

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.,)

10 Defendants.)

11 LEAGUE OF WOMEN VOTERS OF NORTH) CASE NO. 1:13CV660
12 CAROLINA, et al.,)

13 Plaintiffs,)

14 V.)

15 STATE OF NORTH CAROLINA, et al.,)

16 Defendants.)

17 UNITED STATES OF AMERICA,) CASE NO. 1:13CV861
18)

19 Plaintiff,)

20 V.)

21 STATE OF NORTH CAROLINA, et al.,) Winston-Salem, North Carolina
22) July 22, 2015

23 Defendants.) 9:03 a.m.

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TRANSCRIPT OF THE **TRIAL/DAY EIGHT**
BEFORE THE HONORABLE THOMAS D. SCHROEDER
UNITED STATES DISTRICT JUDGE

Proceedings recorded by mechanical stenotype reporter.
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1 P R O C E E D I N G S

2 **MR. DONOVAN:** We are ready to proceed with
3 Representative Henry Michaux as our next witness.

4 **MR. JOYNER:** Introduced in the record already is
5 Representative Michaux's declaration, which is at PX0017 in
6 Case 1:13CVCVS. We will not be handing up copies of that
7 declaration since it has already been introduced, and the
8 Defendants have a copy of it.

9 **THE COURT:** Is there any objection to that in the
10 record?

11 **MR. STRACH:** No, Your Honor.

12 **THE COURT:** All right. It's admitted.

13 **REPRESENTATIVE HENRY M. MICHAUX, JR.,** PLAINTIFFS' WITNESS,
14 being first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 **BY MR. JOYNER**

17 Q Would you state your full name for the record.

18 A My name is Henry M. Michaux, Junior.

19 Q Where do you reside?

20 A I live in Durham, North Carolina.

21 Q And how long have you lived in Durham?

22 A All my life.

23 Q What do you do for a living?

24 A I'm an attorney, also a practicing real estate broker and
25 insurance -- property and casualty insurance agent.

1 Q Are you're also an elected official?

2 A I'm also an elected official. I represent the 31st
3 District in Durham County in the North Carolina House of
4 Representatives.

5 Q Where did you attend college?

6 A I attended college at North Carolina Central University,
7 both for an undergraduate degree and for my law degree.

8 Q And where did you attend law school?

9 A North Carolina Central University.

10 Q When were you first elected to the North Carolina General
11 Assembly?

12 A 1972.

13 Q At the time that you were elected, how many
14 African-Americans were serving in the General Assembly?

15 A There were two that at time. I joined Henry Frye and Joey
16 Johnson, becoming the third in the 20th Century.

17 Q And when was Representative Frye --

18 A Representative Frye was elected in 1968. Representative
19 Johnson was elected in 1970. I was elected in 1972.

20 Q And prior to the election of Representative Frye, when was
21 the last African-American elected to serve in the North
22 Carolina General Assembly?

23 A That had to be during the post-Reconstruction times. I
24 cannot recall anybody that had been elected since that time --
25 African-American that had been elected since that time.

1 Q Would that have been in 1898?

2 A This would be my recollection, the best I can guess.

3 Q How many years have you served in the North Carolina
4 House?

5 A At the end of this session, it will have been 38 years.
6 So right now, it's about 37 years I served.

7 Q Would that qualify you as the longest-serving legislator
8 in the North Carolina General Assembly?

9 A That's what they tell me.

10 Q Now, you interrupted, I believe, your tenure in the North
11 Carolina House to serve as the U.S. Attorney for the Middle
12 District of North Carolina; is that correct?

13 A That's correct. In -- I was appointed by President Carter
14 in 1977 to that position.

15 Q And in 1982, you ran for Congress. Was that the --

16 A That was the 2d Congressional District.

17 Q I want to just ask you, why did you decide to run for
18 public office in 1968 for the North Carolina House?

19 A Well, actually, what had happened -- this goes back even
20 before that. I ran for the first time in the North Carolina
21 House in 1964. This was -- I had been involved in the Civil
22 Rights Movement during that time. One of my closest friends
23 Dr. Martin Luther King, Jr. and I had talked, and he emphasized
24 to me at that time, as he did to others, that in order to have
25 a seat at the table, we would have to become more and more

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1 involved in politics.

2 And in these conversations that we had, he impressed upon
3 me -- Dr. King said, you know, you would be an ideal person to
4 take up political handling and run with it. And the more I
5 thought about it, the more I did. So my senior year in law
6 school, I decided I wanted to run for the North Carolina House,
7 and lost that race by about 120 votes.

8 Q That was in 1964?

9 A That was in 1964.

10 Q Did you run again?

11 A I ran again in 1966. They began to sort of change the
12 rules, and by the time 1968 -- when I ran again in 1968, the
13 rules had been changed to where you had to pick a seat to run
14 and just other certain things.

15 During that time, the majority of the elections to the
16 North Carolina House were at-large elections, particularly in
17 Durham County and in some of the other larger counties. They
18 all had at-large elections.

19 Q Now, during that time, what was the voter registration
20 rolls like for African-Americans in North Carolina?

21 A That's a little difficult because having become involved
22 in the political scene at that time, dating back probably a
23 little bit before that, I sort of watched the trend.
24 African-Americans were not voting to any great extent.

25 We -- there were a group of us that tried to go around the

1 state to get African-Americans registered. This was before
2 1965. And I can recall times that folks -- Representative John
3 Lewis, who was in Congress, Ben Ruffin, another one named John
4 Edwards and myself went down in the eastern part of the state
5 trying to get African-Americans to go out and register to vote.

6 Unfortunately, they ran us out of town. The
7 African-Americans ran us out of town because they were fearful
8 that, you know, that they would lose their jobs. Many of them
9 were tenant farmers, and they said they didn't want to upset
10 the apple cart, so to speak.

11 Q As a result of that, was the registration of
12 African-Americans, particularly in the eastern part of North
13 Carolina, suppressed?

14 A Yes, it was.

15 Q What about in Durham?

16 A Durham is a different sort of voting area. They like to
17 call Durham the liberal bastion of the state. We did not face
18 the same problems because of the independence of the
19 African-American community in Durham. At that time, they had
20 several thriving businesses. You had a community that was sort
21 of self-supporting on its own. And the Caucasian community,
22 the white community, at that time recognized the fact, and we
23 had a bit more liberalism in terms of being able to vote and
24 register in Durham County, not necessarily that it was
25 something that was rampant, but at least they recognized hoops

1 were still there that you had to go through.

2 Q During that time, was Durham still racially segregated?

3 A Oh, very definitely.

4 Q And the eastern part of the state was also segregated?

5 A Very definitely.

6 Q In fact, the eastern part of the state eventually became
7 one of the covered jurisdictions under the Voting Rights Act;
8 is that correct?

9 A That's correct. Basically, the eastern part of the state
10 and actually 40 counties in the state, the majority of those
11 counties being in the eastern part of the state, yes.

12 Q I want to just talk to you just briefly about your
13 experience when you ran for Congress in 1982. What was your
14 experience with racially polarized voting during the campaign?

15 A During that campaign, this was after the '80 redistricting
16 had taken place, and the 2d District had been configured to a
17 point where there was not a majority black district, but it had
18 a significant number of African-American voters that had been
19 added to the rolls in that district at the time.

20 I remember L.H. Fountain was the congressman from that
21 district, and once the parameters were set on the district, he
22 almost immediately resigned because he felt that his -- from
23 what I understood, he felt that he just wasn't going to make
24 it.

25 I had finished my term as U.S. Attorney, and decided that

1 I wanted to run for Congress in that particular district. I
2 ran. I won the primary. There were four of us in the primary.
3 I came out with 46, 47 percent of the vote, somewhere in that
4 neighborhood, not reaching the threshold that was required at
5 the time of 50 percent plus one.

6 I was in a second primary involved with Tim Valentine. It
7 was at this point that you began to see the racial overtones.
8 For instance, some of the ads that he put out would say "my
9 opponent will be busing his voters to the polls" or "there is
10 going to be a block vote," sometimes spelling the word B-L-O-C
11 and sometimes spelling it B-L-O-C-K, which to me was an
12 inference that they were trying to put that racial pitch in
13 there.

14 Q Okay. And you lost that race?

15 A I lost it. One of the significant things about that
16 second primary was it was the only second primary up to that
17 point where turnout had been greater really than in the first
18 primary.

19 Q So in the general election, the turnout was greater?

20 A No, in the second primary. The turnout was greater in the
21 second primary than it had been in the primary itself.

22 What happened in the general election, one of the things,
23 when they changed the voting regulations and whatnot, they
24 forgot to include write-in votes. And in the general election,
25 I got 15,000 write-in votes in that race.

1 Q Okay. I want to just take you back to your service in the
2 North Carolina General Assembly. During your 30-odd years of
3 service, you've served on probably just about every committee
4 that's in the House; is that correct?

5 A Almost all of them, yes, sir.

6 Q All right. And among those, you've served on the
7 Elections Committee and the Redistricting Committee at
8 different points?

9 A Yes, sir, that's correct.

10 Q Now, have you served as chair of the Elections Committee?

11 A I've served as chair of the Election Laws, yes.

12 Q And have you served as chair of the Redistricting
13 Committee?

14 A I've served as vice-chair of Redistricting, not chair.

15 Q All right. In your roles as a leader of the Elections
16 Committee and/or the Redistricting Committee, were you familiar
17 with the preclearance process?

18 A Yes, I was.

19 Q And as a part of that, were enactments from that
20 committee -- did enactments from that committee have to be
21 precleared by the Justice Department?

22 A Those activities that affected any voting changes, any
23 changes in precinct, anything of that magnitude had to be
24 cleared by Justice Department.

25 Q Now, in your experience --

1 A Can I --

2 Q I'm sorry?

3 A Caveat to that, those issues affecting statewide races had
4 to be precleared. There was some counties that were not on
5 that preclearance list that could do what they wanted to on
6 their own without having to be precleared. For instance,
7 Durham County was not on that preclearance list. So Durham
8 could do it. But if it was a state election, anything
9 involving a state election, you had to be precleared.

10 Q Now, your involvement in the preclearing progress, did
11 that pose any difficulties or extraordinary costs for the
12 State?

13 A As far as I know, it didn't. The only thing -- the only
14 cost that might have been involved would be a cost of postage
15 to send the maps to Washington to have them precleared.

16 Q And was the process for preclearance lengthy?

17 A No, it wasn't. Well, it just depends on what they found.
18 And I have been involved, I think, in about -- at least three
19 redistricting sessions, and depending on what you sent them,
20 that determined how long it took. If it was something that
21 they saw that was retrogressive, they would send it back and
22 make you do certain things to it; but in the main, I would say
23 the average would be about a month.

24 Q Based on your experience, you knew how to navigate through
25 the preclearance process?

1 A Yes, sir. Because I can remember one year that another
2 representative and I took the maps to the Washington
3 preclearance.

4 Q And was it precleared?

5 A Yes.

6 Q You indicated in your earlier testimony that there was a
7 suppression of minority voter registration during those days;
8 is that correct?

9 A That's correct.

10 Q Now, when you became a legislator, what did -- what did
11 you do to address that issue?

12 A Here again, recognizing that voter turnout particularly in
13 the African-American community was very low, there was a move
14 afoot to bring more African-Americans into the voting process,
15 particularly with the passage in 1965 of the Voting Rights Act,
16 keeping in mind that the act was passed, but you had the legacy
17 of what got the Voting Rights Act there. We still had that
18 legacy where we were denied the right for various reasons. You
19 had poll taxes, all these things were there.

20 And so some of us decided it became necessary to put into
21 law some of the things that would make it easier for
22 African-Americans to exercise their constitutional right. The
23 very first bill that I put in very early in there was what we
24 call an open registration bill. Prior to that bill passing, in
25 order to have a registration drive, you had to go to the Board

1 of Elections, get a registrar to come out, and the Board of
2 Elections would schedule that if they thought it was necessary
3 to do it.

4 With open registration, anybody, any group could go in and
5 open up a registration drive and have the forms filled out and
6 then sent back to the Board of Elections for --

7 Q Generally, during that time, what was the race of those
8 persons who -- who served as registrars?

9 A The majority of them were white.

10 Q And was it difficult to get them to come into
11 African-American communities?

12 A Well, there was some who didn't want to come in and -- and
13 particularly in the eastern part of the state, you never had a
14 registration -- you never had a registration drive that I can
15 recall. We had them in Durham, but we had to go and make
16 concessions. I don't know what they were, because these folks
17 were a little bit older than I was at the time, but we would,
18 every now and then, have a registration drive when a white
19 registrar would come down in the black community to help
20 register folks. It would happen at a church, somewhere like
21 that.

22 Q What was the impact of the open registration legislation
23 on the African-American community?

24 A We began to pick up more African-Americans through that
25 registration process than we had before. The rolls were

1 becoming increased because you could take a fraternity or
2 sorority, a church or any civic group and get somebody in that
3 group to take as a project registering voters, and that was the
4 way it was done.

5 Q Okay. Now, you were also involved in the leadership of
6 the early voting effort in North Carolina; is that correct?

7 A Yes, sir, I was.

8 Q Why were you involved in this legislative effort to enact
9 early voting?

10 A There were -- keeping in mind the legacy of the
11 African-American community when it came to voting, the
12 suppression that had been put on them during that period of
13 time, we felt that it was time to sort of try to loosen it up
14 in a legal manner, ways for African-Americans to become
15 registered and to exercise that constitutional right that they
16 had.

17 So we began to look at things, and this was about the time
18 that HAVA came out, that is Help America Vote Act came out,
19 stating that citizen counties could receive funds by improving
20 their voter turnout and all of these. So we started out with
21 the one-stop voting and then the extended period of time for
22 voting.

23 Q Let me --

24 A Let me add. During all of this period, particularly in
25 North Carolina, I remember, I guess, about 1999 after the

1 Presidential election, we were 43rd in turnout in the country.
2 After these measures were put into place, particularly
3 affecting the African-American community, we went from about
4 43rd to 11th in the country in voter turnout.

5 Q I want to direct your attention to the U.S. Senate race
6 between Harvey Gantt and Jesse Helms. Are you familiar with
7 that?

8 A I am familiar with both races. The second one I am
9 more -- a bit more familiar with that one than I was the first.

10 Q With respect to that second race, what were some of the
11 voting barriers that were experienced in African-American
12 communities?

13 A Well, basically, what happened, you had a time to vote.
14 You did not -- you had like from 6:30 in the morning to 7:30 in
15 the evening on Election Day to go vote. Well, when things
16 began to move and African-Americans were beginning to take part
17 in the process, African-American candidates began to come out,
18 and credible African-American candidates began to come out.

19 In this particular race with Senator Helms and Harvey
20 Gantt at the time, that was one of the races that drew national
21 attention. On top of that, during that period, there was an
22 African-American, Dr. Reginald Hawkins, running for governor of
23 the state, and we are talking 1968. Reginald Hawkins was
24 running for governor of the state.

25 I was running for my third chance at running for State

1 House, and I think -- I believe that it was Eva Clayton or
2 somebody in the eastern part of the state that was running for
3 the U.S. Congress.

4 Q Now, I am going to try to focus you on 1996 and the
5 Gantt-Helms race.

6 A Okay. Because of the Gantt-Helms race, this was when the
7 race became nationally known, and African-Americans were very
8 much interested in having a race. And because of the attitudes
9 of Senator Helms, Harvey Gantt was the preferable alternative.

10 Q Now, is Harvey Gantt an African-American?

11 A He is an African-American who was at one time mayor of
12 Charlotte.

13 Q And did that campaign create long lines at the polls on
14 Election Day?

15 A Yes, it did. I can remember in Durham at First
16 Presbyterian Church where they had a polling place that there
17 was a line between 7:15 and 7:30 that night. The line was at
18 least two blocks long. The only people who could vote when the
19 time expired were those who were within the enclosure. Anybody
20 left outside were not able to vote.

21 I had to go find a judge that night to get him to mandate
22 that that voting period -- the time be extended. We did get it
23 extended to about 9:30 so that those folks who were outside the
24 polls at the time could vote.

25 Q Did that situation with long lines also exist in other

1 precincts in Durham?

2 A It did. Yes, it did. And particularly in the
3 African-American precincts because folks were coming out to
4 vote.

5 Q What about in precincts around North Carolina? Did they
6 have similar experiences?

7 A That is my understanding, yes.

8 Q Now, what impact or what influence did that experience
9 have on you promoting early voting?

10 A That was probably one of the significant influences
11 because that's when we realized that you couldn't do it all in
12 one day, particularly when you had -- when you were still
13 gearing turnout -- gearing constitutional rights to
14 African-Americans who had been suppressed for so long. The
15 thought came up then, well, why not extend voting period times.
16 Why do early voting, which would allow those in the
17 African-American community to be able to cast a vote without
18 having to, you know, put their jobs in jeopardy or anything
19 like that.

20 Q What do you recall about your support for out-of-precinct
21 voting and its importance?

22 A The best that I can recall on that was that there was
23 some, I guess, backlash against that simply because it hadn't
24 been used, but here again, when you had -- when we realized the
25 redistricting -- that some folks had been moved out of their

1 precincts, that if you were registered, legally registered, but
2 you didn't -- weren't sure where your precinct was, you could
3 go to a precinct, cast a provisional ballot, and have it
4 cleared by the Board of Elections, and that vote would be
5 counted.

6 All of this tied in -- early voting, out-of-precinct
7 voting, all these tied into trying to increase the voter
8 turnout, voter participation in the African-American community.

9 Q All right. Now, when you look at early voting,
10 out-of-precinct voting, same-day registration, the open
11 registrar legislation that you introduced, what was the impact
12 of those bills collectively on the turnout of
13 African-Americans?

14 A Collectively, it was tremendous, because then people were
15 able -- people who put on registration drives, the people who
16 were involved in trying to get everybody in the main of voting
17 for their constitutional right who wanted to have a say in how
18 their lives were directed, it was just tremendous. The turnout
19 was just absolutely tremendous.

20 Q I now want to direct your attention to March 2013 and the
21 H.B. 589. Do you recall what -- the original version of House
22 Bill 589?

23 A At that time when that came up, I was a member of the
24 Election Laws Committee. The H.B. 589 at that time, coming out
25 of the House, was simply a voter photo ID bill. It had six

1 sections to it.

2 Q Okay. Now, did you oppose that bill?

3 A Yes, I did.

4 Q What about other African-American legislators? Did they
5 oppose that bill?

6 A They opposed it also.

7 Q Why did you all oppose that?

8 A Because we thought there was another impediment that was
9 beginning to be put in to suppress particularly the
10 African-American vote. The information that we had received
11 from places like Board of Elections and DMV indicated that
12 photo ID would affect more in the African-American community
13 than any other community.

14 Q Did you have any statistical data dealing with the impact
15 that that would have on African-Americans?

16 A The only statistical data we had was information coming
17 from the Department of Motor Vehicles and from the Board of
18 Elections.

19 Q And was that information provided not only to you as a
20 legislator, but to all of the legislators in the General
21 Assembly?

22 A Yes, it was.

23 Q Now, what happened with that bill?

24 A Well, the bill -- the House had the bill. It was
25 introduced in the House. The House had committee hearings on

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1 the bill, had public hearings on the bill. I remember we had
2 two public hearings, one pro, one con. And it was thoroughly
3 vetted, and it eventually passed the House.

4 During the whole process, many people from the community
5 came in and had input into the bill, like I said, both pro and
6 con. So it was thoroughly vetted, and we still maintain our
7 position that it was an impediment in the minority community.

8 And the other thing was that one of the reasons given at
9 that time for that bill was the fact that they wanted to
10 prevent fraud, and with the information that we received, both
11 from the Board of Elections and other sources, fraud was
12 negligible. I can remember people coming in and saying that
13 they had seen instances of fraud. For instance, a lady came in
14 from Durham who said that an individual had voted but that
15 individual was dead, and she happened to call the name of the
16 individual. Well, in my fortunate situation, I knew the
17 individual that she was talking about. One of the individuals
18 she was talking about was dead. That was the father of the
19 junior who lived in the same house that the father lived in,
20 and junior was voting, had the same name as his father. So she
21 figured that fraud was being committed there.

22 Q All right. Was that information provided to the -- as an
23 example of fraud?

24 A Yes, it was.

25 Q Now, after the -- this bill passed the House, what

1 happened to it?

2 A It went to the Senate, and it stayed in the Senate for
3 about -- like about two months. We never heard anything from
4 the Senate as to what they were going to do with the bill at
5 the time.

6 Q When was -- well, what was the first opportunity that you
7 then heard anything about 589 in the Senate?

8 A When the United States Supreme Court invalidated Section 4
9 and Section 5 of the Voting Rights Act, we got the impression
10 at that time -- well, we knew that the Senate was going to take
11 up 589.

12 Q And how did you know that the Senate --

13 A Because they told us.

14 **MR. STRACH:** Objection, Your Honor, speculation,
15 personal knowledge.

16 **THE COURT:** Overruled.

17 **THE WITNESS:** They told us -- senators came in --
18 some of the African-Americans senators came in and told us that
19 they were fixing to take up House Bill 589. This was almost
20 like two days after the *Shelby County* case.

21 **BY MR. JOYNER**

22 Q Were you here yesterday when Senator Stein testified?

23 A Yes, I was here.

24 Q Do you recall his testimony regarding a comment that he
25 had heard from Senator Apodaca about the 589?

1 A Yes, I do.

2 Q Did you -- were you aware of that same comment?

3 A Yes, I was.

4 **MR. STRACH:** Objection, Your Honor. I believe that
5 objection was sustained.

6 **THE COURT:** It was sustained.

7 **MR. STRACH:** Same objection.

8 **MR. JOYNER:** I am not asking him to talk about the
9 comment. I am asking if he heard Senator Stein make -- testify
10 about the comment.

11 **THE COURT:** But I sustained the objection as to
12 Senator Stein, as I recall.

13 **MR. JOYNER:** Yes, you did.

14 **THE COURT:** Did I not? Okay. I am not sure what
15 your question is apart from that. He can say, yes, I heard
16 Senator Stein, if that's his answer. So if you are asking him
17 whether he heard Senator Stein testify, then you can ask that.

18 **THE WITNESS:** Yes, I heard him testify.

19 **BY MR. JOYNER**

20 Q Were you aware of the same comment?

21 **MR. STRACH:** Objection.

22 **THE COURT:** Sustained.

23 **BY MR. JOYNER**

24 Q Now, based on your experience and anything that you heard
25 about the origins of H.B. 589, did you form a conclusion about

1 the motivation for passing or enlarging or amending 589?

2 **MR. STRACH:** Objection.

3 **THE WITNESS:** Yes, I did.

4 **THE COURT:** Hold on just a minute. What's the basis
5 of your objection?

6 **MR. STRACH:** Number one, regarding -- any testimony
7 regarding motivation for the bill -- I believe it's established
8 that one legislator can't speak for the motivation of the
9 entire legislature, much less the motivation of any other
10 legislator.

11 And I would also object on the grounds of hearsay and
12 personal knowledge. I can't imagine what the basis for his
13 opinion about motivation would be unless it is relying on some
14 hearsay from other legislators.

15 **THE COURT:** Sustained.

16 **MR. JOYNER:** Your Honor, if I may, I am asking him
17 about his conclusions, not about anybody else's conclusions. I
18 don't believe that that's barred by any rule of evidence.

19 **THE COURT:** All right. You can ask that.

20 **BY MR. JOYNER**

21 Q Did you form a conclusion?

22 A Yes, I did.

23 Q And what was that conclusion?

24 A That we were about to do a whole turnabout on the -- what
25 we had done to prevent voter suppression. In other words, we

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1 were about to retrogress and move back to when we were going to
2 be prohibited from exercising the vote in the pre-manner that
3 we were doing it prior to what they had put in the bill.

4 Q Now, did the -- when was the bill first provided to
5 members of the House?

6 A The bill that came from the Senate?

7 Q Yes, the amended bill.

8 A The amended bill that came from the Senate back to the
9 House, the same day that the Senate passed the bill, it came to
10 the House and was read in on the House floor.

11 Q Okay. Do you recall what time of the day that matter was
12 taken up in the House?

13 A It was late in the day. I don't remember the exact time,
14 but it was late in the day because we ran over into the
15 evening.

16 Q And was a record kept of that session when the bill was
17 first discussed in the House?

18 A The amended bill?

19 Q Yes.

20 A Yes, it was.

21 Q And what information were you provided about the bill when
22 it was brought back to the House for consideration?

23 **THE COURT:** All right. Is this information that's
24 provided on the House floor?

25 **MR. JOYNER:** Yes, on the House floor.

1 **THE COURT:** Okay. You can testify as to what was
2 provided on the House floor or anything anybody may have given
3 to you but not as to any conversations outside the actual
4 debate on the floor.

5 **THE WITNESS:** I guess what I have to do is take you
6 through the process, because when the bill came back from the
7 Senate, certain things had to take place in order to get it
8 before the body. That was -- if Your Honor please, that was
9 common knowledge. That was actually what happened, and I can
10 go from that point.

11 **BY MR. JOYNER**

12 Q Well, let me ask you: How was the bill, the amended bill,
13 explained to members of the House on the floor?

14 A It was explained by the original introducer of the
15 original House Bill 589 and by the chairman of the Election
16 Laws Committee, who explained the second half, the part -- the
17 big part of the bill.

18 Q All right. What did they -- what did they say about when
19 they were going to consider the bill?

20 A The speaker indicated we were going to vote on the bill
21 that night.

22 Q And was that the first opportunity that you had to see --
23 actually see the amended 589?

24 A Yes, it was.

25 Q All right. And in response to that, what did you do?

1 A When the bill came back and it was read in to the full
2 body and the speaker had indicated that we were going to vote
3 on that bill tonight, we knew that it was -- had to come back
4 either for concurrence or nonconcurrence. I personally pulled
5 up Rule 30 out of our rules book, which allowed for the whole
6 House to go in to meet as a committee of the whole. The Rules
7 chairman at the time objected to my putting that in there,
8 indicating that it would be a waste of time since we are all
9 sitting there together anyway.

10 But my reason for calling for a committee of the whole
11 would mean that the whole House would be sitting as a
12 committee. You would be able to vet the bill, both pro and
13 con. You would have staff come in and explain portions of the
14 bill that were not in the original bill that had been put in on
15 the Senate side. All of this would have occurred had we had a
16 committee of the whole.

17 Q And what happened to that motion?

18 A That motion failed. The vote was 41 to 69.

19 Q What happened after that?

20 A After that, there were two amendments that came over with
21 the bill, two amendments that had not been engrossed in the
22 bill when it came back from the Senate. Those two amendments
23 were adopted and made a part of the bill.

24 At that point, the speaker called for arguments on -- the
25 primary sponsor asked to speak on the bill, as it had come

1 back. The primary sponsor was Representative Warren. He spoke
2 on the portions -- the six portions -- six sections of the bill
3 that had gone over on the voter ID portion.

4 After he finished, the chairman of the Election Laws
5 Committee explained the ballots of the bill that had been added
6 by the Senate, remembering that the bill that went over to the
7 Senate had six sections in it. When it came back from the
8 Senate, it had 60 sections to it. It went over with 14 pages
9 and came back with 57 pages.

10 So Representative Warren did the first part, which was the
11 VIVA part of it, which was the photo ID part, any amendments
12 that were done there; and Representative Lewis did the last
13 part, the last that added the other 54 sections to it.

14 Q Did either one of them indicate any justification for the
15 bill that was now before the House?

16 A No. And I have since that time tried to find out what the
17 reason was for anybody putting -- wanting to reduce voter
18 turnout, wanting to reduce the means by which folks could
19 exercise their constitutional rights, which is what -- all of
20 the sections that were put in there by the Senate did away with
21 all of the things that we had put in to increase, particularly
22 in the African-American community.

23 Q Was the House given information about the racial impact of
24 these provisions of 589?

25 A Yes, they were.

1 Q And how were they given information about the racial
2 impact?

3 A Of the 40-some-odd Democratic members, particularly the
4 African-American Democratic members, 35 folks spoke against the
5 bill, and the majority of them being African-American members,
6 indicating the impact it would have on the African-American
7 community when you started taking those sections out and
8 reducing their access to the polls.

9 Q Was that a part of the debate on the concurrence?

10 A That was a part of the debate, yes, sir.

11 Q All right. Now, what about African-American Republican
12 members of the house?

13 A I beg your pardon?

14 Q What position did African-American members of the
15 Republican party take on the bill?

16 A We have no African-American members of the Republican
17 party.

18 Q What happened to the bill?

19 A The bill passed, and on the vote after -- prior to that
20 time, we were allotted -- Democrats were allotted 100 minutes
21 to voice whatever they wanted to do on the bill. Debate was
22 opened for 100 minutes. The speaker asked the leader, the
23 Democratic leader whether he had a list or not of folks, and it
24 was provided to him as to who wanted to speak. During that
25 debate, all of the debate was taken up by the Democratic

1 Caucus. Not one Republican spoke either for or against the
2 bill.

3 Q Let me -- who made the decision that the amended bill
4 would just be considered for a concurrence vote?

5 A The speaker did.

6 **MR. STRACH:** Objection.

7 **THE COURT:** Hold on just a minute.

8 **MR. STRACH:** Objection, personal knowledge.

9 **THE WITNESS:** I was there.

10 **MR. JOYNER:** He was there.

11 **THE COURT:** Is that what you observed?

12 **THE WITNESS:** Yes, sir.

13 **THE COURT:** Okay. Overruled.

14 **BY MR. JOYNER**

15 Q How soon after the passage of 589 did the session
16 conclude?

17 A Immediately. Well, before that, the whole Democratic
18 Caucus, at the end of that vote when it passed, stood up, held
19 hands and bowed their heads in a moment of silence, admitting
20 the fact that here was an attack on what we had fought so hard
21 and so long for.

22 Q And who made the decision that that session would conclude
23 immediately after this bill was concurred in?

24 A The Rules Committee chairman -- I'm sorry. Yeah, the
25 Rules Committee chairman made the motion to adjourn.

1 **MR. JOYNER:** I have no further questions of this
2 witness.

3 **THE COURT:** Any cross?

4 **MR. STRACH:** Yes, Your Honor.

5 CROSS-EXAMINATION

6 **BY MR. STRACH**

7 Q Good morning, Representative Michaux.

8 A Good morning.

9 Q How are you?

10 A Fine.

11 Q I'm Phil Strach, one of the lawyers for the Defendants.
12 I've got just a few questions for you this morning.

13 Now, you will agree with me, Representative Michaux, that
14 when you speak about the motive of the legislature, as one
15 legislator, you can't speak for the entire legislature as a
16 whole; is that correct?

17 A That's correct.

18 Q Okay. And would you agree with me that in your career in
19 the General Assembly, you've seen a lot of progress by
20 African-Americans in the General Assembly?

21 A There is no question about it, yes, sir.

22 Q You mentioned when you first arrived, there were only, I
23 think you said, two black members of the General Assembly?

24 A And I was the third one.

25 Q And how many are there today?

1 A Approximately 22, 23.

2 Q And that's just in the House; correct?

3 A That's just in the House. There are maybe six, seven in
4 the Senate.

5 Q All right. And during your tenure in the General
6 Assembly, you saw the election of the first black Speaker of
7 the House with Dan Blue; is that correct?

8 A That's correct.

9 Q And, in fact, at least at one point in your career in the
10 General Assembly, you were chairman of what they call the Big
11 Appropriations Committee; is that right?

12 A I served two terms as senior chair of that appropriations
13 committee, yes, sir.

14 Q All right. And that's -- what was that, four years all
15 together?

16 A Four years all together.

17 Q And the senior chairman of the Appropriations Committee
18 has a lot of say-so about what the state budget looks like
19 every year; is that correct?

20 A Had more say-so than I wanted, yes, sir.

21 Q And in the past 37 years or so that you've been in the
22 General Assembly, are you aware that the number of black voters
23 registered to vote actually has outnumbered and outpaced white
24 voters?

25 A Percentage-wise, yes.

1 Q All right. And would you agree -- you talked a little bit
2 about the Helms-Gantt race. I believe that was 1996?

3 A Yes.

4 Q Would you agree with me that the notoriety of that race
5 and the candidates involved brought a lot of black voters out
6 to vote in that race who might otherwise have not voted?

7 A I would agree with that also.

8 Q Would you agree the same thing is true when President
9 Obama ran for president in 2008 and 2012?

10 A Yes, sir, I would agree to that. Would you let me expand
11 on it?

12 Q Yes, sir.

13 A What you have to understand is that when -- the excitement
14 in the black community when you have people like that running
15 and when you have the opportunity, which is what this
16 legislation gave -- the previous legislation gave the
17 opportunity for African-Americans to come out and vote and do
18 that. Had not that legislation been in effect, you probably
19 would not have seen the types of races that were coming out at
20 that time.

21 Q All right. And when -- at the time of the Helms-Gantt
22 race, there was no same-day registration; is that correct?

23 A That's correct, yes, sir.

24 Q And at that time, in fact, there was no early voting at
25 all; is that correct?

1 A That's correct.

2 Q And you mentioned that in connection with that race, I
3 think it was that race, you said you had to go get a judge to
4 order the polls stay open; is that correct?

5 A That's correct.

6 Q And you are aware, aren't you, that the law currently
7 provides for the State Board of Elections to hold the polls
8 open in situations like that?

9 A I am aware of that now, yes, sir.

10 Q You are aware that during the Helms-Gantt race, folks who
11 wanted to vote in that race had to register at least 25 days
12 before the election?

13 A That's correct. Can I just add? There was nothing in
14 there providing for provisional voting during that period of
15 time either.

16 Q Okay. With respect to the House Bill 589 specifically,
17 Representative Michaux, you would agree with me that there were
18 no formal rules of the House that were violated with respect to
19 the passage of that bill?

20 A I would agree that no formal rules may have been violated.
21 Custom and usage may have been violated.

22 Q We'll talk about that in a little more detail. Did you at
23 any point during the legislative debate on House Bill 589 raise
24 a point of order on the floor?

25 A No, I did not raise a point of order. I only raised a

1 motion to make the House go into the committee of the whole.

2 Q That's right. And prior to your motion to go into a
3 committee of the whole during the debate on House Bill 589, do
4 you recall the last time you had made a motion to go into a
5 committee of whole?

6 A No, sir, I don't. I don't know whether they had ever done
7 it or not; but it was in the rules, and it was there to be
8 used.

9 Q All right. But it was not customary for it to be used?

10 A That's right.

11 Q Now, when House Bill 589 came back to the House for a
12 concurrence vote, it had already been pending in the Senate
13 with some committee hearings, et cetera, for about a week; is
14 that correct?

15 A That's not the way I understood it. The way I understood
16 it was that once -- that they only had spent probably a day or
17 a day and a half in a committee on that bill. That's my
18 understanding.

19 Q All right. Do you know what date the Senate Rules
20 Committee first unveiled their PCS for H.B. 589?

21 A No, I don't. I don't know specifically.

22 Q Do you know the period of time between when the Senate
23 Rules unveiled its PCS until it finally got to the House?

24 A I don't know for a fact, but I think it was about a day
25 and a half. That's my understanding.

1 Q All right. And the -- when I say "PCS," I am talking
2 about the proposed --

3 A Proposed Committee Substitute, yes, sir.

4 Q And, Representative Michaux, given your time in the
5 legislature, I assume you are aware of a process they call "gut
6 and amend"?

7 A Oh, yeah.

8 Q Okay. It sounds like you've had a lot of experience with
9 that?

10 A A lot of experience with that, both pro and con.

11 Q That's right. Particularly the senior appropriations
12 chair, I assume --

13 A Yes, sir.

14 Q Okay. Would you describe to the Court what that process
15 is?

16 A All that simply is is you take a bill that has come from
17 the other body and then met crossover, and you want to put
18 something that you need in there. You would either take out
19 what the original bill had in it and replace it with what you
20 want in there or just add it to.

21 Q So the entire substantive content of the bill often
22 changes?

23 A Often changes, yes, sir.

24 Q All right. And does this often happen towards the end of
25 the session when the time is becoming a factor?

1 A Yes, sir.

2 Q All right. Do you remember a bill from last session that
3 everyone calls the Sharia Law bill?

4 A I recall it. I am not that familiar -- I know it went
5 over. It passed the House, went over to the Senate. The
6 Senate put some things in it dealing with abortion, as I
7 remember. It came back to the House, and the House sent the
8 abortion part back in the motorcycle bill.

9 Q Do you recall whether that bill initially started off as a
10 bill regarding Master Meters?

11 A No, I don't. I really don't.

12 Q All right.

13 **MR. STRACH:** Your Honor, may I approach?

14 **THE COURT:** Yes.

15 **BY MR. STRACH**

16 Q Representative Michaux, certainly take as long as you need
17 to read the document, but let me know when you are ready to
18 proceed.

19 A Okay. I'm basically ready.

20 Q All right. What I handed you is the enacted version of
21 House Bill 522 in the 2013 session. Would you agree that
22 that's what this document appears to be?

23 A Yes, I do.

24 Q Does this appear to be the final version of what -- this
25 is the Sharia Law bill?

1 A Sharia Law bill, yes, sir.

2 Q Okay. And it's House Bill 522; is that correct?

3 A That's correct.

4 **MR. STRACH:** Your Honor, may I approach?

5 **THE COURT:** Yes. Are these going to have exhibit
6 numbers?

7 **MR. STRACH:** Possibly not, Your Honor, possibly not,
8 depending on what the testimony is going to be.

9 **THE COURT:** All right.

10 **BY MR. STRACH**

11 Q Representative Michaux, let me know when you are ready to
12 proceed.

13 A I am ready.

14 Q Representative Michaux, this document is the filed version
15 of House Bill 522 from the 2013 session. Does that appear to
16 be what this is?

17 A Yes.

18 Q And as you can see, the substance of the bill is titled
19 "Master Meters/Landlord-Tenant Agreement"?

20 A Yes.

21 Q You would agree with me that the substance of this bill
22 has nothing to do with Sharia Law?

23 A It doesn't appear to be.

24 Q Or foreign law at all?

25 A That's correct, yes, sir.

1 **MR. STRACH:** Your Honor, may I approach?

2 **THE COURT:** Yes.

3 **BY MR. STRACH**

4 Q Representative Michaux, are you ready?

5 A Yes, sir.

6 Q Was the Sharia Law bill -- was it a controversial bill
7 last session?

8 A Yes. it was.

9 Q It got lots of media coverage; isn't that right?

10 A Yes.

11 Q I believe it got lots of debate on the House floor?

12 A On the House floor; correct.

13 Q The document that I've handed you is a printout of the
14 legislative bill history for House Bill 522. Does that appear
15 what it --

16 A That's what it appears to be, yes, sir.

17 Q And you are familiar, Representative Michaux, I imagine,
18 with going on the General Assembly website and pulling
19 information like this off?

20 A Yes.

21 Q So if you look on this -- would you agree with me that
22 this bill initiated in the House; correct?

23 A Correct.

24 Q And it appears to have gone over to the Senate on May 20,
25 2013; is that right?

1 A Yes.

2 Q All right. And it -- and then it was received back --
3 well, on July 18, 2013, Representative Michaux, it looks like
4 the Senate reported out a PCS?

5 A Yes.

6 Q Is that correct?

7 A That's correct.

8 Q And that would had to have been the final version of the
9 bill that we looked at earlier; is that right?

10 A Yes.

11 Q Okay. And it was received from the Senate on July 22,
12 2013, from the House; is that correct?

13 A That's correct.

14 Q Or from the Senate to the House?

15 A From the Senate.

16 Q And if you will turn the page, it looks like there was a
17 concurrence vote on July 24, 2013; is that correct?

18 A That's correct.

19 Q So -- and then it looks like the House voted to, in fact,
20 concur; is that right?

21 A That's correct.

22 Q And there was no -- you don't see any indication on here
23 where the House sent this to a committee before a concurrence
24 vote; is that correct?

25 A That's correct.

1 Q And there was no conference committee involved in this
2 bill; is that right?

3 A That's correct.

4 Q Now, Representative Michaux, are you aware of what the
5 African-American turnout was in the 2014 election as compared
6 to the 2010 election?

7 A It was higher, yes, sir.

8 Q All right. And are you aware that that's also the case
9 for the 2014 primary?

10 A Yes. Comparing it to 2010?

11 Q Yes, sir.

12 A Yes.

13 Q Now, on the debate on 589 in the House, when the bill came
14 back to the House for concurrence, Representative Michaux, you
15 mentioned that all the members of the Democratic Caucus spoke
16 on the bill?

17 A Just about 35 people spoke on the bill, against the bill,
18 yes.

19 Q All right. And is it correct that when you are debating
20 something in the House, that you push your button on your desk
21 and that tells the speaker who is in the queue to speak; is
22 that right?

23 A That's correct.

24 Q When the speaker called for the vote on House Bill 589
25 that evening, was anyone left in the queue?

1 A When we called --

2 Q When he called for the vote?

3 A After the debate was over?

4 Q Yes, sir.

5 A Nobody was left in there, no.

6 **MR. STRACH:** May I approach, Your Honor?

7 **THE COURT:** Yes.

8 **MR. STRACH:** Your Honor, let me ask a couple of quick
9 questions first.

10 **BY MR. STRACH**

11 Q Representative Michaux, you mentioned earlier you
12 participated in quite a few redistrictings; is that right?

13 A Yes, sir.

14 Q Did you also participate in the 2003 redistricting?

15 A I sure did.

16 Q And you were a member of the House of Representatives at
17 that time; correct?

18 A Yes, I was.

19 Q And the Speaker of the House was Jim Black?

20 A Yes, sir.

21 Q And do you recall that the -- the session in which that
22 redistricting was done in November of 2003?

23 A In the special session called by the governor, yes, sir.

24 Q Yes, sir. And do you recall that the session was
25 transcribed by a court reporter?

1 A Yes, sir.

2 **MR. STRACH:** May I approach, Your Honor?

3 **THE COURT:** Yes. Is this one we've had before?

4 **MR. STRACH:** Yes, Your Honor. I've handed the
5 witness DX295.

6 **BY MR. STRACH**

7 Q Representative Michaux, what I've handed you is a
8 transcript of the session from the particular session that you
9 just said you recall being at. I am just going to ask you a
10 few questions about this particular session.

11 Do you recall when the -- do you recall that the House
12 bill that was considered that session was called House Bill 3?

13 A I think that's right, yes, sir.

14 Q And do you recall that other members of the legislature
15 also introduced bills, redistricting bills to be considered for
16 that session?

17 A That's usually what happens, yes, sir.

18 Q Were any of those, in fact, considered?

19 A I would imagine they were considered somewhere down the
20 line, but I don't know to what extent.

21 Q Do you think they may have been considered privately in
22 the speaker's office?

23 A It could have been in some legislator's office or in the
24 chairman of Elections Law. Anybody could have done it on a
25 private basis, yes, sir.

1 Q Do you recall those other competing versions of the
2 redistricting bill actually being debated on the floor during
3 that session?

4 A No, sir, I don't recall it because this was the year that
5 we had been in and out of court on redistricting. We had
6 gone -- that there was just a lot of activity involving
7 redistricting that year, which is why we had to have the
8 special session called in November because I think by the time
9 that it had gone through all the court procedures, everything
10 that happened in the General Assembly, we finally came up, on
11 the House side, with a consensus as to what the House districts
12 would be.

13 Q All right. And redistricting is one of the most important
14 things you all do in the General Assembly; is that correct?

15 A It is one of them, yes, sir.

16 Q And given that there had been a lot of prior litigation
17 leading up to this session, it was especially important to get
18 it right in this particular session; is that right?

19 A It's particularly right to get it right in every session
20 that you have, yes, sir.

21 Q Okay. Do you recall whether House Bill 3 in 2003 was
22 referred to a committee before it was referred for
23 consideration on the House floor?

24 A I don't recall that, and I am not sure that it had been
25 necessary actually to do it, because when we finally voted on

1 it, this was in the special session that was called, and that
2 special session was called to finalize the redistricting
3 matters that year. It would not, in my estimation, have been
4 necessary to put it to a committee because it had been vetted
5 rather thoroughly, particularly the House portion. It was a
6 House bill, and we had the first bite at the apple, so to
7 speak, on that one.

8 Once everything was done, and based on the satisfaction
9 that came out of the House, we passed the bill. Like I said,
10 it had been in committees. It had been in court. It had been
11 everywhere. When it got there in November, this was what we
12 basically -- there were still some problems still there, but we
13 basically -- this is what we had basically agreed on, and there
14 wasn't any need in that special session to particularly send it
15 to a committee because this was -- whatever came out prior to
16 that was the final version.

17 Q All right. Now, isn't it true that the first time all the
18 legislators saw all of the districts in one package,
19 House Bill 3, was when they arrived at that session in
20 November?

21 A That's very true.

22 Q And isn't it also true that the members of the public had
23 not seen those districts all in one package prior to that
24 session?

25 A That probably was true, too.

1 Q So there could have been no public hearings on the full
2 set of districts prior to that session; is that right?

3 A I am not sure that that's right because -- as I said
4 before, this was a series of court decisions. This was a
5 series of meetings held before the final version was done.

6 Now, everybody knew -- when we went into session in
7 November, it is my opinion -- everybody knew -- I knew what was
8 in there, what was going to be in there as far as the House was
9 concerned. I knew what was going to be in there because that
10 was what -- in all of these machinations that went before, this
11 is what it finally ended up being.

12 So over that period of time, from the time the bill was
13 introduced until we went back into that special session in
14 November, everybody and their brother should have had an
15 indication as to what was going on.

16 Q But no one had seen the full set of districts all
17 together; is that correct?

18 A No, sir, they hadn't. I hadn't seen it.

19 Q And you were a member of the majority caucus at the time;
20 right?

21 A That's exactly right; but what I assumed, and what
22 everybody else assumed, was that because of everything that we
23 went through during that period of time, for instance, my
24 district -- I knew what my district was going to be, and
25 several of the other legislators, I know, knew what their

1 districts were going to be and had some problem with it, but
2 that was the way -- it just happened that way.

3 Q All right. Representative Michaux, if you would just flip
4 through this exhibit I have given you, and let me know if it
5 appears to be an accurate transcription of what occurred during
6 this session.

7 A It does.

8 Q It does?

9 A Yes, sir, it does.

10 Q Well, if you will turn then to page 31 of the transcript.

11 A Yes, sir. That's the beginning of my statement that I
12 made.

13 Q Yes. It says, Representative Michaux, you asked to speak
14 on the bill, and Speaker Black recognized you for that purpose;
15 is that correct?

16 A Yes, sir.

17 Q And do you recall giving this speech?

18 A Yes, sir.

19 Q Okay. Would you read into the record, Representative
20 Michaux, your speech starting on page 31 and concluding on
21 page 34.

22 A Starting at line 11?

23 Q Yes, sir.

24 A "Mr. Speaker and ladies and gentlemen of the House, I find
25 myself" somewhat in "agreement with Representative Wright. One

1 of the things that many of us have fought for in this state was
2 equitable representation. And that representation not only
3 affects the African-American community but everybody who lives
4 within this state.

5 "I have a problem with, number one, the process that we
6 are doing through, this exercise that we are going through now.
7 We got these maps, we got these figures, forty-five -- I'm
8 sorry, we got them a little bit more than an hour ago. We had
9 about forty-five minutes to study them.

10 "From what I have seen, had an opportunity to see, was
11 that minority voting strength in this state has been diluted to
12 some extent. To give you an example, I can take Representative
13 Hunter's district as it now exists and as it will exist under
14 this map. He has lost his base county in there. He's lost
15 Northhampton County in there, to be pushed somewhere else, and
16 picked up two other counties where his present voting strength
17 has been diluted. And you can look at this in other districts
18 involved here.

19 "Now, I guess my whole problem with this is the process
20 that we're going through. I don't know how many of you
21 understand what's happening with these figures. I got an
22 opportunity to go through about three or four of these
23 districts before the gavel banged to bring us back to order.

24 "Like I say, it may be all right. Everybody may agree
25 with it. The process just stinks. We ought to be able to sit

1 down and go over these. We ought to be able to go into
2 Committee and look at these things and work these problems out.

3 "Now, all I know is what I have been told. I haven't had
4 a chance to look at these -- all this stuff that's in here.
5 Give you another example. Every talks about a majority
6 minority district. Well, when they talk about a majority
7 minority district, they're talking about population. Now,
8 population includes babies and those under 18 who can't vote.
9 Voting-age population is a key in all of this. And if you look
10 at what are now the predominantly majority-minority districts,
11 you will find that the population is 50 percent, 60 percent,
12 but you will find that the voting-age population is much, much
13 less than that.

14 "And in one instance, Representative Wainwright's new
15 district under here, I don't see how in the world you can call
16 that a majority minority district because his voting age -- the
17 black voting-age population in that district is less than the
18 white voting-age population.

19 "So I've got a problem. I've got a very distinction
20 problem, and I thought we ought to take the time to try to cure
21 some of these problems that this whole process is taking,
22 rather than trying to ram it through tonight. Thank you."

23 Q Thank you, Representative Michaux.

24 **MR. STRACH:** Your Honor, we have no further
25 questions.

1 **THE COURT:** All right. Any redirect, Mr. Joyner?

2 **MR. JOYNER:** Yes, sir.

3 REDIRECT EXAMINATION

4 **BY MR. JOYNER**

5 Q You were just asked about the debate from 2003 involving
6 H.B. 3; is that correct?

7 A Yes, sir.

8 Q And do you have a vivid recollection of what happened
9 during that time?

10 A Yes, sir.

11 Q Is it your recollection that -- that there had already
12 been an agreement as to what those districts would be before
13 the special session was called?

14 A Yes, sir.

15 Q Okay. And that consensus involved everyone in the House;
16 is that correct?

17 A Yes, sir.

18 Q Now, your concern about -- was that Wainwright's?

19 A Representative Wainwright's district, yes, sir.

20 Q Did you have an opportunity to fully debate and articulate
21 your concerns about the process at that point?

22 A Not at that point, no, sir.

23 Q Okay. But you stated what it was -- your objection to
24 what was going on?

25 A Yes. What you have to understand is that even though --

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1 even though the process had come about and done -- and
2 everybody had basically agreed on what was done, particularly
3 on the House districts, there was still some problems. And I
4 felt at that time that, you know, I wasn't going to push the
5 matter, but we probably should have heard a little bit more
6 from those persons that had some impact. For instance,
7 Representative Wainwright --

8 Q Let me just ask you one quick question. This is during a
9 special session called by the House and Senate; is that
10 correct?

11 A By the governor, yes, sir.

12 Q By the governor?

13 A Yes, sir.

14 Q Was there a special session called to consider 589?

15 A No, sir.

16 Q All right. Were there prior conversations between members
17 of your committee and members of the Senate about 589?

18 A No, sir.

19 Q Was there any court proceedings back and forth dealing
20 with the substance of 589?

21 A No.

22 Q Okay. So, in part, the predicate and the history of
23 House Bill 3 in 2003 is vastly different than what happened
24 with 589; is that correct?

25 A Yes, sir, in more ways than one.

1 Q What are the other ways?

2 A First of all, House Bill 3 was a redistricting bill. It
3 didn't involve any constitutional rights or anything. 589
4 involved constitutional rights.

5 Q Okay. Now, you were asked about this Sharia bill,
6 House Bill 522; is that correct?

7 A I was asked about it, yes, sir.

8 Q Now, what is the difference between the procedures and
9 content of House Bill 522 and the procedure that's -- that was
10 involved in House Bill 589?

11 A Would you state that question again?

12 Q Okay. How did the process differ in considering 522 --
13 how did that differ from the process that was involved in the
14 enactment of 589?

15 A Here again, the difference -- the difference was maybe
16 one, two, three, four. One is that this Sharia Law bill, which
17 really I don't have that much knowledge about, but I do know
18 that it got involved in the gut-and-cut -- what we call gut and
19 cut in the House -- situation where you replace it with other
20 legislation.

21 And these were games that were being played really with
22 Sharia Law. It was something -- for instance, when it went
23 over to the House, it went over as making sure that we didn't
24 have to listen to any foreign jurisdictions or any foreign
25 judgment. When it came back, it came back with abortion

1 matters involved in it. We ignored the -- the House basically
2 ignored that and sent back a motorcycle bill, the abortion
3 portion, and agreed to just to keep the -- it was a whole
4 convoluted situation. With 589, it was straight cut and dry.

5 Q There was considerable discussion about 522 and the
6 legislative process involved?

7 A Yes, sir.

8 Q But there was not the same with 589?

9 A No, sir.

10 Q Now, you were asked about the increase in the number of
11 African-American legislators over the years. First, how many
12 of them voted for 589?

13 A None.

14 Q And how many of them were consulted before 589 -- the
15 amended 589 was placed on the floor?

16 A None that I know of.

17 **MR. STRACH:** Objection. Never mind. Withdrawn.

18 **THE COURT:** Overruled.

19 **BY MR. JOYNER**

20 Q Why was there an increase in the number of
21 African-American legislators by 2014 or 2013?

22 A Because of the legislation that had been passed opening
23 up -- opening up the books, early voting, the same-day
24 registration, out-of-precinct voting, all of these things that
25 were passed by the legislature increased African-American

1 participation.

2 Q So the very thing that resulted in this large increase in
3 African-American representation in the House and in the Senate
4 were the same thing that was now being undermined by 589?

5 A Yes, sir.

6 Q How did that make you feel?

7 A Bad, because it makes me feel that we are really
8 retrogressing. What we have done is we have morphed from the
9 19th Century to the 21st Century without ever having visited
10 the 20th Century.

11 Q Based on your experience and the information that was
12 available to you at the time, what is your conclusion about the
13 motivation for the passage of 589?

14 **MR. STRACH:** Objection.

15 **THE COURT:** Sustained.

16 **BY MR. JOYNER**

17 Q Did you have an opinion about the motivation of the
18 passage of 589?

19 A Yes.

20 Q And what is that opinion based on?

21 A Based on the fact that it was a method of retrogression of
22 going back to what things originally were, and that there would
23 be a dropoff in African-American voting.

24 Q And is it your opinion that that information was available
25 and known in that -- during that enactment process?

1 A Yes, it was. I can give you one good example of what
2 happened. When the original bill was in the House -- when
3 originally 589 was in the House, there were four Democrats that
4 voted for photo identification. When the bill came back from
5 the Senate, those same four Democrats voted not to concur with
6 that bill. And they gave their reason, which is in the record,
7 that it was not the same bill that went over, and they could
8 not afford to even vote for it now.

9 Q All right. You were asked about discretion by the speaker
10 to allow members of your caucus to make comments during the 589
11 discussion; is that correct?

12 A Yes.

13 Q Did you expect that the statements that you made during
14 that session would have any impact on the final disposition of
15 589?

16 A I had hopes that it would. I still have hope that
17 something will happen.

18 Q Did you expect that it would have?

19 A I was hoping that it would. I really -- to be very honest
20 with you, I was -- I had hopes, but I didn't hold out any
21 possibility that it would sway anybody because we had been told
22 that they were in charge and they were going to do what they
23 wanted to do.

24 **MR. JOYNER:** No further questions.

25 **MR. STRACH:** Just briefly, Your Honor.

REXCROSS-EXAMINATION

1
2 **BY MR. STRACH**

3 Q Representative Michaux, I think you just said a minute
4 ago, regarding House Bill 3 from the 2003 session, that there
5 was a consensus on that bill prior to the session that involved
6 everyone in the House. Is that what you said?

7 A Yes, that's what I said. Even though there were -- there
8 was some differences, we recognized -- many of the folks
9 recognized that we were approaching election time. This was in
10 November, and we had about the best that we were going to be
11 able to get, even with the -- some of the problems that were in
12 there. Those persons who had somewhat of a problem,
13 fortunately, were all re-elected anyway, but it still shows
14 some problem. And here again, this was a redistricting matter.

15 Q I understand. The consensus, though, you will agree with
16 me, did not involve the Republican Caucus at the time; is that
17 correct?

18 A I can't say that for sure. I don't know. I'm almost
19 certain that there was some deference paid to the Republican
20 Caucus, yes, sir. Yes, I am very certain -- I am very sure
21 that it was.

22 Q Are you prepared to say that there were Republican -- that
23 every member of the Republican Caucus was part of this
24 consensus?

25 A No. But the way the redistricting happened and the

1 results that came out of that redistricting indicated to
2 anybody that Republicans had some say so in there, because at
3 the end of the elections that year, I think you ended up with
4 something like seven Democratic members of Congress and six
5 Republican members of Congress, and that the division in the
6 House and the membership in the house was not a supermajority.

7 So there had to be some input in there by them, but to the
8 extent that it went -- I don't know, except when I look at the
9 election results, and I see that there was some input, yes,
10 sir.

11 Q Now, Representative Michaux, you recall that in the 2003
12 session, that only dealt with legislative districts?

13 A No. It dealt with redistricting the whole state. The
14 2003 session dealt with redistricting the whole state. The
15 court cases may have dealt with redistricting on a state basis,
16 but you had to redistrict after every census.

17 Q Do you recall that the Congressional plan had passed in
18 2001 and was already the law --

19 A That probably is true, yes.

20 Q And, finally, Representative Michaux, you were talking
21 about the number of African-Americans that have increased in
22 the legislature. Do you believe that that is certainly due in
23 part to the presence of President Obama on the ballot in '08
24 and 2012?

25 A No. I think this was occurring before President Obama got

1 on the ballot. You go back before 2008. We were seeing a
2 steady increase in voter registration and voter participation
3 prior to his coming on the ballot.

4 Q Okay. Going back so far as the Helms-Gantt race; is that
5 correct?

6 A Yes, sir.

7 **MR. STRACH:** Thank you, Your Honor. I've got no
8 further questions.

9 **THE COURT:** Sir, you may step down. Why don't we
10 take our morning break. I will give you a little heads-up. We
11 are going to go to 12:10 today and not 12:30. We're going to
12 stop a little bit early. We'll be in recess for 20 minutes.

13 (The Court recessed at 10:29 a.m.)

14 (The Court was called back to order at 10:52 a.m.)

15 **MR. DONOVAN:** Good afternoon, Your Honor -- or
16 morning still. Plaintiffs call Ms. Kimberly Strach to the
17 stand, Your Honor.

18 Your Honor, these are just copies of the deposition
19 that we may refer to. I have given one to the witness and
20 defense counsel.

21 **KIMBERLY W. STRACH**, PLAINTIFFS' WITNESS, at 10:52 a.m., being
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 **BY MR. DONOVAN**

25 Q Good morning.

1 A Good morning.

2 Q State your name, please.

3 A Kimberly Westbrook Strach.

4 Q And you are the director of the North Carolina State Board
5 of Elections; true?

6 A I am.

7 Q Let's discuss your background. After college, you worked
8 as a probation and parole officer; is that correct?

9 A Correct.

10 Q And then you joined the State Board of Elections in 2000?

11 A That's correct.

12 Q And you became the executive director just in May of 2013?

13 A Correct.

14 Q And prior to being executive director, your work at the
15 SBOE was primarily campaign finance related; is that right?

16 A Primarily.

17 Q You didn't really work on administration of elections;
18 true?

19 A Early on in my career at the State Board of Elections, I
20 started off as an elections investigator and did work more on
21 the administrative side for that period of time.

22 Q Okay. And when you were an election investigator, that
23 was mostly in March of 2000 for about a year; correct?

24 A Correct.

25 Q After that, though, your work was primarily campaign

1 finance related; right?

2 A Correct.

3 Q Your predecessor as executive director was Gary Bartlett;
4 right?

5 A Yes.

6 Q And he served in that position for a fair amount of years;
7 true?

8 A He did.

9 Q He was the executive director when same-day registration
10 was in effect for Presidential elections and midterm elections;
11 right?

12 A That's correct.

13 Q He was the executive director when out-of-precinct
14 provisional voting was in effect for both Presidential
15 elections and midterm elections; right?

16 A Correct.

17 Q And if I have my math right, you were appointed just two
18 months before H.B. 589 was passed?

19 A That sounds about right.

20 Q And 2014 was your first general election as the executive
21 director; right?

22 A Correct.

23 Q So you haven't been the executive director here in North
24 Carolina during a Presidential election; right?

25 A I have not.

1 Q And you have not been the executive director when same-day
2 registration has been in effect for a general federal election?

3 A I was not.

4 Q You haven't been the executive director when
5 out-of-precinct provisional ballots were counted for a general
6 election; true?

7 A I was not.

8 Q Okay. And you have not been the executive director when
9 there were 17 days of early voting during the general election?

10 A I was not.

11 Q Let's talk about your appointment. You were appointed by
12 the State Board of Elections; correct?

13 A Correct.

14 Q And when you were appointed, the State Board of Elections
15 members were -- all were appointed by Governor McCrory; right?

16 A Correct.

17 Q And you understand that we are here -- that Governor
18 McCrory signed H.B. 589 into law; right?

19 A He did.

20 Q And before the Governor signed H.B. 589, H.B. 589 was
21 passed by the North Carolina General Assembly?

22 A Yes.

23 Q And you understand that the General Assembly -- they've
24 hired an outside law firm to defend this case in addition to
25 the Attorney General; is that right?

1 A The General Assembly did, yes.

2 Q And you understand that law firm is Ogletree Deakins;
3 correct?

4 A I do.

5 Q And your husband, Phil Strach, is a partner there and is
6 here with us for the trial; right?

7 A He is.

8 Q And you also understand that Representative David Lewis
9 was a leading sponsor of H.B. 589; is that right?

10 A Yes, chair of the Elections Committee.

11 Q And Representative Lewis, family friend of yours; true?

12 A Family friend of my husband and, yes, myself as well.

13 Q And he was the best man in your wedding; right?

14 A He was.

15 Q Let's talk about your background a little further. Have
16 you ever been a poll worker?

17 A I've never been a poll worker, no.

18 Q Have you ever been a member of a county board of election?

19 A No.

20 Q Have you ever registered a voter during same-day
21 registration?

22 A No.

23 Q Have you ever conducted the verification of a registered
24 voter who registered same day?

25 A No.

1 Q Let's turn our attention to your position as the chief
2 election officer here in North Carolina.

3 Would you agree with me your job is to provide voting
4 practices for the citizens of North Carolina to permit them to
5 fully exercise their right to vote?

6 A I agree with that.

7 Q And part of your job is to understand the demographics of
8 North Carolina?

9 A Sure.

10 Q And you want to provide the North Carolina citizens the
11 voting practices they need to exercise their right to vote?

12 A I want to make sure everyone has the opportunity to
13 exercise their right to vote, yes.

14 Q And one of your goals is to ensure that anyone who is
15 eligible to vote in North Carolina can actually exercise their
16 right to vote; true?

17 A True.

18 Q And, in fact, you want to encourage eligible North
19 Carolina voters to vote, I think you said as much as possible;
20 is that right?

21 A Yes, in every election, yes.

22 Q You understand North Carolina currently has a population
23 of about 9.9 million people?

24 A I do.

25 Q And African-Americans currently represent approximately

1 22 percent of that. You understand that; right?

2 A Yes.

3 Q And you understand the population of North Carolina is
4 growing?

5 A It is.

6 Q And, in fact, it has grown substantially since 2010;
7 correct?

8 A Yes.

9 Q And, in fact, the African-American portion of the overall
10 population is growing as well. You understand that, too;
11 right?

12 A I would assume so.

13 Q I take it you would agree with me the African-American
14 community is an important part of North Carolina's population?

15 A Absolutely.

16 Q And you also understand that African-Americans have been
17 historically discriminated against in voting here in North
18 Carolina?

19 A In the past.

20 Q And in the past, they have been prevented from voting;
21 correct?

22 A In the past, yes.

23 Q And you understand that African-Americans in North
24 Carolina vote in-person disproportionately to whites; correct?

25 A Yes.

1 Q And you understand that white North Carolinians vote by
2 mail disproportionately to blacks?

3 A I think in previous elections, whites do vote more by mail
4 than blacks, yes.

5 Q And you understand here in North Carolina that
6 African-Americans are disproportionately poorer compared to
7 whites in North Carolina?

8 A That's something I have not studied, but I would not
9 dispute that.

10 Q And as part of your work as the executive director and
11 your involvement in this case, you understand that
12 African-Americans in North Carolina are disproportionately
13 poorer than whites; true?

14 A As I said, it's something I have not studied, but I would
15 not dispute that that could be the case.

16 Q Do you understand that to be the case?

17 **MR. PETERS:** Objection. She's answered the question
18 twice.

19 **THE COURT:** I don't know what her basis of knowledge
20 is.

21 **BY MR. DONOVAN**

22 Q As part of your job as executive director, do you try to
23 understand the challenges that different North Carolina voters
24 face?

25 A Yes.

1 Q Okay. Would you agree with me that poorer voters face
2 more challenges in exercising their right to vote than wealthy?

3 A I believe that's true.

4 Q Would you agree with me that individuals with lower
5 literacy rates would face a challenge in exercising their right
6 to vote more than people who are more literate?

7 A A challenge in exercising their right to vote?

8 Q Yes, ma'am.

9 A Certainly people that are illiterate, there are things at
10 the polls where they would have assistance. So I think that
11 would not be necessarily a challenge for them to vote.

12 Q How about to register?

13 A And there are places -- but, yes, that could be more of a
14 challenge.

15 Q Okay. As part of your work as an executive director, do
16 you have an understanding that African-Americans in North
17 Carolina move more often than whites in North Carolina?

18 A I have not -- I don't have any information about that.

19 Q I take it you would agree with me North Carolina should
20 not make it harder for African-Americans vote because they are
21 disproportionately poorer?

22 A I don't think we should make it harder for anyone to vote.

23 Q Including African-Americans?

24 A Absolutely.

25 Q And you would agree with me that North Carolina should not

1 make it harder for anyone, including African-Americans, to vote
2 if they have lower literacy rates?

3 A Correct.

4 Q You would agree with me that North Carolina should not
5 make it harder for individuals to vote in-person than any other
6 way; true?

7 A Correct.

8 Q Now, as executive director, you also understand here in
9 North Carolina there is a fair amount of military bases; true?

10 A There are, yes.

11 Q Fort Bragg?

12 A Yes.

13 Q Camp Lejeune?

14 A Yes.

15 Q And many of these military men and woman who live on these
16 bases are eligible North Carolina voters?

17 A Yes.

18 Q And you understand, as part of your work, that the members
19 at these bases deploy and move quite often?

20 A They do.

21 Q And you understand, based on your work, that military men
22 and women living on these bases have had issues receiving mail,
23 including in the past mail from the county boards of elections;
24 true?

25 A I don't have specific knowledge of that. I do think that

1 that's certainly possible.

2 Q Have you received reports that that has happened?

3 A When you say "reports" -- as I said, I don't know
4 specifically. That could have happened. I don't -- I can't
5 recall a specific report about that happening.

6 Q So you don't remember every being reported by anyone on
7 your staff that military men and women have had more issues
8 receiving county board of elections verifications than others?

9 A Not generally military. I have not had anyone report to
10 me that military has had a harder time receiving mail, no.

11 Q Let's talk about election turnout. You would agree with
12 me that turnout for any particular -- can be driven in any
13 particular election by several factors?

14 A Sure.

15 Q And, in fact, contested races generally generate higher
16 turnout than uncontested races?

17 A I would agree.

18 Q And you would agree that hotly contested races are --
19 have -- generally have higher turnout than less contested
20 races?

21 A I would agree with that as well.

22 Q And as you are executive director, you would agree that
23 the U.S. Senate race in 2014 was what you would call a hotly
24 contested race?

25 A I agree.

1 Q And you understand as executive director that in the 2014
2 election, Former Congressman Mel Watt's seat was an open and
3 contested seat; correct?

4 A It was.

5 Q And in past elections, you understand that was generally
6 viewed as an uncontested seat; true?

7 A I believe that's true as well.

8 Q And you would agree the more contested the race is,
9 holding all other things equal, that tends to increase the
10 turnout?

11 A I think it has an impact on turnout, yes.

12 Q You think not just an impact, it increases; right?

13 A Increases.

14 Q Let's discuss the State Board of Elections and county
15 boards of elections and their structures. It is the State
16 Board of Elections' responsibility to administer elections;
17 right?

18 A Correct.

19 Q And the State Board, as part of their goals, they try to
20 make sure that North Carolina citizens that are eligible to
21 vote, as we've talked about, are actually able to; right?

22 A Yes.

23 Q And one of the State Board of Elections' jobs is to
24 oversee the county board of elections; right?

25 A That is true.

1 Q Because it's the county boards in this state that actually
2 operate and run the elections; right?

3 A Yes.

4 Q Not the State Board?

5 A Correct.

6 Q And in elections, some ballots end up being counted by
7 machines or computers; right?

8 A They end up -- some are -- there are -- there's electronic
9 voting equipment in some precincts, yes.

10 Q Okay. And some ballots end up having to be hand counted;
11 right?

12 A Yes.

13 Q But provisional ballots are an example of ballots that
14 need to be hand counted; right?

15 A Sometimes they do not have to be hand counted.

16 Q But a lot of times they do need to be reviewed, coded, and
17 hand counted?

18 A They would have -- they would have to be reviewed, but if
19 they are accepted, generally, they can be put through the same
20 machine as a regular ballot.

21 Q And tell me what you mean when they need to be reviewed.

22 A Well, all provisional ballots would have to be reviewed to
23 -- for a -- so a determination could be made of whether or not
24 they were eligible to be counted; and depending on the reason
25 of why that person voted provisionally, if they were eligible

1 for everything on that ballot, they would not need to hand
2 count that ballot.

3 Q Okay. So they need to be reviewed, every provisional
4 ballot?

5 A The application would need to be reviewed.

6 Q And that's reviewed by the county board of elections?

7 A Correct.

8 Q Okay. And you would agree with me, even if it's more work
9 for the county board, those provisional votes should be
10 counted, if appropriate?

11 A If they are eligible, they should be counted.

12 Q And as executive director of the North Carolina State
13 Board of Elections, you're focused on providing North Carolina
14 citizens the voting practices they need; correct?

15 A Yes.

16 Q And fair to say you try to understand their needs?

17 A Yes, I think that's fair to say.

18 Q And in order to provide service, you try to stay current
19 on developments in voting administration?

20 A Sure.

21 Q And as part of your work in trying to stay current on
22 voting administration, have you ever studied the voting
23 practices of Mississippi?

24 A I have not.

25 Q How about have you studied the voting practices of New

1 York State?

2 A Not specifically, no.

3 Q Fair to say that in your work, you are focused on trying
4 to provide voting practices for the North Carolina voters, not
5 so much Mississippi and New York State?

6 A I would agree with that.

7 Q Is that true because, as executive director, you
8 understand from your colleagues other states face different
9 issues than you face here in North Carolina?

10 A I think that's true.

11 Q They have different populations; right?

12 A Correct.

13 Q Let's turn for a moment to SEIMS. Can you explain what
14 SEIMS is?

15 A Yes. It's the Statewide Election Information Management
16 System. It is our statewide voter registration and election
17 management system.

18 Q And it contains information on all registered voters in
19 North Carolina?

20 A It does.

21 Q And it contains their voter history as well?

22 A Yes.

23 Q And there is an application in SEIMS that's an electronic
24 poll book; right?

25 A As part of SEIMS, we do have an electronic poll book for

1 early voting and for Election Day.

2 Q And SEIMS, which you just described, is -- that electronic
3 poll book is how you provide provisional voting; correct?

4 A No, not necessarily. That's -- that -- provisional voting
5 is a separate application. It is part -- it is going to be
6 part of the electronic poll book, but it is a separate
7 application.

8 Q So we have the electronic poll book, and we have the
9 provisional voting. And during one-stop voting, that is, early
10 voting --

11 A Yes.

12 Q -- every registered voter that's eligible to vote in that
13 county should be on that electronic poll book; is that right?

14 A Yes.

15 Q And the State Board offers the electronic poll book to all
16 the county boards of elections in the state?

17 A Correct.

18 Q And you offer it to all 100 counties in the state at no
19 cost to them; right?

20 A Correct.

21 Q So if someone is in a precinct on Election Day or early
22 voting site, they can search for anybody's name within the
23 county, not just their precinct; right?

24 A Correct.

25 Q We'll also talk about this a bit later, but in SEIMS, you

1 can take what are called snapshot reports; is that right?

2 A You can take -- right, our IT division can take snapshots
3 of what the database looks like on a particular day and a
4 particular time.

5 Q Yeah, and that's key point; right? Any snapshot report is
6 a specific point in time; right?

7 A Correct.

8 Q Okay. And that's because SEIMS tends to change every day;
9 right?

10 A It does.

11 Q There are individuals who become registered voters, and
12 there's individuals who are taken off the rolls; right?

13 A That's correct.

14 Q Fair to say it's a dynamic process?

15 A Very.

16 Q Let's discuss voter eligibility in North Carolina. In
17 order to be an eligible voter in North Carolina, there's a few
18 things you need; right? You need to either be born in the U.S.
19 or a naturalized citizen?

20 A Yes.

21 Q You have to reside in North Carolina?

22 A Correct.

23 Q And you have to have lived at your residence in that
24 precinct for 30 days before an election?

25 A Yes.

1 Q So it's three things: You need to be a U.S. citizen, you
2 need to reside in North Carolina, and you need to reside at
3 your residence in that precinct for 30 days before the
4 election?

5 A Yes. And you need to be 18 years old as well.

6 Q Sure. You need to be 18. That's a good point. And you
7 can't be a convicted felon; right?

8 A And you cannot be a convicted felon.

9 Q So these three eligibilities, once you are over 18, are
10 the requirements to be what we call "eligible" in North
11 Carolina?

12 A Correct.

13 Q So let's turn to see how an eligible voter registers. To
14 register in North Carolina, a person needs to fill out a voter
15 registration application?

16 A Yes.

17 **MR. DONOVAN:** May I approach, Your Honor?

18 **THE COURT:** Yes.

19 **BY MR. DONOVAN**

20 Q Ms. Strach, I've handed you what we have marked as PX212A.
21 Do you see that before you?

22 A I do.

23 Q And that is a North Carolina voter registration
24 application; is that right?

25 A It is.

1 Q And this is the current version that is still on the State
2 Board of Elections website; is that right?

3 A It looks to be, yes.

4 **MR. DONOVAN:** Your Honor, I move the admission of
5 212A.

6 **MR. PETERS:** No objection.

7 **THE COURT:** Admitted.

8 (Previously offered and admitted into evidence on
9 7/20/2015.)

10 **BY MR. DONOVAN**

11 Q So let's walk through this, Ms. Strach. Just to start
12 off, you agree that this form needs to be filled out regardless
13 of the method that I am later going to vote; right?

14 A Correct.

15 Q Okay. So whether I am going to vote on Election Day,
16 absentee mail, early voting, this is the form I need to fill
17 out?

18 A Yes, it is.

19 Q And, in fact, this is the form I need to fill out if I am
20 going to same-day register as well?

21 A Yes, it is a similar form.

22 Q So part of the starting points -- and this is --
23 obviously, it needs to be filled out honestly; right?

24 A Yes.

25 Q Because if it's filled out fraudulently or falsely, that's

1 what is called in North Carolina a Class I felony?

2 A It is.

3 Q And that's a serious charge?

4 A It is.

5 Q And you tell people that -- about the need to fill these
6 out honestly and the Class I felony on this State Board of
7 Elections website?

8 A Yes, and on the form.

9 Q And you tell people that it's right on this registration
10 form as well; right?

11 A Yes.

12 Q And that's in the bottom left; is that right?

13 A That's correct.

14 Q And you put it in a different color to make sure people
15 know, when they are signing and providing these to the State
16 Board of Elections, that if they do it fraudulently or falsely,
17 they could be subject to being charged with a Class I felony?

18 A That's correct.

19 Q So let's walk through the form. We've had a lot of talk
20 about it, but let's walk through it. Sections (sic) 1 require
21 a registrant to identify themselves as a U.S. citizen and over
22 18 years of age; is that right?

23 A Correct.

24 Q And that needs to be filled out in order to have a
25 complete registration form?

1 A Yes.

2 Q Section 2 is pretty straightforward. It's your name,
3 first, last, and middle; is that right?

4 A That's correct.

5 Q And you have in parenthesis in red on this form -- it says
6 that's required; you have to provide that information?

7 A That is correct.

8 Q Then you have Section 3 to the right is date of birth,
9 which is a requirement to provide?

10 A Yes.

11 Q Then we also have to fill out your North Carolina voter
12 registration number. Do you see that?

13 A I do.

14 Q And that's because individuals may already be a registered
15 voter, but if they move to another county or other reasons,
16 they need to reregister?

17 A That is correct.

18 Q And you also ask if they have a North Carolina driver's
19 license or their last four digits, they should provide that?

20 A That's correct.

21 Q Okay. But we don't have here that parenthesis in red
22 "required"; right?

23 A That is correct.

24 Q Because that's -- which we'll get to in a minute. People
25 can provide other information, but if they can provide either

1 their registration or their driver's license, it is helpful for
2 the county boards and the State Board; right?

3 A It is.

4 Q Let's continue. In Section 4, you have to provide your
5 residential address information; is that right?

6 A Correct.

7 Q And that, again, has it in red there that it's required;
8 right?

9 A Yes.

10 Q And it then goes on -- let's look at Section 5. It says
11 "mailing address"; right?

12 A Correct.

13 Q And on mailing address, there is not that little red
14 parenthesis saying "required"; is that right?

15 A Correct.

16 Q And the reason you request -- may request a mailing
17 address is that for some people a mailing address may be
18 different than the residential address?

19 A Correct.

20 Q And that's because there are definitely places in North
21 Carolina that don't receive residential mail; is that right?

22 A That is correct.

23 Q Let's look to the right there. There is a box we haven't
24 talked about so far in this trial. It's called "map diagram."
25 Do you see that?

1 A I do.

2 Q And that's for individuals who may not have a street
3 address at all in certain parts of North Carolina. They can
4 just draw where they reside, kind of almost a map of it; right?

5 A Yes.

6 Q And you would agree with me that even if a North Carolina
7 citizen lives in a place where they don't receive mail at their
8 residence, they are still eligible and should be able to vote;
9 true?

10 A As long as they reside there, yes.

11 Q So it's residence that's important?

12 A It's residence that's important.

13 Q Let's continue. Let's look at -- Section 6 is where you
14 fill out -- provide gender, race, ethnicity. And this is the
15 information that gets into the SEIMS system that we've seen in
16 this trial; right?

17 A Right. This information is, yes.

18 Q And then to the right there, there is the political party
19 affiliation. If a voter so chooses, they can register with a
20 party or unaffiliated or other; correct?

21 A Correct.

22 Q Then at the bottom of 7, this is where if you are moving,
23 it's helpful for the county board and the State Board to know
24 where you used to live so you can swap out the registration?

25 A Right. So we can cancel it in the previous county;

1 correct.

2 Q And then a requirement of the application is to sign it;

3 correct?

4 A It is.

5 Q And at bottom it is signed under the penalty of perjury?

6 A Yes.

7 Q And you have to attest to the fact that you are a United
8 States citizen over 18 years, a resident of North Carolina and
9 in that precinct for 30 days, and that you won't vote in any
10 other county or state after submitting this form, and that you
11 are not a convicted felon?

12 A Correct.

13 Q Let's turn to page 2 for a moment. If you look to the
14 right under "voter identification requirements," you list there
15 what we've referred to in this case as HAVA ID?

16 A Yes.

17 Q Okay. Can you explain to the Court what HAVA ID is?

18 A That is -- HAVA ID is ID that if someone does not have --
19 does not provide their driver's license or Social Security
20 number or we're not able to validate that information, then the
21 first time that they vote, they have to vote in person and they
22 have to provide what we call HAVA ID, and that is what is
23 listed here.

24 Q Okay. And then below that, you list photo ID
25 requirements; right?

1 A Correct.

2 Q And that's the provision that's now in the form telling
3 North Carolina voters that effective January 1, 2016, there is
4 going to be a photo ID requirement in order to vote; is that
5 right?

6 A That's correct.

7 Q And on this form, you don't yet have the explanation of
8 the General Assembly's recent bill that you don't need a photo
9 ID if you will sign a declaration regarding the reasonable
10 impediment exception; is that right?

11 A It is not on this form, no.

12 Q And this is the latest form still on the State Board of
13 Elections website; true?

14 A This is the -- looks to be. I can't verify that, but I
15 believe this looks to be.

16 Q I think it is, too. I checked last night, but I think it
17 is.

18 So let's look on the left-hand side to talk about in order
19 to submit this form, you need to deliver the original to your
20 county board of elections; is that right?

21 A That's correct.

22 Q In order for an original application, you can't scan it or
23 fax it to a county board of elections; is that right?

24 A That's right.

25 Q And that's because under North Carolina law, they need the

1 ink signature on page 1; is that right?

2 A Correct.

3 Q Okay. And on the form itself, one does not have a listing
4 of the addresses for the county boards of elections; is that
5 true?

6 A Excuse me. Could you repeat that?

7 Q Sure. On the registration form itself or the
8 instructions, page 2, you do not have a listing of the
9 addresses for the county boards of elections; is that right?

10 A Not on this form. We have it on our website.

11 Q It's on the website, or you could call, right, to try to
12 get it?

13 A Or you could call, absolutely.

14 Q But if someone is just looking at the form, you don't list
15 the county board of elections addresses, do you?

16 A It is not on the form.

17 Q Let's go back to page 1 and talk about the North Carolina
18 driver's license, if they are provided.

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

20 **THE COURT:** Yes.

21 **BY MR. DONOVAN**

22 Q Ms. Strach, I've handed you what are screenshots from the
23 North Carolina Department of Motor Vehicles, walking you
24 through what you need to get a North Carolina license, because
25 that's the number that you would get -- that you would fill in

1 on the form, on the registration form; is that right?

2 A It is.

3 Q Okay. Let's just walk through the requirements that you
4 need in order to get a North Carolina driver's license.

5 **THE COURT:** This is PX772?

6 **MR. DONOVAN:** It is 722, Your Honor.

7 **MR. PETERS:** Objection, Your Honor, both to
8 relevance, and I don't believe there's been any establishment
9 that Ms. Strach is familiar with this. It is not from the
10 State Board of Elections; it's from DMV.

11 **MR. DONOVAN:** I haven't tried to move it in yet, Your
12 Honor.

13 **THE COURT:** The objection is to questions about use
14 of this form?

15 **MR. PETERS:** Yes, sir.

16 **THE COURT:** Do you want to lay some foundation?

17 **MR. DONOVAN:** Sure, be happy to.

18 **BY MR. DONOVAN**

19 Q Ms. Strach, when someone gives the county board and State
20 Board of Elections a driver's license number, the State Board
21 actually takes that information and validates it against DMV;
22 correct?

23 A Right, we validate against DMV's database.

24 Q And, in fact, as part of your work as executive director
25 of the State Board of Elections, especially with this new law,

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1 you've gotten to work even more with the Department of Motor
2 Vehicles; true?

3 A Yes.

4 Q And you, both through your direct reports and your own
5 knowledge, have become familiar with some of the requirements
6 to get a North Carolina driver's license?

7 A Our outreach team is very familiar.

8 Q So let's just walk through, and I just want to kind of
9 walk through so we'll know what the North Carolina DMV might
10 have when you validate that -- when the State Board of
11 Elections validates that with the DMV.

12 So if we look at page 1 on step 2, the requirements, do
13 you see that the North Carolina DMV tells people they need to
14 bring four documents total? It is right under step 2.

15 A Yes.

16 Q And I just want to walk through these briefly. One of the
17 requirements to get a North Carolina driver's license, which
18 you would then get a number that you would put on the
19 registration form -- do you see you need to provide proof of
20 your age and identity?

21 A I see that.

22 Q And you would need to provide proof of your Social
23 Security number?

24 A Correct.

25 Q Go to the next page. You need to provide proof of

1 residency?

2 **MR. PETERS:** Your Honor, I am sorry. I'm going to
3 object again. This seems to be about the photo ID
4 requirements, which are not part of this trial.

5 **MR. DONOVAN:** It is not, Your Honor. We just -- just
6 to let you know what we are covering is to cover what the State
7 Board of Elections has access to on information when someone
8 gives them their photo ID number. It's not -- I am not kind of
9 challenging the photo ID requirement.

10 **THE COURT:** What will this be relevant to?

11 **MR. DONOVAN:** Sure, it's going to provide -- to show
12 that the State Board of Elections and county board of elections
13 has proof of residency of many voters, including same-day
14 registrant voters.

15 **THE COURT:** Overruled.

16 **BY MR. DONOVAN**

17 Q So I think, Ms. Strach, we were at the proof of residency.
18 Do you see that?

19 A I see that.

20 Q And then not so relevant for us here, but you also need to
21 provide proof of liability insurance. Do you see that?

22 A I see that.

23 Q If you go to page 4 of this exhibit, these are proof of
24 residency acceptable documents. Do you see that?

25 A Did you say page -- I see that.

1 Q Do you see that?

2 A I do.

3 Q Great. And some of the documents that you can give to the
4 North Carolina Department of Motor Vehicles to prove your
5 residency is a document issued by the state, county, city or
6 Federal Government. Do you see that?

7 A I see that.

8 Q In fact, you can prove your residency with your North
9 Carolina voter precinct card; correct?

10 A Correct.

11 Q And without going through all these, you would agree with
12 me, a lot of these are very similar to what you can provide to
13 for HAVA ID?

14 A Some of them are.

15 Q Correct. Can you identify which ones are?

16 A I don't think that the North Carolina -- I don't think
17 your vehicle registration card is a HAVA document. Your voter
18 card is not one. This -- I don't -- military orders or
19 documents could be a government document. I'm not sure.
20 Utility bill is on here. Housing lease or contract or mortgage
21 is not a HAVA document. Bank statement is. School records are
22 not necessarily a HAVA document. Insurance policy does not
23 appear to be a HAVA document as well. Or a letter from a
24 homeless shelter.

25 Q Going back to the HAVA ID, it provides that "or a

1 government document that shows your name and address"; correct?

2 A Correct.

3 Q So if the North Carolina registration vehicle card would
4 show your name and address, that would be a HAVA document?

5 A That would -- yes, it would.

6 Q Same thing with military orders, if they show your name
7 and address; correct?

8 A Right, if they show your name and address.

9 Q If you go one more page in PX722 and if you look at the
10 top, the website says that if you move within North Carolina,
11 you need to update your driver's license, ID card, or vehicle
12 registration within 60 days; is that right?

13 A That's correct.

14 Q So against that, let's go back to your registration form,
15 PX212A, and talk about that validation process.

16 I'm sorry. Before we go -- so based on what we looked at,
17 your understanding, you would agree that anyone that has a
18 North Carolina driver's license in the state of North Carolina
19 has had to prove at least to the DMV their proof of identity
20 and residency, as we've just walked through; right?

21 A For the DMV, yes.

22 Q For the DMV. So let's walk through now the way -- is it
23 the county board of elections or the State Board that does the
24 interface between SEIMS and the DMV database?

25 A It's the State Board of Elections.

1 Q Okay. So let's walk through that. So if a registration
2 includes a driver's license number, SEIMS will automatically
3 validate that with the DMV?

4 A Yes.

5 Q And that data is transmitted, as you just said, from the
6 State Board of Elections to the DMV, and then the DMV
7 electronically provides a response; right?

8 A That's correct.

9 Q All right. And this will provide --

10 **THE COURT:** When you say "validate that," validate
11 what?

12 **BY MR. DONOVAN**

13 Q What does it validate, Ms. Strach?

14 A It confirms that the two numbers match.

15 Q So that is the number the driver -- let me make this a
16 little easier. Let me hand you a document.

17 **MR. DONOVAN:** May I approach, Your Honor?

18 **THE COURT:** Yes.

19 **BY MR. DONOVAN**

20 Q Ms. Strach, I've handed you what we have marked as
21 Plaintiffs' Exhibit 567. Do you have that before you?

22 A I do.

23 Q Let's start at the top. This is a memo to the directors
24 of the county board of elections?

25 A It is.

1 Q And we didn't cover this before, but each of the 100
2 county boards of elections here in North Carolina have a
3 director; right?

4 A They do.

5 Q And this is a memo from Marc Burriss, IT director. Do you
6 see that?

7 A I do.

8 Q And Marc Burriss has been a State Board of Elections
9 employee for several years; is that right?

10 A Close to the same amount of time I have.

11 Q A veteran. And then we have under subject, it's called
12 "SEIMS-Numbered Memo 2009-003." And that is a number -- a
13 SEIMS-numbered memo is simply a way you all keep track of memos
14 by -- the first is the year, and then it is the number of the
15 memo per year; is that right?

16 A That's our tracking method.

17 Q And this memo was issued on January 12, 2009; is that
18 right?

19 A That's correct.

20 Q So let's go down -- and feel free to refer to any of it,
21 but I am going to focus on the first page here to walk through
22 this process of validation that we talked about. I am on the
23 third paragraph. And it provides, "If a new registration or a
24 change to an existing record includes a driver's license
25 number, last four digits of a social security number, or

1 statewide ID, SEIMS will automatically validate the number."

2 Do you see that?

3 A Yes.

4 Q And that's true? That's what happens?

5 A It will automatically verify with DMV, yes.

6 Q Let's just walk through this paragraph. It then says,
7 "Although the ID numbers are not required when a change is
8 being made to an existing voter in the county - if a number is
9 entered, SEIMS validates it to ensure that only the valid
10 numbers are entered." Do you see that?

11 A I do.

12 Q And then it goes on to say, "To validate the numbers, the
13 data is transmitted from the county system to the State Board
14 of Elections system, and from there to the North Carolina
15 Division of Motor Vehicle system." Is that right?

16 A That's correct.

17 Q And that's what happens; right?

18 A That's how I understand it as well.

19 Q Okay. Now, it then also talks about in addition to the
20 driver's license number, it says, "If the SSN," Social Security
21 number, "is being validated, the DMV system transmits the data
22 to the Social Security Administration system." Do you see
23 that?

24 A I do.

25 Q And that's a separate process that happens?

1 A It happens -- it still goes through -- we go to SSA
2 through DMV.

3 Q So it's a separate validation, but it goes through the
4 same process?

5 A Correct.

6 Q And then Mr. Burris writes, "This can result in occasional
7 delays but our experience so far has been that responses return
8 within seconds." Do you see that?

9 A I do.

10 Q That's because it's electronic; it happens very quickly?

11 A Correct.

12 Q And then the next paragraph, it provides -- it says, "When
13 validating the NCDL," the North Carolina driver's license,
14 "information, the data is considered valid if the driver's
15 license number, last name, first name, and birth date match a
16 valid driver's license record with the North Carolina DMV." Do
17 you see that?

18 A I do.

19 Q And so from what we've walked through, we know if the
20 State Board has a North Carolina driver's license, they are
21 able to validate based on name, driver's license, and birth
22 date that information with the North Carolina DMV?

23 A Right. Validating that number with the DMV, yes.

24 Q And that would tell you, as we just looked through, that
25 that is that person's identity and, at least according to the

1 DMV, their place of residence; correct?

2 **MR. PETERS:** Objection. That's hearsay.

3 **THE WITNESS:** What we are validating --

4 **THE COURT:** Hold on just a minute, please. What is
5 the basis?

6 **MR. PETERS:** For one thing, Your Honor, it's hearsay.
7 He is saying her testimony has been what is validated, and he's
8 saying that also tells you that what else that's in DMV's
9 system is accurate.

10 **MR. DONOVAN:** It is not hearsay, Your Honor. I am
11 not asking for an out-of-court statement. I am asking for what
12 happens in the process.

13 **MR. PETERS:** He is asking for the accuracy. He's
14 asking her to admit to the accuracy of the data that's on the
15 system that the State Board of Elections does not --

16 **THE COURT:** Are you asking about the accuracy of the
17 data?

18 **MR. DONOVAN:** I am not asking about the accuracy.
19 What I'm asking is about the process that we have a memo on.

20 **THE COURT:** Overruled as to the process.

21 **BY MR. DONOVAN**

22 Q So let me re-ask my question, Ms. Strach. If you have a
23 driver's license, you can validate that, as it's laid out in
24 Mr. Burris's memo, with the North Carolina DMV that would
25 validate their proof of residency; is that right?

1 A That's not what it's validating. It's validating their
2 identity, not their residency. That's why it says in the memo
3 that it's just a first, last name, date of birth, and your
4 driver's license. They are validating -- only validating that
5 information.

6 Q And if they have the identity, do you have any reason to
7 believe that individuals are not required to update their
8 residency with the DMV, as we walked through, 60 days after
9 they move?

10 A That's the DMV policy. So that -- right. That is what
11 DMV requires for driver's license.

12 Q Okay. And with this process, you are able to identify --
13 or, excuse me, validate a person's identity; correct?

14 A We are validating, right, that those identifiers of their
15 identity match what's in the DMV database or the SSA.

16 Q Let's talk about registration of these registration folks.
17 You have to -- let's discuss the different times a North
18 Carolina citizen needs to register to vote.

19 First, once you turn or you're about to turn 18 for the
20 next election, you need to register to vote; right?

21 A You do.

22 Q People who move to North Carolina from out of state need
23 to register?

24 A They do.

25 Q People who move from one county to another county within

1 North Carolina need to register; is that right?

2 A Yes.

3 Q And if there are administrative errors either at the DMV
4 or through their registration, they may need to reregister?

5 A When you say "administrative errors," you'd have to define
6 what kind of administrative errors would require them to
7 reregister.

8 Q Well, let's say they sign up at the DMV and they don't get
9 the scan so that application is incomplete. Would they need to
10 reregister?

11 A Not necessarily. If we have information from DMV that
12 they attempted to register there, we would send them a letter,
13 and whatever information we were to fish it in, we would
14 obtain.

15 Q And if the person doesn't respond to that rejection notice
16 or incomplete notice, so it never gets validated, if they
17 showed up, they would have to reregister again; is that right?

18 A Well, what they would have to do is if they didn't respond
19 to that, but there was proof that they had registered at the
20 DMV, they could -- whenever they did show up to vote, they
21 could complete a voter registration form that -- whatever was
22 missing, that could be used, and that would not be a
23 reregistering. That would be completing things that had not
24 been received from their initial registration.

25 Q Okay. Is it your testimony that if someone seeks to

1 register six months before an election, and it doesn't get
2 completed, they then show up at an early voting site and we
3 don't have same-day registration, are they entitled to register
4 at that point?

5 A They are entitled to cast a provisional ballot, and the
6 information that will be obtained on that ballot is a voter
7 registration card, which should satisfy whatever information
8 had not been previously received from wherever they had
9 registered -- from the DMV, excuse me.

10 Q And would that vote count?

11 A It should.

12 Q Let's also talk about you need to reregister if you are
13 removed from the rolls due to voter list maintenance. Is that
14 right?

15 A Correct.

16 Q And voter list maintenance has been an emphasis of your
17 administration at the State Board of Elections; is that right?

18 A I think list maintenance has been an emphasis of the State
19 Board of Elections for many years.

20 Q And you can get removed from the voter rolls for
21 inactivity, right, if you don't vote for two federal elections?

22 A You could get -- right. If you have not voted for two
23 federal elections and then you do not respond to a mailing from
24 the county board of elections, then you would be deemed
25 inactive.

1 Q And after how long do you actually get removed?

2 A You would have an additional two federal elections.

3 Q If that happens, in each of these scenarios, the North
4 Carolina citizen would need to register or reregister using
5 that registration form we talked about; right?

6 A If they --

7 Q If they need to register.

8 A If they were to be removed for inactivity, if they were to
9 show up at the polls to vote, they would be asked had they
10 moved, and if they said no, and then they would update their
11 voter registration, but it would not really be reregistering of
12 the individual. They would still be entitled for their vote to
13 count.

14 Q For the folks that move county to county, though, they
15 need to reregister; right?

16 A That's correct.

17 Q Without same-day registration, people who turn 18, people
18 who move from out of state --

19 **THE COURT:** Excuse me. Let me make sure I
20 understand. So you said people that had been removed from
21 registration rolls for inactivity?

22 **THE WITNESS:** Correct.

23 **THE COURT:** What would happen?

24 **THE WITNESS:** If that individual had not left the
25 county, they just had not responded to the mailing, and they

1 showed up to vote, if they were to -- if they were to sign they
2 had not moved from that residence, they would still be eligible
3 to vote. They would update their voter registration, they
4 would still be a voter, and they would then be an active voter.

5 **THE COURT:** Okay. Can do they that then on Election
6 Day?

7 **THE WITNESS:** They could.

8 **BY MR. DONOVAN**

9 Q If they moved within the county and they gave their new
10 address during early voting, could they still vote?

11 A If they had not moved from the county, they could give
12 their new address. That would be updated and, yes, they could
13 still vote.

14 Q Okay. And we'll get to this a little later. That would
15 start a new mail verification process as well; right?

16 A It would.

17 Q We'll footnote that, and we'll come back to that.

18 In each of these scenarios in which a person -- let me
19 take one step back. The judge was asking you when -- you said
20 that they -- when does a person actually get removed from the
21 list during voter list maintenance?

22 A They would get removed after they had been inactive for at
23 least another two federal elections.

24 Q And once they are removed after those two federal
25 elections, can they just -- even if they're at the same

1 address, can they go and just vote?

2 A They could go. They would not be on the rolls. So they
3 would be asked to confirm that they had not moved from the
4 county; and if they were able to do that, they would be able to
5 vote.

6 Q Even after they were removed from the rolls?

7 A Yes.

8 Q So let's talk about the scenarios where someone needs to
9 reregister, someone who moves county to county. That needs to
10 be done -- that new form, they need to deliver that to the
11 county board of elections 25 days before the election unless
12 there's same-day registration; is that right?

13 A That's correct.

14 Q Let's discuss same-day registration. Same-day
15 registration permits an eligible North Carolina citizen to
16 register and vote on the same day during the early voting
17 period; is that right?

18 A That's correct.

19 Q Okay. And when a person registers through same-day
20 registration, the person goes to an early voting location;
21 right?

22 A That's the place where they have to same-day register,
23 yes.

24 Q And at that early voting location, they would fill out
25 that voter registration form we went over?

1 A Yes.

2 Q And unlike a non-same-day registration process, that North
3 Carolina citizen, registers that same day, needs to appear in
4 person; right?

5 A They must appear in person.

6 Q Because if you are registering in a way other than same
7 day, you can actually register without showing up in person?

8 A Outside of the same day, the early voting period, yes.

9 Q And unlike a non-same-day registration registrant, a
10 person who registers same day needs to fill out that
11 registration form in the early voting site; right?

12 A Correct.

13 Q And the election official would be right there to make
14 sure the information on the form was filled out correctly and
15 completely; correct?

16 A That's their job.

17 Q They are there to assist the voter to help them fill that
18 out?

19 A They are.

20 Q And that same-day registration voter would need to show
21 HAVA ID at the time of registering at the early voting point?

22 A Yes.

23 Q Not later?

24 A Correct.

25 Q And the election official would review that HAVA ID

1 presented right at that time of the same-day registration; is
2 that right?

3 A That's correct.

4 Q And that HAVA ID must have the citizen's current address;
5 correct?

6 A Yes.

7 Q And under same-day registration, the election official
8 would receive that application directly from the voter; right?

9 A From the voter, yes.

10 Q And so, therefore, under same-day registration, there is
11 no need to mail the application to a county board of elections;
12 right?

13 A No.

14 Q And under same-day registration, the county board
15 verification process, by law, is to be started within two days;
16 correct?

17 A Right, 48 hours.

18 Q Forty-eight hours. And just as a contrast, under a
19 non-same-day registration process, the law doesn't provide any
20 set time to start that mail verification; right?

21 A There is not a statutory time. They are to do it -- as
22 soon as they receive it, they should be processing it.

23 Q But there is nothing in the statute that requires that;
24 right?

25 A Correct.

1 Q But for same-day registration, it is required 48 hours;
2 right?

3 A That's correct.

4 Q And when the registration form is provided, if a driver's
5 license is provided, as we talked about, it would validate the
6 person's identity with the DMV; correct?

7 A Excuse me. To the precinct official?

8 Q Yes. So when they take that, they enter that information
9 into the system; right?

10 A They do not enter in -- the voter would enter in their --
11 when they --

12 Q I'm sorry. After the county board of elections official
13 receives the form --

14 A Right.

15 Q -- explain to us what happens to that form.

16 A With the same-day registrant?

17 Q Yes, ma'am.

18 A So that form would then also be processed just in the same
19 way as any other voter registration form.

20 Q So that would mean if they provided a driver's license,
21 you would have that validation of their identity; correct?

22 A If they included that number on the form, it would go
23 through the very same process.

24 Q And same-day registrant voters vote an absentee ballot;
25 correct?

1 A Just like -- right. Every voter that presents and votes
2 during the early voting period votes an absentee ballot.

3 Q One of the differences of an absentee ballot versus
4 Election Day is that it's what we call retrievable; right?

5 A It is.

6 Q That is, you could track it and take it out of the
7 election up until the time of the canvas; right?

8 A If the law permitted that, it is a retrievable ballot that
9 can be removed from the vote totals.

10 Q And there are situations where the law provides some where
11 they can be removed and some where they must be removed; right?
12 Do you want me to re-ask the question?

13 A If you could.

14 Q Sure. You had said that it depends, right, whether or not
15 it is retrievable, but it can only be removed from the totals
16 depending on the reason; right?

17 A Right. There are certain processes that are set forth in
18 the statutes of when a ballot can be retrieved.

19 Q And by using the word "retrieved," that just means that
20 the county board can track it and go and actually take it out
21 of the totals if they determine under the law that would be the
22 appropriate thing to do?

23 A That's correct.

24 Q Now, with same-day registration, it's fair to say that
25 North Carolina citizens that show up to same day register -- we

1 talked about this -- they register at not quite, but almost,
2 100 percent of those that register and vote?

3 A That's correct. Most do. There are some that do not, but
4 most do.

5 Q And that's kind of the point of same-day registration;
6 right? You register and vote at the same time?

7 A I believe so.

8 Q Now, let's talk about all North Carolina voters, we talked
9 about, are required to live at their residence for 30 days
10 before the election?

11 A That's correct.

12 Q Okay. And there is no requirement that they continue to
13 live at that address for any period of time after the election;
14 right?

15 A That's correct.

16 Q So, therefore, even if they moved the day after they vote,
17 that does not mean that they were an ineligible voter when they
18 voted; right?

19 A As long as they had lived at that address when they voted
20 for 30 days prior to the election.

21 Q And, that is, as long as they lived where they say they
22 lived the day they vote, it is okay; the law does not require
23 them to stay at that address for any period of time after they
24 vote?

25 A No, it does not.

1 Q You'd agree with me also, even if they live at a residence
2 that does not receive U.S. Mail, that doesn't mean that they
3 were ineligible to vote?

4 A No, if they actually live at the address, they are not
5 ineligible.

6 Q Do you understand that other states offer what we've
7 discussed as Election Day or same-day registration?

8 A I am aware that other states offer same-day and some
9 Election Day.

10 Q You would agree with me that Election Day registration
11 would provide less time for mail verification than North
12 Carolina same-day registration because that ends when the early
13 voting period is over; right?

14 A Election Day would require -- would give no time for mail
15 verification.

16 Q Let's talk about some of those states. Are you aware that
17 Illinois has Election Day registration?

18 A I believe I did know that.

19 Q Are you aware that Colorado has Election Day registration?

20 A Yes.

21 Q Are you aware that Minnesota has Election Day
22 registration?

23 A Yes.

24 Q Are you aware that Iowa has Election Day registration?

25 A I am not sure, but I -- I don't know that one

1 specifically, but I will take your word for it.

2 Q Okay. And are you aware -- and there's other states as
3 well; correct?

4 A I think there are other states.

5 Q And Utah has a pilot project on same-day registration --
6 or, excuse me, Election Day registration going on right now?

7 A I believe I heard that as well.

8 Q Are you aware of any state that has implemented Election
9 Day or same-day registration that has repealed it?

10 A I don't know.

11 Q But you are not aware of any state other than here in
12 North Carolina that has implemented Election Day or same-day
13 registration that later repealed it; right?

14 A I am not aware.

15 Q Do you understand that in several of these states, such as
16 Ohio and others, that when someone registers and votes on
17 Election Day, they just need to show proof of current ID?

18 A I don't know the requirements of the other states. I'm
19 sorry.

20 Q Have you looked at any of the requirements of any of the
21 other states that provide election or same-day registration?

22 A I have not.

23 Q Let's talk about what a county board does with that
24 registration form when they receive it.

25 A Okay.

1 Q First, when a county board receives it, they obviously
2 have someone who reviews the application, right, for
3 completeness?

4 A Are we talking about a same-day registrant --

5 Q Oh, I'm sorry, no, I'm moving -- just regular non-same-day
6 registration.

7 A Correct. If a county board receives a voter registration
8 application, they do; they review it to make an initial
9 determination that the information that's required is there.

10 Q Okay. Is that different than the same-day registration?

11 A No.

12 Q So it's the same either way --

13 A It's the same.

14 Q Okay. And under North Carolina election law, the county
15 board of elections determines that either the applicant is not
16 qualified or they make the tentative determination that the
17 applicant is qualified to vote; correct?

18 A That's right; it's a tentative determination.

19 Q And then they start -- what we talked about before; there
20 is no time limit, but they start mail verification for non-SDR
21 registrants, and they have to do it within 48 hours for SDR
22 registrants?

23 A That's correct.

24 Q Let's turn now to that mail verification process you
25 talked about. The mail verification process -- well, let me

1 take a step back.

2 After the county board of elections reviews that
3 registration form, if it makes that tentative determination, it
4 will mail a nonforwardable registration card to the voter's
5 residential or mailing address?

6 A That's correct.

7 Q And then in SEIMS it will wait 15 days to see if that
8 verification card is returned?

9 A That's correct.

10 Q And that 15 days is kind of automated within SEIMS; is
11 that right?

12 A It is.

13 Q And that 15 days is tracked -- well, withdrawn.

14 If you get the card -- the first card back as
15 undeliverable, then the automated system will send another
16 nonforwardable card to that address; is that correct?

17 A That's correct.

18 Q And if you get the second card back as undeliverable
19 before that individual votes, that registration would then be
20 denied?

21 A Correct.

22 Q When you get that second card back and it is denied, does
23 the county board of elections take any steps with that
24 registration to try to reach out to that voter, or is it just
25 denied?

1 A It is denied.

2 Q Now, on the other hand, if you don't get that second card
3 back within 15 days, that voter is deemed an active voter;
4 correct?

5 A Correct.

6 Q And that would be noted within SEIMS; right?

7 A Yes.

8 Q Noted -- it's all automated, right, within SEIMS?

9 A It is.

10 Q And fair to say the mail verification system is not a
11 precise verification system?

12 A The mail system?

13 Q Yes.

14 A Correct.

15 Q Okay. Because if a card is returned, that does not, in
16 fact, verify that the person does not live at that address;
17 right?

18 A Right.

19 Q On the other hand, if the card is not returned, that
20 doesn't, in fact, verify that the person does live at that
21 address; right?

22 A No. That's the system we have in place to verify that.

23 Q Yeah. That's just kind of the system you are using;
24 right?

25 A It is the system that the North Carolina general statutes

1 require us to use.

2 Q Now, under this verification process, it is possible for a
3 person who registers 25 days before the election may not
4 complete that verification process until after they cast their
5 ballot; right?

6 A It is possible.

7 Q And, in fact, it is not just possible; it happens. Right?

8 A Oh, yes, it happens.

9 Q And that just means that someone could register 25 days
10 before the election and vote, but that mail verification
11 process hasn't run its course; is that right?

12 A If -- I'm sorry. Would you --

13 Q Sure. So if a registrant sends in a registration form and
14 they go and vote, either early or on Election Day, and that
15 mail verification process has not been completed, that may
16 happen?

17 A That's correct.

18 Q Okay. And the same thing could happen for same-day
19 registrants; that is, they vote the same day, that mail
20 verification process may not be completed by the canvas date.

21 Correct?

22 A Correct, or Election Day by statute.

23 Q Or Election Day?

24 A Correct.

25 Q And under any of those scenarios we just talked, that

1 doesn't mean that the voter is an ineligible North Carolina
2 voter. It just means they haven't yet completed mail
3 verification; right?

4 A It means that their residence has not been able to be
5 verified.

6 Q But it doesn't mean they are an ineligible voter, right,
7 because that has a different meaning; correct?

8 A Correct. Mail verification is our way of verifying
9 residency, and residency certainly is a requirement of voter
10 registration. So if that process has not completed, then
11 residency has not been verified.

12 Q And that's the point I am getting at is simply because
13 residency, as you put it, hasn't been verified does not mean
14 that they were an ineligible voter on Election Day?

15 A Does not mean they were ineligible; correct.

16 Q Now, in the system we talked about, if a voter -- I think
17 the term of art you use is has a voter history, that is, they
18 vote or something else comes into the SEIMS system before that
19 mail verification process is complete, rather than getting
20 denied, they would be marked inactive; correct?

21 A That's correct.

22 Q Okay. And so if they failed the two-card verification
23 process we talked about, but they have a voting history, they
24 voted in between, they would then become inactive; they
25 wouldn't be denied within the system?

1 A That is correct.

2 Q Instead, that voter would get a confirmation mailing that
3 is, in fact, forwardable as opposed to the other two cards that
4 were nonforwardable?

5 A Right. The statute says that if that happens, that
6 someone votes and they fail mail verification, we then
7 immediately start the list maintenance process by the
8 confirmation mailing.

9 Q And when they are marked inactive -- well, let me finish
10 the confirmation mailing.

11 The confirmation mailing, that one is forwardable to the
12 known address, and, of course, it could get forwarded by the
13 U.S. Postal Service, and that voter then needs to mail back
14 that form to the county board of elections?

15 A That's correct.

16 Q And another way they could be turned again into an active
17 voter is they could actually go vote again and confirm their
18 address or provide their updated information?

19 A That is correct.

20 **MR. DONOVAN:** Your Honor, I conferred with defense
21 counsel. I would like to show some demonstratives on the
22 screen. I don't think there is any objection.

23 **THE COURT:** All right.

24 **MR. DONOVAN:** Can we bring up KS-1, Demonstrative
25 KS-1.

1 **BY MR. DONOVAN**

2 Q Ms. Strach, I've handed you a demonstrative that I want to
3 see if it illustrates the process we talked about. And here on
4 the far left we talk about a voter registering; is that right?
5 Do you see that?

6 A Correct.

7 Q And then it shows, once they register, provided it is a
8 completely filled out registration form, that first
9 verification card is mailed out. Do you see that?

10 A I do.

11 Q Okay. And as we talked about, if it's not returned in
12 15 days, that voter is kind of flipped in the system to being
13 active; is that right?

14 A Correct.

15 Q If the card is returned undeliverable, you then do that
16 second verification card; right?

17 A That is what we do.

18 Q And if that card is not returned within 15 days, that
19 voter again is kind of flipped to active?

20 A Correct.

21 Q Let's go to KS-2. So then when you send out that second
22 verification card -- we've already talked about if it's not
23 returned; but if that card is returned undeliverable and that
24 voter has not cast a ballot, under North Carolina law, that
25 registration is then denied?

1 A Correct.

2 Q Okay. But if they have voted, if they've cast a ballot,
3 they are then marked inactive and then you get that
4 confirmation mailing; is that right?

5 A Correct.

6 Q Let's go to KS-3. At the confirmation mailing, if a card
7 is returned undeliverable or no response, they remain on the
8 rolls inactive for two federal elections, and at that point
9 they are removed; is that right?

10 A That's correct, if there's been no activity.

11 Q If there's been no activity. But if they do respond or
12 they vote at the next election, they are actually marked as an
13 active voter?

14 A That's correct.

15 **THE COURT:** Marked as an active voter?

16 **MR. DONOVAN:** Active voter. It's in the SEIMS
17 system, yes, Your Honor.

18 **BY MR. DONOVAN**

19 Q Let's talk about this mail verification process, which we
20 have before. One of the inherent flaws in a mail verification
21 process is that it uses the United States Mail to verify
22 people's residency; correct?

23 A I am not sure that I would say that's a flaw of the
24 system, but it does use the U.S. Mail.

25 Q Okay. Would you agree that from time to time it creates

1 real challenges in confirming people's actual residency?

2 A I think there sometimes are, yes, difficulties with using
3 U.S. Mail.

4 Q In fact, in your job, people have reported to you that
5 there are problems with the U.S. Mail in the verification
6 process?

7 A Yes.

8 Q And let's talk about a few of those problems. One of the
9 problems with using the U.S. Mail to confirm residency is what
10 we talked about, people move; right?

11 A True.

12 Q And another issue with the verification cards is sometimes
13 from time to time the county boards of elections don't get
14 those cards out in a timely manner?

15 A Sometimes they don't.

16 Q Okay. And you have received reports that some of these
17 verification cards that get delivered to university dorms don't
18 get allocated to those residents correctly; is that right?

19 A I have had that complaint, yes.

20 Q And you've also received reports from your staff that
21 verification cards delivered to apartment buildings don't
22 always get delivered to the right apartment; correct?

23 A I think there have been occasions of that.

24 Q And one of the reasons that verification -- another reason
25 the verification effort may have failed is because the address

1 that it gets mailed to was wrong; it was different than what
2 was put on the registration form?

3 A I'm sorry?

4 Q You want me to reask?

5 A Please.

6 Q Okay. Sure. One of the reasons this mail verification
7 effort also may fail is that the entry from the registration
8 system into the SEIMS system may transpose the numbers; you may
9 get the wrong address on there?

10 A There could be a data entry error. That's possible.

11 Q Okay. Another reason that a voter who is properly
12 registered at an address when he casts the ballot -- that
13 person may move before they complete the verification process;
14 is that right?

15 A They could move, yes. They could also update their voter
16 registration, which would start a new mail verification at
17 their new address.

18 Q And that's a good point. So there are periods of time
19 where someone may not mail verify but later then come and give
20 you their correct address; is that right?

21 A They could either through their new registration process,
22 right, or if they are inactive, then they could give their new
23 address, and we could go through that process to confirm their
24 new address.

25 Q And one example, just to bring it to the real world, is

1 someone could live at a residence, vote that day, and then
2 move, let's say, within the month, especially if the card
3 doesn't go out in time, and then they basically don't get back
4 to you until the next election when they show up to vote within
5 the same county; is that right?

6 A That could happen.

7 Q Okay. And within that period in your SEIMS system, they
8 would appear to be a voter who failed mail verification; right?

9 A If they failed it at that initial mail verification after
10 voting, they would -- but they voted, they would have failed
11 mail verification, yes. They would be made inactive. If it
12 was not in the same-day registration, if they had failed mail
13 verification and moved in that same scenario, they would be
14 denied.

15 Q Correct. So this person who voted on a day, so they are
16 going to have a voter history, they may move. So for a period
17 of time, they would be inactive in the SEIMS system; but once
18 they updated that information, they would then change to be an
19 active status. Right?

20 A That's correct.

21 Q And that's an important point, right, because whenever you
22 look at the SEIMS system on any given day, we talked about it,
23 is kind of a living creature; right?

24 A It is.

25 Q Okay. In that someone might be inactive for a period and

1 then when they provide you the information, they are active;
2 right?

3 A Yes.

4 Q So on any given day when you look at kind of a point in
5 time, that may change as they update information at a later
6 time; right?

7 A Your status could absolutely change, yes.

8 Q I want to ask you about the 15 days that you use. Now,
9 you talked about it, North Carolina laws require the county
10 boards to send these mail verifications; correct?

11 A Correct.

12 Q Now, the statute, though, doesn't provide any time period
13 in the statute; correct?

14 A It does not.

15 Q So it's fair to say waiting the 15 days before a
16 registrant is verified is a policy of the State Board of
17 Elections, not part of North Carolina statutes?

18 A It's not part of statute.

19 Q And for a period of time, I think before your tenure, the
20 State Board of Elections policy was that they would wait 10
21 days before a registrant verified as active; is that right?

22 A I am not sure. As long as I have been there -- I didn't
23 change the policy to 15. It was 15 when I took this position.

24 Q And just to wrap that up, it is clear that the 15 days is
25 a choice, a policy made by the State Board of Elections; is

1 that right?

2 A Correct.

3 **MR. DONOVAN:** Your Honor, I am about to get into
4 reports and graphs and things.

5 **THE COURT:** How much more do you have?

6 **MR. DONOVAN:** Probably about 40 minutes or
7 45 minutes.

8 **THE COURT:** We'll go ahead and stop here for lunch.
9 We'll see you all at 2:00.

10 **MR. DONOVAN:** What time did you want -- 2:00?

11 **THE COURT:** 2:00.

12 (The Court recessed at 12:04 p.m.)

13 (The Court was called back to order at 2:03 p.m.)

14 **THE COURT:** Mr. Donovan, you may continue, please.

15 **BY MR. DONOVAN**

16 Q Good afternoon.

17 A Good afternoon.

18 Q Ms. Strach, when we stopped earlier, we were talking about
19 the mail verification process. I just want to continue on
20 that.

21 If a voter reports the new address in the same county at
22 the polling -- at an early voting location, would mail
23 verification start over again?

24 A Yes.

25 Q So that new address would get mail verified; right?

1 A That's correct.

2 Q Okay. So that person would update their address; and if
3 they did it during early voting, it may or may not complete
4 mail verification before the canvas; is that right?

5 A That's correct.

6 Q And the same thing for SDR. If an SDR voter registers and
7 votes in a early voting location, their mail verification may
8 or may not complete before the canvas; is that right?

9 A Yes, sir.

10 Q So for both a person that updates their address and a
11 same-day registrant who gives, let's say, their driver's
12 license -- for both of those individuals, you can validate
13 their identity; correct? You just may not be able to validate
14 their mail verification before the canvas date?

15 A The voter that is changing their address, their identity
16 would have already been validated or they wouldn't be on the
17 poll book and eligible for that election.

18 Q But the SDR voter with the driver's license number, like
19 we talked about before, you could validate their identity
20 through the DMV validation; right?

21 A It's the same -- well, that -- it's just that the existing
22 voter, that validation process would already have occurred;
23 whereas, the SDR voter, it hasn't occurred yet.

24 Q It hasn't occurred yet?

25 A Right.

1 Q But if they vote during early voting, through the process
2 we talked about, you're confident that identity match at least,
3 because it's that instantaneous DMV SEIMS match, that could be
4 done before the canvas; right?

5 A That process would be done, yes.

6 Q If a voter becomes inactive due to the list maintenance
7 procedures we talked about this morning, they show up during
8 early voting and they give the new address, does mail
9 verification then start on that voter?

10 A Yes.

11 Q And just as we talked about the prior two situations, that
12 voter may or may not complete mail verification before the
13 canvas; correct?

14 A That is true.

15 Q And, in fact, a voter who just mails their registration to
16 a county board of elections on the last day, the 25th day
17 before the election, they may vote and their vote may be
18 counted in the canvas before they complete mail verification as
19 well; is that right?

20 A It's possible. Mr. Donovan, it's before Election Day. I
21 just want to make sure I clarify that, that Election Day is
22 when it has to have completed by.

23 Q Correct. But either way, those voters, if they don't
24 complete mail verification before the Election Day on each of
25 those, if they don't fail mail verification, their vote will

1 count; right?

2 A Correct.

3 Q Under each of those situations?

4 A Yes.

5 **MR. DONOVAN:** May I approach, Your Honor?

6 **THE COURT:** Yes.

7 **MR. DONOVAN:** Your Honor, I handed the witness
8 Plaintiffs' Exhibit 68A. It's already in evidence. May I
9 publish?

10 **THE COURT:** Yes. I want to ask one clarifying
11 question. When you say mail verification is not complete, what
12 do you mean?

13 **THE WITNESS:** When a voter has received a mailing, if
14 that mailing has not come back as either undeliverable -- if it
15 comes back as undeliverable, then that person has not completed
16 mail verification. If it doesn't come back in 15 days, then
17 that person is considered for mail verification to be complete
18 at least at that time.

19 So what we are talking about with mail verification
20 is it has to have the time for the mail to get that information
21 to the voter and either come back as undeliverable or not come
22 back, and the system recognizes it as verified.

23 **THE COURT:** So if the second card comes back
24 undeliverable, are they -- is mail verification complete or not
25 complete?

1 **THE WITNESS:** If it comes back undeliverable, it's
2 complete. That person -- if they are a traditional registrant
3 outside the SDR period, their voter registration would be
4 denied; it would be ineligible to vote. If it comes back
5 undeliverable after a person has voted, then that person's
6 would not be denied; they would be inactive.

7 **THE COURT:** Thank you.

8 **BY MR. DONOVAN**

9 Q Let me follow up on that point. There's instances,
10 Ms. Strach, where the card may come back undeliverable after
11 15 days; correct?

12 A That is true.

13 Q And in that situation, although it is past 15 days, you
14 then start the second mail verification; correct?

15 A That's correct.

16 Q So there are situations where although the 15 days pass
17 and they are marked, in your words, as having completed
18 verification, you would then start verification or the
19 following steps after that; right?

20 A That is correct. Just to make sure I am clarifying, the
21 15 days is what's been set in the system, and we certainly do
22 get cards that come back undeliverable after the 15 days. That
23 doesn't mean that they're verified. Their status will then
24 change to unverified, and we will send another mailing in the
25 process.

1 Q And in those situations, if the voter has voted, for that
2 election, and that card comes back, whether it's a non-SDR
3 registrant or a SDR registrant, that vote counts; correct?

4 A The vote will count.

5 Q Ma'am, I've handed you Plaintiffs' Exhibit 68A.

6 **MR. DONOVAN:** Your Honor, the difference we -- I
7 believe Plaintiffs' Exhibit 68 was the black-and-white version.
8 This is simply the color version of that.

9 **BY MR. DONOVAN**

10 Q And, Ms. Strach, I gave you a hard copy. There is shading
11 on the one on your screen, which may be easier to follow.

12 A Yes.

13 Q So let's look at Plaintiffs' Exhibit 68A, which is a State
14 Board of Elections mail verification analysis of new voters
15 from February 11, 2013. And you reviewed this document;
16 correct?

17 A I have.

18 Q So let's start at the top. The title of this report is
19 called "Mail Verification Analysis of New Voters." Do you see
20 that?

21 A I do.

22 Q And it goes on to say that, "The State Board of Elections
23 reviewed data in the statewide voter registration database
24 system to analyze the mail verification activity of new
25 registrations during 2012." Do you see that?

1 A I do.

2 Q And the statewide voter registration database system being
3 referred to is SEIMS; right?

4 A Correct.

5 Q It then goes to say, The chart below shows the
6 undeliverable rate of new registrations during various
7 registration periods in 2012."

8 Then it goes on to say, "These registrants would have
9 received two non-forwardable mailings pursuant to GS 163-82.7
10 that were returned undeliverable, or a confirmation mailing
11 sent to the registrant was not returned pursuant to
12 GS 163-82.14."

13 Do you see that?

14 A I see that.

15 Q And the two nonforwardable mailings are those -- what we
16 talked about before and we had on that demonstrative, the two
17 nonforwardable mailings; right?

18 A Correct.

19 Q And then this report analyzing mail verification also
20 includes, as part of that process, a confirmation mailing
21 that's sent pursuant to a different statute; is that right?

22 A This report includes that, but mail verification is really
23 the two verification mailings, the nonforwardable mail.

24 Q This report done in 2013 included in its mail verification
25 analysis both the nonforwardable and the confirmation mailing;

1 is that right?

2 A I think what it's saying is it's including the status of
3 someone that had received a confirmation mailing.

4 Q And this goes to the point, just to put a fine point on
5 it, is if someone votes and they failed that mail verification,
6 they sent through the mail a confirmation letter in which a
7 person can then send back, and that resolves that mail
8 verification issue that you had; is that right?

9 A Well, I think it's a different issue. The mail
10 verification issue has been sort of completed when it comes
11 back -- the second one comes back undeliverable. The
12 confirmation mailing is then sent as part of the list
13 maintenance process to ensure whether or not that person should
14 remain on the voter rolls. So I think they are two different
15 things. They serve two different purposes.

16 Q When you send a confirmation mailing, what are you hoping
17 to confirm?

18 A We're hoping to confirm that person's residence and that
19 they are still in the county at the address that they have
20 provided the Board of Elections.

21 Q When you send mail verification, the two cards we talked
22 about, what are you seeking to verify?

23 A We are also trying to seek confirmation that the person
24 lives there, but it doesn't require the voter to send that
25 back.

1 Q Okay. So is it fair to say that both of those
2 processes -- and I understand the way you are distinguishing
3 them -- are both intended to verify the voter's residence?

4 A That the person -- the confirmation is is the person still
5 there and they have -- will they return -- do they return that
6 at the address. But they're also exactly -- the confirmation
7 mailing can be forwardable. So you are also -- it could be a
8 new address then that you are confirming.

9 Q Okay. But on both of those, I believe you said, both
10 were -- one is kind of a negative answer, right, the two
11 nonforwardable emails (sic). The confirmation, the voter
12 actually needs to send it back; right?

13 A That's correct.

14 Q And both are intended to get at where is that voter's
15 residence; is that fair?

16 A That's true.

17 Q So let's go through this report. And as I said, the hard
18 copy is a little hard to see the shading. So if we can go to
19 the chart. What this report does -- has five different time
20 periods; is that right?

21 A Yes, it does.

22 Q Okay. And the three non-shaded time periods are time
23 periods, what I'd say, are non-same-day registration periods;
24 right?

25 A Yes.

1 Q I think your word was "traditional"?

2 A Right, non-SDR; right.

3 Q And the two shaded sections are same-day registration
4 periods; right?

5 A Correct.

6 Q Okay. And this data from the calendar year 2012; is that
7 right?

8 A That's correct.

9 Q Okay. So let's go to the far right column first, and this
10 is what we talked about earlier. The non-SDR period has a
11 report date of February 6, 2013; right?

12 A They do, yes.

13 Q And what that means is the report, as we talked about
14 earlier, basically took a snapshot of the data as it existed on
15 February 6, 2013?

16 A Correct.

17 Q Now, if we look at the SDR periods, those have two
18 different snapshot dates; is that right?

19 A That's correct.

20 Q So the first SDR period, that's September (sic) 27, 2012?

21 A Yes.

22 Q All right. And then the final one is January 7, 2013; is
23 that right?

24 A Correct.

25 Q Okay. So as we look at these periods, it then is looking

1 at the undeliverable rate and --

2 **THE COURT:** Did you September 27?

3 **MR. DONOVAN:** I'm sorry, Judge?

4 **THE COURT:** I thought I heard you say September. I
5 may have misheard that.

6 **MR. DONOVAN:** If I did, that's my fault. The last
7 period is January 7, 2013.

8 **THE COURT:** And the one before that is?

9 **MR. DONOVAN:** November 27, 2015.

10 **BY MR. DONOVAN**

11 Q Is that right, Ms. Strach?

12 A Yes, it is.

13 **MR. DONOVAN:** So, yeah, it is after that period,
14 Judge.

15 **BY MR. DONOVAN**

16 Q So let's look at those. And in this report, the
17 undeliverable is defined, as we just said, people who either
18 failed the two nonforwardable mailings and did not subsequently
19 confirm through the confirmation mailing; is that right?

20 A Right, for purposes of this report, yes.

21 Q For this report. And this report shows the lowest
22 undeliverable rate is actually the same-day registration period
23 before the primary; is that right?

24 A Yes.

25 Q It's the 1.15 percent?

1 A Correct.

2 Q And the second lowest on this report is the same-day
3 registration period right before the November election?

4 A That's correct.

5 Q And then the third lowest is the general registration --
6 or the registration before the general election; is that right?

7 A Yes.

8 Q And then the two periods up above, which are the
9 undeliverable rates for the period from January through July,
10 that's -- the percentages are 3.2 percent and 4.3 percent;
11 correct?

12 A Yes, that's what it says.

13 Q So fair to say, according to this report, as of
14 February 11, 2013, the lowest undeliverable rate were both of
15 the same-day registration periods; is that correct?

16 A Right. This report reflects that, yes.

17 Q And Marc Burriss, the gentleman we saw in that memo
18 earlier, the head of IT, is the person that compiled the
19 information for these tables; is that right?

20 A I believe that's true.

21 Q You understand that this report was provided to the North
22 Carolina General Assembly?

23 A I do.

24 Q So if you could turn -- and we'll put it on the screen,
25 but what's marked as page 5 of this report.

1 What this report then did is looked at each of the time
2 periods and broke down the voters by either active, denied
3 inactive, removed, or temporary. Do you see that?

4 A I do.

5 Q Okay. I want to focus on the removed to kind of highlight
6 how dynamic this process is. These people are people who
7 although they registered during this period, they were
8 subsequently removed; is that right?

9 A Right.

10 Q Whether or not they were active, denied or -- well, active
11 or inactive, they've since been removed from the rolls; is that
12 right?

13 A Correct.

14 Q This shows that the period of July 2012 through
15 October 2012, that by the snapshot date in February of 2013,
16 that of these voters, it shows almost 200 of them were removed
17 because they were deceased; is that right?

18 A Yes.

19 Q Almost 1,800 have moved from the county; is that right?

20 A Yes.

21 Q Okay. And a little over 2,900 have moved within the
22 state; is that right?

23 A Correct.

24 Q Okay. And what that indicates is what we talked about
25 earlier is that the data and people -- it's a dynamic process,

1 and SEIMS would show that although people may have been active
2 at one time, they get removed and maybe registered somewhere
3 else or leave the state?

4 A Right. It shows that these people registered during that
5 time period; and when that snapshot was taken, that was the
6 status of that person.

7 Q And looking at the inactive section there, do you see the
8 ones that say "confirmation not returned"?

9 A Yes.

10 Q And there was 1,493 of those. Do you see that?

11 A Yes, I do.

12 Q And just to highlight this, if we did it a month later,
13 some of those individuals may have confirmed in the interim and
14 would be moved from inactive, confirmation not returned, to the
15 active section; right?

16 A A lot of things could have happened in a month in the
17 SEIMS database. Certainly, that's one of the things that could
18 have happened.

19 Q Now, since that report, you've requested that the State
20 Board of Elections create another report on mail verifications;
21 is that right?

22 A That is correct.

23 Q And you requested that after several depositions in this
24 case; right?

25 A That is correct.

1 Q Okay. And fair to say, as we discussed, this report we
2 are going to look at grew out of this litigation; is that
3 right?

4 A This report?

5 Q Yes.

6 A This report was done prior to the litigation.

7 Q I'm sorry. The report you requested that was provided in
8 June of this year, you requested that --

9 A I did request that.

10 Q -- as part of this litigation?

11 A Right.

12 Q And as we discussed, your counsel here reviewed that
13 before it became final and it was published; true?

14 A I think they reviewed that. I am not absolutely sure who
15 reviewed that, but I -- they certainly probably did.

16 Q I am going to ask: Would reviewing your deposition that
17 we had last weekend help you -- you said you can't remember --
18 refresh your recollection of whether they reviewed it or not?

19 A What I am saying is I believe that they did. I don't have
20 firsthand knowledge about that, but I believe that they did.

21 Q But sitting here today, you believe they did; correct?

22 A I do.

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

24 **THE COURT:** Yes.

25 **BY MR. DONOVAN**

1 Q Ms. Strach, I've handed you what the Defendants have
2 marked as Defendant's Exhibit 16. Do you see this?

3 A Yes.

4 Q And this is the 2015 analysis of mail verification that we
5 were just discussing; is that right?

6 A Correct.

7 Q Okay. And it has a date of May 2015, but this was
8 actually provided to the Plaintiffs in this case and put on the
9 website in June of 2015; correct?

10 A Yes. And I believe that that is when it was actually
11 completed. I think the May date is an earlier version of the
12 report.

13 Q Okay. How many different versions of this report do you
14 think it went through before it became final?

15 A I don't know that.

16 Q And of this report, you did not draft any of the text; is
17 that right?

18 A I did not.

19 Q You didn't collect any of the data?

20 A I did not.

21 Q You didn't analyze any of the data?

22 A No.

23 Q You didn't verify any of the data?

24 A No.

25 Q And you didn't look at the snapshot reports that were used

1 to generate this report?

2 A I did not.

3 Q Let's go to page 2 of DX16 and just spend a moment. This
4 first chart is a copy of the chart we just looked at that's in
5 PX68A; correct?

6 A Correct.

7 Q And in that report, you said you had -- the staff had
8 identified certain duplicates that were in those snapshot
9 reports; is that right?

10 A That's correct.

11 Q And those duplicates were removed and the data was
12 corrected?

13 A Correct.

14 Q Okay. And that's what you referred to or the report
15 refers to that's saying certain of the data used in the 2013
16 report was inaccurate in that it contained duplicates; is that
17 right?

18 A Right. To explain, during the SDR periods, because data
19 had to be pulled from multiple tables -- this is my
20 understanding -- that there were duplicates. When the report
21 was revisited and going back and looking at those same
22 snapshots, it was discovered there were duplicates in that.

23 Q And that's what's referred to in that footnote I was just
24 talking about; right?

25 A Yes.

1 Q On page 2. Okay. Now, after those duplicates were
2 removed, the staff did not rerun the report using those same
3 snapshot dates; correct?

4 A Correct.

5 Q They used a different snapshot date; correct?

6 A Well, there was one other issue that was the reason for
7 the later date. There were two -- as you know, two SDR
8 periods. One of those periods was run on 1/7/2013. So there
9 may have been duplicates in that. But the other reason that
10 that was run at a later snapshot was because it was determined
11 that mail verification had not had an opportunity to complete
12 for people during that time period, and so a later snapshot was
13 used, and it was used for both SDR periods.

14 Q Okay. And can you look at the last date of the
15 registration period? The first is November 3rd, 2012; correct?

16 A Yes.

17 Q Okay. And the report date is January 7th of 2013;
18 correct?

19 A Correct.

20 Q How many days are between the last date of the
21 registration period, November 3rd, and the report date of
22 January 7th, just an estimate?

23 A You basically got two months.

24 Q Okay. And as we talked about before, the first mail
25 verification should be done within 15 days; correct -- or I'm

1 sorry, it should complete itself within 15 days?

2 A SEIMS is automated to say verified at 15 days.

3 Q Then it would send another postcard out or another card
4 out --

5 A If it had been returned undeliverable, yes.

6 Q Okay. And that could -- if it's returned within 15 days,
7 and it is done again, that should complete within 30 days;
8 correct?

9 A If it's returned within 15 days.

10 Q Okay. So let's go to that second report using data from
11 really 120 days later rather than 60 days later. And that's on
12 page 3; is that right?

13 A Correct.

14 Q We don't need to go through the different time ranges
15 again, but just to note that -- let's walk through each. The
16 lowest undeliverable rate still is the SDR period before the
17 primary; is that correct?

18 A Correct.

19 Q The second lowest undeliverable rate is then the
20 registration period before the general election; is that right?

21 A That's correct.

22 Q The third undeliverable rate is then the SDR period before
23 the general election; is that right?

24 A That is right.

25 Q Okay. And then the two highest periods are actually

1 non-SDR periods from January through July of 2012; is that
2 right?

3 A Correct.

4 Q Now, this shows for each period the undeliverable rate.
5 That is the number that didn't deliver; right?

6 A That's correct.

7 Q So I want to show you what I've handed your counsel, which
8 is KS-4, if I can, which is a demonstrative. And this is going
9 back to the first chart on page 2.

10 I will tell you what I did, but feel free to check, which
11 is I took 100 percent minus the undeliverable rate to look at
12 it another way, and this shows how many did deliver or did pass
13 mail verification. Is that right?

14 A Yes.

15 Q Okay. And in looking at both SDR periods and the period
16 right before the general election, they all were above
17 98 percent; correct?

18 A Right.

19 Q Okay. And the two periods -- non-SDR periods were lower
20 than that, one 96 and one below 96 at 95 percent; is that
21 right?

22 A Two of them were.

23 Q Two of them were. Okay. So then let's go to KS-5. I did
24 the same thing for the second chart. In here, it would show
25 that the first SDR period before the primary is still --

1 **THE COURT:** Can you go back one?

2 **MR. DONOVAN:** Yes, we can. Let's go to KS-4.

3 **THE COURT:** Okay. Thank you.

4 **BY MR. DONOVAN**

5 Q If we go to KS-5, this does the same thing, ma'am. There
6 is a calculator there if you want to check, but we take
7 100 percent minus each of the undeliverable rates. And if you
8 look at that, the SDR period, rather than having the lowest
9 undeliverable rate before the primary, would actually have the
10 highest deliverable rate; is that right?

11 A Yes.

12 Q Okay.

13 A On this chart, yes.

14 Q And under your revised analysis, then the period right
15 before the general election would have the second highest at
16 98.0 percent; right?

17 A Yes. Once again, by this chart, yes.

18 Q You checked my math. Do you agree with that? Is that --

19 A I agree with your math.

20 Q Okay. And then the third would be the next SDR period,
21 which would be at 97.75 percent; correct?

22 A Yes.

23 **THE COURT:** Which of the undeliverable rates off of
24 this exhibit were you subtracting --

25 **MR. DONOVAN:** Sure. So the first, KS-4, was using

1 the chart on page 2.

2 **THE COURT:** Okay.

3 **MR. DONOVAN:** And then KS-5 was using the chart on
4 page 3 at the top.

5 **THE WITNESS:** All right. Thank you.

6 **BY MR. DONOVAN**

7 Q Then if we go to KS-6. So what I did here, Ms. Strach --
8 and you can do the math, but I think you can look at it and see
9 if we add all the SDR registrations, we determine a deliverable
10 rate, and add all the non-SDR, the numbers are effectively --
11 although the SDR is slightly higher, they are effectively the
12 same. Do you see that?

13 A Yes.

14 Q Now, at the bottom of page 3, you had your staff do the
15 additional analysis, you thought, from the depositions, and
16 that is determine the number of voters that voted that had not
17 yet mail-verified; is that right?

18 A It determined the number of people that registered in
19 2012, and of those who voted, did they pass mail verification.

20 Q Right. And as we talked about, almost every same-day
21 registrant registers and votes; right?

22 A Correct.

23 Q Whereas, if you look at a larger sample of non-SDR
24 registrants, some decide to vote, some don't; right?

25 A Right.

1 Q So by a matter of math, it is going to make the
2 percentages during the non-SDR period lower; correct?

3 A If more people during the traditional non-SDR do not vote,
4 yes.

5 Q So let's look at your chart at the bottom of page 3. I
6 want to focus on the final row for a moment. That is the SDR
7 period before the 2012 election. And of the 96,691 new
8 registrants during that period, 2,171 of them did not pass this
9 mail verification as of March 22, 2013?

10 A Based on the proxy, yes.

11 Q Based on the proxy. And that generated a 2.25 percent.
12 And as we discussed, of the 96,691 that registered during same
13 day, 96,529 actually voted; is that right?

14 A Of those that registered, yes. That was the number that
15 voted, yes.

16 Q And that left 2,144 that both registered and voted -- I'm
17 sorry -- newly registered, did not mail-verify, and voted; is
18 that right?

19 A Yes. According to the proxy.

20 Q According to the proxy. So let me ask you some questions
21 about those. Of the 2,144, you didn't have your staff look at
22 how many of those later became active through confirmation
23 letter or voted in a subsequent election, did you?

24 A No.

25 Q And in 2012 -- we mentioned this earlier. Some of the

1 counties in 2012 did not start mail verification for same-day
2 registration within 48 hours, did they?

3 A That's correct.

4 Q So in not doing that, you would agree with me, they were
5 not following North Carolina law?

6 A I agree.

7 Q And you did not have your staff look to see how many of
8 those 2,144, the counties that did not start within 48 hours
9 are included in that number, did you?

10 A The purpose of this report was just to look at mail
11 verification, and with this part of the report, mail
12 verification for those that had voted, not anything past the
13 mail verification process.

14 Q Did you have anyone on your staff look if any of those
15 2,144 were from any of those counties in 2012 that did not
16 start mail verification within 48 hours?

17 A I am -- of the 2,144 that didn't deliver, were they in the
18 counties that did not start --

19 Q Start the mail verification within 48 hours as required by
20 North Carolina law.

21 A I believe some of them are.

22 Q Okay. Do you know how many?

23 A I don't.

24 Q Did you have your staff look at how many of the 2,144
25 undeliverable were already North Carolina registered voters

1 that simply registered in a new county and voted in 2012?

2 A No. Again, this was not part of this report.

3 Q Okay. Did you have your staff look at how many of the
4 2,144 lived on military bases in North Carolina?

5 A No.

6 Q Did you have your staff look at how many of the 2,144
7 lived in apartment buildings in North Carolina?

8 A No. Once again, that was not the purpose of this. It is
9 just looking at mail verification.

10 Q Did you have your staff look at how many of the 2,144 you
11 list on this chart that lived at homeless shelters here in
12 North Carolina?

13 A Once again, not the purpose of this report or analysis.

14 Q If I asked you those same series of questions for each of
15 the categories on this chart at the bottom of 3 for the period
16 during registration before the election, the SDR before the
17 primary, or the two earlier periods, your answers would be the
18 same; correct?

19 A They would.

20 Q Now, if you add up all of the new registrants who didn't
21 complete mail verification but voted in 2012, I will tell you
22 that that number I get is 4,625. Do you see that?

23 A It's here?

24 Q It's not.

25 A Okay.

1 Q I will represent to you that was my math.

2 A Okay.

3 Q But if you look at the column, it's the 552 plus 138, plus
4 335, plus 1,456, plus 2,144. Do you see those?

5 A I do.

6 Q And if you add up the column next to it, the total new
7 registrants for 2012, that number that I got -- feel free to
8 add it -- but it's 515,321. Do you see that?

9 A I do.

10 Q So if you want, if you take your calculator there, if we
11 take 4,625 which represent --

12 A 4,625?

13 Q 4,625 divided by 515,321.

14 A 515,000?

15 Q 321.

16 A Yes.

17 Q What result did you get?

18 A It says 89 percent.

19 Q .0089?

20 A Yes.

21 Q And that would be .89 percent of all the new registrants
22 in 2012; correct?

23 A Yes.

24 Q So less than 1 percent; is that right?

25 A Yes.

1 Q I want to do one more calculation here. And that is, if
2 we add up -- let me approach with one thing first.

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

4 **THE COURT:** Yes.

5 **MR. DONOVAN:** Judge, I apologize. I only have one
6 copy at this time, but I will put it on the screen.

7 **BY MR. DONOVAN**

8 Q Ms. Strach, I handed you a screenshot from the North
9 Carolina State -- this is your State Board of Elections; is
10 that right?

11 A That is.

12 Q Okay. And at the top, I'm only showing you this, it
13 reports the total ballots cast for the 2012 election; is that
14 right?

15 A Yes.

16 Q And if we look at the top, that number is 4,542,488. Do
17 you see that?

18 A Correct.

19 Q Okay. So I want to do one more calculation. If we take
20 all of the voters that registered both during what you call the
21 traditional and the SDR period before the 2012 general
22 election, so 2,144 plus 1,456, that equals 3,600. Do you agree
23 with that?

24 A I'm sorry? Say that one more time.

25 Q 1,456 plus 2,144.

1 A That's -- you're taking those numbers from?

2 Q I'm taking it from your bottom chart on page 3, and those
3 are the voters that newly registered in 2012 before the general
4 election during the traditional and the SDR period but did not
5 mail-verify.

6 A Okay. Yes. I see that now. Sorry.

7 Q Let's divide that by the total votes cast in the 2012
8 election here in North Carolina. Did you get .00079?

9 A I did.

10 Q Okay. So that would mean .079 percent of the votes in
11 North Carolina in 2012 were those representing those that
12 registered during 2012, both the traditional and the SDR
13 periods, and did not mail-verify before they cast their vote;
14 is that right?

15 A Yes. Based on the proxy, once again.

16 Q Based on the proxy. Now, looking at all -- we are back on
17 Chart 3 at the bottom of page 3. Looking at all of the
18 individuals that registered during 2012, voted but did not
19 complete mail verification, you have not determined that any of
20 those votes were fraudulent; right?

21 A No, I have not looked into it, so I couldn't tell whether
22 they were or whether they were not.

23 Q You don't have any information at all to suggest in any
24 way to this Court that any of those votes in any of those
25 columns under "Total Undeliverable" were fraudulent; true?

1 A I have reason -- for some reason, they failed mail
2 verification. Whether that was because they didn't live there
3 and they shouldn't have registered, I don't know. I don't have
4 enough information to say that.

5 Q Ms. Strach, you don't have any information to suggest in
6 any way to the Court that any of those votes under the "Total
7 Undeliverable" column are fraudulent; correct?

8 A As I said, I don't have -- I don't personally have
9 information. We have not looked into the reason why they
10 failed mail verification.

11 Q Looking back on your Chart 3, you would agree with me if
12 same-day registration was not effect in 2012, although we have
13 nothing to suggest that any of them were fraudulent, 96,691
14 votes would not have counted; true?

15 **MR. PETERS:** Object to form.

16 **THE COURT:** Hold on just a minute. What page are we
17 on?

18 **MR. DONOVAN:** I'm on the bottom of page 3 of DX16,
19 Your Honor.

20 **THE COURT:** I'm sorry. I'm not sure I understand the
21 question.

22 **MR. DONOVAN:** Let me re-ask it then. That's
23 important.

24 **BY MR. DONOVAN**

25 Q So if we look on the bottom of page 3, do you see that,

1 Ms. Strach?

2 A I do.

3 Q And you would agree with me, I think we just confirmed,
4 that you don't have any information that any of these votes
5 during the SDR period, whether they mail-verified or not, were
6 in any way fraudulent; is that right?

7 A I don't have information either way.

8 Q But if same-day registration was not in effect in the 2012
9 election, 96,529 votes that were cast would not have been
10 counted under H.B. 589; is that right?

11 **MR. PETERS:** Objection. Calls for speculation.

12 **THE COURT:** Hold on just a minute, please. I will
13 overrule the objection.

14 **THE WITNESS:** So you are asking me if 96,000 --

15 **BY MR. DONOVAN**

16 Q You want me to re-ask the question?

17 A If you could.

18 Q If H.B. 589 was in effect in 2012, and, thus, we did not
19 have same-day registration, 96,529 votes cast in the
20 November 2012 election would not have counted; true?

21 **MR. PETERS:** Your Honor, I am going to object again
22 because there is an assumption there that those voters would
23 have voted if same-day registration was not in effect. He
24 seems to be assuming that they still would have cast votes
25 during early voting without having registered. I think there's

1 a faulty assumption there.

2 **MR. DONOVAN:** Well, Your Honor, that's going to be
3 for us to argue and for you to decide. I understand that's the
4 argument, but I think it is pretty well established that if we
5 had H.B. 589 in 2012 -- and part of this has been some
6 allegation of fraud, and we've established that none of these
7 votes -- if there is any information by the chief elections
8 official in North Carolina has any proof of fraud, they would
9 not have counted. I think it is a fair question. They can
10 make their arguments, Judge, but they can't kind of stop the
11 examination of the chief elections official.

12 **MR. FARR:** But, Your Honor, the evidence is that in
13 2014, there were, I think, about 800 ballots cast during early
14 voting by people who cast provisional ballots for no record of
15 registration. So Mr. Donovan is assuming that these 96,000
16 people would have gone and voted during same-day
17 registration -- or during early voting, even though there was
18 no same-day registration, when there is no evidence in the
19 record to support such an assumption.

20 **MR. DONOVAN:** That is not the assumption of the
21 question.

22 **THE COURT:** I am going to overrule the objection, but
23 I don't know what weight I am going to give whatever the
24 response is because of some of the concerns that are expressed.
25 You may answer.

1 **THE WITNESS:** Well, how I would answer that is if --
2 first of all, let me say this. I don't know that 96,529
3 people -- this is based on a proxy in SEIMS. So I do not know
4 these people -- that's the number that failed mail
5 verification. It could have been higher than that, or it could
6 have been lower than that as well.

7 So assuming that that is the people that actually
8 came to vote during the early period where there is no same-day
9 registration and they cast a ballot, because there is no
10 same-day registration, their vote would not be counted.

11 **BY MR. DONOVAN**

12 Q Now, ma'am, in the report you requested for this
13 litigation, on the next two pages, you generated -- your staff
14 generated additional charts and graphs; is that right?

15 A That's correct.

16 Q Okay. And I think you told me last time these are
17 questions better equipped for Mr. Neesby, who is going to
18 testify in this case?

19 A As far as analyzing the data, that is absolutely true.

20 Q Although we will ask our questions of him, I am going to
21 ask you the same question. For the individuals identified in
22 these analyses that may or may not have mailed-verified but
23 voted, you don't have any information that any of those votes
24 were fraudulent; correct?

25 A Like I said earlier and what I want to be clear about,

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1 that is because we have not looked into why these people did
2 not mail-verify.

3 Q Ms. Strach, I think you've said before, you believe more
4 time for mail verification would be helpful; correct?

5 A The mail verification system that we have is what we have
6 to continue with. I think that's the only way. There would
7 have to be more time for someone to be able to complete that
8 process in order to be held to the same standard as every other
9 voter.

10 Q One way to do that would be to move the canvas date back;
11 correct?

12 A Well, two things. If you -- you would have to change the
13 law to allow the verification process to complete up to canvas
14 day. Right now, it's Election Day. So you would have to
15 change the law and do that. If you were able to change the
16 law, you would then have to build in enough time for that
17 process to work. And if you let someone vote on the last
18 Saturday before the election, you would need at least an
19 additional 30 days afterwards for that.

20 So, yes, if you changed all those things and moved it to
21 canvas, that would certainly be one of the things that would
22 allow for the verification process to complete.

23 Q Right. Because, you would agree, if you move the canvas
24 back, that would give you more time for your concern, that you
25 wanted more time for mail verification; true?

1 A Mail verification is what North Carolina law requires us
2 to do, and that's what I am basing that on.

3 Q And, in fact, you wouldn't be opposed to that; correct?

4 A I wouldn't be opposed to the -- I guess I don't understand
5 your question. Opposed to what?

6 Q Sure. Let me ask these questions and see if you can
7 answer it. We've already talked about one way to get more time
8 for same-day registration is to extend the canvas; correct?

9 A Right, that you can do that.

10 Q And you wouldn't be opposed to that; correct?

11 A I would be opposed to something -- what I would be opposed
12 to is if we had to move it out so far that the Board of
13 Elections couldn't do their work, and we had to make sure that
14 people were seated -- if -- those people that are elected, we'd
15 have to make sure there was time for that. So we would have to
16 make sure we had a time period where all those things could
17 take place.

18 **MR. DONOVAN:** May I approach, Your Honor?

19 **THE COURT:** Yes.

20 **BY MR. DONOVAN**

21 Q Ms. Strach, you sat for a deposition last weekend;
22 correct?

23 A I did.

24 Q You gave testimony?

25 A Yes.

1 Q You gave testimony under oath; correct?

2 A I did.

3 Q On paragraph 44, line 14, did I ask you these questions
4 and did you give these answers?

5 "Q We've already talked about one way to
6 get more time is to extend the canvas; correct?

7 "A If you could extend the canvas enough
8 to give the process to work -- enough time to
9 work.

10 "Q And you wouldn't be opposed to that;
11 correct?

12 "A No. Moving back -- the canvas date
13 back? No, I would not.

14 "Q That would actually put less stress
15 on the system?

16 "A Absolutely."

17 Did I ask those questions, and did you give those answers?

18 A You did and I did. But I would like to clarify what --

19 Q Please.

20 A I am not opposed certainly for the canvas to be moved out
21 for purposes of letting county board of elections have more
22 time to do their work. I certainly would not oppose that. My
23 only point on that is -- and I would not oppose it for purposes
24 of mail verification, if that's what the law was changed to.

25 I'm just saying in order for the mail verification system

1 that we have in place to work, if you moved it out where it
2 would work -- would need to be to work, I am not sure how far
3 it would be. You could possibly be into December or later, and
4 then we would have other issues with seating elected officials,
5 and that's my only point about that.

6 Q And we had same-day registration in North Carolina before
7 it was repealed by 589; correct?

8 A We did.

9 Q And you haven't determined, based on your work --
10 withdrawn. We'll get to that.

11 And when same-day registration was in effect, it actually
12 required that individuals provide ID when they show up, and
13 then you would do the mail verification process; correct?

14 A That's correct.

15 Q And if they failed mail verification before the canvas
16 date, their vote could be retrieved; correct?

17 A No.

18 Q It could not be retrieved?

19 A No. What same-day registration required, because that's
20 absen -- they are an absen -- it's an absentee ballot. And the
21 current law and the law it was then is that absentee ballots
22 can be only challenged --

23 Q Challenged, okay.

24 A -- on Election Day. So if it's not challenged, then that
25 ballot would not be subject to retrieval.

1 Q So it is on Election Day. And as we talked about, there
2 are votes that aren't mail-verified that are through
3 traditional registration; correct?

4 A Correct.

5 Q And same-day registration?

6 A That's correct.

7 Q Let's go to what we talked about, the DMV process.

8 **MR. DONOVAN:** May I approach, Your Honor?

9 **THE COURT:** Yes.

10 **BY MR. DONOVAN**

11 Q I handed you an email, ma'am, that's marked PX340. Do you
12 see that?

13 A I do.

14 Q And you've received this email in the past; correct?

15 A I was copied on this, yes.

16 Q If you look at the bottom, there is an email from
17 Ms. Degraffenreid to directors of the State Board of Elections
18 group. Can you summarize what Ms. Degraffenreid is discussing
19 in the bottom email?

20 **MR. PETERS:** Your Honor, if I could just interrupt
21 for a minute to check and make sure whether Ms. Strach needs
22 her glasses, because I am told they are back here.

23 **THE WITNESS:** That would be nice.

24 **MR. PETERS:** May I approach, Your Honor?

25 **THE COURT:** Yes.

1 **THE WITNESS:** Yes. So what Ms. Degraffenreid was
2 telling the directors is that apparently there had been some
3 counties that had determined that they had not received the
4 images from DMV. What happens when you register at the DMV is
5 you -- they send electronic data based on the transaction.
6 They also send the image where you signed the application.

7 And this email indicates that the electronic data --
8 we have the electronic data. We usually wait for that
9 electronic data to -- for the images to be received so they can
10 both be sent to the Board of Elections for processing, that we
11 had images that had not -- we had not received yet. And so
12 this was her letting the counties know that if we don't receive
13 those images, then we will push the data for them to process.

14 **BY MR. DONOVAN**

15 Q And then you have a response by Charlie Collicutt? Do you
16 see that?

17 A I do.

18 Q Who is he?

19 A He is the director of the Guilford County Board of
20 Elections.

21 Q And he responds that, "I think we really do need the
22 images, and not rely on the I-Queue mailings to correct DMV's
23 mistake." He says, "We all the response rate on reject
24 letters - low to put it kindly." Do you see that?

25 A Yes, I do.

1 Q What are reject letters?

2 A Well, I think what he is talking about is we have what we
3 call an I-Queue, and that is where if we have voter
4 registrations that are incomplete for some reason, it can be
5 for a variety of reasons, and if the data image has not reached
6 the county board of elections with the data, that's a place
7 where that voter registration would go.

8 We send -- we don't call it a reject letter. It think
9 sometimes in years past, it might have been called that, but
10 it's an incomplete letter. It is a letter sent to the
11 applicant, the voter registration applicant, that says whatever
12 the deficiency is, and you need to return it.

13 In this situation, if they had not received the image from
14 DMV, they would be asking for the applicant to complete a new
15 registration form to be included with the electronic record.

16 Q And what did you understand Mr. Collicutt to be saying
17 when he says, "We all know the response rate on reject
18 letters" -- or incomplete letters, in your language -- "low to
19 put it kindly"?

20 A I really don't know that I can speculate exactly what he
21 means by that. I think he was just saying that he doesn't
22 believe they are going -- they may not respond back.

23 Q He actually said he thought the response rate on such
24 letters would be "low to put it kindly"; correct?

25 A That's what he said.

1 Q And Mr. Collicutt is the director of elections in Guilford
2 County?

3 A He is.

4 **MR. DONOVAN:** Your Honor, I move the admission of
5 Plaintiffs' Exhibit 340.

6 **THE COURT:** Any objection?

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

8 **THE COURT:** Admitted.

9 **BY MR. DONOVAN**

10 Q Ms. Strach, while we are waiting, I want to go back to
11 modifications potentially to same-day registration. Another
12 way to provide more time to mail-verify for same-day
13 registration would be to start the early voting period earlier;
14 correct?

15 A To start the early voting period earlier so you would have
16 more time. It would only be for those people that registered
17 during that early period. It would not make any difference for
18 those that were later in the period, so it would have to be far
19 enough back that those people could complete the mail
20 verification process.

21 Q Sure. But if we had, rather than a 10-day early voting
22 period, a longer period, people could same-day register, and
23 that would provide more time for the mail verification process
24 we discussed; correct?

25 A It would still not address those that registered during

1 the latter part of the -- or at least the 10 or 15 days before
2 early voting, or even 30 days. It wouldn't address that.

3 Q But it would provide more time; true?

4 A Well, you are always going to provide more time, but it
5 would not provide any more time for those people that are
6 registering during the last days. It would no effect on those
7 people.

8 Q And would it be your position as a chief election officer
9 that any voter, even if they vote traditional, and they don't
10 mail-verify, their vote should be excluded?

11 A Is it my position -- I'm sorry. State that one more time.

12 Q As the chief elections officer in this state, is it your
13 position that voters during the traditional period that do not
14 complete mail verification, that it would be better if their
15 votes are not counted?

16 A It is North Carolina law that they are not counted. I
17 mean, that's what the law states. If you fail mail
18 verification, you are denied. Therefore, you are an ineligible
19 voter. So it can't count.

20 Q Well, I thought we talked about voters -- we can go back
21 to your chart. Why don't we do that then. Do you have
22 Defendant's Exhibit 16 in front of you, ma'am? I'm on page 3
23 of your updated chart at the bottom.

24 Is it your position as the chief elections officer in
25 North Carolina that the 1,456 voters that registered outside of

1 the SDR period, did not mail-verify but voted, that it would be
2 better if their votes did not count?

3 A No. I guess, I am sorry, I misunderstand. What I'm
4 saying is that North Carolina law says if you have not voted
5 and you fail mail verification, you are denied. Therefore, you
6 cannot vote. North Carolina law also allows, though, if you
7 have not completed mail verification and you vote, then your
8 vote has to be counted unless it is challenged on Election Day.
9 It does have the challenged provisions so that if someone sees
10 that someone has not verified their address, they could
11 challenge that voter, and then that voter ballot would not
12 count.

13 Q So if the same-day registration -- the repeal of same-day
14 registration of H.B. 589 is allowed to go into effect, those --
15 if it was in effect for 2012, those 1,456 votes would be
16 counted, but the 2,144 would not; correct?

17 A Are we talking about 2012?

18 Q Correct.

19 A If those people presented to vote and knew -- and knowing
20 there was not same-day registration and chose to cast their
21 ballot during that time anyway -- is that your question that
22 you are asking? I'm sorry.

23 Q No, that's fine. Let's walk through it this way. I don't
24 want to confuse you. If H.B. 589 -- we are looking back.

25 A Right.

1 Q -- applied in 2012, and those same votes were cast, the
2 1,456 would have counted in 2012, and they would count even
3 after H.B. 589 is in effect; correct?

4 A That is correct, unless they are sustained by a challenge.

5 Q Okay. And that's the point is that there will be, and
6 there has been, we know from history of looking at these
7 elections, that even voters that vote during, your words, the
8 traditional registration period, there are some amount that
9 vote, their vote is counted, and they don't mail-verify; is
10 that true?

11 A That's correct.

12 Q Let me hand you --

13 **MR. DONOVAN:** May I approach, Your Honor?

14 **THE COURT:** Yes.

15 **BY MR. DONOVAN**

16 Q Ms. Strach, I've handed you what's marked as Plaintiffs'
17 Exhibit 622. Do you see that?

18 A I do.

19 Q And this is another one of these -- this is an
20 SBOE-numbered memo; correct?

21 A It is.

22 Q And this one is marked 2012-20. Do you see that?

23 A Yes.

24 Q And this is an email from Gary Bartlett to directors.
25 That would be the county board of election directors?

1 A That's correct.

2 Q And this is titled "Proof of Residency for Same-Day
3 Registrants." Do you see that?

4 A Correct.

5 Q Has this memorandum since been overruled or modified that
6 you know of?

7 A It's not been officially modified in any way, no.

8 Q And this is called "Proof of Residency for Same-Day
9 Registrants"; right?

10 A Correct.

11 Q And it goes through in summary, as we look below, is that
12 when you same-day register, Mr. Barrett was reminding the
13 county board of election directors what was required under
14 same-day registration; is that right?

15 A That's correct.

16 Q Okay. And the first block quote, it provides that you
17 have to provide "proof of residence by" providing -- "by
18 presenting any of the following valid documents that show the
19 person's current name and current residence address." Do you
20 see that?

21 A Yes.

22 Q Okay. So it needs to be their current residence; is that
23 right?

24 A That's correct.

25 Q And if we look down below, that's emphasized yet again

1 when they say the list of acceptable documents is a copy of a
2 current and valid photo identification, or, in the second line,
3 it talks about a current utility bill and so on; correct?

4 A It does.

5 Q And if I look at Number 2 of all the items that are
6 permitted, a lease is not one of the items that is permitted;
7 correct?

8 A No, it is not.

9 Q Okay. And if we look at -- going over to the last page of
10 this document, rather than in a memo form, this looks like a
11 little bit more of a handout form; is that right?

12 A The third page?

13 Q Yes.

14 A Yes, it is.

15 Q And is it common for county board of elections to use such
16 handouts to train their poll workers?

17 A Yes, it is.

18 Q And looking at the last page -- we don't need to go
19 through the whole thing, but it again emphasizes that you need
20 proof of residence, and it needs to be current; correct?

21 A Correct.

22 Q Okay. And if we look at the list on the right-hand side
23 for same-day registration, it lists documents showing name and
24 current address of the applicant, and it has a long list and,
25 again, a lease is not one of those items; correct?

1 A A public housing document would be one of those.

2 Q But if it's a public --

3 A It would have to be a public --

4 Q It has to be a public --

5 A Public leasing.

6 Q Not a private lease?

7 A I don't think so, no.

8 Q Ms. Strach, during the preliminary injunction phase of the
9 case, you submitted a declaration; is that correct?

10 A Correct.

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

12 **THE COURT:** Yes.

13 **BY MR. DONOVAN**

14 Q Ms. Strach, I would direct your attention to paragraph 28
15 of your declaration. Just let me know when you get there.

16 A Mr. Donovan, I think this might be the wrong declaration.

17 Q Oh, is it?

18 A Oh, I'm sorry. I thought you said page 28.

19 Q Let me focus your attention on paragraph 28. Do you see
20 that?

21 A I do.

22 Q And in paragraph 28, you start off saying, "SDR has been
23 the direct cause of significant problems in an election." Do
24 you see that?

25 A I do.

1 Q And then you refer to the municipal elections in the town
2 of Pembroke in 2013; is that right?

3 A Correct.

4 Q Okay. And this is a municipal election that took place
5 under your watch as executive director; is that right?

6 A I did.

7 Q And it was an election for town council?

8 A Yes.

9 Q Okay. I think we agreed it was a small election; is that
10 right?

11 A It was a pretty small election.

12 Q And what you talk about in paragraph 28 is nine members of
13 a basketball team that showed up during early voting to
14 register same day and vote; is that right?

15 A Correct.

16 Q And in that they presented a lease as proof of their
17 residence to same-day register; correct?

18 A Correct.

19 Q And as we just talked about, this was a private lease;
20 correct?

21 A I believe that it was.

22 Q And I think we just agreed that a private lease is not
23 sufficient, either under the SBOE memo or otherwise, as proof
24 of current residence; correct?

25 A That's correct.

1 Q Okay. So if the law was followed by the poll worker, she
2 would not have registered those people; correct?

3 A Those nine -- right; if she had used a correct document,
4 she shouldn't have registered those people.

5 Q So if she followed the law and was trained better, she
6 would not have let them same-day register; correct?

7 **MR. PETERS:** Object to the characterization.

8 **THE COURT:** Overruled.

9 **THE WITNESS:** I don't know about her training. I
10 don't know why she accepted that document.

11 **BY MR. DONOVAN**

12 Q But she shouldn't have accepted it; correct?

13 A She should not have accepted a private lease, no.

14 Q And the problem there wasn't just that it was a private
15 lease, it was a private lease that wasn't even going to start
16 until December of '12; correct?

17 A The date was postdated.

18 Q So she violated the lease doesn't count, and she also
19 violated the need to show current residence; correct?

20 A Correct.

21 Q Okay. And in your declaration at paragraph 28, you didn't
22 disclose either of those facts; correct?

23 A I did not disclose those facts in that, but the reason I
24 did not disclose those facts in that is because the reason that
25 I believe that SDR was an issue was there were also other

1 people that presented documents that were -- would have been
2 acceptable that were not valid.

3 But the purpose on this was that these individuals showed
4 up with a document, the precinct official -- they would not
5 have been able to do that. They did not live in Pembroke.
6 They were not -- they did not have the ability to go through
7 mail verification in order to determine their residency. That
8 was the purpose of that.

9 Q Well, let's -- we are going to get to that point. But the
10 point here is that those nine basketball players that used a
11 private lease that was postdated should never be accepted for
12 same-day registration; correct?

13 A They shouldn't, and they didn't live in Pembroke.

14 Q Okay. And there was a hearing in December 20th of 2013
15 regarding the Pembroke Town Council; correct?

16 A There was.

17 Q And you were the executive director of the State Board of
18 Elections on that date; correct?

19 A I was.

20 Q You attended the hearing?

21 A I did.

22 Q And you are aware of what happened at that hearing;
23 correct?

24 A I am.

25 Q You were aware of that prior to submitting your

1 declaration to this Court; correct?

2 A I was.

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

4 **THE COURT:** Yes.

5 **BY MR. DONOVAN**

6 Q Ma'am, I've handed you what is Plaintiffs' Exhibit 580.

7 It was also showed to you at your deposition. And this is a

8 copy of the transcript from the hearing on that Pembroke;

9 correct?

10 A Correct.

11 Q And at that Pembroke hearing, the State Board of Elections

12 determined that the ballots cast by those nine basketball

13 players were retrievable; correct?

14 A They were retrievable because they were absentee, yes.

15 Q And the concern was not those nine basketball players.

16 The concern was that no one trusted what this poll worker had

17 done at that location, which is why they called for a new

18 election; correct?

19 A I believe they called for a new election because they were

20 not sure of the process and how many other people could have

21 been involved in that.

22 Q They weren't sure if this poll worker was making mistakes

23 otherwise as well; correct?

24 A I think that was one of their concerns, yes.

25 Q And as a result of this mistake, you instructed the

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1 Robeson County Board of Elections to conduct supplemental
2 training on these poll workers; correct?

3 A We did.

4 Q In fact, you are working to improve the administrative of
5 elections in Robeson County; correct?

6 A We are.

7 Q Okay. And you don't need to change the same-day
8 registration law to keep people like this who came if the law
9 is properly applied and the poll workers apply it correctly; is
10 that right?

11 A My point for the nine basketball players, they had given
12 an address where they did not reside. So they would have
13 failed mail verification had mail verification occurred, and
14 they would have voted. That's my point on that.

15 Q I understand your point. I am asking about the facts.
16 You don't need to change the law to keep people like this from
17 voting if the law is applied to same-day registrant voters;
18 true?

19 A If the law was applied to same-day registrant voters, it
20 still would not address the residence issue.

21 Q That's not the question here. The question in the
22 Pembroke hearing was it was a private lease that was postdated;
23 correct?

24 A Clearly, they should have not accepted that.

25 Q Okay. Let's move to on Election Day. The hours for

1 precincts to be open in 2014 on Election Day, on Election Day
2 itself, were the same as 2010?

3 A For early voting or --

4 Q I'm sorry, for Election Day.

5 A Election Day, same as 2010.

6 Q And the hours for voting precincts to be open in 2016 on
7 Election Day will be the same as 2012?

8 A Correct.

9 Q Okay. There's no additional hours on Election Day,
10 correct, because that's set by statute?

11 A It is set by statute unless the State Board agrees to an
12 extension, and they can do that.

13 Q I want to ask you about that. H.B. 589 eliminated the
14 discretion of county boards of elections to keep their polls
15 open an additional hour; correct?

16 A That's correct.

17 Q And they actually gave the State Board of Elections the
18 authority to do that rather than the county boards of
19 elections; correct?

20 A They did.

21 Q And they actually described the circumstances when you can
22 do that; right? If it's delayed opening for 15 minutes?

23 A Correct.

24 Q Any other bases?

25 A It's really a delay, and we actually used that in the '14

1 election.

2 Q Why did you use that?

3 A Because we had a polling place -- a couple of polling
4 places that were -- had delays in opening for various reasons,
5 and so the State Board actually had to act on that.

6 Q And you at the State Board of Elections don't have the
7 authority to extend the hours of the polls on Election Day if
8 you just feel there is too many people at a certain precinct;
9 correct?

10 A I don't have that authority.

11 Q Let's turn to out-of-precinct and provisional voting.
12 Prior to H.B. 589, an eligible voter was permitted to cast a
13 provisional ballot out of precinct on Election Day; correct?

14 A Correct.

15 Q So we are focused on Election Day. And an out-of-precinct
16 voter is a valid registered North Carolina voter that presents
17 to vote in the correct county but in the wrong precinct?

18 A That's correct.

19 Q Okay. And a provisional ballot that's voted out of
20 precinct, pre-H.B. 589, would be counted for all contests that
21 appeared on the ballot for which the voter would have been
22 eligible in their correct precinct; correct?

23 A Pre-H.B. 589, yes.

24 Q So a voter voting for the U.S. senator in North Carolina,
25 doesn't matter which precinct you are in for that; right?

1 A Correct.

2 Q For governor; correct?

3 A Correct.

4 Q For president?

5 A Yes.

6 Q Now, after H.B. 589, if it's not continued to be enjoined,
7 the State of North Carolina -- I will withdraw.

8 After H.B. 589's repeal of the counting of out-of-precinct
9 ballots, the State of North Carolina still provides provisional
10 ballots for many reasons, including out-of-precinct voters?

11 A Yes.

12 Q Okay. And that's because federal law requires that;
13 right?

14 A That is correct.

15 Q So even if it's more work for a county board to provide an
16 out-of-precinct provisional ballot, it has to do it because it
17 is federal law; right?

18 A Yes.

19 Q Okay. So even if there is a burden, doesn't matter,
20 federal law requires it and you are going to make sure it
21 happens?

22 A I am.

23 Q So let's talk about the different reasons people can
24 provide provisional ballots. But before we get there, would
25 you agree with me that provisional ballots can prevent simple

1 errors from resulting in the loss of eligible voters losing
2 their right to vote?

3 A They can.

4 Q And would you agree that's a necessary part of a fair and
5 secure election process?

6 A Provisional voting, yes.

7 Q Now, provisional ballots in North Carolina are offered --
8 and I'm going to go through a couple categories, but there's
9 the unrecorded-move voters; right?

10 A Yes.

11 Q There is the unreported-move voters; right?

12 A The unreported?

13 Q Yes.

14 A Yes.

15 Q There are voters that vote -- it's marked an incorrect
16 party voter; is that right?

17 A That's correct.

18 Q There are extended-hour voter provisional ballots?

19 A Yes.

20 Q There are HAVA-ID-not-provided provisional voters?

21 A Correct.

22 Q And now, after the recent amendment in the next election,
23 there will be provisional ballots for those people that don't
24 have photo IDs; correct?

25 A That present and do not provide a photo ID, yes.

1 Q So that's a new category of provisional voting?

2 A Yes.

3 Q And then, of course, we have out-of-precinct provisional
4 voting; right?

5 A Correct.

6 Q Okay. Now, with each of those categories, when they
7 are -- when a provisional ballot is cast, the county board of
8 elections, I think we talked earlier, will review that ballot;
9 correct?

10 A Right. There are other reasons, too, but I'm not sure if
11 that's --

12 Q There's other categories we haven't covered --

13 A There are other categories, yes.

14 Q When a provisional ballot is cast, the county board of
15 elections has to review that; correct?

16 A They do. They have to review the application, the
17 provisional application, yes.

18 Q What do they do with it when they review it?

19 A They review it. They determine why the person was voting
20 a provisional ballot. They try to determine whether or not
21 that person -- if that person was voting provisional ballot,
22 because it says there was no record of their registration, they
23 will try to make a determination if they have evidence that
24 that person is a registered voter. They will do whatever
25 research they need based on the reason the person voted a

1 provisional ballot.

2 Q Okay. And whether a provisional ballot cast for any of
3 these reasons counts, the county board of elections still has
4 to review that provisional ballot; correct?

5 A They have to review it, right, and provide any additional
6 information the county board would need in order to make a
7 determination of whether to count the ballot.

8 Q And after H.B. 589, such as in the 2014 election, if there
9 were any out-of-precinct voters who, even after they were told
10 the vote wouldn't count, still wanted to cast a provisional
11 ballot, the county boards of elections still reviewed those;
12 correct?

13 A They would review to see why, and if they -- if it was not
14 an unreported move, they would just be able to tell the Board
15 why that person had voted.

16 Q And under H.B. 589, the State of North Carolina is still
17 going to offer provisional ballots for all of those categories
18 we talked about, including out-of-precinct; correct?

19 A Yes.

20 Q And even under H.B. 589, the state county -- excuse me.
21 Under H.B. 589, the county boards of elections are still going
22 to review all the provisional ballots that are cast, including
23 out-of-precinct ballots; correct?

24 A They review all provisional ballots.

25 Q And after --

1 A The applications.

2 Q I'm sorry. I interrupted you. Go ahead.

3 A I'm sorry. The applications, not the actual ballots, but
4 the applications.

5 Q The applications, fair point. And after H.B. 589, North
6 Carolina is going to count properly cast provisional ballots
7 for unreported-move voters still; right?

8 A Yes, they will.

9 Q They are still going to count provisional ballots for
10 unrecorded-move voters; correct?

11 A So unreported moves are unrecorded moves, yes.

12 Q How about is -- the county boards of elections, even after
13 H.B. 589, are going to review provisional ballots that are cast
14 as incorrect-party voters; correct?

15 A Sure, yes.

16 Q And county boards of elections are still going to review
17 provisional ballots that are what we call extended-hours
18 voters?

19 A They are going to review all of them, yes.

20 Q Okay. And the county board of elections is still going to
21 review and count the HAVA-ID-not-provided voters; correct?

22 A It would still review those as well.

23 Q Okay. So the big change we have is that the county boards
24 of elections are still going to provide provisional
25 out-of-precinct ballots. They are still going to review them.

1 They are just not going to count them; right?

2 A Right. If they were just voting out of precinct and it
3 was not an unreported move, they are not going to count those.

4 Q But they are still going to get reviewed?

5 A They are going to get reviewed as far as being able to
6 tell the Board of Elections this person voted out -- this is --
7 they didn't vote in their precinct, and it was not an
8 unreported move.

9 Q So it is fair to say the burden on a county board of
10 elections, if they had to count those votes, is that they'd
11 actually have to count the votes, right, for the
12 out-of-precinct votes?

13 A The burden would be the counting of that -- for an
14 out-of-precinct voter, yes, they would have to count for the
15 ballot items of which they were eligible to vote.

16 Q And in 2014 election, the State did not count
17 out-of-precinct ballots; correct?

18 A In 2014; correct. Only unreported moves.

19 Q And you're -- the State Board of Elections and others
20 train poll workers to tell voters that their out-of-precinct
21 votes would not count; correct?

22 A We advised our counties to tell precinct officials that we
23 wanted them to make sure that they understood that if they
24 chose not to go to their correct precinct and vote their
25 ballot, if they were not an unreported move, we wanted them to

1 know your vote will not count because that's what was going to
2 happen. So that's why we wanted to make sure they knew so that
3 they took the opportunity, if they could, to go to their
4 correct precinct.

5 Q Okay. And we are going to turn next to the chart you
6 provided on out-of-provisional ballots, but did you track at
7 all or were you able to track anyone who was told that they
8 their out of -- they needed to go to a different precinct or
9 their out-of-precinct ballot wouldn't count, just never came
10 back, did not vote?

11 A I don't know that we have data on that.

12 **MR. DONOVAN:** May I approach, Your Honor?

13 **THE COURT:** Yes.

14 **MR. DONOVAN:** Your Honor, just for planning, I have
15 two more exhibits.

16 **THE COURT:** All right.

17 **BY MR. DONOVAN**

18 Q Ms. Strach, I've handed you what's marked as Plaintiffs'
19 Exhibit 689. Do you have that before you?

20 A I do.

21 Q And this is a tabulation of statewide provisional ballots
22 both for 2010 and 2014; is that right?

23 A That's correct.

24 Q And if we look at the bottom, I think your counsel has
25 mentioned that out of precinct -- excuse me. Withdrawn.

1 If we look at the bottom grand total for 2010, there were
2 26,257 provisional ballots cast during that midterm; correct?

3 A Correct.

4 Q And during 2014, there was 18,749; correct?

5 A That's correct.

6 Q And if we look over to the right, the number of
7 provisional ballots on Election Day went down; correct?

8 A Yes.

9 Q Between 2014 compared to 2010?

10 A That's correct.

11 Q Let's focus on the early voting period. During the early
12 voting period, the provisional ballots actually went up;
13 correct?

14 A Early voting period, yes.

15 Q It went from 277 in 2010 to a little under 1,500, 1,481,
16 in 2014 midterm; is that correct?

17 A That's correct.

18 Q So it increased a fair amount?

19 A It did.

20 Q And let's look at what drives that. If we look at the no
21 record of registration row, it's about the sixth row down. Do
22 you see that?

23 A I do.

24 Q And if we look at early voting in 2010, there were only 97
25 no record of registration provisional ballots during early

1 voting. Do you see that?

2 A I do.

3 Q And if we look above up that, there is an N, an P, and a Y
4 and that for stands no, partial, or yes; correct?

5 A N, P, and Y, yes.

6 Q Okay. And in 2010, actually 58 of those 97 provisional
7 ballots were counted; correct?

8 A Correct.

9 Q Okay. So let's go to the right. Let's look at 2014. We
10 have 97 in 2010. How many no-record-of-registration
11 provisional ballots do we have during early voting in 2014?

12 A 968.

13 Q So about ten times as many?

14 A Yes.

15 Q And if same-day registration was available, that would
16 have been an option for those individuals that came in early
17 voting and had no record of registration; correct?

18 A That's correct.

19 Q Okay. And if we look of the 968, can you tell us how many
20 of those 968 were not counted?

21 A 818.

22 Q And next to each of these, you list -- and I know there's
23 some unknown and other, but you list a party's race as either
24 black or white, and then you have other and unknown; correct?

25 A Correct.

1 Q And if we look at the number of black provisional ballots
2 cast early for no record of registration in 2010, there was 19
3 of the 97; correct?

4 A 2010, yes.

5 Q Yes, ma'am. Okay. That's roughly almost 19 out of 100.
6 It is a little above 19 percent; correct?

7 A You said 19 for unknown?

8 Q I'm sorry. Nineteen of ninety-seven; correct?

9 A Nineteen, yes.

10 Q Okay.

11 A I'm sorry, yes.

12 Q And then if we look to the right, if you look in 2014, how
13 many black -- or how many provisional ballots were cast by
14 black voters that had no record of registration?

15 A 300.

16 Q And how many of those 300 were not counted?

17 A 256.

18 Q Okay. And again, for efficiency, I am going to show you
19 KS-7 that your counsel has, and feel free to check my math; but
20 fair to say in 2010, a little under 20 percent of the
21 no-record-of-registration provisional ballots were cast by
22 African-Americans; whereas, in 2014, almost 21 percent of
23 no-record-of-registration provisional ballots were cast by
24 African-Americans?

25 A I believe that's correct.

1 Q Let's look at one more category. Looking at a couple rows
2 down, "Previously Removed or Denied," do you see that?

3 A I do.

4 Q And in 2010, how many North Carolina voters cast
5 previously removed/denied provisional ballots?

6 A 1,959.

7 Q Okay. And how many cast that during early voting?

8 A Eleven.

9 Q And, again, if I show up and I'm previously removed from
10 the rolls or denied, if same-day registration was available, I
11 could have reregistered; correct?

12 A If you've previously been removed and you were -- and you
13 state that you haven't moved from the county, you wouldn't need
14 to reregister.

15 Q But if I moved and I'm in a different county, I could
16 register?

17 A If you moved out of the county and you moved back, with
18 same-day registration, you could.

19 Q Okay. So let's look to the right, and tell me how many
20 previously removed/denied provisional ballots were cast in
21 2014.

22 A 1,899.

23 Q And how many were cast during early voting?

24 A 316.

25 Q So the previously removed/denied provisional ballots went

1 from 11 in 2010 to 316 in 2014; is that right?

2 A That's correct.

3 Q Okay. I did the same math based on the same methodology.

4 If we could put KS-8 up. This shows that a number of

5 African-American previously removed/denied provisional ballots

6 in 2010 were approximately 18 percent of those votes; whereas,

7 in 2014, there were 32 percent; is that right?

8 A You are talking about ballots cast, not whether or not it

9 counted, just whether they were cast?

10 Q Correct.

11 A Correct.

12 Q And, finally, on this chart, let's look at the incorrect

13 precinct, which is the third row. Do you see that?

14 A I do.

15 Q And in 2010, there were 6,274 incorrect precinct

16 provisional ballots cast; correct?

17 A Correct.

18 Q Of those 6,274, can you tell the Court how many were not

19 counted either partially or in full?

20 A Were not counted, 49.

21 Q Okay. So fair to say the overwhelming majority were

22 counted either partially or in full?

23 A Correct.

24 Q In 2014, when the out-of-precinct ballots were not

25 counted, the number went down to 1,935; correct?

1 A Correct.

2 Q Okay. But, yet, of those that were cast, 1,390 were not
3 counted either partially or at all; correct?

4 A That's correct.

5 Q So, Ms. Strach, North Carolina has a primary coming up; is
6 that right?

7 A A couple.

8 Q A couple. And you are offering one-stop early voting.
9 That begins September 3rd, I believe?

10 A Oh, we are talking about municipals? Yes.

11 Q Yes, ma'am.

12 A Yes.

13 Q And North Carolina is offering same-day registration
14 during -- for that September primary; correct?

15 A We are.

16 Q And North Carolina is counting out-of-precinct provisional
17 ballots cast; right?

18 A Yes.

19 Q And that's due to the injunction from this case; correct?

20 A Correct.

21 Q And you have on the State Board of Elections a brief
22 notice that you are offering same-day registration and
23 out-of-precinct provisional balloting; correct?

24 A We do.

25 Q And when was that put on the website?

1 A I'm not sure of the exact date.

2 Q Fair to say it was in the past kind of two weeks?

3 A I'm not sure. It's probably been in the last month, I
4 would say.

5 Q Have you conducted -- have you sent any memos to the
6 county boards of elections on offering same-day registration,
7 out-of-precinct for the upcoming primaries?

8 A Not yet, but we will.

9 Q And have you done any other publicity to let people know
10 that same-day registration and out-of-precinct is available
11 other than on the website?

12 A We have not.

13 Q Do you plan to?

14 A We certainly will, but the municipal elections, most of
15 that is going to happen with the county boards of elections.

16 Q Ms. Strach, if a Court rules that North Carolina cannot
17 repeal out-of-precinct provisional voting during federal
18 elections, you can and will make sure that happens; correct?

19 A Absolutely.

20 Q If a Court rules that North Carolina cannot repeal
21 same-day registration during the federal elections, you can and
22 will make that happen; correct?

23 A I will.

24 Q If the Court rules that North Carolina cannot repeal seven
25 days of early voting during federal elections, you can and will

1 make sure that happens?

2 A Right.

3 Q If the Court rules that North Carolina is required to
4 offer preregistration, as it did before H.B. 589, you can and
5 will make sure that happens; correct?

6 A If the Court requires it, I will do it.

7 Q Thank you, Ms. Strach.

8 **MR. DONOVAN:** Thank you, Your Honor.

9 **THE COURT:** All right. We're going to take our
10 afternoon break for 20 minutes, and then we'll pick up from
11 there.

12 (The Court recessed at 3:34 p.m.).

13 (The Court was called back to order at 3:56 p.m.)

14 **THE COURT:** Ms. Riggs.

15 **MS. RIGGS:** Good afternoon, Your Honor.

16 DIRECT EXAMINATION

17 **BY MS. RIGGS**

18 Q Good afternoon, Ms. Strach.

19 A Good afternoon.

20 Q I want to ask you a few questions about the National Voter
21 Registration Act. You are the chief elections officer for the
22 State of North Carolina under the 1993 National Voter
23 Registration Act; correct?

24 A Correct.

25 Q You understand, don't you, that Section 7 of the NVRA

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1 requires North Carolina to designate as voter registration
2 agencies all offices in the state that provide public
3 assistance; right?

4 A I do.

5 Q And that in North Carolina, these public assistant
6 agencies are administered by the Department of Health and Human
7 Services.

8 A Correct.

9 Q And the NVRA mandates that public assistance offices
10 provide voter registration opportunities whenever an individual
11 is engaged in what is called a covered transaction; correct?

12 A Correct.

13 Q And these voter registration services must be provided by
14 public agencies regardless of whether the covered transaction
15 takes place in person, at an agency office, or remotely via
16 phone, email, mail, or Internet; correct?

17 A Correct.

18 Q The National Voter Registration Act contains reporting
19 requirements; right?

20 A Correct.

21 Q And you have to provide by -- at least biannual reports to
22 the Federal Election Assistance Commission?

23 A We do.

24 Q And you are aware, are you not, that the State Board of
25 Elections has reported on its website and to the EAC that the

1 number of applications from public assistance agencies has
2 dramatically decreased in 2013 and 2014?

3 A Correct.

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

5 **THE COURT:** Yes.

6 **MS. RIGGS:** Your Honor, I've handed the witness and
7 the Court what Defendants have stipulated reflects data
8 reported on the State Board of Elections website. The data is
9 from a file entitled "Public Assistance Activity 2008 to 2014."
10 The stipulation was filed on July 7, 2015, and this has been
11 marked as Plaintiffs' Exhibit 725. May I display?

12 **THE COURT:** Yes.

13 **BY MS. RIGGS**

14 Q Ms. Strach, can you go -- I only handed you Attachment A,
15 but can you look at Attachment A?

16 A Yes.

17 Q And can you tell me the number of registrations submitted,
18 the total, which is on the second page -- the total number of
19 registrations submitted from the public assistance -- from
20 public assistance agencies in 2008?

21 A 42,672.

22 Q And what is that number in 2009?

23 A 33,705.

24 Q And what is that number for 2010?

25 A 36,824.

1 Q And then 2011?

2 A 42,988.

3 Q And 2012?

4 A 41,162.

5 Q And 2013?

6 A 18,758.

7 Q And finally 2014?

8 A 13,340.

9 **MS. RIGGS:** Your Honor, I would like to now display a
10 demonstrative we've created reflecting that data that we just
11 discussed.

12 **THE COURT:** All right.

13 **BY MS. RIGGS**

14 Q Ms. Strach, based on the numbers we just talked about in
15 the demonstrative in front of you, you would agree with me that
16 there's been a significant drop in registrations from public
17 assistance agencies in the last two years; correct?

18 A Right. This does show the voter registration activity,
19 and this comes from how we track it by source, but, yes, it
20 does -- the source 01 is a public assistance agency, and those
21 numbers have dropped.

22 Q And, in fact, they've significantly dropped?

23 A Yes.

24 Q Okay. So I want to ask you -- well, I will get to how
25 they track in a second. But you've been notified -- the State

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1 Board of Elections has received this year letters notifying it
2 of NVRA violations; correct?

3 A Alleged violations, yes.

4 Q And this letter is with respect to both public assistance
5 agencies and the DMV; correct?

6 A That's correct.

7 Q So now I want to talk about how SBOE tracks registrations
8 submitted from public assistance agencies. Registration
9 applications collected by those assistance agencies are given
10 to the county board of elections; correct?

11 A That's correct.

12 Q And they are coded as having originated from a public
13 assistance agency; correct?

14 A Correct.

15 Q They have the 01 code on them?

16 A That's correct.

17 Q Okay. Is that coding done by the public assistance
18 agencies or the county board?

19 A It is actually done -- it is on the voter registration
20 form itself. Public assistance agencies will order forms from
21 our office, and we send those forms with that coding on it so
22 that everything that's distributed from that agency will be
23 recognized as coming from a public assistance agency.

24 Q And so then they send those applications to the county
25 board?

1 A Correct.

2 Q Do they also report to you, the State Board of Elections,
3 the number of applications they sent to the county board?

4 A Some do. Some do it through an online tool that we have.
5 Some report that information to the county board of elections,
6 and the county board of elections will provide that information
7 to us in a survey.

8 Q Okay. That surveying tool was developed by Veronica
9 Degraffenreid; is that correct?

10 A It was.

11 Q And Ms. Degraffenreid has been working point on
12 NVRA-related matters for some time now?

13 A Since coming to the agency, she has, I believe, been the
14 point person from the beginning. She is the point person for
15 NVRA.

16 Q And am I correct that was 2008 or 2009?

17 A Yes, ma'am.

18 Q Okay. All right. So then am I correct in understanding
19 that North Carolina FAST is a new computer program which
20 unifies how county assistance agency workers and public
21 assistance agencies process assistance applications?

22 A NC FAST, and I do not understand all of the -- about
23 NC FAST, but, yes, that is an electronic system that I went --
24 I think they went to in 2012, I think fully in December of
25 2012, for FNS applications. This is an electronic way of

1 obtaining this data and allowing people to electronically go
2 through their own computers and sign up for services that way
3 as well.

4 Q Okay. And primarily for county workers, it is a case
5 management system that allows them to avoid asking repeat
6 questions for different assistance applications; is that
7 correct?

8 A That's correct.

9 Q Okay. Now, are you aware that there was a pilot rollout
10 of NC FAST in four counties in 2012?

11 A I believe so, in around May of 2012, I believe.

12 Q Okay. Can you display KS-102. This is a demonstrative.
13 Were you aware that Guilford, Catawba, Carteret, and
14 Johnston Counties were the May 2012 pilot NC FAST counties?

15 A I don't believe I knew the specific counties, no.

16 Q Okay. Have you done any analysis to see how reported
17 registrations from public assistance agencies in 2012 changed
18 in these pilot counties before and after the implementation of
19 NC FAST?

20 A I don't think we've looked specifically at those pilot
21 counties. We have been looking at all counties. So just not
22 just these four counties.

23 Q So you didn't compare their submission rates before the
24 rollout of NC FAST and right after the rollout of NC FAST?

25 A As I said, I am not -- I don't think I was aware of these

1 four counties. So that probably has not been done yet.

2 Q Can you display KS-103?

3 So you are unaware that the average public assistance
4 agency registration applications submitted from these four
5 counties from January 2012 to April 2012 was 62.125?

6 **MR. PETERS:** Objection, Your Honor. I don't think
7 anyone has put these numbers into evidence.

8 **MS. RIGGS:** We believe they will be later in our
9 case-in-chief, or we will submit a motion for judicial notice,
10 as these are all numbers; but I am just asking her if she is
11 aware of them.

12 **THE COURT:** I will allow it, subject to it being
13 connected up later with the evidence.

14 **THE WITNESS:** I was not aware of that.

15 **MS. RIGGS:** Next slide, please.

16 **BY MS. RIGGS**

17 Q And so are you aware that after the implementation of
18 NC FAST in these four pilot counties that the average number of
19 registrations submitted from the agencies from July 2012 to
20 December 2012, in fact, increased slightly to 62.87?

21 A I was not aware of those specific counties, no.

22 Q In 2012, we reviewed the numbers. The number of
23 applications submitted from public assistance agencies hadn't
24 hit that significant drop yet; correct?

25 A I'm sorry. By the chart?

1 Q Yes.

2 A Correct.

3 Q Okay. Now, I just want to ask a few follow-up questions
4 based on topics you discussed with Mr. Donovan this morning.
5 You talked earlier with Mr. Donovan about voter registrations
6 completed at DMV, and I believe you said that even if a person
7 who registered at DMV wasn't on the rolls, when they went to
8 vote that if there was proof that they registered at DMV, they
9 were entitled to cast a provisional ballot, and it should
10 count. Did I get correctly?

11 A If they say -- if they show up and they are no record of
12 registration, and they say they registered at DMV, that's part
13 of the provisional research. The county will research to see
14 if that individual -- they have any record that they attempted
15 to register. They actually -- we even query DMV so that in
16 case the county doesn't have that information, if DMV had that
17 information, so that if there is evidence of that, yes, that
18 ballot should count, yes.

19 Q Okay. So on the provisional ballot for no record of
20 registration, there is something the voter can check about I
21 registered at DMV; correct?

22 A There is, yes.

23 Q And then county board staff are the ones who research that
24 provisional ballot and make a recommendation to the county
25 board itself?

1 A That's correct.

2 Q And whether or not there is proof that the would-be voter
3 registered at DMV doesn't depend just on whether they had a DMV
4 interaction on the date they said they do, but also whether
5 there is record of voter registration activity that day; is
6 that correct?

7 A Are you asking if we are looking at whether or not the DMV
8 shows record of activity?

9 Q Yes.

10 A If the DMV showed record of activity and they showed that
11 they had registered, they would have -- it would be a table
12 that would provide us information that that person had chosen
13 to register at DMV at that day -- at that time.

14 Q But, in fact, you are aware of situations where a voter
15 reported being at DMV and registering, and the DMV research
16 shows the voter was at DMV that day, but there is no record of
17 registration; correct?

18 A What it would show is that in the voter table that the
19 voter said they did not want to register. There would be a
20 "no" to that question.

21 Q But it might confirm that the voter was actually at DMV
22 when they said they were?

23 A Correct.

24 Q Have you done any research to determine what percentage of
25 provisional ballots cast where the registrant said he or she

1 registered at DMV actually end up counting?

2 A I have not done any research on that. I think we
3 certainly have looked at provisional data with no record of
4 registration and DMV. I am not sure what -- I am not sure
5 myself what the statistics on that are.

6 Q As you sit here today, you don't know if a majority of
7 those votes actually end up not being counted?

8 A I believe many of those that were sent to DMV -- well, let
9 me say this. There are people -- there are registrations -- no
10 record of registrations that are sent to DMV, and they never
11 said that they registered at DMV. So I am not sure which
12 ones -- I don't know that we have data on the ones that said
13 they registered at DMV or not.

14 Q But sitting here today, you don't know how many were
15 submitted for that reason, I registered at DMV, and how many
16 were rejected?

17 A I am not sure what that number is.

18 Q You spoke with Mr. Donovan earlier about when a voter gets
19 removed for being inactive, so pursuant to list maintenance
20 procedures. I believe you said that if the voter goes on
21 Election Day and confirms his or her address, even after being
22 removed, that it was possible that the voter might still be
23 able to vote?

24 A They should be able to vote. They would vote a
25 provisional ballot. That's actually one of the provisional

1 reasons.

2 Q And there are reasons a voter can be removed besides
3 pursuant to list maintenance activity; correct?

4 A Sure.

5 Q The Department of Public Safety sends lists of -- to
6 county boards of people they alleged have been convicted of a
7 felony; correct?

8 A Correct.

9 Q And people -- county boards receive information about
10 voters who have passed away?

11 A Correct.

12 Q And counties sometimes merge duplicate files to keep the
13 lists nice and clean; correct?

14 A They do.

15 Q And all of that, in that, there is potential for clerical
16 error; correct?

17 A There is also potential for clerical error. But the
18 information that you just spoke about, felons and death, all of
19 that should be in the record for that voter as well of why they
20 were removed, not just that they were removed. That specific
21 information is contained there.

22 Q And if a voter goes and casts a provisional ballot and
23 believes that he or she has been improperly removed from the
24 rolls, there is no appeals process; correct?

25 A They would vote a provisional ballot. It would be up to

1 the county board whether or not to count it. It would be
2 counted only by the county board.

3 Q Right. And the statutes -- North Carolina general
4 statutes require that the poll worker tell the voter how to
5 find out if the provisional ballot has been counted and why,
6 but not to interact -- doesn't provide any guidance on
7 interacting with the county board to pursue an appeal if they
8 believe they have been wrongly removed from the list; correct?

9 A No. That information is whether or not their ballot has
10 been counted. There are other things that a voter can do if
11 they believe they have been improperly removed from the list.

12 Q But the statute on provisional ballots instructs the
13 county workers are only required to provide the voter with the
14 number of their provisional ballot, how to check if it's been
15 counted or not, and that they are entitled to know the reasons
16 why their provisional ballot has not been counted; correct?

17 A Correct. Pursuant to HAVA, that's exactly what they do.

18 **MS. RIGGS:** Pass the witness.

19 DIRECT EXAMINATION

20 **BY MR. KAUL**

21 Q Good afternoon, Director Strach.

22 A Good afternoon.

23 Q I would like to start out by asking you some questions
24 about preregistration. Okay?

25 A Sure.

1 Q And, first, let's talk about when preregistration was
2 still in effect in North Carolina. You've never heard of
3 somebody preregistering and then showing up to vote before they
4 were eligible to do so, have you?

5 A I haven't.

6 Q And when preregistration was still in effect, the
7 registration form actually stated that you had to be 18 years
8 old by Election Day of the general election in order to vote;
9 right?

10 A That's correct.

11 Q And in terms of registering to vote, the law under
12 preregistration was simply that once you turned 16, you could
13 submit a preregistration application; right?

14 A Right.

15 Q Now, the repeal of preregistration changed that rule;
16 correct?

17 A It did.

18 Q But even after preregistration was repealed, 17-year-olds
19 who were going to turn 18 by the date of the general election
20 were and are eligible to register to vote; correct?

21 A Yes, at certain periods, they are, yes.

22 Q I'll ask you about those certain periods in just a minute.
23 You've been aware of that rule about 17-year-olds being
24 eligible to register in certain circumstances since before the
25 repeal of preregistration took effect; correct?

1 A Yes.

2 Q Okay. Let's talk about those certain periods you just
3 mentioned. Can you explain how those periods affect whether a
4 17-year-old can register to vote?

5 A Right. There are certain periods -- even if a 17-year-old
6 would not be 18 -- would be 18 on the day of the general
7 election, they are only allowed to register 60 days out from
8 the primary for that general election. So prior to that 60
9 days, they would not be eligible to register.

10 During the 60 days and up until the close of the books
11 before the primary or election, they would be eligible to
12 register at that time and would be processed as a registered
13 voter.

14 Q Okay. And you referred to close of books. That's now 25
15 days before the -- both the primary and the general election;
16 right?

17 A That's correct.

18 Q So I just want to make sure we've got this straight. So a
19 17-year-old can register if he or she is going to be 18 by the
20 date of the general election if it's 60 days or fewer before
21 the primary or the general, but at least 25 days or more before
22 the primary or general; right?

23 A That's correct.

24 Q Do you have, like, a simple guide you hand out to
25 17-year-olds for that?

1 A We need one probably.

2 Q Now, that's in even-numbered years; correct?

3 A That's correct.

4 Q And it actually gets more complicated in odd-numbered
5 years; right?

6 A It absolutely gets more complicated.

7 Q Can you explain why that's the case?

8 A Because we have several different types of municipal
9 elections. We have four different types of municipal elections
10 that are conducted at different times during a municipal
11 election year; and based on where you live, you are only
12 eligible to vote in the municipality where you live, and,
13 therefore, the 60 days out from that election may be different,
14 depending on which municipal election you are eligible to vote
15 in.

16 Q Okay. And that's because municipalities can set different
17 days for their elections in odd-numbered years; right?

18 A By statute, they have the same date that they have to set,
19 but they are all -- they are different based on the type of
20 election that they are conducting.

21 Q Okay. And the types of elections vary on odd-numbered
22 years; correct?

23 A That's right.

24 Q Okay. So if you live in one municipality, even if you
25 share a birth date with someone who lives in a different

1 municipality, you may be eligible to register at different
2 times; correct?

3 A That's correct.

4 Q Now, the repeal of preregistration became effective
5 September 1st, 2013; correct?

6 A That's correct.

7 Q All right. And at that point in time, the set of rules
8 that we've just been discussing went into effect in North
9 Carolina; right?

10 A That's right.

11 Q Before that, as you said before, if you were 16 or 17, you
12 could just submit a registration pursuant to preregistration;
13 right?

14 A You could submit it. It was not processed until those
15 same times that we just talked about, but the county board held
16 that information in what we call a queue; and then when the
17 time -- the time for a 17-year-old to be able to register, they
18 would process that through. They would go through then the
19 mail verification process.

20 Q Okay. But from the perspective of a 16-year-old or
21 17-year-old, they could submit the application, and it would be
22 received as long as they were 16 or 17; right?

23 A Correct.

24 Q Now, let me move forward just a little bit to
25 November 2013. Did there come a point in time when you had

1 Veronica Degraffenreid instruct the DMV to stop registering
2 17-year-olds?

3 A There was a time after numerous discussions with DMV and
4 others, including our counsel in our office, we were -- because
5 of the confusion that we just talked about, we were trying to
6 find out how DMV was going to address registering people that
7 were not 18. And so after discussions, they let us know that
8 they didn't think that they could change their system in order
9 to recognize what municipal election that person would be
10 eligible to vote in. Therefore, whether or not that was a time
11 that they were eligible to register, they just didn't think
12 that they could do that.

13 So because they could not do that, what happens if a
14 16-year-old or a 17-year-old submits a voter registration
15 application to the county board of elections and it is not an
16 eligible time period, that voter is denied, is sent a letter of
17 denial saying you are not qualified because of age. So in
18 trying to make sure that we did not cause confusion for both
19 the DMV and the voter -- because they couldn't make those
20 changes in their system, that is why we thought the best thing
21 to do at that time -- so that a 17-year-old that was not
22 registering during the right time period would not receive a
23 denial letter, we thought it was best to provide those
24 instructions to DMV so that that confusion would not happen for
25 the 17-year-old that wasn't qualified since they could not tell

1 whether or not they were qualified.

2 Q Let me ask you a few follow-up questions about that.

3 First of all, I mentioned Veronica Degraffenreid. Can you just
4 tell the Court who Veronica Degraffenreid is?

5 A Veronica Degraffenreid is an employee of the State Board
6 of Elections, and she's the elections support manager. She
7 really -- one of her primary roles is to oversee a lot of
8 administrative functions of elections, specifically with the
9 counties and with voter registration.

10 Q When you said that the DMV system couldn't handle these
11 time frames you were just describing --

12 A Yes.

13 Q -- is what you meant, that the DMV could not program its
14 computer system so that it could provide examiners with an
15 accurate date as to when a 17-year-old could register?

16 A Correct. The DMV has a system that has a screen for voter
17 registration, and they did not believe that they could program
18 that so that the examiner that the driver or the voter
19 registration applicant is sitting in front of them -- whether
20 they would know whether to offer voter registration to that
21 person or not.

22 Q And that was because of this maze of different time frames
23 we've before describing for eligibility?

24 A Yes, sir.

25 Q And in addition to being worried about the DMV's system,

1 you were also worried that the DMV examiners would make errors;
2 correct?

3 A If the system could not be automated, it would be up to
4 the DMV examiner to know all the elections and whether or not
5 they were in a time frame for which they would be eligible to
6 register.

7 Q And on top of that, you were worried about confusion among
8 17-year-olds; correct?

9 A I was concerned that they would get a letter of denial of
10 their registration after they had been offered registration,
11 believing that they were eligible to register.

12 Q Okay. So because of all those concerns, you decided to
13 have Ms. Degraffenreid issue the instruction to DMV not to
14 register 17-year-olds; correct?

15 A That's correct.

16 Q Now, you said that earlier that some 17-year-olds are
17 eligible to register to vote and that you knew that at this
18 time; right?

19 A That's correct.

20 Q All right. Now, it's fair to say that you usually try to
21 follow the law in your role as executive director of the State
22 Board of Elections; right?

23 A I always try to follow the law in my position.

24 Q Okay. In this circumstance, though, the rule that was
25 being applied at DMV was not consistent with the rule

1 permitting 17-year-olds to register; right?

2 A The rule that was being provided was that they were to
3 register 18-years-olds, which is the legal age for registering
4 to vote. So we thought that that was the best way to do that
5 at that time.

6 Q I'm sorry, did you say 18 is the legal age for registering
7 to vote?

8 A Well, it's the legal age of voting. There are
9 17-year-olds that are eligible, absolutely, at certain time
10 periods.

11 Q And is it fair to say that this was sort of an exceptional
12 circumstance from your perspective?

13 A This was a circumstance where the law had just been
14 enacted, and we needed to let DMV know how to handle this since
15 it was a repeal. We could not continue to do preregistration.
16 So this was a decision believing we were complying, as best we
17 could, with what the law stated and that we were ensuring that
18 people would not be registered that were not eligible.

19 Q All right. Now, typically, if somebody submits a
20 registration and they aren't eligible or they omit something
21 from their registration, they get put into the I-Queue, or
22 incomplete queue, that you were talking about before; right?

23 A If they are qualified and it is missing some sort of
24 information, they get put into the I-Queue, yes.

25 Q What if they don't check the citizenship box on a voter

1 registration application?

2 A They would get an incomplete letter because we would not
3 process that until either that check -- that was checked or we
4 were provided something that showed that they were citizen.

5 Q But they would be put in the I-Queue; correct?

6 A Correct.

7 Q Even though they may not be eligible?

8 A Correct. And, excuse me, any registration that comes in
9 that is either missing something or the individual is not
10 eligible would go initially into the I-Queue. You could get a
11 denial letter out of the I-Queue or you could get an incomplete
12 letter out of the I-Queue.

13 Q Okay. And why didn't you just have 17-year-olds who
14 submitted registration applications put into the I-Queue?

15 A Because if they went into the I-Queue, just as they would
16 now if we had a 16-year-old that registered, their application
17 would go into the I-Queue and the result of that is they would
18 get a denial letter out of the I-Queue.

19 Q But couldn't they be put in the I-Queue and then register
20 when they turned 18?

21 A That would be preregistration.

22 Q Okay. So the reason that they get the rejection letter
23 and are not put into the queue is because of the repeal of
24 preregistration?

25 A Correct.

1 Q Now, this policy of not registering any 17-years-old at
2 the DMV was one of the points of discussion in, I think, a few
3 of your depositions; correct?

4 A It has been.

5 Q This is not the first time we've talked about this topic;
6 right?

7 A This is not the first time.

8 Q And do you recall that following one of those depositions,
9 a letter was sent to your counsel asserting that this practice
10 of not registering 17-year-olds at DMV was unlawful?

11 A I do recall that.

12 Q All right. And not long after that, you directed the DMV
13 to switch its policy to permit all 17-year-olds to submit
14 registration applications even if they were not eligible;
15 right?

16 A I did.

17 Q Okay. So now there is the reverse situation in which
18 ineligible 17-year-olds may be submitting voter registration
19 applications at the DMV; correct?

20 A And that is the case, yes.

21 Q In the meantime, between when you started that policy and
22 when it was changed, as we just discussed, there were a number
23 of eligible 17-year-olds who used DMV services who were not
24 offered voter registrations services; correct?

25 A That's correct.

1 Q And you sent a letter to those individuals; is that right?

2 A We sent a letter to -- right, to the entire list of those
3 individuals that had presented to DMV.

4 **MR. KAUL:** Your Honor, may I approach?

5 **THE COURT:** Yes.

6 **MR. KAUL:** Your Honor, this is a stipulation among
7 the parties that's been marked as Plaintiffs' Exhibit 726.
8 This stipulation was filed on July 12th, 2015. It is
9 Document 330 in the 658 case. I move that it be admitted into
10 evidence.

11 **MR. PETERS:** No objection, Your Honor.

12 **THE COURT:** Admitted.

13 **BY MR. KAUL**

14 Q Director Strach, I would like to direct your attention to
15 the last page of this exhibit.

16 A Yes.

17 Q Now, is this an example of the type of letter that you
18 sent out that you were just discussing?

19 A This is the letter that was sent out.

20 Q And would you please read the first two sentences of that
21 letter into the record?

22 A "Our records indicate you recently interacted with the
23 North Carolina Division of Motor Vehicles (DMV) and were not
24 given an opportunity to register to vote. This was due to
25 changes in our state's election laws that went into effect last

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1 year. A modification to our procedures designed to simplify
2 the registration process has been approved."

3 Q Thank you. And the change in the state's election laws
4 that you were referring to was the elimination of
5 preregistration?

6 A I am, yes.

7 Q And let me direct your attention to page 2 of this
8 document, which contains the substance of the stipulation.

9 A Yes.

10 Q All right. And this says that in September of 2014, the
11 North Carolina State Board of Elections sent letters to
12 2,726 individuals and that the last page is an example of those
13 letters; is that right?

14 A That's correct.

15 Q And the reason that letter was sent to 2,726 individuals
16 is that that is the number of individuals who appeared at a DMV
17 location and were not offered the opportunity to register to
18 vote despite the fact that they were eligible to register;
19 right?

20 **MR. PETERS:** Objection.

21 **THE COURT:** Overruled.

22 **THE WITNESS:** That is the number that, yes, we were
23 provided from DMV that we sent that to, yes.

24 **BY MR. KAUL**

25 Q All right. Let's shift gears briefly and talk a bit about

1 colleges and universities in North Carolina. First, North
2 Carolina has a number of colleges and universities; correct?

3 A It does.

4 Q Including many historically black colleges and
5 universities?

6 A Yes.

7 Q And would you agree that college students tend to move
8 frequently from residence to another residence?

9 A I'm not sure I have a whole lot of information about the
10 frequency of how they move, but they move from home to their
11 college campus.

12 Q You are familiar with the dorm system in a lot of
13 colleges; right?

14 A I am.

15 Q And in that system, a lot of students move every year;
16 correct?

17 A Some can, I would assume.

18 Q I think you testified before that you've received
19 complaints relating to mail getting to colleges. Does that
20 sound right?

21 A It's one specific complaint that I think we were talking
22 about. It was an occasion that mail had been not returned back
23 to the Board of Elections at Winston-Salem State University,
24 that verification mailings had been mailed to the university
25 mailbox, and they were undeliverable; but instead of returning

1 them back to the Board of Elections, or as they said, they had
2 an agreement for someone to pick them up, they were not
3 returned back.

4 Q All right. Let's talk about another example of the mail
5 on college campuses. And I would like to talk about the
6 judicial voter guides from 2014. What are judicial voter
7 guides, first of all?

8 A The judicial voter guide is a -- it's a voter guide that
9 was really established by the public fund program for judicial
10 candidates, the public judicial guide --

11 Q The public judicial guide you said?

12 A Yes.

13 Q And it was established for judicial candidates?

14 A It was originally, yes, established for judicial
15 candidates that -- for appellate court races, and it contained
16 information about those candidates and about the appellate
17 court system. It also contained other voter registration
18 information, and it was distributed, and is still distributed,
19 to all households in North Carolina.

20 Q All households regardless of whether the people who live
21 there are registered to vote?

22 A Regardless.

23 Q Is it sent to apartments?

24 A It is sent to every -- we send this information to the
25 Postal Service, and they provide us the household information.

1 So I am not sure exactly what is contained in that.

2 Q And in the spring of 2014, some college campuses did not
3 receive the judicial voter guide; correct?

4 A We were made aware of that.

5 Q And why was that?

6 A Why was --

7 Q Why did they not receive it?

8 A Apparently, they were not on the list of households
9 that -- this is the same list we had been sending to -- for --
10 since 2004, and they were not on that list.

11 Q All right. And next I would like to talk to you about
12 college campuses that had an early voting site on them or
13 nearby in 2012 but that didn't have an early voting site in the
14 2014 general election. Okay?

15 A Okay.

16 Q And I will refer to that as an early voting site having
17 been moved off of campus for ease of reference. Okay?

18 A Okay.

19 Q First, you would agree that early voting sites were moved
20 off of some college campuses from 2012 to 2014; right?

21 A Yes, some were.

22 Q And do you know how many?

23 A I don't.

24 Q All right. Let me ask you about a few colleges one at a
25 time. First, there was an early voting site moved off of UNC

1 Charlotte from 2012 to 2014; right?

2 A I am not -- don't know specifically about that.

3 Q All right. What about Fayetteville State University?

4 A I wasn't aware specifically about Fayetteville State
5 either.

6 Q What about North Carolina A&T State?

7 A It's possible. I have to sign all of these plans. So I
8 probably have seen it, but I do not recall that.

9 Q All right. How about Winston-Salem State University?

10 A Yes.

11 Q Yes, meaning there was a site moved?

12 A I think there was a site moved off of that.

13 Q And what about NC State?

14 A I've heard that there was one off of NC State, too, yes.

15 Q And how about Duke?

16 A I'm not sure. The information that I wouldn't see -- I
17 would not see in the plans that -- that I signed, I don't see
18 where they were previously.

19 Q What about East Carolina University?

20 A I am not specifically aware.

21 Q And you are aware of Appalachian State; right?

22 A Yes.

23 Q Now, in addition to that, the Pasquotank County Board of
24 Elections tried to disqualify a senior at Elizabeth City State
25 from running for city council in 2014; correct?

1 A I am aware of that.

2 Q And Elizabeth City State is an historically black college?

3 A Yes.

4 Q And that decision was ultimately reversed by litigation;
5 correct?

6 A No, it was ultimately reversed by the State Board of
7 Elections.

8 Q Litigation was filed before the State Board acted;
9 correct?

10 A I'm not sure how that happened, but the State Board acted
11 and reversed that decision.

12 Q Let's talk specifically about the Appalachian State case
13 that you recognized from before. Am I right that from 2006
14 until the 2013 municipal election, the early voting plans for
15 all Watauga County general elections included a site on the ASU
16 campus?

17 A I'm not sure how many elections that it was on the campus,
18 but I'm aware that it was on the campus for some elections,
19 yes.

20 Q And in 2014, there was litigation concerning the decision
21 not to put a one-stop site on the campus at Appalachian State;
22 right?

23 A That's correct.

24 Q And that litigation alleged that the site was removed to
25 deter student voting; correct?

1 A I am not specifically sure what the findings were on that.

2 Q I'm asking about the allegation.

3 A The allegation, yes.

4 Q And while that litigation was pending, the State Board
5 voted to add an early voting site on Appalachian State's
6 campus; right?

7 A Yes.

8 Q Now, have you seen emails related to that plan between
9 Stacy Eggers, IV, and Paul Foley?

10 A I don't think that I have seen those.

11 Q Paul Foley is -- was a member of the State Board of
12 Elections until very recently; correct?

13 A He was a member of the board.

14 Q Are you aware that he was advising Mr. Eggers about the
15 early voting plan for that location?

16 A I've read accounts of that.

17 Q Mr. Eggers, by the way, is the county attorney for Watauga
18 County; right?

19 A He is.

20 Q And his brother is the chair of the county board of
21 elections?

22 **THE COURT:** How does this relate to the claims in
23 this case?

24 **MR. KAUL:** Your Honor, one of the members of the
25 State Board of Elections was involved in counseling a member of

1 the county board of elections on a plan to remove an early
2 voting location from a college campus.

3 **THE COURT:** I understand that, but --

4 **MR. KAUL:** It goes to the burden on young voters, in
5 part, as a result of H.B. 589, and also it states intent to
6 discriminate against young voters.

7 **MR. PETERS:** Your Honor, I would suggest it is
8 completely unrelated to H.B. 589. If anything, it goes to the
9 actions of one board member and of one county board. But the
10 issue in this case, as the Plaintiffs have framed it, is the
11 effect of the provisions of House Bill 589 and the intent of
12 the legislature in enacting House Bill 589, and it's totally
13 irrelevant to either of those things.

14 **THE COURT:** What is the time period of this event?

15 **MR. KAUL:** This is 2014, Your Honor.

16 **THE COURT:** After H.B. 589 was signed into law by the
17 Governor?

18 **MR. KAUL:** It is, and it involves the actions of a
19 state board member who was appointed by the Governor who signed
20 it.

21 **THE COURT:** I understand. How does that go to
22 legislative intent?

23 **MR. KAUL:** It goes to the State's intent to make it
24 more difficult for young people to vote. I will add, Your
25 Honor, I am essentially done with --

1 **THE COURT:** I think it's pretty far afield. So if
2 you don't have much more, let's move on. It comes well after
3 the events that led to the passage of the bill is what you are
4 telling me.

5 **MR. KAUL:** It came approximately a year after.

6 **THE COURT:** I understand. Okay.

7 **BY MR. KAUL**

8 Q Let me switch topics. If you believe that there was a
9 significant amount of election fraud occurring in North
10 Carolina, you would investigate that fraud; correct?

11 A If there are any allegations of election fraud that are
12 made to our office, we would investigate them, yes.

13 Q Okay. What if there were no allegations but you believe
14 that there was significant amount of fraud going on in a
15 particular area?

16 A If I had evidence of fraud, I would investigate it, yes.
17 It would have to be more than just a belief. There would have
18 to be evidence to do that.

19 Q Okay. And you have not investigated individuals who
20 failed mail verification; correct?

21 A We have not investigated, right, individuals that have --
22 by virtue of just failing mail verification, we have not.

23 Q All right. And let me ask you a little bit about voters
24 who use same-day registration. First of all, on average, they
25 are younger than other voters; correct?

1 A Same-day registration?

2 Q Yes.

3 A I am not sure of the specific statistics on that, so I'm
4 not sure that I can say that.

5 Q Do you know if they are more likely to be poor than other
6 voters?

7 A I don't know.

8 Q Do you know if they are more likely to be racial
9 minorities than other voters?

10 A I don't know what the statistics are on that.

11 Q Do you know if they are more transient than other voters?

12 A I don't know that.

13 Q The mail verification process for same-day registrants,
14 you said before, was supposed to begin within two days of when
15 the registration was submitted?

16 A Correct.

17 Q And I believe you also testified before that that deadline
18 was not consistently met by the county boards of elections;
19 correct?

20 A We came to know that there were some counties that did not
21 follow that.

22 Q Okay. And the primary elections in North Carolina take
23 place on the first Tuesday after the first Monday in May;
24 correct?

25 A Correct.

1 Q Do you know when the college school year typically ends?

2 A In May.

3 Q Okay. So if a college student were to use same-day
4 registration in early May to vote in a primary and then were to
5 leave school because the year was over a few weeks later, there
6 is a high likelihood that that student would fail mail
7 verification; correct?

8 **MR. PETERS:** Objection, Your Honor. It depends on
9 what address the college student uses.

10 **THE COURT:** She can answer the question -- overruled.
11 She can answer it.

12 **THE WITNESS:** I don't know if they would fail or not.
13 It depends on if they still maintained an address there because
14 they intended to return.

15 **BY MR. KAUL**

16 Q But isn't it right that a large percentage -- a
17 disproportionately large percentage of mail verification
18 failures are accounted for by college students?

19 A I don't know that we have the specific statistics on that,
20 so I certainly couldn't answer that.

21 **MR. KAUL:** I don't have any further questions. Thank
22 you.

23 **THE COURT:** Anybody else on the Plaintiffs' side?
24 Okay. Any questions from the Defendants?

25 **MR. PETERS:** Your Honor, I do have just a few handful

1 of things that I would ask to make sure some of the testimony
2 has been clear, but I want to make sure the Court understands
3 that we have designated Ms. Strach as a witness for our case in
4 chief. We do intend to call her back for our case in chief.
5 So I can ask that handful of questions now, knowing that she
6 will be back later, or if the Court would prefer to move on.
7 We can do that however you want.

8 **THE COURT:** You are welcome to proceed however you
9 wish.

10 **MR. PETERS:** Thank you.

11 CROSS-EXAMINATION

12 **BY MR. PETERS**

13 Q Ms. Strach, let me ask you to look at Plaintiffs'
14 Exhibit 726, which Mr. Kaul was discussing with you a moment
15 ago.

16 A Yes.

17 Q That's the stipulation on the letter that was sent out
18 to -- and let me ask you to look at page 2 of that. And it
19 says there that it was sent to 2,726 individuals; is that
20 correct?

21 A Correct.

22 Q And is it your understanding that that's 2,726 individuals
23 who had some dealings or interaction with DMV when they were
24 17 years old?

25 A Yes.

1 Q And during the time period that DMV was not registering
2 17-year-olds?

3 A Correct.

4 Q Do you know whether or not all of these 2,726 individuals
5 were, in fact, eligible to vote when they interacted with DMV?

6 A I do not know.

7 Q Okay. Now, you've referred a number of times earlier
8 today to canvas and talked about -- you answered questions
9 about if the canvas date were extended or votes being counted
10 before canvas. Can you explain what canvas is?

11 A Canvas is actually the certification of votes, but it is
12 the period that -- the canvassing of votes happens after
13 Election Day, and up until that day that we call the county
14 canvas, that's when the county boards actually certify the
15 election results.

16 So during this time period, that is when the research for
17 provisional ballots takes place. That's when the audit takes
18 place to ensure that all of the results that have come in are
19 audited and have been tabulated correctly. That time period is
20 sort of the audit, but the actual certification of that
21 election the county board meets is actually called the canvas.

22 Q With votes that are cast by a voter using same-day
23 registration, are those votes counted on Election Day or during
24 the period after or on canvas day? When are those votes
25 actually counted?

1 A Same-day registration or -- they're absentee ballots, and
2 all absentee ballots are counted on Election Day.

3 Q And how long is it between Election Day and canvas?

4 A It depends on the election. It's usually around ten days.

5 Q You also -- let me ask you to look at Plaintiffs'

6 Exhibit -- I believe it is 16, excuse me, Defendants'

7 Exhibit 16, which Mr. Donovan asked you to look through.

8 And that is the report that at least the header on it is
9 "May 2015, State Board of Elections Analysis and Mail
10 Verification Voter Failure Rates."

11 A Yes.

12 Q Do you have that in front of you?

13 A I have it.

14 Q Let me ask you to look at page 3.

15 A Yes.

16 Q And you were asked a number of questions about those
17 charts, and when you would answer those questions, you would
18 refer to this chart being based on proxies. Do I remember that
19 correctly?

20 A That's correct.

21 Q Can you explain what you mean by "proxies"?

22 A I can. We were talking about a snapshot that -- this
23 information was based on a snapshot of our statewide voter
24 registration system. So whatever status that particular voter
25 was in in the system on that day, that status was used for this

1 report. And so that status could have -- you could be in that
2 status for a variety of different reasons, but it was sort of
3 used as a proxy for what had happened to you during the mail
4 verification process.

5 Q So is it accurate to say that that status, as reflected in
6 the snapshot, if you were to have taken the snapshot the next
7 day, the status could have been different?

8 A It could have been different.

9 Q Now, you were asked some questions about the -- what had
10 to be done administratively to review ballots that had been
11 cast by a voter voting out of precinct. Do you recall that?

12 A I do.

13 Q Let me ask you, first, is it the ballot that is reviewed
14 or is it the application that's reviewed?

15 A It is the provisional application.

16 Q And when out-of-precinct provisional balloting has been in
17 effect in North Carolina -- let's talk about 2012 as an
18 example. What was the process that a county elections official
19 had to go through to review the out-of-precinct provisional
20 ballot and ballot application?

21 A Right. The county board of elections would determine that
22 that person was register -- what precinct they were properly
23 registered in. So then they would have to go and research to
24 see which offices they were eligible to vote for, and if those
25 offices were different than the ballot that had been cast where

1 they voted, then they would have to see which of the offices
2 they voted for on that ballot they were eligible for, which
3 ones they were not. So they would either have to -- so that if
4 that ballot was counted, it would either have to be hand
5 counted or they would have to complete a new ballot with those
6 races voted for in the way that the voter voted so they could
7 be put through the machine, the voting machine.

8 Q Why couldn't they put the ballot that the voter had voted
9 through the machine?

10 A Because that voter was possibly not eligible for some of
11 the races they had voted for on that ballot and so those --
12 they would not be eligible to be counted.

13 Q And in 2014, there was not out-of-precinct provisional
14 balloting; correct?

15 A That's correct.

16 Q And -- but people who showed up in the wrong precinct were
17 offered a provisional ballot?

18 A That's correct.

19 Q And what was the -- involved in the review that a county
20 elections official had to follow in that instance?

21 A If the voter was voting out of precinct, and not because
22 of an unreported move, then there would be no further review
23 that would need to be done for that application if it was just
24 simply an out-of-precinct ballot. That would be what would be
25 told to the county board, because that ballot is not going to

1 count.

2 **MR. FARR:** I don't have any further questions, Your
3 Honor.

4 **THE COURT:** Any follow-up limited to the cross?

5 **MR. DONOVAN:** Definitely.

6 REDIRECT EXAMINATION

7 **BY MR. DONOVAN**

8 Q Ms. Strach, do you have Plaintiffs' Exhibit 689? That's
9 the chart we looked at, the out-of-precinct.

10 A Yes.

11 Q Let's look at 2010 early -- 2010 out-of-precinct voting.
12 Do you see that?

13 A Yes.

14 Q Okay. And what is the number you see there?

15 A 2010, total?

16 Q Yes, ma'am.

17 A 6,274.

18 Q And of those, how many were fully counted under the Y --
19 or the Y row?

20 A 3,127.

21 Q Okay. And that would mean of those, either they were, in
22 fact, in their correct precinct or the ballot was the same as
23 the precinct they should have voted in because all of the races
24 were counted; true?

25 A That's correct.

1 Q And then we look above, and there is about 3,000 -- I
2 can't read it, I wrote over it -- 3,091?

3 A I think it is 3,098.

4 Q And those were reviewed and, in fact, were partially
5 counted; correct?

6 A That's correct.

7 Q And there was only 49 of the over 6,200 that were cast
8 that weren't counted at all; correct?

9 A That's correct.

10 Q Okay.

11 **MR. DONOVAN:** Thank you.

12 **THE COURT:** Anybody else? No. All right.

13 Ms. Strach, you may step down.

14 Mr. Donovan?

15 **MR. DONOVAN:** Your Honor, we have an 11-minute video,
16 if we want to work to 5:00, or we can do it tomorrow.

17 **THE COURT:** We'll do the video. How about that?

18 **MR. GLICK:** The video we will play will be from

19 Ms. Kate Cosner. She is the county liaison for the State Board
20 of Elections and formerly the director of elections for the
21 Allegheny County Board of Elections.

22 I have scripts, if I can approach, as well as the
23 full deposition designations, which we would like to mark as
24 PX803.

25 **THE COURT:** All right.

1 (Designated portions from the video deposition of Kate
2 Cosner were played.).

3 **MR. DONOVAN:** Your Honor, one more housekeeping
4 matter. I did confer with Mr. Peters. I would like to move in
5 certain exhibits that we used today with Ms. Strach. There's
6 no objection, although Mr. Peters noted that he would like to
7 make a comment on one exhibit.

8 Plaintiffs would move into evidence Plaintiffs'
9 Exhibit 212A, which is the registration form.

10 **THE COURT:** Give me just a minute.

11 All right. That was already moved and admitted,
12 according to my notes.

13 **MR. DONOVAN:** Great. Plaintiffs' Exhibit 567, which
14 is the memo from Marc Burris.

15 **THE COURT:** Admitted.

16 **MR. DONOVAN:** Plaintiffs' Exhibit 622, it is the
17 August 28, 2015, Gary Bartlett memo on proof of residency.

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

19 **MR. DONOVAN:** Plaintiffs' Exhibit 580, which is the
20 transcript of the Pembroke Town Council transcript dated
21 December 20, 2013.

22 **THE COURT:** That's admitted.

23 **MR. DONOVAN:** Plaintiffs' Exhibit 689 --

24 (Off-the-record discussion.)

25 Mr. Farr is correct. Just to be precise on the

1 record, PX580 is the hearing before the State Board of
2 Elections regarding Pembroke Town Council election.

3 **THE COURT:** All right.

4 **MR. DONOVAN:** Plaintiffs' Exhibit 689, which is the
5 statewide provisional results.

6 **THE COURT:** Admitted.

7 **MR. DONOVAN:** And there is one more Mr. Peters is
8 looking at.

9 **MR. PETERS:** Your Honor, on Exhibit 725, I simply
10 wanted to point out, as Ms. Riggs said, we did stipulate to
11 that exhibit, but I wanted to make sure that it was clear that
12 we did not stipulate to the accuracy of the numbers in that
13 exhibit. Our stipulation was that the numbers speak for
14 themselves. And as to --

15 **THE COURT:** What do you mean? I mean, did it go out
16 to that many people to --

17 **MR. PETERS:** These are numbers that are on there from
18 a variety of sources.

19 **THE COURT:** That's a different one, I'm sorry.

20 **MS. RIGGS:** The stipulation did include that that
21 chart accurately reflected what the State Board of Elections
22 had posted on its website.

23 **THE COURT:** Okay.

24 **MR. PETERS:** Right, just -- since the numbers come
25 from a variety of sources. And as to 727, I don't think we

1 have any objection to it as a demonstrative exhibit. As far as
2 the content of it, we might have some.

3 **MR. DONOVAN:** Your Honor, Plaintiffs' Exhibit 727 are
4 the demonstratives we used on Ms. Strach's examination, which
5 we have referred to as KS-1 through 8. I would just like that
6 identified for demonstrative purposes as Plaintiffs'
7 Exhibit 727, and I do have a hard copy for the Court.

8 **THE COURT:** What was your position, Mr. Peters, as to
9 those? Any objection as to the demonstratives?

10 **MR. PETERS:** I'm sorry, Your Honor, that's the one
11 that I was saying we don't have an objection to it as a
12 demonstrative exhibit.

13 **THE COURT:** Admitted.

14 **MR. DONOVAN:** Your Honor, PX725, which Mr. Peters
15 referred to, I just don't think you formally moved that into
16 evidence. That was the stipulation.

17 **THE COURT:** Which one is that?

18 **MR. PETERS:** That's the one we were talking about
19 that there was a stipulation that the numbers were taken from
20 the State Board's website, but we did not stipulate as to the
21 accuracy of those numbers and that they speak for themselves.

22 **THE COURT:** I thought you just moved it in a minute
23 ago.

24 **MR. DONOVAN:** We did. We were just saying we haven't
25 heard from you that it's actually admitted. We just wanted to

1 make sure it is formally admitted on the record.

2 **THE COURT:** Admitted.

3 **MR. DONOVAN:** Thank you. Thank you, Your Honor.

4 **THE COURT:** Anything further? So what is the plan
5 for tomorrow?

6 **MR. DONOVAN:** I am going to go back and regroup. And
7 9:00 a.m. -- I think we probably have another full day and
8 maybe a little bit Friday, but we may actually trim and be done
9 tomorrow with our case-in-chief. It may be Friday morning.

10 **THE COURT:** What is the situation with Senator Cook,
11 I think it is; is that right?

12 **MR. KAUL:** Your Honor, the video that I had mentioned
13 that I thought would provide some context for the statement and
14 corroboration, we intend to play that tomorrow. And so my
15 inclination would be to move formally the admission of those
16 exhibits after we play the video and --

17 **THE COURT:** What about -- you have a subpoena. I
18 haven't ruled on it formally. Where do we stand on that? Any
19 expectation that he needs to be here tomorrow?

20 **MR. KAUL:** Not tomorrow. Friday would be fine if
21 he's going to appear. I think we can take all those issues up
22 jointly.

23 **THE COURT:** Anybody want to be heard on that?

24 **MR. STRACH:** Your Honor, that's fine. We are happy
25 to deal with it tomorrow.

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 6th day of August 2015.
11

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13

14 Briana L. Nesbit, RPR
15 Official Court Reporter
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