 A Okay.

10 Q Do you see the highlights portion there? And this is  
11 page 18. Could you go ahead and read that portion for me?

12 A Yes. "The next page of that chart actually shows who  
13 votes, and what you will see is that in the first seven days of  
14 North Carolina, the experience has been that African-Americans  
15 disproportionately vote on the first seven days of early  
16 voting, which coincidentally are the days that you all are  
17 stripping out of the early vote process."

18 Q Okay. Moving on to the next section.

19 **THE COURT:** Is this in the full Senate?

20 **THE WITNESS:** This is to the full Senate, sir.

21 "You all would be shocked to know that it's  
22 African-Americans, Hispanic, younger, and first-time voters who  
23 are disproportionately affected by reduction in early voting.  
24 I am sure you all are shocked of that reality."

25 **BY MR. FISHER**

1 Q And these are your statements in addition to what you  
2 presented on the Dashboard; is that correct?

3 A Correct. If you -- when you read the record, there are  
4 multiple instances where my fellow senators who supported the  
5 bill and opposed me would argue that what I said were just  
6 facts, Stein facts. And I figured that if I gave them the  
7 actual data, they didn't have to look at my words; they could  
8 actually look at the data from which I made my assertions.

9 Q Did any of your fellow senators on the record deny that  
10 African-Americans used the first week of early voting more  
11 heavily on average than white voters?

12 A No.

13 Q Let's take a look at your statements from the next day of  
14 floor debates, and that's July 25th. We'll start on page 30.  
15 Go ahead and read that portion for me.

16 A "The bill ends same-day registration. In the last  
17 election, 100,000 people did this. That is fantastic. Do you  
18 know why we instituted registration before election? It was  
19 done by Democrats in the late 1900s" -- I think I said 1800s.  
20 I meant to if I didn't -- "to minimize the participation of  
21 African-Americans in the election. By eliminating same-day  
22 registration, you all are going back to the sorry old history  
23 that we should not embrace."

24 Q And the next section.

25 A "It will disproportionately affect minorities. Minorities

1 take advantage of early vote and, in particular, the first week  
2 of early vote more than the general population. They take  
3 advantage of same-day registration, like college students do,  
4 more than the general population. They disproportionately  
5 don't have driver's licenses, and the biggest instance where  
6 they do these things disproportionately, as Senator Bryant  
7 talked about yesterday, was straight-party vote. You wrap all  
8 these election changes into one."

9 Q Did any of your fellow senators on the record challenge  
10 your assertion that African-Americans used same-day  
11 registration more heavily on average than white voters?

12 A No.

13 Q You also mentioned college students and preregistration;  
14 is that correct?

15 A I did.

16 Q Did you also discuss photo identification on the Senate  
17 floor that day?

18 A I did.

19 Q Did you again note, as you did in the Rules Committee  
20 hearing, that a disproportionate number of African-Americans  
21 lacked a qualifying photo ID?

22 A I did. That was the quote I just gave.

23 Q Did any of your fellow senators on the record challenge  
24 your assertion that African-Americans disproportionately lacked  
25 photo identification in North Carolina?

1 A No, none.

2 Q So despite the evidence and facts that you've described,  
3 did the Senate ultimately pass H.B. 589 and refer the bill over  
4 to the House?

5 A It did.

6 Q And in doing so, did the North Carolina General Assembly  
7 depart from its customary procedure in passing H.B. 589?

8 A Yes, in that when one considers this bill, the scope of  
9 it, the seriousness of the rights affected, people's ability to  
10 participate in their democracy, and that it went from a  
11 committee to being enrolled, meaning that it passed both the  
12 Senate and the House in a two-day period, I can think of no  
13 other instances in my seven years of service where something  
14 affecting such a fundamental right was rushed through with such  
15 little deliberation.

16 At the end of the day, there were ten people -- ten North  
17 Carolinians who got to speak for a total of 20 minutes in one  
18 committee meeting before there was this dramatic rewrite of  
19 North Carolina election laws that had been layered in over the  
20 past 20 years with the sole purpose of redressing our  
21 historical legacy of African-Americans not participating in  
22 their democracy -- in our democracy to the extent the  
23 population would merit. And as a result of those reforms,  
24 we've had a dramatic improvement in performance -- these  
25 reforms not only helped African-Americans, they helped all

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1 North Carolinians.

2       So when North Carolina in 1988 was ranked 48th in the  
3 nation in terms of the percentage of its people who voted in a  
4 Presidential election at 45 percent to 24 years later being  
5 ranked 11th with 65 percent of the state voting in that  
6 Presidential election, white participation increased but  
7 African-Americans participation increased even more, which  
8 served the purpose of mitigating the legacy of Jim Crow. And  
9 to see these reforms that had benefited our entire state  
10 eviscerated in a two-day process in the General Assembly I  
11 thought was outrageous.

12 Q       I would like to ask you just a few questions about your  
13 understanding of the reasoning behind the provisions of  
14 H.B. 589. While you were participating in the debate on the  
15 bill, did you become aware of stated reasons in support?

16 A       The primary stated reason --

17               **THE COURT:** These are the reasons on the floor?

18               **THE WITNESS:** On the floor on the record, yes, sir.

19               **THE COURT:** All right.

20               **THE WITNESS:** -- were to promote the integrity of the  
21 elections process, and that was the go-to explanation. And,  
22 for instance, one of my colleagues, Senator Tillman, made an  
23 argument about integrity, and I asked him, I said -- on the  
24 floor, he yielded for my question. I said, Senator Tillman,  
25 how does ending preregistration of high school students or

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1 ending straight-ticket voting meet a practice that two and a  
2 half million North Carolinians utilized -- how do either of  
3 those eliminations enhance integrity? And he didn't have a  
4 response to that.

5 Q Did any legislators on the record provide a rationale for  
6 eliminating out-of-precinct provisional ballots?

7 A No. And that is a perfect example of how the rushed  
8 process I think was abusive in that the only mention I recall  
9 of out-of-precinct voting by anyone in the two days was by one  
10 of the citizens, who spoke in the 20 minutes that the Rules  
11 Committee chairman allowed, talked about the disproportionate  
12 racial impact that the out-of-precinct voting elimination would  
13 have on African-American voters. And after that, I don't even  
14 remember it in the two days of floor debate. And I frankly  
15 believe that if there were more time and more deliberation,  
16 that issue would have been brought to the floor, and we, as  
17 elected representatives, would have been able to give it  
18 adequate consideration, and as it were, we did not.

19 Q Do you believe that protecting the integrity of elections  
20 was the real reason for the bill?

21 A I don't.

22 Q Based on your participation in the legislative debate on  
23 H.B. 589, were bill supporters in the Senate aware of your  
24 concerns about the bill and similar concerns of other bill  
25 opponents about the effect of H.B. 589 on African-American

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1 voters?

2 **MR. STRACH:** Objection to speculation.

3 **THE COURT:** Sustained without any further foundation.

4 **BY MR. FISHER**

5 Q You presented evidence concerning the effect of H.B. 589  
6 on African-American voters; is that correct?

7 A I did. I both presented evidence -- documentary evidence  
8 as well as my advocacy, and it was for full consideration by  
9 the Senate.

10 Q And other senators on the record mentioned  
11 disproportionate impacts on African-Americans; is that correct?

12 A Senator Bryant talked about it as it related to  
13 straight-ticket voting, Senator Robinson as it related to voter  
14 identification, Senator Graham as it related to preregistration  
15 and same-day registration, and Senator Parmon spoke  
16 passionately on the bill as a whole and its racial impact, as  
17 did Senator Nesbitt.

18 Q And the supporters of H.B. 589 were in the chamber and  
19 heard those statements; is that right?

20 A Yes. They may not have all been in the chamber at all  
21 moments; but, yes, the supporters could not have not -- they  
22 could not have not heard us, if that is English.

23 **MR. FISHER:** Thank you, Senator Stein.

24 **THE COURT:** Do you know how long your cross is? I am  
25 contemplating taking our afternoon break.





1 constitute the pieces actually being challenged in this  
2 lawsuit?

3 A I have not.

4 Q Would it surprise you to know that it is only about 16 or  
5 17 pages?

6 A It would not, because, as I mentioned, when you are  
7 eliminating things like same-day registration, straight-ticket  
8 voting, preregistration, to eliminate something, you just say  
9 section so and so is abolished or is no more; and so to  
10 eliminate things really doesn't take up many pages.

11 Q All right. Now, you agree with me, don't you, that in the  
12 passage of House Bill 589, there were no formal rules that the  
13 legislature violated; is that correct?

14 A I cannot think of any.

15 Q All right. And you yourself didn't raise any points of  
16 order during the legislative process on House Bill 589, did  
17 you?

18 A I do not believe that I did.

19 Q All right. The point of order is the -- would be the way  
20 that you would bring to the attention of the majority a  
21 possible violation of the rules; correct?

22 A It would be to bring it to any presiding officer, who  
23 would then rule on that point of order, yes.

24 Q You mentioned in your direct testimony that you received  
25 the PCS around 9:00 in the evening because you checked your

1 email; is that correct?

2 A That's correct.

3 Q And you said it was common for you to check your email to  
4 make sure you hadn't gotten any important legislative matters  
5 at that time of the night; correct?

6 A I try to, yes.

7 Q Isn't it true that you had gotten other important PCS  
8 versions of other bills at that time of the night?

9 A I'm sure that I had.

10 Q And you said that the Rules Committee meeting would be the  
11 next day; correct?

12 A That's correct.

13 Q You stated that that didn't give you much time to marshal  
14 help from outside groups and individuals; is that correct?

15 A Certainly not adequate or sufficient time, no.

16 Q Now, you agree with me that there are bills already  
17 pending in the legislature to eliminate SDR; correct?

18 A I have no idea. The fact of the matter is is in any given  
19 session there's probably 3,000 bills introduced. Only a small  
20 fraction of those ever get heard in a committee, and of those  
21 that get heard in the committee, a host of them get completely  
22 rewritten at the time of the committee in form of a PCS; and so  
23 it is not a productive use of time to read every idea that  
24 every legislator has in the form of a bill. And so there may  
25 have been a bill, but it was never discussed and I didn't know

1 of it.

2 Q Do you think that if there was a bill pending to eliminate  
3 SDR that election advocacy groups would have read it and  
4 started preparing for it?

5 A They may have.

6 Q All right. Isn't that why -- isn't it true that the  
7 Exhibit A to your declaration -- would you agree with me that  
8 was a fairly significant or substantial analysis of the bill by  
9 likely Southern Coalition for Social Justice?

10 A It was certainly a helpful analysis, yes.

11 Q And you were able to obtain this between the time you got  
12 the PCS and the Rules Committee meeting the next day; correct?

13 A Correct.

14 Q Now, regarding the information in Exhibit A -- would you  
15 all mind pulling that back up on the screen, PX717.

16 Senator Stein, we've pulled PX717 back up on the computer  
17 screen. I believe this was one page of the SCSJ information  
18 that you brought with you to the Rules Committee meeting; is  
19 that correct?

20 A It is.

21 Q And then you also brought this information with you to the  
22 full Senate floor debate on H.B. 589; is that correct?

23 A It is correct.

24 Q And regarding this particular information from SCSJ, you  
25 said that it was loaded on something called the Dashboard.

1 That was basically on a computer screen for each senator at  
2 their desk?

3 A It is exactly what we have here for the witness. Each  
4 member gets to choose their form of technology, whether it is a  
5 computer or a tablet; but on that piece of hardware, there is  
6 access to software which is called the Dashboard. It will show  
7 the current item being discussed or the amendment or the bill,  
8 or you can toggle and look at the calendar as a whole.

9 Q How many pages of information did you ask to be loaded  
10 onto the Dashboard?

11 A For the graphs, it was four pages. It was the page  
12 showing the utilization of same-day registration and the  
13 demographic impact, and then same thing with early voting, the  
14 utilization of early voting and the demographic.

15 I also submitted a law review article on the impact of  
16 early voting on Florida, the reduction of early voting in  
17 Florida and its disproportionate impact on African-Americans.  
18 I don't remember how long that journal article was.

19 Q Would all that have been loaded into the Dashboard at the  
20 same time?

21 A It would have been, and available to any member at any  
22 time.

23 Q For a member to actually review that, would they have to  
24 scroll through it page by page?

25 A For the law review article, yes. The graph came up, and

1 it was on their screen.

2 Q And was that just one graph per issue that came up on the  
3 screen?

4 A It was.

5 Q So they would have to scroll through each graph to review  
6 each graph; correct?

7 A That's correct.

8 Q And you have no idea whether each senator, in fact,  
9 reviewed each one of those graphs during that debate, do you?

10 A I don't know whether each senator reviewed each graph.

11 Q All right. And during the actual debate on the Senate  
12 floor, you did not read the information from these graphs to  
13 your colleagues on the Senate floor, did you?

14 A I believe what I said was African-Americans vote at a  
15 higher rate than the general population in the first week of  
16 early voting, and that African-Americans would be  
17 disproportionately affected by the elimination of same-day  
18 registration and that African-Americans would be  
19 disproportionately affected by the percentage who do not have  
20 driver's licenses.

21 I know that Senator Robinson said that 34 percent of  
22 African-American -- registered voters without licenses were  
23 African-American, and I know that Senator Bryant said that  
24 80 percent of African-Americans utilized straight-ticket voting  
25 as compared to 45 percent of whites. And so the statistics

1 were out there and the general import was out there.

2 Q Okay. With respect to SDR and early voting, you  
3 characterized the numbers as having a disproportionate impact  
4 in your remarks to the Senate; but it is true, right, that you  
5 did not give the senators the actual numbers?

6 A I did not give the actual numbers, I don't believe. I  
7 talked about its general import and I put the graphs up there  
8 so that the fact checkers among them could ascertain whether  
9 what I was saying was true.

10 Q And you have no idea if they did that or not?

11 A I don't know. I mean, I know some did because it was on  
12 the screen. Whether all of them, I can't speak.

13 Q All right. And, in fact, if they were, if they had  
14 happened to look down at the screen and scroll through and come  
15 across this particular document, for instance, PX717, the first  
16 thing that would come out at them on this page would be the  
17 graph in the middle, don't you think?

18 A I would think so.

19 Q All right. And isn't it true that one thing -- one item  
20 of information that this graph demonstrates is that whites use  
21 early voting in raw numbers much more than black voters?

22 A It's true. I actually made that point as it related -- I  
23 actually made it on a partisan basis as it related to early  
24 voting and same-day registration -- I mean and straight-ticket  
25 voting, that these were utilized by whites and by Republicans,

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1 just not at the same rate.

2 Q So you were making the point that Republicans would be  
3 hurt by this bill as well?

4 A I was making the point that North Carolinians would be  
5 hurt and that African-Americans would be hurt  
6 disproportionately.

7 Q And you were making the point to the majority Republican  
8 Senate caucus that Republicans would get hurt, too; is that  
9 correct?

10 A I was trying to find a way that might dissuade them from  
11 what I thought was their course.

12 Q My question was, was the answer -- was that -- was I  
13 correct?

14 A Restate your question, if you don't mind.

15 Q You were trying to persuade the Republican Senate majority  
16 that this H.B. 589 would also hurt Republicans; isn't that  
17 correct?

18 A I did.

19 Q Now, Senator Stein, are you aware of the participation  
20 rates for early voting by race in the 2014 election?

21 A I have not studied those numbers.

22 Q All right. Have you -- did you know that black voters  
23 used early voting in the 2014 elections at a higher rate than  
24 white voters?

25 A I did not know that, but nor am I surprised because they

1 had already shown a propensity to do early voting at a higher  
2 rate, and so the fact that the number of days had shrunk  
3 wouldn't necessarily result in African-Americans using it less.  
4 It's just fewer African-Americans would have been afforded the  
5 opportunity to take advantage of that.

6 Q So as it turned out, African-Americans as a group were not  
7 negatively impacted by the loss of seven days of early voting;  
8 is that correct?

9 A I have no idea.

10 Q With respect -- let's stay on early voting for a second.  
11 You mentioned Senator Rucho's amendment that was suggested by  
12 you to require what I will call the matching-hours requirement.

13 A Uh-huh.

14 Q Do you recall your testimony on that?

15 A I do.

16 Q And you also mentioned that there was a subsequent  
17 amendment allowing a waiver process; is that correct?

18 A Not entirely accurate. On the first day of Senate voting,  
19 I offered an amendment that was accepted that had the  
20 matching-hours requirement. On the second day -- but there was  
21 some technical drafting problems with that amendment. So we  
22 needed to clean it up.

23 And in the course of doing that, on the second day of  
24 Senate debate, that was offered by Senator Rucho, and it had a  
25 couple of other provisions in it that I described in my direct



1 testimony.

2 Q And that's what I've just characterized as the waiver  
3 process?

4 A Correct.

5 Q And isn't it true, Senator Stein, that you voted for  
6 Senator Rucho's amendment that created the waiver process?

7 A I did.

8 Q Now, are you aware of a term that I understand is used in  
9 the building called "gut and amend"?

10 A I am aware.

11 Q Can you describe what that process is?

12 A Gut and amend is when a bill that is being considered in a  
13 committee, the substance of which is taken out, stripped out,  
14 and other substance put in in its place in the form of a PCS,  
15 and then it's considered by that committee.

16 Q All right. And oftentimes it's replaced with material and  
17 language completely unrelated to what was there originally;  
18 correct?

19 A It can be.

20 Q And isn't that a process that happens quite a bit in the  
21 legislature?

22 A When it usually occurs is when it's toward the end of a  
23 session and a chamber has already passed a substantive  
24 provision on that bill, but, for whatever reason, the other  
25 chamber isn't acting on it. And so if a Senate bill goes to

1 the House, it has to go through one or two House committees and  
2 then come to the floor. It may be changed; in which case, it  
3 comes back to the Senate, and the Senate has to vote to concur  
4 or not concur. If they don't concur, it goes to conference.

5 So that whole process can change dramatically, and it  
6 gives the other chamber a lot of power over the outcome of that  
7 bill. So if -- a chamber which has already dealt with an issue  
8 and has a strong view on that issue, what they will do to  
9 hamstring the other chamber sometimes is they will take a House  
10 bill, strip it out, put in substantive language that's already  
11 been fully debated by that Senate, and then the Senate will  
12 send it over. At that point, the House can either vote to  
13 concur or to not concur. They don't have an opportunity to  
14 amend it. It can go to conference where it can be negotiated.  
15 So it's a way -- but it is generally done when a bill has  
16 already been fully vetted by the chamber before it's done.

17 Q But it is not unusual through the gut-and-amend process  
18 for a bill that originates in one chamber to be changed  
19 substantially, if not completely, in the other chamber?

20 A I would say that it occurs not frequently, but it occurs.

21 Q All right. Does it occur too frequently for your taste?

22 A Yes, I can safely say that.

23 Q Are you familiar with a bill from the last legislative  
24 session that was known as the Sharia Law bill?

25 A I am very familiar with the Sharia Law bill.

1 Q And was that a bill that was subjected to this  
2 gut-and-amend process?

3 A It was.

4 Q Can you describe it to me?

5 A Yeah. It was a House bill having to do with the  
6 application of Sharia Law in North Carolina courts, and I  
7 believe that it went through the Rules Committee in a similarly  
8 politicized fashion and came out keeping the Sharia Law  
9 provision. So it wasn't stripped, but it was amended to  
10 include a host of antiabortion restrictions.

11 Q So -- I'm sorry --

12 A I was just going to talk through the process. I didn't  
13 mean to interrupt.

14 Q So the Sharia Law piece of it stayed in the bill, but it  
15 added some, what some might argue, unrelated pieces of  
16 legislation and put it all in as one big passage?

17 A It did. It did exactly that, and the Senate passed it and  
18 it was ran through quickly. Fundamental difference between  
19 that bill and this bill, even though they both affected  
20 constitutional rights, is that that bill then went to the  
21 House, where it was sent to a committee and deliberated, and,  
22 in fact, after some time, what they did, the House, was they  
23 gutted and amended a Senate bill and sent over a version back  
24 to the Senate for consideration after there had been public  
25 hearings on it. And that whole process took about a month from

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1 the time it was first heard in Rules Committee until it was  
2 enrolled; whereas, this bill, which affects the most  
3 fundamental of rights, took two days.

4 Q Now, isn't it correct at the end of this process, though,  
5 eventually it came back to the House on a concurrence vote?

6 A It did.

7 Q All right. And then didn't it pass on a motion to concur  
8 at the very end of the session?

9 A No.

10 Q That's not your recollection?

11 A That's not what happened. What happened was the House  
12 refused to take the House bill that we sent over, the Sharia  
13 Law bill, and instead they took the substance of the  
14 abortion -- antiabortion provisions and inserted it into a  
15 motorcycle bill that was a Senate bill, and then the House sent  
16 over to the Senate a motorcycle bill. So it became -- it was  
17 sort of what they were calling the motorcycle abortion bill.  
18 So what started as the Senate Sharia abortion bill became the  
19 motorcycle abortion bill, and that's what became law.

20 Q All right. But in any event, the legislative history of  
21 the bill is on the General Assembly's website and would speak  
22 for itself?

23 A Absolutely, it is, yes; and if I'm wrong, I am happy to be  
24 corrected.

25 Q In speaking of concurrence, when a bill originates, say,

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1 in the House, goes to the Senate, gets changed, comes back to  
2 the House, and in that example, the proper procedure is it has  
3 to be voted on concurrence, either for or against, before  
4 anything else can happen with the bill; is that correct?

5 A No, that's not correct. What can happen, and typically  
6 happens, will be that the House -- if it's a substantive bill  
7 affecting substantive rights that involves matters which have  
8 not been properly deliberated, the House will typically refer  
9 it to a committee for review and recommendation to the floor  
10 for concurrence.

11 Q Can you give me an example of any bill this session where  
12 that's been done?

13 **MR. FISHER:** Objection, relevance. We are talking  
14 about H.B. 589 passed in 2013. I think that was the subject of  
15 Senator Stein's direct testimony.

16 **THE COURT:** Overruled.

17 **THE WITNESS:** There is a bill that's happening today.  
18 There was a House bill on regulatory reform that pertained to  
19 one issue, and it came to the Senate and, coincidentally  
20 enough, I think it was a 57-page bill the Senate came up with  
21 and sent it back to the House, and the House did not vote to  
22 concur. I don't know if they voted to concur. I don't think  
23 they did. They sent it to a committee for review, and there is  
24 a public hearing on that today.

25

1 **BY MR. STRACH**

2 Q So in addition to sending it to a committee, another  
3 option is for the House, or whichever chamber receives the bill  
4 back, to vote on a motion to concur or a motion not to concur;  
5 isn't that correct?

6 A That is an option.

7 Q And if they vote -- it can't be sent to a conference  
8 committee until it's been voted on concurrence; correct?

9 A That's correct.

10 Q And if a bill goes to a conference committee, a conference  
11 committee is appointed by the House and the Senate; is that  
12 right?

13 A Correct.

14 Q And then the conference committee typically meets; is that  
15 right?

16 A No. Typically, a member or two of the conference  
17 committee meets and negotiates something.

18 Q And they don't usually do that in public, do they?

19 A Often not, no.

20 Q So, basically, the bill is then negotiated in the  
21 conference committee in secret, and a final version is brought  
22 back to both chambers; is that correct?

23 A That's correct.

24 Q And when it comes back to the chamber out of conference  
25 committee, the only option that each chamber has is to vote it

1 up or down; is that correct?

2 A That's correct.

3 Q There is no opportunity for amendments and that sort of  
4 thing; is that right?

5 A You are right.

6 Q Just in the same way when House Bill 589 came back to the  
7 House on a concurrence vote, there was also no opportunity for  
8 amendment; is that correct?

9 A That's correct. House Bill 589 could not be amended, but  
10 the House had in its opportunity to send it for a committee for  
11 discussion or to do what they did on the abortion bill, which  
12 is to take the pieces they like, put it in a Senate bill, and  
13 send it back. But as I said -- maybe I didn't say, but the  
14 House took the 589 voter restriction law up the very same day  
15 Senate passed third reading. So that's why it only took two  
16 days for it to become enrolled from the first committee  
17 meeting.

18 Q Were you in the -- you were not in the legislature in  
19 2005; is that correct?

20 A I was not.

21 Q Are you familiar with the bill passed in the legislature  
22 in 2005 reconfirming out-of-precinct voting?

23 A I was not -- I am not familiar. I am sorry.

24 Q Do you know any background about that at all?

25 A I don't.

1 Q You were not in the legislature in 2003 either; correct?

2 A Correct.

3 Q Do you have any background or information on the 2003  
4 redistricting plan that was passed in the special session that  
5 year?

6 A Just what I read in the newspapers.

7 Q We don't want to hear about what you read in the  
8 newspapers.

9 In speaking of out-of-precinct voting, during the Senate  
10 debate on 589 that's on the floor of the Senate, as I  
11 recollect -- and you may have testified to this already --  
12 there was no debate on the out-of-precinct provision at all; is  
13 that correct?

14 A I don't recall any debate.

15 Q And so the -- none of the -- your colleagues in the  
16 Democratic Caucus on the floor raised any complaints, at least  
17 on the floor, about out-of-precinct voting; is that correct?

18 A I am embarrassed to admit, but it slipped by us.

19 Q Are you familiar with the process that the State Board of  
20 Elections uses to verify registrations through the mail?

21 A Generally. Not expert, but, yes, I am generally aware.

22 Q What is your understanding of the mail verification  
23 process?

24 A That if you register to vote, they will send a letter to  
25 you confirming your registration. If you don't -- if it comes



1 back to them, they will send a second letter, and then after  
2 that, my understanding is they will take you off the rolls.

3 Q All right. Are you familiar with any reports that the  
4 State Board of Elections did on mail verification?

5 A No.

6 Q Are you familiar with a bill from the 2013 session, Senate  
7 Bill 666?

8 A I am not.

9 Q Does that ring a bell?

10 A If you give me the title or its import, maybe I will  
11 remember.

12 Q It had to do with tax exemption for parents of college  
13 students who voted in their college town. Do you recall that?

14 A I do recall that. I think it was Senator Cook.

15 Q Yes.

16 A Yes, I recall that.

17 Q Do you recall what committee that bill was referred to?

18 A I assume Rules, because Rules is primarily where bills go  
19 to die. My understanding was that that was not a popular bill,  
20 and the leadership realized early on that that was not one they  
21 wanted to move.

22 Q It was an elections bill that went to Rules; correct?

23 A To die.

24 Q And it was a bill that you did not expect to be passed?

25 A I did not expect it to be passed.

1 Q When a bill is heard in a committee, Senator Stein, is the  
2 chairman of that committee required to let members of public  
3 speak?

4 A It is typical. What will happen in a committee is that  
5 the -- this is the typical form. The bill sponsor will speak  
6 briefly. Staff will give whatever additional comments they  
7 have. The committee will debate and ask questions, and then  
8 the committee chairman will ask for public comment. I don't  
9 know that there is a rule that requires that, although it is  
10 certainly the course -- standard course of business.

11 Q Isn't it in the chair's discretion whether to allow anyone  
12 but a General Assembly member to speak?

13 A The chair has a great deal of discretion.

14 Q And in the case of House Bill 589, the chairman of the  
15 Rules Committee exercised his discretion to allow members of  
16 the public to speak, didn't he?

17 A He did. Ten people, two minutes each.

18 Q Now, to the extent that you were concerned about the  
19 cutback to early voting, do you recall remarking during the  
20 legislative debate on the Senate floor that you thought your  
21 amendment would mitigate that concern?

22 A I did. And by "mitigate," I meant to partially  
23 ameliorate. I believed that the amendment would at least  
24 create a floor under which counties could not go. I believed,  
25 however, that it remained negatively impactful on

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1 African-Americans when you consider, one, there is just the  
2 fact that there are fewer days; therefore, there are fewer  
3 opportunities for people to cast their ballot. And, two, it  
4 eliminated one of the two Sundays and one of the three  
5 Saturdays, and, in fact, that first Sunday is the date at which  
6 the highest percentage of African-Americans vote. Well over  
7 40 percent of all voters that Sunday are African-Americans.

8 Q But you haven't checked the numbers from the 2014  
9 elections to see whether your prediction came true on that?

10 A I did not check the numbers.

11 Q Do you recall, Senator Stein, that in order for a waiver  
12 to be accepted, it has to get the unanimous support of the  
13 county board of elections?

14 A Yes, I negotiated that piece.

15 Q Regarding the early voting piece, Senator Stein, first of  
16 all, are you aware of whether or not the number of early voting  
17 sites increased as a result of the matching-hours requirement  
18 that you proposed?

19 A I am unaware.

20 Q Okay. And are you aware that under the prior law a  
21 majority of the State Board of Elections could overrule the  
22 site selection for early voting sites of the county boards?

23 A Before 589 or after 589?

24 Q Before 589.

25 A I don't recall that.

1 Q All right. Senator Stein, is it -- you are a candidate  
2 for Attorney General of North Carolina?

3 A I am not currently a candidate for Attorney General.

4 Q Have you indicated to the media that you are going to run  
5 for that position?

6 A I have indicated to the media that I am strongly  
7 considering running for that position.

8 Q All right. And just for the record, you are registered as  
9 a Democrat; is that correct?

10 A I am a Democrat.

11 **MR. STRACH:** Thank you, Your Honor. I have no  
12 further questions.

13 **THE COURT:** Any other from the Defendants? Any  
14 redirect?

15 **MR. FISHER:** Very quickly, Your Honor.

16 REDIRECT EXAMINATION

17 **BY MR. FISHER**

18 Q Senator Stein, you were asked about the data that you  
19 provided on Dashboard. That data included data on same-day  
20 registration even if you didn't read out the numbers?

21 A That's correct.

22 Q In your experience during legislative sessions, do your  
23 colleagues look at the materials that are provided on the  
24 Dashboard?

25 A Yes.

1           **MR. STRACH:** Objection, speculation.

2           **MR. FISHER:** He opened the door, Your Honor.

3           **THE COURT:** Overruled.

4           **THE WITNESS:** Yes, it's common. When someone puts up  
5 a document, it is different enough that people will review it,  
6 yes.

7           **MR. FISHER:** Thank you, Senator Stein.

8           I would like to move into evidence Exhibit 717, the  
9 exhibit that Senator Stein marked during his testimony.

10          **MR. STRACH:** No objection.

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

12          Anything further on redirect?

13          **MR. FISHER:** That's it, Your Honor.

14          **THE COURT:** Did you have any further questions?

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

16          **THE COURT:** Senator, you may step down.

17          **THE WITNESS:** I appreciate it, Your Honor.

18          **MR. DONOVAN:** Your Honor, next we were going to play  
19 a video of a witness, name is Tawanda Pitt. For the record, it  
20 is 4 minutes designated by Plaintiffs, and 3 minutes designated  
21 by Defendants.

22          **THE COURT:** All right. Is this offered by all  
23 Plaintiffs?

24          **MR. DONOVAN:** Yes. If we can have one moment, we'll  
25 hand up the transcript, Your Honor.

1           **THE COURT:** Okay. Thank you.

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

3           **THE COURT:** Yes.

4           **MS. RIGGS:** I'm sorry. These are colored copies with  
5 different shades.

6           (Designated portions from the video deposition of Tawanda  
7 Pitt were played.)

8           **MR. DONOVAN:** Your Honor, at this time if we could --  
9 my partner, Ms. O'Connor, was going to move in some exhibits  
10 and do some deposition designations, hand out some --

11           **THE COURT:** All right.

12           **MS. O'CONNOR:** Good afternoon. I am going to proceed  
13 to move to admit some materials that I believe continue to be  
14 in the unobjected-to category, and I think Defendants -- we've  
15 given Defendants a heads-up that we would be presenting these.  
16 I think these should go pretty smoothly. We'll see.

17           **THE COURT:** All right.

18           **MS. O'CONNOR:** So I am going to start with some  
19 deposition designations, written designations. Those would be  
20 the designations of Marcia Pleasant.

21           **THE COURT:** Can you read the exhibit number first and  
22 then the name?

23           **MS. O'CONNOR:** Sure.

24           **THE COURT:** So I can make a list. Thank you.

25           **MS. O'CONNOR:** So Plaintiffs' Exhibit 769 will be the

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1 deposition designations of Marcia Pleasant. Plaintiffs'  
2 Exhibit 770 will be the designations of April Sidbury.  
3 Plaintiffs' Exhibit 771 will be the designations of Brandi  
4 Smith. Plaintiffs' Exhibit 772 will be the designations of  
5 Lynne Walter. Plaintiffs' Exhibit 773 will be the designations  
6 of Bessie Ward. Plaintiffs' Exhibit 774 will be the  
7 designations -- I am just looking for her first name here -- of  
8 Marianne Murphy (sic). Plaintiffs' Exhibit 776 are the  
9 designations of Malcolm Wilson. And Plaintiffs' Exhibit 777  
10 are the designations of Courtney Woodard.

11           So Plaintiffs would move that those designations be  
12 admitted.

13           **MR. FARR:** Counsel, those include our  
14 counter-designations?

15           **MS. O'CONNOR:** They do.

16           **MR. FARR:** No objection, Your Honor.

17           **THE COURT:** Those are admitted.

18           **MS. O'CONNOR:** Further, in connection with those  
19 depositions, we have two exhibits that relate to the deposition  
20 of -- the Wilson deposition, which is PX776. That's the  
21 deposition. And these are two exhibits to that deposition.  
22 They are Plaintiffs' Exhibit 311A, which was Wilson Deposition  
23 Exhibit 1, and Plaintiffs' Exhibit 312A, which was Wilson  
24 Deposition Exhibit 2; and we would move that those two exhibits  
25 be admitted.

1           **THE COURT:** Any objection?

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

3           **THE COURT:** Admitted.

4           **MS. O'CONNOR:** The next category of materials that we  
5 would like to move in, Your Honor, are a series of binders that  
6 contain the full legislative transcripts that we had discussed  
7 yesterday. Some of the versions that were admitted in the  
8 course of the PI materials were excerpts, and so these are a  
9 full set of the full transcripts, and I believe these similarly  
10 are unobjected to by the Defendants.

11           **THE COURT:** What is the number on those?

12           **MS. O'CONNOR:** So they are marked -- we have them in  
13 binders by -- with several Plaintiffs' exhibit numbers that are  
14 already on the Plaintiffs' Exhibit list, and I can mark these  
15 binders with Plaintiffs' exhibit numbers by binder, if that  
16 continues to work, that process.

17           The first binder will be Plaintiffs' Exhibit 718.  
18 That consists of Plaintiffs' Exhibits 542 through Plaintiffs'  
19 Exhibit 546.

20           The second binder will be Plaintiffs' Exhibit 719,  
21 and that consists of Plaintiffs' Exhibit 547 through  
22 Plaintiffs' Exhibits 551.

23           And the third of three binders for this set will be  
24 marked as Plaintiffs' Exhibit 720, and that consists of  
25 Plaintiffs' Exhibits 552 through 553.



1           **MR. FARR:** Just for clarification, I don't know if  
2 counsel can answer this, but do we know which of those exhibits  
3 are House proceedings versus Senate proceedings?

4           **MS. O'CONNOR:** I could go through them here.

5           **THE COURT:** If you would just direct your comments to  
6 me, and you all can listen to each other.

7           **MS. O'CONNOR:** Well, they say them on their face. I  
8 can go through them here; and if it suits the Court and  
9 counsel, I can grab the exhibit list and walk through them or  
10 we can discuss.

11           **MR. FARR:** I think it is all right, Your Honor. I  
12 apologize.

13           **THE COURT:** All right.

14           **MS. O'CONNOR:** So we would move that Plaintiffs'  
15 Exhibits 718, 719, and 720 be admitted.

16           **MR. FARR:** No objection, Your Honor.

17           **THE COURT:** Admitted.

18           **MS. O'CONNOR:** The last grouping for this session  
19 would be a series of amendments, so these are legislative  
20 amendments to H.B. 589. These have been marked as Plaintiffs'  
21 Exhibit 705 --

22           **THE COURT:** Are these proposed amendments that were  
23 defeated?

24           **MS. O'CONNOR:** That's right. Plaintiffs'  
25 Exhibit 706, Plaintiffs' Exhibit 707, Plaintiffs' Exhibit 708,

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1 Plaintiffs' Exhibit 709, Plaintiffs' Exhibit 710, and  
2 Plaintiffs' Exhibit 711. And I believe these also are  
3 unobjected to, and we would move that they be admitted.

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

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

6 **MS. O'CONNOR:** That's all we have for now, Your  
7 Honor.

8 **THE COURT:** Is there an extra set for my use of  
9 those?

10 **MR. DONOVAN:** Yes.

11 **MS. O'CONNOR:** Yes. We have three hard copies to  
12 bring up, and I will organize them and bring them up.

13 **THE COURT:** That would be great. Thank you very  
14 much.

15 **MR. DONOVAN:** Your Honor, one more housekeeping  
16 matter on the exhibit -- I understand PX792, which is the  
17 Quisha Mallette highlighted transcript from yesterday, it was  
18 never formally moved in. It was played to you. So at this  
19 time we move in Plaintiffs' Exhibit 792, which is the  
20 highlighted deposition transcript of Quisha Mallette.

21 **MR. FARR:** No objection, Your Honor.

22 **THE COURT:** All right. That's admitted. What was  
23 the one from earlier today that you were going to look at?  
24 Have you had a chance to look at it?

25 **MR. DONOVAN:** I have the transcript, but I haven't

1 given it to Mr. Farr. I will tonight.

2 **THE COURT:** All right.

3 **MR. FARR:** Your Honor, there was an exhibit that  
4 Ms. Riggs wanted to introduce, and we looked at it and we have  
5 no objection to that if she wishes to move that in.

6 **MS. RIGGS:** That was it.

7 **THE COURT:** What was the number?

8 **MS. RIGGS:** 792.

9 **THE COURT:** That's admitted.

10 **MR. DONOVAN:** Your Honor, at this time we have some  
11 videos, but -- we had some negotiations and we resolved the  
12 disputes, but the videos aren't cut yet. So if I could suggest  
13 we recess for the day at ten to 5:00 rather than 5:00 and pick  
14 up, and we would be able to cut those and be a little more  
15 efficient tomorrow.

16 **THE COURT:** Okay. So you say you've resolved some  
17 disputes about --

18 **MR. DONOVAN:** I think we've resolved to date all of  
19 our disputes on deposition designations.

20 **THE COURT:** Okay. That's good news.

21 **MR. DONOVAN:** So -- but we are prepared to continue  
22 with live witnesses and video tomorrow at 9:00.

23 **THE COURT:** Okay. All right. Where do you stand  
24 with your interest in having Senator Cook show up? That's  
25 deferred for now, is that the --

1           **MR. DONOVAN:** I think that's right, Your Honor.

2           **MR. KAUL:** That's right, Your Honor. I believe the  
3 issue will be fully teed up with the evidence that we view as  
4 corroborative of the statement as of Thursday; but to the  
5 extent the Court would rather hear from us on that earlier,  
6 we're, of course, happy to --

7           **THE COURT:** I am happy to wait until you have other  
8 evidence. There is one issue with Senator Cook, I think, at  
9 least from one of the articles, and that's his statement  
10 relates to a bill that's not one of the bills at issue here,  
11 and that may add a wrinkle to it. So I don't know what your  
12 other evidence is, but I note that it didn't relate to  
13 House Bill 589 or any of the predecessor pieces to it, as far  
14 as I could tell. Is that right?

15           **MR. KAUL:** It is right, Your Honor, although one of  
16 the bills has been cited by the Defendants as a precursor to  
17 H.B. 589; and more to the point, we believe that Senator Cook's  
18 intent with respect to young voters just months before H.B. 589  
19 was passed is relevant.

20           **THE COURT:** Well, I will wait and see what your other  
21 evidence is. No need to get into another discussion now.

22           Anything further we need to address?

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

24           **THE COURT:** Do you think you'll still be putting on  
25 evidence for the day tomorrow?

1           **MR. DONOVAN:** Yes, definitely. For our estimate, we  
2 are looking at Thursday to rest. We may have a witness or two  
3 we may need to call out of order. I haven't talked to Mr. Farr  
4 about that, but I will do that.

5           **THE COURT:** Okay. All right. Okay. 9:00 tomorrow.  
6 You all have a good evening.

7           (The Court recessed at 4:49 p.m.)

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END OF TRIAL DAY SEVEN

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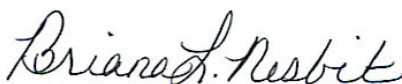
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1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF NORTH CAROLINA  
3 CERTIFICATE OF REPORTER  
4  
5

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 4th day of August 2015.  
11

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14 Briana L. Nesbit, RPR  
15 Official Court Reporter  
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