

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

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

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

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

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

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

1 APPEARANCES:

2 For the Plaintiff:
3 (NAACP)

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

6 DANIEL T. DONOVAN, ESQ.
7 BRIDGET K, O'CONNOR, ESQ.
8 MICHAEL A. GLICK, ESQ.
9 CHRISTOPHER J. MANER, ESQ.
10 JODI WU, ESQ.
11 KIRKLAND & ELLIS, LLP.
12 655 15th Street, NW, Suite 1200
13 Washington, DC 20005

14 IRVING JOYNER, ESQ.
15 N. C. CENTRAL UNIVERSITY SCHOOL OF LAW
16 P. O. Box 374
17 Cary, North Carolina 27512

18 (LWV)
19 ALLISON JEAN RIGGS, ESQ.
20 ANITA S. EARLS, ESQ.
21 GEORGE E. EPPSTEINER, ESQ.
22 SOUTHERN COALITION FOR SOCIAL JUSTICE
23 1415 W. Highway 54, Suite 101
24 Durham, North Carolina 27707

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

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

1 APPEARANCES (Continued):

2 (USA)

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

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

10

11 (Intervenor
 Plaintiff):

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

14

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

17

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

20

21 For the Defendants:

22 (State of NC)

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

25

1 APPEARANCES (Continued):

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

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

8
9

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

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18
19
20
21
22
23
24
25

INDEX

PLAINTIFFS' WITNESSES:**PAGE:**

LORRAINE C. MINNITE, PH.D.

Direct Examination by Mr. Maner	17
Cross-Examination by Mr. Strach	43
Redirect Examination by Mr. Maner	68
Recross-Examination by Mr. Strach	72

CYNTHIA M. DUNCAN, PH.D.

Direct Examination by Ms. Riggs	77
Cross-Examination by Mr. Strach	89
Redirect Examination by Ms. Riggs	96

HELEN COMPTON

Direct Examination by Ms. Lieberman	122
Cross-Examination by Ms. Murphy	131

EXHIBITS

<u>Exhibits:</u>	<u>Identified</u>	<u>Received</u>
P-43 Dr. Lorraine Minnite's expert report, 4/11/14	22	23
P-170 Dr. Lorraine Minnite's expert declaration, 6/29/14	22	23
P-232 Dr. Lorraine Minnite's expert report, 2/12/15	22	23
P-798 Deposition Designations of Tawanda Pitt		74
P-803 Deposition Designations of Kate Cosner		75
P-804 Deposition Designations of Jay DeLancy	75	77
P-45 Dr. Cynthia Duncan's expert report		81

EXHIBITS			
1	<u>Exhibits:</u>	<u>Identified</u>	<u>Received</u>
2	P-729	Demonstrative slides used	101
3		during the testimony of Dr.	
4	P-802	Cynthia Duncan Deposition Designations of	102
5	P-563	Joseph Windsor Memo from K. Cosner to K.	106
6	P-567	Strach/Robeson Status Report Memo from M. Burris to county	106
7		boards of elections directors/Driver's License	
8	P-574	validation, SEIMS Memo 2009-003 NCSBOE staff review of HB587	106
9	P-582	Memo from J. McLean to Senator	106
10	P-583	Nesbitt/Preliminary one-stop data analysis One-stop, in-person absentee	106
11	P-584	voter turnout spreadsheet County one-stop site voter	106
12	P-585	counts spreadsheet Memo from G. Bartlett et al. to	106
13		county boards of elections/Provisional ballots,	
14	P-586	SBOE Memorandum 96-13 One-stop sites and times for	106
15	P-587	11/2/14 general elections One-stop voting sites for	106
16	P-588	11/4/08 general elections588 One-stop voting sites for	106
17	P-589	5/4/10 primary election One-stop voting sites for	106
18	P-590	11/2/10 general elections One-stop voting site list, 2012	106
19	P-591	primary One-stop voting sites for the	106
20	P-592	11/6/12 general election One-stop voting sites for the	106
21	P-593	5/6/14 primary election 2006 general election one-stop	106
22	P-594	locations One-stop voting sites for	106
23	P-595	11/4/14 general election Letter template/Incomplete	106
24		voter registration application	
25			

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

EXHIBITS		<u>Identified</u>	<u>Received</u>
1			
2	<u>Exhibits:</u>		
3	P-596 Memo from J. McLean to county		106
4	boards of elections		
5	directors/Revised procedure for		
6	denial letters and certified		
7	mail-voter scan NCSBOE Memo		
8	2008-02		
9	P-597 NC voter registration		106
10	application		
11	P-598 2014 provisional ballot		106
12	envelope, Durham County		
13	P-599 2014 provisional voter		106
14	instructions, Durham County		
15	P-600 2014 provisional voting		106
16	application, Durham County		
17	P-601 Provisional voting		106
18	administrative procedures		
19	P-602 Memo from G. Bartlett and V.		106
20	Degraffenreid to county boards		
21	of elections directors/Post-May		
22	verification of		
23	college/university students'		
24	campus residency, NCSBOE Memo		
25	2008-06		
26	P-603 Memo from G. Bartlett to		106
27	Representative Lewis/NCSBOE		
28	comments on HB351		
29	P-604 Press release: "Board of		106
30	Elections Finalizes Citizenship		
31	Audit		
32	P-605 Email from K. Strach to NCSBOE		106
33	group directors/Citizenship		
34	audit results		
35	P-615 April 2013 SBOE DMV ID analysis		106
36	P-616 Memo from K. Strach to county		106
37	boards of elections/One-stop		
38	early voting in the 2014		
39	primary and Session Law		
40	2013-381 hours-matching		
41	requirement, NCSBOE Memo		
42	2013-05		
43	P-617 Memo from K. Strach to county		106
44	boards of elections/One-stop		
45	implementation plans: May 2014		
46	primary, NCSBOE Memo 2014-01		

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

EXHIBITS		<u>Identified</u>	<u>Received</u>
1			
2	<u>Exhibits:</u>		
3	P-618 Memo from K. Strach to county		106
4	boards of elections/May 2014		
5	primary one-stop hours		
6	reduction requests, NCSBOE Memo		
7	2014-02		
8	P-620 Orders: In re One-Stop Absentee		106
9	Voting Required Hours Reduction		
10	May 6, 2014 Primary		
11	P-621 NCSBOE provisional voting post		106
12	HB589		
13	P-622 Memo from G. Bartlett to county		106
14	boards of elections		
15	directors/Proof of residency		
16	for same-day registrants,		
17	NCSBOE Memo 2012-20		
18	P-433 Email from V. Degraffenreid to		108
19	county boards of		
20	elections/One-stop rejections,		
21	2008-2009		
22	P-446 Email from V. Degraffenreid to		108
23	A. Penny/Incomplete voter		
24	registration application		
25	template, request for		
	identification information		
	template, absentee ballot		
	request template, and petition		
	change letter template		
	P-469 Email from G. McCue to NCSBOE		108
	group directors/Survey: CBE		
	Director input on Prospect of		
	Reduced One-Stop Voting Period		
	P-515 U.S. Election Assistance		108
	Commission Report/Election		
	Crimes: An Initial Review and		
	Recommendations for Future		
	Study		
	P-557 Administration of voter		108
	registration, polices and		
	procedures for the		
	implementation of the NVRA of		
	1993 and Article 7A, Chapter		
	163 of NCGS		

EXHIBITS			
	<u>Exhibits:</u>	<u>Identified</u>	<u>Received</u>
1			
2	P-558		108
3	US Government Accountability		
4	Office Report to Congressional		
5	Requester/Elections: Issues		
6	Related to State Voter ID Laws,		
7	GAO-14-634		
8	P-630		108
9	USDOJ, NVRA of 1993, Questions		
10	and Answers website link		
11	P-634		108
12	NCSBOE registration		
13	applications submitted from		
14	NVRA public assistance agencies		
15	by year		
16	P-635		108
17	U.S. Election Assistance		
18	Commission/The Impact of the		
19	NVRA of 1993 on the		
20	Administration of Elections for		
21	Federal Office, 2011-2012		
22	P-646		108
23	Durham County voter		
24	information, precinct level		
25	P-647		108
	Voter registration applications		
	P-335		113
	Email from D. Wright to V.		
	Degraffenreid attaching		
	concerns about S47		
	P-337		113
	Email from V. Degraffenreid to		
	J. Jones et al./VIVA		
	requirements and direction		
	P-343		113
	Email from S. Carbo to G.		
	Bartlett et al.		
	P-363		113
	Email from D. Wright to V.		
	Degraffenreid et al/Question on		
	Voter ID		
	P-365		113
	Email from D. Wright to C.		
	Poucher/Election Bills		
	P-384		113
	Email from V. Degraffenreid to		
	C. Boyd-Malette/Voter		
	registration mismanagement		
	P-388		113
	Email from merlin1246@aol.com		
	to Representative Warren et al.		
	attaching SC Photo ID Law		
	P-389		113
	Email from Representative		
	Warren to D. Rasmussen et		
	al./Absentee ballot - Two		
	witnesses versus current one?		

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

EXHIBITS			
1	<u>Exhibits:</u>	<u>Identified</u>	<u>Received</u>
2	P-390 Email from Representative		113
3	Warren to A. Maestas/Media		
4	request, NBC Latino, NC Voter		
5	ID bill		
6	P-391 Email from J. DeLancy to		113
7	Representative Murray/If all		
8	else fails		
9	P-392 Email from Representative Lewis		113
10	to D. Molinaro et al./Voter ID		
11	P-393 Email from B. Jones to E.		113
12	Churchill et al./Voter ID bill		
13	P-399 Email from Representative		113
14	Warren to A. Latos/Hi from WSOC		
15	P-401A Email from Representative		113
16	Warren to J. Rhodes/NC Voter ID		
17	law - Indiana State photo ID		
18	law upheld by the US Supreme		
19	Court (Redacted version)		
20	P-402 Email from G. Gebhardt to J.		113
21	Bonnet et al./NC Voter ID law,		
22	public hearing next week		
23	P-404 Email from Representative		113
24	Warren to B. Ware/Voter ID bill		
25	P-405 Email from M. Fliss to		113
	Representative Lewis/Voter ID		
	laws		
	P-407A Email from D. Williams to		113
	Representative Lewis et		
	al./Voter ID (Redacted version)		
	P-408 Email from Representative Lewis		113
	to B. Tyler et al./Voter ID		
	P-410 Email from Representative		113
	Warren to D. Dvoracek/Tribes		
	not recognized		
	P-413 Email from J. DeLancy to		113
	Representative Lewis et		
	al./House Elections Committee		
	P-414 Email from B. Clyne to		113
	Representative Brawley et		
	al./HB451		
	P-415 Email from Representative Lewis		113
	to H. von Spakovsky et		
	al./Hearing		
	P-416 Email from G. Rogers to H. von		113
	Spakovsky et al./Hearing		

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

EXHIBITS			
	<u>Exhibits:</u>	<u>Identified</u>	<u>Received</u>
1			
2	P-418	Email from N. Evans to	113
3		Representative Warren/VIVA	
4	P-419	Email from Representative	113
5		Warren to N. Evans/VIVA	
6	P-420	Email from T. Pittman to	113
7		hoover@myglnc.com/Representative	
8		Larry G. Pittman's April 3rd	
9		newsletter	
10	P-421	Email from R. Starling to M.	113
11		Burris et al./Additional	
12		analysis	
13	P-422	Email from M. Burris to T. Farr	113
14		et al./Additional analysis	
15	P-423	Email from R. Starling to V.	113
16		Degraffenreid et al./Absentee	
17		ballots	
18	P-424	Email from S. Nichols to G.	113
19		Bartlett et al./DMV audit items	
20	P-425	Email from M. Burris to R.	113
21		Starling et al./DMV audit items	
22	P-426	Email from T. Farr to S.	113
23		Nichols et al./DMV audit items	
24	P-427	Email from J. McLean to S.	113
25		Nichols et al./Interview of G.	
26		Bartlett	
27	P-428	Email from R. Starling to J.	113
28		McLean et al./Interview of G.	
29		Bartlett	
30	P-429	Email from R. Starling to J.	113
31		McLean et al./Interview of G.	
32		Bartlett	
33	P-430	Email from R. Starling to M.	113
34		Burris et al./DMV audit items	
35	P-434	Email from R. Starling to M.	113
36		Burris et al./DMV audit items	
37	P-435	Email from V. Degraffenreid to	113
38		G. Bartlett et al./Online	
39		registration and same-day	
40		registration	
41	P-436	Email from E. Churchill to M.	113
42		Burris et al./2008 statewide	
43		and federal stats	
44	P-437	Email from M. Burris to Sheerin	113
45		et al./2008 statewide and	
46		federal stats	

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

EXHIBITS			
1	<u>Exhibits:</u>	<u>Identified</u>	<u>Received</u>
2	P-438 Email from E. Churchill to V.		113
3	Degraffenreid et al./2008		
	same-day registration stats		
4	P-439 Email from V. Degraffenreid to		113
	G. Bartlett et al./2008		
5	same-day registration stats		
6	P-440 Email from G. Bartlett to R.		113
	Starling et al./DMV audit items		
7	P-441 Email from B. Garrett-Jones to		113
	E. Churchill et		
8	al./Straight-party voting		
	demographics		
9	P-442 Email from V. Degraffenreid to		113
	K. Strach et al./Archive		
10	P-443 Email from V. Degraffenreid to		113
	C. Collicut/Archive		
11	P-444 Email from V. Degraffenreid to		113
	C. Collicut/Archive		
12	P-445 Email from C. Collicut to V.		113
	Degraffenreid/Archive		
13	P-447 Email from G. Bartlett to R.		113
	Starling et al./Absentee		
14	P-448 Email from M. Perry to V.		113
	Degraffenreid/Curbside voting		
15	made difficult		
16	P-449 Email from K. Campbell to K.		113
	Strach et al./Watauga County		
17	Board of Elections one-stop		
	implementation plan for 2013		
18	P-452 Email from M. McFadyen to K.		113
	Strach/Guidance		
19	P-457 Email from D. Wright to E.		113
	Churchill/SBE meeting		
20	P-458 Email from V. Degraffenreid to		113
	E. Churchill et al./Outstanding		
21	questions from 3/15 House		
	Election laws		
22	P-459 Email from V. Degraffenreid to		113
	E. Churchill et al./2008		
23	statewide and federal stats		
24	P-460 Email from E. Churchill to G.		113
	Bartlett et al./DMV unlicensed		
25	voters		

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

EXHIBITS			
1	<u>Exhibits:</u>	<u>Identified</u>	<u>Received</u>
2	P-466	Email from Representative Lewis to T. Oudeh/Protect voting in NC	113
3			
4	P-470	Email from V. Degraffenreid to B. LiVecchi et al./Citizenship review voters processed	113
5			
6	P-471	Email from M. Tutor to C. Rhinehart et al./Voter fraud actions needed now	113
7	P-472	Email from D. Wright to C. Rhinehart et al./Voter fraud actions needed now	113
8			
9	P-473	Email from M. Tutor to C. Rhinehart/Possible absentee fraud	113
10	P-474	Email from D. Wright to M. Tutor/NC voter fraud revised addition	113
11			
12	P-494	Email from D. Wright to V. Degraffenreid et al./VR guidelines, SEIMS, HAVA	113
13	P-496	Email from M. Tutor to G. Bartlett et al./Double voting, deceased voter check	113
14			
15	P-497	Email from G. Bartlett to M. Tutor et al./2008 general election double voters	113
16	P-498	Email from K. Holland to M. Tutor et al./Duplicate voters	113
17	P-499	Email from M. Tutor to D. Wright attaching MT administrative investigations	113
18			
19	P-501	Email from D. Wright to K. Strach/Another complaint about Watauga County's early voting plan	113
20			
21	P-502	Email from D. Wright to M. Robinson responding to complaint about Watauga County's early voting plan	113
22			
23	P-503	Email string between V. Degraffenreid and L. Lovedahl/Whether HB589 changes students' dependent status if they register at college	113
24			
25			

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

EXHIBITS			
1	<u>Exhibits:</u>	<u>Identified</u>	<u>Received</u>
2	P-504 Email from V. Degraffenreid		113
3	explaining high school		
4	registration		
5	P-507 Email from G. Bartlett to		113
6	Representative Cotham/HB1260		
7	P-562 Letter from M. Murphy to K.		113
8	Strach/Allegheny County Board		
9	of Elections resolution and		
10	one-stop implementation plan		
11	P-662 Defendants' third amended		115
12	initial disclosures		
13	P-663 Defendants' objections and		115
14	responses to Plaintiff United		
15	States' 1st set of request for		
16	admissions		
17	P-664 Defendants' supplemental and		115
18	amended objections to responses		
19	to request for admissions		
20	P-665 Defendants' objections and		115
21	responses to Plaintiff United		
22	States' 1st set of requests for		
23	production		
24	P-666 Defendants' objections and		115
25	responses to Plaintiff League		
	of Women Voters' 1st set of		
	interrogatories		
	P-667 Defendants' objections and		115
	responses to Plaintiff NAACP's		
	2nd set of interrogatories		
	P-668 Defendants' objections and		115
	responses to Plaintiff United		
	States' 4th set of		
	interrogatories		
	P-669 Defendants' objections and		115
	responses to Plaintiff United		
	States' 3rd set of		
	interrogatories, No. 10, 11,		
	and 13		
	P-670 Defendants' objections and		115
	responses to Plaintiff United		
	States' 2nd set of		
	interrogatories		
	P-671 Plaintiff United States'		115
	request for judicial notice		
	with Exhibits A-H		

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

EXHIBITS			
<u>Exhibits:</u>		<u>Identified</u>	<u>Received</u>
1			
2	P-672		115
3	Defendants' answer to Plaintiff United States' request for judicial notice		
4	P-673		115
5	Defendants' objections and responses to Plaintiff United States' 3rd set of		
6	P-675		115
7	interrogatories, No. 12 and 14 Defendants' objections and responses to Plaintiff League of Women Voters' 1st request for production		
8	P-533A	117	117
9	Transcript of Plaintiff's Exhibit 533, Video of Thom Tillis' interview on MSNBC		
10	P-714		118
11	Video clip from Senator Apodaca's interview on WRAL 5		
12	P-800		119
13	Deposition designations of Gary Sims		
14	P-304		119
15	Exhibit 451 from Gary Sims' deposition/NC public voter search		
16	P-581		119
17	Exhibit 457 from Gary Sims' deposition/Wake County polling place changes		
18	P-788		121
19	Deposition Designations of Carlton Jordan		
20	P-789		121
21	Deposition Designations of Carolyn Justice		
22	P-790		121
23	Deposition Designations of Elizabeth Kuniholm		
24	P-791		121
25	Deposition Designations of Nancy Lund		
	P-793		121
	Deposition Designations of John Mendez		
	P-794		121
	Deposition Designations of Brian Miller		
	P-795		121
	Deposition Designations of Mary Perry		
	P-796		121
	Deposition Designations of Susan Schaffer		
	P-797		121
	Deposition Designations of Timothy Washington		
	P-541		121
	Exhibit 179 from Carolyn Justice's deposition/Screenshot regarding HB451		

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

EXHIBITS			
	<u>Exhibits:</u>	<u>Identified</u>	<u>Received</u>
1			
2	P-555	Exhibit 180 from Carolyn Justice's deposition/Screenshot regarding HB666	121
3			
4	P-778	Deposition Designations of Victoria Banks	122
5	P-779	Deposition Designations of Sandra Beatty	122
6	P-780	Deposition Designations of Tracy Bucholtz	122
7	P-781	Deposition Designations of Jason Chisholm	122
8	P-782	Deposition Designations of Carolyn Coleman	122
9	P-783	Deposition Designations of Armenta Eaton	122
10	P-784	Deposition Designations of Robin Ellis	122
11	P-786	Deposition Designations of Lonnie Gene Hatley	122
12	P-787	Deposition Designations of Jimmie Hawkins	122
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

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

2 **THE COURT:** Good morning, Mr. Donovan.

3 **MR. DONOVAN:** Good morning, Your Honor. We are ready
4 to proceed. Our next witness, if we may, is Dr. Minnite.

5 **LORRAINE C. MINNITE, PH.D.,** PLAINTIFFS' WITNESS, at 9:08 a.m.,
6 being first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 **BY MR. MANER**

9 Q Good morning, Dr. Minnite.

10 A Good morning.

11 Q Could you please state your name for the record.

12 A Lorraine Carol Minnite.

13 Q And where are you currently employed?

14 A I'm currently employed at Rutgers University in Camden,
15 New Jersey.

16 Q What is your position there?

17 A I'm associate professor of public policy and the director
18 of the Urban Studies Program in the Department of Public Policy
19 and Administration.

20 Q And what is your educational background?

21 A I have a bachelor's degree in history and I have graduate
22 degrees, including a Ph.D., in political science.

23 Q Since completing your Ph.D., has your work and research
24 focused on any particular subject matter?

25 A Yes, on American elections, but specifically the incidence

1 of voter fraud in American elections.

2 Q Where have you taught since you received your Ph.D.?

3 A I have taught at Barnard College, which is part of
4 Columbia University, and in my current position at Rutgers
5 University.

6 Q How many years of experience do you have researching and
7 analyzing voter fraud in elections?

8 A Fourteen years.

9 Q And have you published any peer-reviewed articles or books
10 related to the subject matter of this case?

11 A Yes.

12 Q Could you just explain to the Court what those materials
13 are?

14 A Yes. I've published a book called *The Myth of Voter*
15 *Fraud*, which is specific to the questions here about voter
16 fraud, which is published by Cornell University Press. And I
17 have also published peer-reviewed articles and journals and in
18 books as well.

19 Q Dr. Minnite, have you ever testified before on the subject
20 of voter fraud?

21 A Yes.

22 Q And under what circumstances did you testify?

23 A In 2008, I was invited to testify before the House
24 Judiciary Committee Subcommittee on the Constitution, which I
25 provided oral and written testimony to. I was also invited to

1 provide written testimony to the Senate Rules Committee. I
2 have testified in other cases on voter fraud, specifically in
3 Pennsylvania in a state case and in federal cases in Wisconsin
4 and Texas.

5 Q Have you been accepted by Courts as an expert in the topic
6 of voter fraud?

7 A Yes.

8 Q Have your opinions ever been excluded by any Court?

9 A No.

10 Q Dr. Minnite, I want to focus now on the work that you did
11 in this case. What were you asked to do in this case?

12 A I was asked to provide an opinion on the incidence of
13 voter fraud, both nationally and in North Carolina in recent
14 elections.

15 Q Have you submitted an expert report in this matter?

16 A Yes.

17 Q Have you formed any opinions?

18 A Yes.

19 Q And at a high level for now, what are the key opinions
20 that you reached?

21 A My key opinions are that the evidence -- empirical
22 evidence, I think, shows that the incidence of voter fraud
23 nationally and in North Carolina is exceedingly rare.

24 **THE COURT:** Let me stop just for a minute. Before
25 she gives her opinion, is there any objection to her testifying

1 as to these opinions?

2 **MR. STRACH:** We don't have any objection to her
3 qualifications, Your Honor.

4 **THE COURT:** And are you -- in what areas are you
5 moving to qualify her?

6 **MR. MANER:** Specifically on the incidence and effect
7 of voter fraud in American elections.

8 **THE COURT:** All right. I am sorry. You may
9 continue.

10 **BY MR. MANER**

11 Q Dr. Minnite, let's start over. At a high level just for
12 now, what are the key opinions that you reached?

13 A The key opinions are that, as I stated, the empirical
14 evidence shows, I think, that the incidence of voter fraud,
15 both nationally in and North Carolina, is exceedingly rare.

16 That over a period of 14 years, since 2000, in elections
17 in North Carolina where there have been more than 35 million
18 votes cast, there have only been two referrals for voter
19 impersonation, and that based on this empirical evidence,
20 neither the elimination of same-day registration or the
21 imposition of photo ID requirement are justified.

22 Q Let's talk about your methodology. What types of
23 information have you reviewed in connection with your work in
24 this matter?

25 A Well, first, I incorporate all of the research that I did

1 that went into the production of my 2010 book, and that
2 included -- at the national level, that included both
3 qualitative and quantitative forms of data. So, for example,
4 news reports, legal records, public records requests to state
5 officials, all kinds of primary materials, including reports
6 produced by state elections agencies, records from the Justice
7 Department, and so forth.

8 And in -- to then focus on North Carolina, I looked again
9 broadly at news reports, at depositions and -- produced in this
10 case, at records of the State Board of Elections, at records
11 from the North Carolina Attorney General's Office, specifically
12 press releases and things that were available on the website,
13 and beyond that, but different kinds of data like that.

14 Q And how would you describe your method of analysis?

15 A The method is a mixed methods approach, which is very
16 common in the social sciences. It is increasingly a popular
17 approach, primarily because it involves looking at qualitative
18 and quantitative and, say, archival research and allows you to
19 triangulate the findings so that your conclusions are never
20 based simply on one piece of information, and that's believed
21 to increase the validity of the findings.

22 **MR. MANER:** And, Your Honor, in addition to
23 proffering Dr. Minnite as an expert, we'd ask that we -- we
24 would like to move to admit her reports and her declaration,
25 and I would note for the record that those reports are

1 Plaintiffs' Exhibit 43, Plaintiffs' Exhibit 170, and
2 Plaintiffs' Exhibit 232, 232 being her most recent report from
3 February 12 of 2015.

4 **MR. STRACH:** Your Honor, we don't have any objection
5 generally to the report. There are two footnotes citing news
6 articles quoting Senator Tillis. One in Footnote 56 of the
7 2015 report is the same quote that Your Honor saw in the video
8 clip that was shown earlier. So we would object to the news
9 article itself coming in, in light of the Court's resolution
10 and the parties' resolution of that issue.

11 There is a -- Footnote 61 also contained an
12 article --

13 **THE COURT:** Is there any objection to reliance on the
14 same information as it appears in the video?

15 **MR. STRACH:** Not to the quote as it was in the video.

16 **THE COURT:** Okay. Is there any substantive
17 difference between the video quote and the quote that's
18 captured in the comments posted on the WRAL website that's
19 reflected in Footnote 56? In other words, are they essentially
20 one and the same?

21 **MR. STRACH:** That I don't know.

22 **THE COURT:** Okay.

23 **MR. STRACH:** The other one, Your Honor, is Footnote
24 61.

25 **THE COURT:** In the same report?

1 **MR. STRACH:** In the same report. That's a different
2 quote from Senator Tillis in a different news medium, WNCN, and
3 so we would raise the same objection to that that we have to
4 other similar news articles.

5 **THE COURT:** All right. Do you want to be heard on
6 that?

7 **MR. MANER:** Yes, Your Honor. I would just note that
8 we are not asking to admit the newspaper articles cited in the
9 report. We are simply asking to admit the report themselves.

10 **THE COURT:** Okay. Well, I am going to admit the
11 reports. If it becomes important as to whether or not I rely
12 on any part of her opinion that may rely on the hearsay, then I
13 will address that separately at a later time.

14 **BY MR. MANER**

15 Q Now, before we talk in detail about your opinions,
16 Dr. Minnite, could you explain what you mean by the term "voter
17 fraud"?

18 A Yes. You know, in social science, it is very important,
19 for the purposes of measuring empirical phenomena, the concepts
20 are clearly defined. So I define voter fraud as the
21 intentional corruption of the electoral process by voters.

22 And the elements of that definition I think that are
23 important are to distinguish who the perpetrator of the fraud
24 is, so voters; the intentional corruption of the electoral
25 process, so the principle of intent. And this is consistent

1 with the way in which the kinds of acts that we think of as
2 voter fraud are codified in election laws. So in all my
3 research, I looked at all of the election codes across the
4 state and the Federal Government, and intent is always an
5 important part of that.

6 So the definition, I think, is simple, and it allows for
7 empirical measurement, and that's how I define it.

8 Q And can you explain any distinction that you make between
9 voter fraud on the one hand and election fraud on the other?

10 A Yes. So voters can only corrupt the party election
11 process that they have access to. So that, in some ways,
12 limits what voter fraud is. Voters can misrepresent who they
13 are. They can attempt to vote more than once and breaking the
14 law that way.

15 But, primarily, they have control over their identity and
16 how they represent themselves. So they can corrupt the
17 registration process where they corrupt their own registration
18 records. They can corrupt the voting process where they
19 misrepresent themselves as someone else, or they can
20 misrepresent their eligibility.

21 All other kinds of corruption of the electoral process in
22 which the perpetrator is not the voter, say the perpetrator is
23 a party official or a campaign worker or something like that,
24 those other forms of fraud I refer to broadly as electoral
25 fraud. So in some sense, voter fraud is a subset of a broader

1 idea about electoral fraud.

2 Q Now, do you have an opinion as to what forms of voter
3 fraud House Bill 589 addresses?

4 A Yes.

5 Q And can you just explain that, please.

6 A Well, I think, primarily, House Bill 589 tries to address
7 voter impersonation.

8 Q And why did you come to that conclusion?

9 A Well, if we look at the -- some of the major revisions of
10 House Bill 589 to the North Carolina election code, primarily
11 adding photo ID -- and I understand that's not part of this at
12 this point -- but also eliminating same-day registration, it
13 speaks to the idea that voters might be trying to vote when
14 they are not eligible to vote.

15 Q Let's turn to your first opinion. What is the basis for
16 your conclusion that in-person voter impersonation fraud is
17 exceedingly rare nationally?

18 A Well, when I began this research -- and it was stimulated
19 by the 2000 Presidential election and the focus on election
20 administration after that, I had probably a sense that there
21 was voter fraud. It began to emerge after that election as a
22 problem, even though it wasn't specifically a problem
23 immediately at that time.

24 But over the next year or so, it began to emerge in the
25 context of a discussion about how should we reform the

1 electoral process; and I probably thought there was voter
2 fraud, and I thought, well, this should be an easy question to
3 answer. Let me go to the crime statistics and try to figure
4 out how much there is.

5 And as I began the research, I also found that political
6 scientists had not studied this issue at all, and so it became
7 a -- kind of increasingly interesting to me to look at it. So
8 it began, and I just started to look for the crime statistics,
9 how many people are convicted of this, because it is a crime.
10 In many states, it is a felony. It is a deportable offense for
11 someone who is not a citizen. So it is a serious crime.

12 And I looked first there, and then I couldn't find
13 anything. There wasn't any -- there weren't any sort of
14 central repositories or databases that have been put together.
15 So I began to broaden my search, and I thought, okay, well, for
16 some reason, I am not finding the convictions. Maybe that's
17 too narrow of a way of looking at it. So I said, let me look
18 for indictments, and I -- there is a database that's produced
19 by the U.S. -- Administrative Office of U.S. Courts that
20 records all indictments that are brought in a federal district
21 court system on an annual basis. I started looking into that
22 just for indictments, and I was still finding very little.

23 The codification of that database made it difficult to
24 actually isolate those sorts of cases. So then I again
25 broadened it. I said, let me look at whether -- you know,

1 maybe there is some kind of problem with the prosecution of
2 these crimes. Let me just see how many cases are referred.

3 It's sort of, you know, like a funnel out into looking for
4 evidence that way, and that became the core -- the initial core
5 of my research into the incidence of voter fraud.

6 Q And you mentioned that database as one example of the
7 sources that you consulted. What are some of the other sources
8 of empirical data that you reviewed in reaching your conclusion
9 that fraud was exceedingly rare nationally?

10 A Well, as I mentioned in that mixed methods approach, you
11 look at data from all different angles and sources and see if
12 you see a pattern and -- or whether you see something
13 contradicting itself. So looked at -- you know, as I said, I
14 began looking just on the news reports, and I began to make a
15 distinction between allegations and evidence.

16 And at the time, after the 2000 election, the
17 U.S. Attorney General launched a program to find, prosecute
18 voter fraud and voter suppression. It was called the Ballot
19 Access and Voting Integrity program, and it was a program to
20 bring lawyers from the civil rights division together with
21 lawyers from the criminal division to sort of upgrade the
22 training and knowledge about what fraud and suppression are and
23 what the laws are, and then to train U.S. Attorneys or to
24 provide additional training to them and their district election
25 officers so that at every federal election, they can be

1 available. They can let the public know they are there. They
2 can have the tools they need to investigate fraud and voter
3 suppression.

4 And I found a case list of the first three years after
5 that program from 2002 to 2005 that included 95 indictments,
6 and those -- as I looked at each one of those cases, each one
7 of these 95 indictments, applying my definition of voter fraud,
8 to focus on the perpetrators of the fraud and to categorize the
9 indictments that way, I saw that actually only 40 of those
10 cases that were fraud or intimidation were voters -- were cases
11 of voters.

12 And then looked -- following through on those cases, only
13 26 of those people were convicted or pled guilty. So here was
14 an instance where the Federal Government had prioritized the
15 investigation and prosecution of voter fraud, and the result
16 was over a three-year period that included a Presidential
17 election and a midterm election only 26 people were convicted.

18 So that evidence I found very -- I thought it was very
19 important and very persuasive, and it was not contradicted by
20 any of the other evidence that I collected from state attorneys
21 general or secretaries of state, prosecutors, and people like
22 that that I interviewed.

23 Q And of the 26 voters you just mentioned that pled guilty
24 or were convicted, what were the forms of fraud that they had
25 committed?

1 A I think there were just three forms, and that was -- there
2 were a few cases of non -- we'll call it noncitizen voting, a
3 few cases of double voting, and the majority of them, as I
4 recall, were cases of people who had felony convictions who
5 voted without having their -- before their rights were
6 restored.

7 Q Of those 26 cases, how many involved a ballot that was
8 cast in North Carolina?

9 A There was one case in North Carolina. The person was
10 charged with illegal voting but pled to something less than
11 that, and this involved a young man who was Canadian who I
12 believe had gotten registered. I am not absolutely clear that
13 he voted, but he was charged with that and, as I say, convicted
14 of false swearing or something and went back to Canada.

15 Q You mentioned that you looked to indictments for evidence
16 of fraud. Why did you look to indictments in particular?

17 A Well, I thought that -- you know, I put a little more
18 weight on the evidence that came from officials, government
19 officials, Justice Department officials, prosecutors, and I
20 thought that indictments involved -- there needs to be some
21 evidence to bring an indictment. Indictments were -- showed
22 that there was something -- even if you couldn't achieve a
23 conviction, there was something there.

24 Q Let's turn to your analysis of fraud in North Carolina in
25 particular. What is the basis for your conclusion that

1 in-person voter impersonation fraud is exceedingly rare in
2 North Carolina?

3 A Well, I began my research again with a sort of broad
4 review of the media, and the reason I do that is because of
5 voter fraud has become a very, you know, discussed issue in the
6 public, and so if there is some, I would expect to see some
7 discussion of it in there. So it gives me just kind of a gauge
8 on what might be going on.

9 But, ultimately, I looked to reports that are produced by
10 government agencies. So, for example, the State Board of
11 Elections here in North Carolina, I relied on a number of
12 documents they did -- they produced.

13 I've also looked at the deposition of the person who was
14 the chief investigator in the State Board of Elections, and I
15 relied on evidence that was produced in a memo by the State
16 Board of Elections that was sent to the House Elections and
17 Appropriations Committee here in North Carolina in March of
18 2013, I believe, in connection with the legislative hearings
19 and debates that were beginning on H.B. 589.

20 And that evidence there showed that there had only been
21 two referrals for voter impersonation over the period of 2000
22 to 2012.

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

24 **THE COURT:** Yes.

25 **BY MR. MANER**

1 Q Dr. Minnite, I've handed you what's been previously marked
2 as Plaintiffs' Exhibit 71, which I will note has already been
3 admitted into evidence.

4 Do you recognize this document?

5 A Yes.

6 Q And what is it?

7 A This was the memo -- I guess it is actually a letter --
8 that I was referring to just a minute ago from the State Board
9 of Elections director at the time, Gary Bartlett, to committees
10 of the North Carolina General Assembly, House Elections
11 Committee, Appropriation Subcommittee on General Government,
12 and it is dated March 11, 2013.

13 Q And if you would, please, flip to Appendix F in
14 Plaintiffs' Exhibit 71. I would note for the record that the
15 page number is SBE-P-00047890. And let me know when you get
16 there.

17 A Okay.

18 Q Do you recognize this table, Dr. Minnite?

19 A Yes.

20 Q And is this the same table that you were just discussing
21 that was prepared by the State Board of Elections?

22 A Yes.

23 Q And is this the same table that's reproduced in your
24 expert report at Appendix F?

25 A Yes.

1 Q And what does this table show?

2 A Well, in the rows, it has forms of voter fraud. It says
3 "voter fraud type," and these generally map to what is in North
4 Carolina's election code, I think it is Chapter 163-275, as the
5 kinds of fraud that -- here it's called voter fraud, and then
6 in the columns are the years. And these are referrals to
7 district attorneys or local law enforcement of cases from the
8 State Board of Elections.

9 Q And what are some of the forms of fraud that are listed in
10 this table?

11 A This table lists double voting, felon voting, noncitizen
12 voter registration and voting, absentee fraud, vote buying, and
13 so forth.

14 Q And do all of these forms of fraud meet your definition of
15 voter fraud?

16 A No, not all of them.

17 Q Can you identify the ones that you exclude from your
18 definition of voter fraud?

19 A Well, I would exclude misrepresentation of election law,
20 because I read that to mean that someone has -- might call it
21 sometimes voter suppression tactic, but you tell -- you
22 misrepresent what the law is to people about, say, when
23 Election Day is.

24 Voter registration fraudulent forms, that I believe refers
25 to, say, perhaps a voter registration drive where there's been

1 some production of a fraudulent registration form. Voter
2 registration failure to deliver I believe refers to similarly
3 voter registration drive maybe where forms were collected and
4 they weren't delivered on time. So I would exclude those, and
5 I also exclude vote buying.

6 Q And looking --

7 A Excuse me. Also illegal voter assistance.

8 Q Thank you. And looking specifically at the highlighted
9 row there for voting impersonation, do these two referrals
10 represent the total number of potential cases of impersonation
11 fraud that you found between 2000 and 2013 when House Bill 589
12 was introduced?

13 A Yes.

14 Q And focusing now on the time period between the enactment
15 of H.B. 589 and February of 2015, when you submitted your
16 expert report in this case, how many additional claims of
17 impersonation fraud did you find in North Carolina?

18 A None.

19 Q Did you find that there were other referrals that were
20 made during that period?

21 A Yes. In the response to Plaintiffs' interrogatories in
22 this case that was shared with me, there was a mention that
23 there had been three more referrals to district attorneys over
24 that period, and two of them were called potential in-person
25 fraud, and one was a vote-buying referral, and within -- the

1 reason I don't call the in-person referrals voter impersonation
2 is because it is not clear to me that's what they are. It
3 could have been double voting.

4 Q And in the course of your research, did you also determine
5 how many ballots were cast in federal elections in North
6 Carolina between 2000 and 2014?

7 A Yes.

8 Q And why is the number of ballots cast in federal elections
9 over that period relevant to your opinions?

10 A Well, because I think we can think of fraudulent votes as
11 votes, and so the sort of relevant context for understanding
12 the scale of fraud would be to look at, well, how many votes
13 are cast.

14 And I took -- I took a -- what I am trying to say is I
15 didn't include actually all elections over that period. I
16 looked at the big elections with big turnout, and even I
17 believe there were a couple of years when there were second
18 primaries. I didn't include them. I just looked at the eight
19 years of a federal election and a federal primary, and that
20 number exceeds 35 million.

21 Q And did you attempt to calculate the rate of potential
22 voter impersonation in North Carolina over that same time
23 period, that is, between 2000 and 2014?

24 A Yes.

25 Q Can you turn to LM Slide 6, please. Dr. Minnite, what

1 does this slide show?

2 A Well, this was just, again, a gauge on how we are
3 understanding what voter fraud is and trying to get at yet
4 another way the question of the incidence of fraud.

5 So I took the data that was in this table prepared by the
6 State Board of Elections, and I said, well, what if I took a
7 really narrow view and I just looked at voter impersonation?
8 So there were two cases referred there. And then what if took
9 a broader view and included the other forms of voter fraud?
10 And the number that I calculated from this table, excluding
11 those few cases that we mentioned before, and adding in the two
12 referrals for in-person -- potentially in-person fraud that
13 came after the production of this table, that number was 580.

14 I then just simply divided by the 35 million-plus votes
15 that were cast just in those federal elections, because
16 remember I am not counting nonfederal election there. So it is
17 a sort of lower number than the actual number of ballots that
18 were cast.

19 But I think what the table shows is that whether you take
20 a sort of narrow view on just impersonation or you take a
21 broader view on voter fraud, it is still statistically, if you
22 will, or calculated number here is practically zero.

23 And I would want to also point out, you know, these are
24 referrals. These are not cases in the sense that they have
25 been fully investigated and tried or otherwise resolved.

1 Q And focusing just on the 580 total referrals that comprise
2 what you refer to in your report as the hypothetical upper
3 bound of potential fraud, are there other possible explanations
4 for these cases besides voter fraud?

5 A Certainly.

6 Q What might some of those be?

7 A Well, one of the things I found in all of my years of
8 researching this is that a very strong pattern of these numbers
9 being reduced even further when they are investigated, and the
10 alternative explanation, if you will, is that it's clerical
11 error, that it's human error. And it just happens over and
12 over again that what's discovered in the investigation is
13 simple human error here. So that's another possible
14 explanation for these numbers.

15 Q I want to shift gears a little bit to your discussion of
16 what's commonly referred to as the Interstate Crosscheck
17 program, which begins on page 23 of your report. What is the
18 Crosscheck program?

19 A The Crosscheck program was an initiative of the Kansas
20 Secretary of State's office that began ten years ago. What
21 happens is that States enter into agreements with the Kansas
22 Secretary of State's office to share their voter files on an
23 annual basis, and they commit to providing some personnel to
24 work with the output of the program, and the Kansas Secretary
25 of State's office does a data match of all of the participating

1 states' voter files. And the purpose of it is to try to
2 identify duplicate registrations that may also be duplicate
3 votes, if voter histories are attached.

4 Q And does the Crosscheck program address voter
5 impersonation fraud?

6 A No.

7 Q And how long has North Carolina participated in the
8 Crosscheck program?

9 A Well, one of the things that H.B. 589 did was change the
10 requirement of the State Board of Elections in their list
11 maintenance practices to allow the State to enter into this
12 program. So North Carolina decided to enter this program, I
13 believe, at the end of 2013, beginning of 2014.

14 Q And on page 26 of your report you discuss what you
15 consider to be three crucial problems with the Interstate
16 Crosscheck program. Can you just explain to the Court what
17 those problems are that you identify?

18 A Yes. I have a lot of experience with studying list
19 matching and the problems involved with list matching, and it
20 is a very difficult thing. It has to be done very, very
21 carefully. And one of my concerns about the Interstate
22 Crosscheck program is we don't know how the data matches. We
23 know what's said, which is we are going to match on a set of
24 fields, first name, last name, date of birth, usually, but we
25 don't know in any given instance, when the match is done,

1 exactly how it was done.

2 And my concern there is that there's just not enough
3 transparency about that. Given how technical and careful you
4 need to be when you do list matching, I think it would be
5 better for us to know how that was done. So that's sort of the
6 first problem; and because of the transparency issues, that
7 raises then questions about the reliability of the output when
8 the match is done.

9 And I think that the data really are not that reliable as
10 has come out in terms of the results in the last several years
11 with very big numbers being announced of matches and those
12 really, as I said, dissolving down into almost nothing where
13 there are better explanations for what these are. There are a
14 lot of false positives.

15 In fact, in the few materials I have been able to locate
16 about the program that have been produced by the program -- for
17 example, they have a state participation guide -- they actually
18 say in there that the program produces a high level of false
19 positives. Those are things that look like matches that are
20 not matches. So that's the second problem is really the
21 reliability of the data as to whether it is actually showing
22 you real duplicates in terms of registration or real double
23 votes.

24 And then the third concern has to do with how the
25 information has been interpreted, and that information has been

1 seized upon as actual evidence of fraud when, in fact, it is
2 not evidence of fraud. It is maybe the first cut of potential
3 record matching where there's got to be a lot more
4 investigation about whether these are actual matches and not
5 false positives. It is not evidence of fraud, but it has been
6 seized upon and there have been claims that it is evidence of
7 fraud.

8 Q And has the State Board of Elections in North Carolina
9 released any information about the results of its registration
10 Crosscheck exercise?

11 A Yes. I don't know if "released" is the right word, but
12 the State Board did a presentation before the Joint Elections
13 Committee here in the General Assembly last year, and there was
14 a PowerPoint presentation prepared by the State Board that was
15 available -- I think it was available on their website.

16 Q And what, if any, conclusions do you draw as to the
17 incidence of voter fraud in North Carolina from the results of
18 North Carolina's participation in the program?

19 A Well, as I said, this is not evidence of voter fraud. So
20 it doesn't challenge the pattern we see in the previous
21 reporting by the State Board on the numbers there in terms of
22 either voter impersonation or other forms of voter fraud.

23 Q Dr. Minnite, do you know whether any states have dropped
24 out of the Crosscheck program?

25 A Yes.

1 Q Which states?

2 A I believe Florida and Oregon have dropped out.

3 Q And what is your understanding as to why those States have
4 dropped out of the program?

5 A My understanding is that there were some resource issues
6 on the state side in Florida in terms of their being able to
7 staff it because they get back so much data, and it is -- it
8 takes them so much time to go through it, and it's produced
9 nothing. And then with respect to Oregon, that the data is
10 unreliable.

11 Q Now, I want to talk for a moment about same-day
12 registration. You concluded that the elimination of same-day
13 registration on the grounds that the practice opens the door to
14 fraud is not justified by the record of fraud in North
15 Carolina. How did you come to that conclusion?

16 A Well, if we go back to that table produced by the State
17 Board of Elections, there is a sort of interesting pre and
18 post, if you will, in the time range because North Carolina
19 adopts same-day registration in 2007, and we don't really see
20 any big increase in voter fraud in those numbers. There was
21 one case of voter impersonation referred before 2007 and one
22 case of voter impersonation referred after 2007.

23 And, you know, I say that in the context of having looked
24 at the incidence of fraud in other states that have either
25 Election Day registration or same-day registration but where

1 they allow voters to register and vote on the same day, and I
2 have found no evidence that same-day registration increases the
3 potential or the incidence of voter fraud either there or here
4 in North Carolina.

5 Q And you also mentioned in your report an incident in
6 Pembroke involving a handful of voters that were permitted to
7 same-day register during the 2013 municipal election. Have you
8 had an opportunity to review any materials related to that
9 election?

10 A Yes. It came up first in the broad general news search
11 that I did. I read a bunch of news stories about it. Then I
12 looked at the transcript of the Robeson County Board of
13 Elections when they had a protest hearing because that was an
14 election where there was a tie and the candidates -- you know,
15 one candidate was bringing a protest, so there was a hearing.
16 I read that transcript.

17 And then I read the transcript of the hearing before the
18 State Board of Elections, which happened after that. And I
19 also read the declaration of Ms. Strach, the director of the
20 State Board of Elections, from last year, and her -- parts of
21 her deposition.

22 Q And you were, in fact, in the courtroom yesterday when
23 Ms. Strach was testifying; right?

24 A Yes.

25 Q Now, what was your understanding of what occurred in

1 Pembroke as it relates to there's nine basketball players that
2 registered and voted during the one-stop period?

3 A My understanding is that this was a case of poll worker
4 error, that those individuals had presented proof of residency
5 that was not acceptable under North Carolina law, but it had
6 been accepted by a poll worker.

7 Q And do you agree that had the poll worker, Ms. Nine is her
8 name, properly applied the pre-H.B. 589 law, that those voters
9 would not have been allowed to register and vote?

10 A Yes.

11 Q And why is that?

12 A Because it is my understanding that they presented a lease
13 which wasn't acceptable and also that that lease was actually
14 dated in the future, so it wasn't even a current lease. So
15 they did not have proof of residency, which they have to reside
16 in that precinct for 30 days before the election.

17 Q Is this incident, in your expert opinion, an example of
18 fraud in same-day registration?

19 A No.

20 Q And why not?

21 A Because I think it is a pretty clear case of poll worker
22 error and the poll worker error, as I mentioned, happens. Poll
23 worker error is often the explanation for what I tend to call
24 irregularities, which are things that come up in the records
25 where certain numbers that are supposed to match don't match

1 and you have to kind of figure out what happened. It is just a
2 pattern that comes up and over and over again.

3 So to see it in this instance where there would have been
4 these two hearings investigating it and so forth, doesn't -- it
5 doesn't surprise me as the explanation.

6 Q Just to sort of recap, based on the information that you
7 reviewed about the Pembroke incident, North Carolina's
8 participation in the Crosscheck program and all of the State
9 Board of Elections materials that you reviewed about the
10 incidence of fraud, what is your opinion about the incidence of
11 fraud in North Carolina?

12 A My opinion is the same as in my report from February,
13 which is that it's exceedingly rare.

14 **MR. MANER:** I don't have any further questions at
15 this time, Your Honor.

16 **THE COURT:** Mr. Strach.

17 **MR. STRACH:** Thank you, Your Honor.

18 CROSS-EXAMINATION

19 **BY MR. STRACH**

20 Q Good morning, Dr. Minnite.

21 A Good morning.

22 Q Good to see you again. My name is Phil Strach, one of the
23 lawyers for the defense. We met at your deposition a few
24 months ago; is that correct?

25 A Yes.

1 Q I want to ask you a few questions about your report. And
2 as I recall, in your report, you mentioned -- you talked about
3 the creation of registration requirements many years ago; is
4 that correct?

5 A Yes, and the introduction.

6 Q And you mentioned that those were started to keep track of
7 voters to ensure the voters were accounted for in the electoral
8 process; is that accurate?

9 A Yes.

10 Q And you are not opposed to registration requirements, are
11 you?

12 A No.

13 Q You don't -- okay. And now, at the time that registration
14 requirements were imposed, they were novel at the time, weren't
15 they?

16 A Yes. Actually, the first kind of registration that we
17 know about was from the early 1880s in Massachusetts where we
18 still had property requirements in the United States through
19 the 1820s, 1830s, 1840s, and that meant that officials in towns
20 had property records, and they would -- it was -- actually, the
21 onus was on government to create the registration list, and
22 they would go out and record where people lived based on the
23 property records because there were property requirements to
24 vote.

25 So the very earliest forms of voter registration allowed

1 people to register and vote on the same day, and the government
2 took the responsibility to create that; and then over the
3 course of the 19th Century with the big changes of
4 industrialization and the Civil War and so forth, and
5 urbanization at the end of the century, we get what we call
6 personal registration, which flipped that responsibility and
7 now required the voter to present and to register.

8 Q And the registration requirements were created
9 additionally, at least in part, as one way to combat fraud?

10 A It was said. I say in the report that it's probably one
11 of these historical questions that we'll never be able to
12 actually really know and answer about how much fraud there was
13 in 19th Century America but -- and we have a kind of one-sided
14 view in the records and in the scholarship and in the history
15 of reformers who said what they wanted to do was to subdue
16 broader forms of electoral fraud. And so registration became a
17 kind of reform aimed at reducing electoral fraud.

18 Q And, in particular, fraud perpetrated by people who had
19 the power and means to do so by organizing other people to
20 commit that fraud?

21 A Yes.

22 Q And it was also implemented out of a concern for
23 increasing population at the time?

24 A Yes. It was a time of, as I said, industrialization and
25 certainly urbanization and immigration to the United States.

1 Q All right. So they had a concern about making sure they
2 kept track of exactly who was voting and who was eligible to
3 vote?

4 A It was not uncommon for many forms -- in many places, in
5 many states that would pass voter registration laws to apply
6 those laws only to cities, only to big cities. And so I think
7 we heard here in the court last week about Wisconsin not having
8 voter registration really almost until 10, 15 years ago in many
9 places because, as I recall, they didn't have to keep
10 registration lists in Wisconsin in communities that had 5,000
11 people or less.

12 So the rural nature of the state, voter registration was
13 unevenly applied, and it was often applied to cities like New
14 York City or Philadelphia and not the rest of the state because
15 these were places that were growing so rapidly in population
16 and immigration and the sort of fears about who those people
17 were. So those registration requirements were really targeting
18 new people and cities.

19 Q Because that's where the population was increasing the
20 most?

21 A Yes.

22 Q As the population increases, that puts more strain on an
23 election administration system, doesn't it?

24 A It can if resources aren't there to meet the new need, or
25 there is a kind of policy decision not to do that.

1 Q All right. Now, you do agree, don't you, Dr. Minnite,
2 that there is a history of organized electoral fraud in the
3 United States?

4 A Well, I certainly think we have a colorful political
5 history, and there are lots of examples of that in the 19th
6 Century especially and through the 20th Century as well, yes.

7 Q All right. Have you -- are you aware of a United States
8 Supreme Court case called *Crawford v. Marion County Election*
9 *Board*?

10 A I am.

11 Q Have you ever read that decision?

12 A Yes.

13 Q It dealt with Indiana's photo ID requirement; correct?

14 A That's correct.

15 Q And there was some discussion in that opinion about voter
16 fraud; is that right?

17 A Yes.

18 Q Did you cite *Crawford* anywhere in your report?

19 A I don't think so.

20 Q Okay. Would you turn to page 20 of your report, the 2015
21 report. Now, are you there?

22 A Yes.

23 Q On page 20 of your report, you cite a case from the
24 Missouri Supreme Court; is that correct?

25 A Yes.

1 Q But you did not cite the leading case in the United States
2 Supreme Court on voter fraud, did you?

3 A I have an opinion about what was said in that case about
4 voter fraud. I am not a lawyer. I am not a legal scholar.
5 But as a researcher and a political scientist, I think in that
6 decision that the comments about voter fraud, which aren't a
7 lot, but what's commented there -- a reference to Boss Tweed, a
8 reference to news sources stating there is some fraud in the
9 rest of the country. That doesn't constitute an informed
10 opinion or an informed knowledge about voter fraud.

11 So I don't state it because it doesn't -- it doesn't sort
12 of meet my standards of having a correct understanding about
13 the evidence.

14 Q Okay. So the perceptions of the majority of the United
15 States Supreme Court in the *Crawford* opinion on voter fraud
16 don't meet your academic standards?

17 A Those opinions are not informed by the historical record.

18 Q Okay. So in the opinion the Court said that, quote, The
19 risk of voter fraud is real, unquote. Do you disagree with
20 that?

21 A I disagree with the -- with stating that based on a
22 reference to Boss Tweed as the evidence for that. That's what
23 I disagree with.

24 Q Do you disagree with it irrespective of the reference to
25 Boss Tweed?

1 A The question is do I think there is a risk to voter fraud?

2 Q No, the quote from the case was that, "The risk of voter
3 fraud is real."

4 A I think it's real in the sense that it could happen, but I
5 don't think it is real in the sense that it likely happens.

6 Q All right. And then the Court also stated in that opinion
7 that the real risk of voter fraud that they were referring to
8 could affect the outcome of a close election. Do you agree
9 with that?

10 A Voter fraud could affect the outcome of a close election,
11 yes.

12 Q And do you recall the Court in the *Crawford* case citing
13 the Baker Report?

14 **MR. MANER:** Your Honor, I object. I would just note
15 that the reference to the Court as deciding the *Crawford*
16 decision -- I believe the opinion was an opinion by three
17 justices.

18 **THE COURT:** Do you want to refer to which opinion?

19 **MR. STRACH:** Yes, Your Honor, I will be more specific
20 about that.

21 **BY MR. STRACH**

22 Q In the plurality opinion -- the opinion of three -- in the
23 opinion of three justices -- the first opinion by three of the
24 justices, they cite the Baker Report. Do you know what I am
25 referring to when I cite the --

1 A No, I am not sure what the Baker Report is.

2 Q Are you familiar with a report issued by the Commission on
3 Federal Election Reform chaired by former President Jimmy
4 Carter and former Secretary of State James A. Baker?

5 A Yes. It is usually referred to as the Carter-Baker
6 Report.

7 Q Okay. And are you familiar with their statement in that
8 report regarding the existence of voter fraud?

9 A Which statement would that be?

10 Q Quote, There is no evidence of extensive fraud in U.S.
11 elections or in multiple voting, but both occur and it could
12 affect the outcome of a close election.

13 Do you recall that statement?

14 **MR. MANER:** Your Honor, I object. I would ask that
15 Mr. Strach provide her either with an exhibit or document that
16 she can refer to. She doesn't have it in front of her.

17 **THE COURT:** Overruled. If you need to refer to
18 something, you are always welcome to refer to something.
19 Otherwise, proceed.

20 **THE WITNESS:** Okay.

21 **BY MR. STRACH**

22 Q I'm just simply asking what you recall. I will represent
23 to you I'm quoting a statement in the report: "There is no
24 evidence of extensive fraud in U.S. elections or of multiple
25 voting, but both occur and it could affect the outcome of a

1 close election."

2 Do you recall that statement from the report?

3 A I don't recall it, but I take that you're representing it
4 accurately.

5 Q And do you agree with that statement?

6 A Yes.

7 Q Let's talk a little bit about your definition of voter
8 fraud just to make sure it's clear.

9 Your definition of voter fraud does not include
10 unintentional conduct?

11 A No. It would make no sense to do that because fraud means
12 the intent to deceive. So it wouldn't make sense to define
13 fraud in a way that includes something that's not part of what
14 the definition actually is.

15 Q Specifically, with regard to same-day registration, the
16 failure to verify the residence of an SDR registrant through
17 the mailing process would not meet your definition of voter
18 fraud; correct?

19 A If that's all it was -- as I understand your question, you
20 are asking me if the person who registers through the same-day
21 registration option and the mail verification process isn't
22 completed. Is that what are you asking me?

23 Q Right.

24 A Is that evidence of fraud?

25 Q Right.

1 A No.

2 Q But you do agree that you can technically have an illegal
3 ballot that's not fraudulent per your definition?

4 A Yes. I distinguish between illegal ballots and fraudulent
5 ballots, again, turning on the notion of intent. And illegal
6 ballots can occur and they can occur through poll worker error.

7 Q All right. Let me ask you -- you testified a moment ago
8 about the issues in Pembroke?

9 A Yes.

10 Q And you characterized what happened there as poll worker
11 error; correct?

12 A Clerical election administration error, administrative
13 error, human error, yes.

14 Q When you read the transcripts of the various hearings that
15 were held in that matter, did you see statements to the effect
16 that the students who were attempting to same-day register and
17 vote were, in fact, nonresidents of that town?

18 A I saw those statements.

19 Q All right. So isn't it the case that what happened there
20 was a poll worker who failed to catch fraud?

21 A No, I don't assume that those students were intending to
22 commit fraud.

23 Q Even though they were presenting a lease as evidence of
24 residence in that town when they were not residents of that
25 town?

1 A Well, there is often a lot of confusion about voting, and
2 we've created a very complex system as it is. It's very
3 different from state to state. When you move, you have to
4 learn what the new rules are.

5 And I actually myself have been a victim of administrative
6 error just in 2013 after I moved from New York to New Jersey,
7 registered at the DMV, received a voter registration card,
8 voted -- I didn't even know I could do this. I went in to
9 apply for an absentee ballot and they said, you can just leave
10 it with us now. So New Jersey had early voting that I didn't
11 even know about because they don't advertise it. So in 2012, I
12 voted absentee.

13 2013 -- we have gubernatorial elections in off year -- I
14 went to my polling place. I didn't even know where it was. I
15 had to figure that out. I was out of town. I came back just
16 to vote. I figured out where it was. They said, you are not
17 on the registration list, and I had already voted the year
18 before. And they said, well, you have to go to the county
19 board. I had to go to the county board. They had to try to
20 figure out what was going on, and what happened was clearly an
21 error on the part of probably the Postal Service. The county
22 board had sent a mailing for that upcoming 2013 election that I
23 never got and it had been rerouted to my previous address
24 because I had submitted a change of address with the Postal
25 Service, which I believe they keep on record for 18 months, and

1 somehow the mailing -- I have been getting mail at my home for
2 over a year. That mailing went to my New York City address
3 that I had moved from more than a year before.

4 So I actually had to vote a provisional ballot. It took
5 half a day. And I then had to follow-up and figure out if it
6 was counted. It was a whole other process of phone calls. I
7 couldn't set up an account on the Board of Elections site, the
8 server was down, et cetera.

9 So my point is that anybody can be a victim of error, and
10 in the case you are asking me about in Pembroke, it is
11 completely reasonable to assume that there is mistakes and
12 misunderstanding about who is eligible to vote. So I would not
13 assume that that was fraud.

14 You know, if it had been fraud, I would have hoped that
15 those people would have been prosecuted, and I don't have any
16 knowledge of any of those so-called basketball players being
17 prosecuted for attempting to illegally vote, which you can be
18 prosecuted for.

19 Q So what would it take in your mind to show that what the
20 basketball players did was, in fact, fraud?

21 A If the rules had been followed and they had been prevented
22 from voting, that would be the end of it. The rules were not
23 followed for whatever reason, and they were ineligible and
24 their form of residency documentation was accepted. To show
25 that they had intended to commit the fraud, there has to be a

1 showing of intent. And this is something that law enforcement
2 deals with all the time. So whatever the investigative methods
3 or procedures are used, they have to be able to show that there
4 was an intent to deceive the poll worker, and I think showing
5 up with a lease that is not even in force says to me there is
6 some confusion there.

7 And I can also say, as having now 15 years teaching
8 college students, you would be surprised at what they don't
9 know about elections. I had students at Columbia tell me they
10 can vote more than once.

11 Q That wouldn't surprise me.

12 A And so I am not so surprised young people don't always
13 understand all the rules and could think that that would be
14 acceptable. And the whole matter would have been over if it
15 had been -- you know, procedures had been properly in place and
16 implemented there, and then they would have walked away and we
17 wouldn't have this discussion about Pembroke.

18 Q And so if they were intending to commit fraud but had not
19 gotten away with it, what would it take in your mind to show
20 that was intentional? Would it take an admission on their
21 part?

22 A It could. You know, I mean, they could be interviewed by
23 inspectors and asked what they were trying to do. Did they
24 know that they couldn't vote there? There could be other
25 evidence that could be brought to bear on that, but intent is

1 very important, and I want to stress that because I believe
2 that the mistakes that are made are far larger than the intent
3 to commit fraud in explaining things like this.

4 I think that is really important. And it goes back to my
5 interest in the subject to begin with where I was teaching
6 Introduction to American Government that semester of the 2000
7 Presidential election, and this is not something, again, my
8 students would ever be interested in, election administrations.
9 Forgive me, but it's tedious. And we were fascinated each day
10 in watching the recount process. I still can't quite believe
11 how fascinated I was in watching that process unfold and
12 learning about it, and, you know, it was a window on the
13 problems of election administration, and it opened up really an
14 important useful debate nationally about what we should do that
15 led to the passage of the Help America Vote Act in 2002.

16 So I thought the focus was going to be on reforming
17 election administration to make it better, to make voting
18 better, to open the process up so that all eligible citizens
19 can vote; and, instead, it started to morph into a focus on
20 voter fraud, which was not a part of that election debacle in
21 Florida in 2000.

22 So I say this -- also, we can think about it in terms of,
23 again, the way social scientists would think about it as
24 alternative explanations and hypotheses. We can test an
25 hypothesis about fraud versus an hypothesis about clerical

1 error as the explanation. We are learning a lot now more, I
2 think, as a result of that scholars have become much, much more
3 interested in election administration, and we are learning
4 about how mistakes can be made and how we can try to build
5 better systems, better both to protect the integrity of the
6 election and provide the access to all citizens who want to
7 vote.

8 Q So you would agree then that election administration --
9 there's two sides of the coin; that is, providing access but
10 also protecting the integrity?

11 A Absolutely. I mean, I don't want one fraudulent vote
12 cast, like probably everybody in this room. So we need to try
13 to make sure that all the laws are followed, that people are
14 properly registered, that they are eligible, their eligibility
15 is established., but that they also can vote. In my way I
16 think about integrity, it also includes access because in a
17 democracy, if you don't have access, the elections don't have
18 the kind of integrity they should.

19 So I don't think about it in terms of one or the other. I
20 think about the access question is an integrity question. You
21 have to have both.

22 Q You think -- you would agree with me that even one case of
23 voter fraud is too much; correct?

24 A Yes.

25 Q Now -- and that's because you shouldn't sacrifice

1 integrity for election conveniences; is that correct?

2 A I'm not sure I understand your question.

3 Q Well, if access and integrity are two sides to the
4 election administration coin, you should not sacrifice one for
5 the other; is that fair?

6 A Well, as I said, I know it's common to think of integrity
7 and access as sort of two separate things that are at odds with
8 one other, and, I mean, in some ways, it is, but I think that
9 really diminishes the idea of access as a question of integrity
10 in an election.

11 So if some people are being barred or the burdens are much
12 greater on them than on others and they have less access, then
13 electoral outcomes from elections like that don't have as much
14 integrity. That's the kind of point I am making. So the words
15 have picked up in the public discourse to mean a certain thing,
16 but I would like to sort of shift that a little bit so that we
17 think of access as an integrity issue.

18 Q Let's talk about the federal ballot integrity initiative
19 that you looked at in your report. I think it is called the
20 Ballot Access and Voting Integrity Initiative; is that correct?

21 A Yes.

22 Q And that's the one that I believe you said started in
23 2002; is that right?

24 A Yes.

25 Q Okay. And you looked at the years 2002 through 2005; is

1 that right?

2 A At the time I was doing this research in the mid-2000s
3 that eventually developed into my book, that was all I had
4 access to, the first three years of that program.

5 Q All right. And the program went on beyond 2005, didn't
6 it?

7 A It is my understanding, yes.

8 Q And why did you cut it off in 2005?

9 A I didn't cut it off. It was an incredibly laborious
10 process doing that research that involved Freedom of
11 Information Act requests to the Justice Department that took
12 more than two years to process; and then once I was able to
13 locate this case list that I mentioned, I then used the PACER
14 system to look at all of the records that I could look at for
15 each one of those indictments. So it was very laborious to do
16 that research.

17 As I said, this was in 2006 and 2007. I had hoped that my
18 book would be published in 2008. It didn't actually come out
19 until 2010, but that's why. It wasn't a sort of decision about
20 only looking at a particular period.

21 Q So you cut your research off in 2005 so you could make
22 sure your book got to publication in the time that you wanted
23 it to?

24 A It had been seven years already, and I was trying to move
25 on.

1 Q And so your -- the report that you submitted in this case
2 is -- at least as to federal matters, is limited to the years
3 2002 to 2005; correct?

4 A Yes. I mean, I did follow afterward, but I didn't do it
5 as systematically as I did for those first three years. So my
6 judgments are really based on that solid work that I did in the
7 first three years of that program.

8 You know, one of the hardest things for you when you're in
9 academia, when you are an academic and you are trying to be a
10 scholar is that you have to always ask whether you are right.
11 You have to always be open to the possibility that you are
12 wrong, and that can be very hard, but you have to keep doing
13 that. So I have tried to build into the way I do my work
14 always kind of checking, you know, was I wrong, did I miss
15 something, did I really misinterpret something.

16 So, for example, you know, since they have invented Google
17 Alerts, which is -- on Google, you can kind of set up Google to
18 send you from the worldwide Internet alerts based on a search
19 phrase, and I have had that set up for years on "voter fraud."
20 I get a Google Alert every single day of news sources or
21 whatever that are coming through. It's just something that I
22 do to kind of keep a check on what I have done before to see if
23 things -- and, of course, the world changes, but to see if I'm
24 right. So I keep in touch in that way with respect to what's
25 happened at the federal level, but I didn't do the systematic

1 scholarship after those first three years.

2 I say all of that to say that there is a question of sort
3 of validity and reliability in the data, and there is nothing
4 that I have come across or in the other research I have done in
5 other publications since the 2010 book that cause me to worry
6 that those conclusions are not valid.

7 Q All right. But you didn't update those conclusions for
8 this report in this case, did you?

9 A I don't report that here, no.

10 Q Okay. Now, isn't it true that there was a similar Ballot
11 Access and Voting Integrity Initiative at the federal level in
12 the early 1980s?

13 A There was something with the same name. It doesn't appear
14 to be exactly the same program, but there was something during
15 the Reagan years in the early 1980s that had the same name.

16 Q You did not attempt to research any findings of voter
17 fraud from that program for this report; is that correct?

18 A Oh, yes, I tried to research that initially. I actually
19 went to the National Archives and tried to look at the
20 historical records of the Justice Department on that. It was a
21 little bit different, though, because it seemed to be focused
22 only on African-Americans in the South, in Alabama, who were
23 assisting other people in voting, and these people who were
24 assisting other people in trying to learn how to and use an
25 absentee ballot process were being accused of quote/unquote

1 voter fraud. So that would be like earlier in the chart where
2 there was -- illegal assistance was one of the categories in
3 the chart that was prepared by the State Board of Elections
4 that we looked at. I mean, it was that kind of voter fraud
5 that I don't call voter fraud because it is not perpetrated by
6 voters. That was what was being called voter fraud, and those
7 prosecutions were very limited then.

8 I do have this in my 2009 book, which is called *Keeping*
9 *Down the Black Vote: Race and the Demobilization of American*
10 *Voters*. I have a whole sort of set of -- it is not a chapter.
11 It is part of a chapter on that case, on the one that you are
12 asking me about.

13 Q But you didn't do a systematic study of the 1980s program
14 the same way you did the first three years of the program in
15 2002, did you?

16 A Well, the 2002 material is more timely and I think more
17 important and also spoke to the issues that I was interested
18 in, the policy questions about election administration reform.
19 So, as I said, as I dug into it and looked at it. It wasn't
20 the kind of program that was going after what I am calling
21 voter fraud, which is double voting or felon voting or
22 noncitizens. It was focused on people who were helping other
23 people to vote in the South.

24 Q All right. But my question was, you didn't do any
25 systematic analysis of that program like you did for the

1 program in 2002, did you?

2 A Well, I did substantial research, but as I found from the
3 research, it wasn't relevant. So --

4 Q Did you do a systematic analysis --

5 A It is in a publication. It is my book *Keeping Down the*
6 *Black Vote*.

7 Q I understand that. You've said that twice. Did you do a
8 systematic analysis of the indictments and convictions from the
9 1980s program like you did for 2002?

10 A Well, I tried. There didn't seem to be that many
11 prosecutions. I tried. I had to -- I looked at a lot of
12 material on microfilm, and young people here won't know what
13 that is. A lot of this was actually on microfilm. I had to go
14 to various libraries to track it down.

15 But it wasn't -- in the end, what I discovered, even
16 though it had the same name, it wasn't anything really like the
17 same program. So I used that research in the first book, but
18 it doesn't speak to what the second book was about.

19 Q You don't report any of the results of that research in
20 this 2015 report in this case?

21 A Well, again, it is not about voter fraud, the way I'm
22 defining it in the second book, so it wouldn't make sense to
23 report it.

24 Q So the answer is no?

25 A Yes, the answer is no.

1 Q Now, with regard to the indictments and convictions that
2 you looked at for the program from 2002 to 2005, I believe you
3 reported that there were 40 indictments and 26 convictions; is
4 that correct?

5 A Yes.

6 Q All right. So that's -- quick math, that's a success rate
7 on convictions of about 65 percent. Do you agree with that?

8 A I will take your calculation.

9 Q All right. Now, Dr. Minnite, you never, I don't believe,
10 ever worked -- have you ever worked for a Board of Elections?

11 A No.

12 Q Have you ever actually been tasked with investigating a
13 case of any kind of voter fraud?

14 A No. Which I take you mean as an investigator or a state
15 employee or election official?

16 Q That's right.

17 A Right. No, I haven't.

18 Q Outside of academia?

19 A No, I have not.

20 Q Are you aware of what resources the State Board of
21 Elections had to investigate voter fraud from the period of
22 2000 to 2012?

23 A I know that they had an employee who was like an
24 investigator, chief investigator, over that period, and at
25 various times over that period, some additional personnel, one

1 or two other people.

2 Q All right. But you don't know what kind of budget they
3 had for investigating voter fraud?

4 A No.

5 Q Do you know what -- any resources that the State Board of
6 Elections currently has for investigating voter fraud?

7 A Only what I read in the paper about it.

8 Q Do you know if they have more resources after 2013 than
9 they did between 2000 and 2012?

10 A I believe so. I believe there's been a hiring of, I
11 think, three or four people in investigations.

12 Q All right. Now, when it comes to terminology, we've used
13 the term "voter fraud," and you use another term called
14 "electoral fraud." Correct?

15 A I use both terms, yes.

16 Q Isn't it true that the words "voter fraud" can mean
17 different things to different people?

18 A Certainly.

19 Q And is it true that those words can mean different things
20 to different legislators or lawmakers?

21 A I'm sure that's the case.

22 Q All right. So when a member of the public or a legislator
23 uses the term "voter fraud," they may very well be referring to
24 something broader than what you define as voter fraud; is that
25 correct?

1 A Absolutely. That is the sort of second part of my book
2 was to try to puzzle through why the public thinks there is so
3 much voter fraud. And a lot of it is, I think,
4 misunderstanding about it and misuse and alternative uses of it
5 to the way I think about it and comparing it to the actual
6 evidence versus what people think. So I did spend a lot of
7 time sort of thinking about how people think about voter fraud,
8 why do they think about it that way.

9 Q And you also agree, don't you, that it is possible to
10 impersonate someone else at the polls?

11 A Yes.

12 Q And it is also possible for someone to get away with it,
13 isn't it?

14 A It's possible.

15 Q And didn't you cite research in your report, Dr. Minnite,
16 where two researchers found that there is a sizable part of the
17 population that does believe that voter fraud commonly or
18 occasionally occurs?

19 A What are you referring to?

20 Q I can never pronounce his name. Ansolabehere?

21 A Ansolabehere and Persily.

22 Q Wasn't it true that that was one of their findings?

23 A Could you say again what you think the finding is?

24 Q Sure. That a sizable share of the population believes
25 that vote fraud commonly or occasionally occurs?

1 A What page are you on?

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

4 A Okay.

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

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

7 **THE COURT:** Okay.

8 **BY MR. STRACH**

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

15 A Yes.

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

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

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

1 A I believe I reviewed most of it.

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

5 A That's correct.

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

8 **THE COURT:** Any redirect?

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

10 REDIRECT EXAMINATION

11 **BY MR. MANER**

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

15 A Yes.

16 Q What materials have you reviewed?

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

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

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

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

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

10 A No.

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

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

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

24 A I didn't find any.

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

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

5 A I didn't find any.

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

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

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

14 A Yes.

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

19 A No, sir.

20 Q Why do you think that is?

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

1 workers.

2 So by combining the registration and the voting process
3 together, it all happens at one time, and it happens in front
4 of the very people whose responsibility it is to prevent voter
5 fraud. So I think there are -- there are ways in which
6 same-day registration adds additional security to the process.

7 Q Shifting gears just a bit, have you had an opportunity to
8 review the deposition transcript of Marshall Tutor?

9 A Yes.

10 Q And who is Marshall Tutor?

11 A Marshall Tutor was the investigator of the State Board of
12 Elections over that period. I believe he said in his
13 deposition he was hired around 2003, and so he had some 10, 11
14 years of experience.

15 Q And how did your review of Mr. Tutor's testimony affect
16 your opinions in this case?

17 A Well, it supported my opinions because he said in his
18 deposition that the board investigated every allegation that
19 came to them or every referral, say, from a county board, but
20 everything that came to them about voter fraud, they
21 investigated, and so -- when I look at those numbers of
22 referrals and going back, I believe that these had been
23 investigated at a basic level, because he also said in the
24 deposition that it wasn't their duty or their business perhaps
25 to try to establish intent. That was the role of law

1 enforcement or of the prosecutor to establish the intent. So
2 the presumption is that they saw something that made them think
3 it is possible. They didn't establish intent, but they thought
4 it might be possible.

5 I thought -- in reading his deposition, I thought the
6 process involved at the State Board of Elections at the time
7 seemed as kind -- it added a reliability to the data they then
8 produced in that table.

9 **MR. MANER:** I don't have any further questions, Your
10 Honor.

11 **THE COURT:** Anything further?

12 **MR. STRACH:** Just a few brief follow-ups, Your Honor.

13 RECROSS-EXAMINATION

14 **BY MR. STRACH**

15 Q Dr. Minnite, regarding underenforcement of voter fraud,
16 did you, in connection with your report in this case, interview
17 any North Carolina district attorneys about the resources they
18 have available to prosecute voter fraud?

19 A No, I wasn't able to do that because I think that there
20 would have been issues. I would have to disclose that I had
21 been asked to do the research for the Plaintiffs.

22 Q And is it your understanding that the State Board of
23 Elections does not have any prosecutorial authority to actually
24 prosecute fraud cases?

25 A My understanding is it is called in the law a

1 quasi-judicial agency, but that it doesn't prosecute.

2 Q So they refer cases that they find over to the DAs;
3 correct?

4 A That's my understanding, yes.

5 Q And the district attorneys are also free to investigate
6 potential fraud on their own; is that your understanding?

7 A That's my understanding.

8 Q And then with respect to Mr. Tutor, do you agree with me
9 that he also testified that if an individual presenting to vote
10 provided a correct name and address, it would be almost
11 impossible for the poll worker to know whether that individual
12 was impersonating someone else?

13 A I think I remember him saying that. If you are reading
14 from his deposition --

15 Q Yes.

16 A -- I will take it as a quote.

17 Q Thank you.

18 **MR. STRACH:** Thank you, Your Honor. No further
19 questions.

20 **THE COURT:** Thank you. You may step down.

21 **MR. DONOVAN:** Your Honor, we'll address this later,
22 but just for your notes, I had the team check regarding
23 Footnote 56 and 61, the quotes by -- from Mr. Tillis. They are
24 contained in PX533, just for your notes. We'll address that
25 later.

1 **THE COURT:** 533 is the video?

2 **MR. DONOVAN:** That's the video.

3 **THE COURT:** If you could just assure your opponents
4 of that --

5 **MR. DONOVAN:** We will.

6 **THE COURT:** -- and then --

7 **MR. DONOVAN:** We will let you know after the break.

8 **THE COURT:** -- I will hear from them as to whether
9 they have any further objection to that.

10 **MR. DONOVAN:** We will.

11 **THE COURT:** We'll take our 20-minute break.

12 (The Court recessed at 10:41 a.m.)

13 (The Court was called back to order at 11:02 a.m.)

14 **THE COURT:** Mr. Kaul?

15 **MR. KAUL:** Your Honor, next we have a video. Before
16 I queue that up, I have just two housekeeping matters. There
17 was a video played earlier, Tawanda Pitt, and her deposition
18 designations were provided to the Court, but I don't believe
19 they were formally admitted. PX798 --

20 **THE COURT:** Give me just a moment. That was before
21 5:00?

22 **MR. DONOVAN:** It was Tuesday evening.

23 **MR. KAUL:** That was Tuesday evening, Your Honor.

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

25 **MR. KAUL:** Similarly, Kate Costner, her deposition

1 designations are PX803. So we would move that those be
2 admitted as well.

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

4 **MR. KAUL:** Your Honor, the next video is from the
5 deposition of Jay DeLancy, who is the executive director of the
6 Voter Integrity Project. The is 29 minutes and 20 seconds
7 long. May I approach with a transcript?

8 **THE COURT:** Yes.

9 (Designated portions from the video deposition of Jay
10 DeLancy were played.)

11 **MR. KAUL:** Your Honor, may I approach?

12 **THE COURT:** Yes.

13 **MR. KAUL:** The document I handed up is PX804. That's
14 the full set of deposition designations for Mr. DeLancy marked
15 the same way that the recently submitted designations were. I
16 move that those be admitted.

17 **MR. STRACH:** Your Honor, in our counter-designations,
18 we lodged certain objections to his testimony based on
19 relevance and other issues. We understand it is a judge trial,
20 so the Court will give the testimony whatever weight it
21 deserves; but we just wanted to note the objections and the
22 explanation of the objections that we lodged in our
23 counter-designations, which is Document 302 in Case 13:861.

24 **THE COURT:** Are the counter-designations part of this
25 document, Plaintiffs' Exhibit 804?

1 **MR. KAUL:** They are.

2 **THE COURT:** They are all part of here?

3 **MR. STRACH:** Yeah, there were no
4 counter-designations, just objections.

5 **MR. KAUL:** Sorry.

6 **THE COURT:** Mr. Strach, you are referring me to
7 Document 302. Do I need to read that, or can I just read what
8 is Plaintiffs' Exhibit 804 and understand what your objections
9 are?

10 **MR. STRACH:** You would have to read what's in
11 Document 302.

12 **THE COURT:** To get the nature of the objections?

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

14 **THE COURT:** I understand. Any objection to my
15 admitting the document subject to my later determining how I
16 would rule on the objections?

17 **MR. KAUL:** None from me, Your Honor.

18 **THE COURT:** In other words, do you want to hash it
19 out now, or are you both comfortable leaving it for me to
20 decide later as to objections?

21 **MR. STRACH:** We are happy to leaving it to you.

22 **MR. KAUL:** I am as well.

23 **THE COURT:** All right. I will admit 804 subject to
24 my determination later as to any objection that may be raised
25 in the transcript.

1 Q When did you receive those degrees?

2 A The BA was '71 and the Ph.D. was 1985.

3 Q And, Dr. Duncan, can you briefly describe your employment
4 history?

5 A Yes. While I was getting my master's and Ph.D., I was
6 working as research director at an economic development
7 organization in eastern Kentucky and West Virginia and
8 southwest Virginia. And then I consulted and was codirector of
9 a project called the Rural Economic Policy Program that was at
10 the Aspen Institute and consulted to the Ford Foundation on
11 rural poverty and developmental issues.

12 In 1999, I joined the faculty at the University of New
13 Hampshire in sociology as an assistant professor and over the
14 next ten years worked my way up to full professor.

15 In 1999, I went to the Ford Foundation, where I became
16 director of community and resource development, and I stayed
17 there four years, managing seven program officers domestically
18 and about a dozen overseas.

19 And then in 2004, I was recruited back to the University
20 of New Hampshire to be founding director of the Carsey
21 Institute, an institute that was endowed by an alum, Marcy
22 Carsey, to provide rigorous research on vulnerable families and
23 communities.

24 Q And when did you start your current position at AGree?

25 A In 2011.

1 Q Dr. Duncan, what's been the focus of your research in the
2 past few years?

3 A Virtually my whole career my research has focused on
4 poverty and inequality and social change.

5 Q And have you published on this topic?

6 A Yes, I've published chapters in peer-reviewed books,
7 peer-reviewed articles and two books, an edited book in the
8 early '90s on rural poverty, to which I also contributed.

9 And then in 1999 Yale University Press published my book
10 *Worlds Apart: Why Poverty Persists in Rural America*, which was
11 based on a comparative study of three communities. The press
12 asked me to update that book recently, and so in 2013, I went
13 back to the original communities, 20 years after the original
14 interviews, and wrote an update that was just published this
15 past year.

16 Q In the course of your professional career, have you
17 studied poverty in the rural south and in North Carolina?

18 A Yes. I have done extensive work studying Appalachia and
19 the Mississippi Delta, two of the sites for my book,
20 interviewing hundreds of people and analyzing census data over
21 virtually a century in those two places.

22 I have studied North Carolina at the request of the League
23 of Women Voters and the Southern Coalition for Southern Justice
24 in early 2013, and that involved analysis of census data, the
25 American Community Survey, and also doing some interviews here

1 in North Carolina.

2 **MS. RIGGS:** Your Honor, the League of Women Voters
3 Plaintiffs tender Dr. Duncan as an expert in sociology, poverty
4 and inequality.

5 **MR. STRACH:** No objection.

6 **THE COURT:** No objection?

7 **MR. STRACH:** No objection.

8 **THE COURT:** She may give her opinions.

9 **BY MS. RIGGS**

10 Q What were you asked to do in this case?

11 A I was asked to present a report describing the poor in
12 North Carolina.

13 Q Did you produce a physical report?

14 A Yes, I did. I submitted a report based on analysis of the
15 2012 American Community Survey micro data and included some
16 analysis of five-year data, 2008 to 2012, when we were looking
17 at smaller geographical areas. And I came down to North
18 Carolina with a graduate student, and we interviewed 47 poor
19 urban and rural residents in North Carolina.

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

21 **THE COURT:** Yes.

22 **MS. RIGGS:** Your Honor, I've handed the Court and the
23 witness what has been marked as Plaintiffs' Exhibit 45, the
24 expert report of Dr. Duncan, and we move for admission of that
25 report.

1 **MR. STRACH:** No objection.

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

3 **BY MS. RIGGS**

4 Q Dr. Duncan, can you describe for the Court the
5 methodological approach you took to this analysis?

6 A Sure. I used the same approach that I have taken during
7 my whole career of combining analysis of census data with
8 in-depth interviews. In this case, as I said earlier, we --
9 with a graduate student, I analyzed the American Community
10 Survey micro data for 2012 and then conducted interviews to get
11 the -- in which I explore the biographical experience of the
12 individual and also get their perspectives on opportunity and
13 barriers and community -- the community they live in to help us
14 better understand what those statistics are telling us.

15 Q And how many people did you interview in North Carolina?

16 A Forty-seven with assistance.

17 Q Why should a poverty analysis include personal interviews
18 in your opinion?

19 A Well, I think that to understand how people -- why people
20 are poor and what their experience is, we have to understand
21 better the more complicated nuances of their family life, their
22 community life, their educational opportunities, or lack
23 thereof, and their work experience.

24 Q Do conducting personal interviews -- does that help you
25 establish any patterns?

1 A Well, certainly in the work that I did for my book, having
2 conducted hundreds of interviews with people from all walks of
3 life, I was able to identify patterns, patterns that were
4 different for those who escape poverty, from those who were
5 stuck in poverty, the difference in communities where there was
6 a strong middle class and strong institutions, and communities
7 where there were, in effect, haves and have-nots and the
8 have-nots or the poor were in different institutions.

9 In that case, there were -- there were so much qualitative
10 data that there were clear patterns, and, you know, people from
11 entirely different states would say they recognize the
12 characters in a certain chapter because those were patterns
13 that were -- as a social scientist likes to find, that were
14 common across these kinds of conditions.

15 In the case of the interviews here in North Carolina, they
16 were not randomly selected, and I think they track well with
17 the interviews that I have done elsewhere and contribute to
18 patterns that I have seen and other scholars have seen
19 elsewhere.

20 Q Dr. Duncan, I want to review some of the findings from
21 your report, and I've created demonstratives to help us walk
22 through that.

23 **MS. RIGGS:** May I display, Your Honor?

24 **THE COURT:** Yes.

25

1 **BY MS. RIGGS**

2 Q First, can you tell us about the extent of poverty in
3 North Carolina?

4 A In 2012, when I did the report, poverty in the state was
5 18 percent. That was 1,500,000 people who lived in poverty,
6 and it was 2 percentage points higher than the national average
7 at the time.

8 The -- throughout the report, in almost every indicator
9 that we looked at, the rate of poverty is higher for people of
10 color, African-Americans, Native Americans and Hispanics, and
11 that's the case overall. It is two to three times higher for
12 blacks and Hispanics than it is for whites.

13 Q What did you find about those who don't fall into the
14 technical poverty category but still face economic challenges?

15 A Well, a lot of scholars also look at people who are living
16 at 150 percent of poverty, which is considered near poverty,
17 and those are people who also struggle to make ends meet, put
18 food on the table, take care of their kids; and over a quarter
19 of North Carolinians fall in that category and, again, the rate
20 is higher for African-Americans.

21 Q Just to clarify quickly, when did you produce this report,
22 Dr. Duncan?

23 A Produced the report in 2013.

24 Q And what data is it based upon?

25 A 2012 data from the American Community Survey. So the more

1 recent data that we have today is 2013 data. 2014 data won't
2 be available until September of this year.

3 Q Now, going back, how do you measure poverty?

4 A So we still rely primarily on a measure that Molly
5 Orshansky developed in the 1960s when we first began to measure
6 poverty, and she saw that food was a third of a person's diet
7 and multiplied that third that the food costs and came up with
8 a measure, which we have adjusted with the Consumer Price Index
9 every year since that first definition. And so in 2012, when
10 we were looking at poverty, the poverty level for a family of
11 four would be around 23,000. For a single parent with two
12 kids, it would be 18,000 something.

13 Q Are there alternative ways to measure poverty as well?

14 A There is a new measure, which I haven't personally used,
15 although colleagues at the Carsey Institute and Carsey School
16 have, that takes into account different measures and finds
17 slightly different results. It takes into account assistance
18 from programs, cost of living, that kind of thing, but it's not
19 widely used yet. It's just now becoming popular.

20 I think it is important when we think about poverty -- and
21 many scholars, poverty scholars, also think this -- that we use
22 this income poverty cutoff that I just described that dates
23 back to the '60s, but when you think about what poverty means
24 and what it is to be poor, it is helpful to think about --
25 scholars like to talk about poverty being not having adequate

1 resources to participate fully in the mainstream of education
2 and work, to being excluded from opportunities; and when
3 resources diminish, participation in the mainstream of work and
4 education and community also diminishes.

5 Q Dr. Duncan, can you tell me about what unemployment and
6 lower educational attainment means for people of different
7 racial backgrounds?

8 A Sure. Well, of course, the more you work, the less likely
9 you are to be poor. And so when we look at unemployment, a
10 high proportion of those who are unemployed are poor, but the
11 proportion of unemployed who are African-American is much
12 higher if they are -- unemployed is much higher than it is for
13 white non-Hispanic adults in North Carolina.

14 Q Does that mean being unemployed results in different
15 economic status if you are white or black?

16 A Right. Right. If you are unemployed and you are white,
17 34 percent of those unemployed who are white are poor; whereas,
18 45 percent of those who are unemployed who are black are poor.
19 So you have a higher rate again.

20 And the same thing happens with education. No matter what
21 educational attainment level we look at, if you are a person of
22 color, you are more likely to be poor at that level of
23 education.

24 Q And, Dr. Duncan, in your studies, what did you find out
25 about vehicle access in North Carolina?

1 A 15 percent of the poor in North Carolina do not have
2 access to a vehicle in their household. The rate is 9 percent
3 for a white person who is poor and 27 percent of black persons
4 who are poor. In other words, 27 percent of poor black North
5 Carolinians do not have access to a vehicle.

6 Q Dr. Duncan, what is residential instability?

7 A Residential instability refers to people who move a lot,
8 and the question in the American Community Survey is, did you
9 move last year. We know from many studies that the poor move
10 more often because their lives are unstable. And in North
11 Carolina, while 15 percent of the people moved, more people who
12 were poor moved. I think it was about a quarter. I don't have
13 that in front of me, but 19 percent of blacks moved in that
14 year, which is -- many studies have shown is very hard on
15 children who are changing school districts and just kind of
16 reflects, as well as contributes, to the instability of poor
17 families.

18 Q And how does home ownership factor in?

19 A Well, sort of naturally, if you own a home, you are likely
20 to experience more stability in your life, and home ownership
21 is higher among whites than it is among blacks.

22 Q And what did you find with respect to racial disparities
23 and poverty in different metro settings?

24 A Well, it was striking really. The differential in poverty
25 rates was consistent across the different types of areas that

1 North Carolinians live in. That is to say, in central cities,
2 poverty was higher for blacks and Hispanics than it was for
3 whites. In rural areas, it was higher for blacks and Hispanics
4 than it was for whites. It was lower in suburban areas, but
5 even there the rate was higher for people of color.

6 Q Dr. Duncan, I know you have written an entire book on the
7 subject, but can you briefly explain to us why poverty, like
8 what we see in North Carolina, persists?

9 A Well, I think that in many ways, the poverty that we found
10 in those statistics and learned about in those interviews is a
11 legacy of an economy in North Carolina based on low wages in
12 textiles and agricultural for many decades. That legacy
13 persists in low-education and low-wage jobs today; and we saw
14 that in the statistics, and it is one reason that poverty
15 persists.

16 Another reason that poverty persists is that poverty is
17 increasingly concentrated in this country, and so people who
18 are poor are likely to live in a high poverty area where a
19 majority are poor and where they are isolated from the
20 mainstream, like we were talking about before, where maybe
21 there aren't -- there isn't a large middle class of shop owners
22 or professionals or paraprofessionals who have the resources to
23 invest in basic community institutions like good schools.

24 And so those growing up in multi-generations of poor
25 families have limited prospects. I like to think of it as a

1 cultural toolkit that -- culture as a toolkit where you have
2 the habits, experiences, the role models and then you decide
3 what you can be and what decisions are right for you based on
4 that toolkit of experiences that you have; and when you are
5 living in a concentrated poverty area, those experiences and
6 role models are limited. So you might repeat your parents'
7 experience of poverty.

8 Q Can you also explain to us why poverty, like what you
9 described in your report, has a differential impact by race?

10 A I think both in my own work and in important new work by
11 other scholars that we are able to see that the long-term
12 impact, the legacy again of racial discrimination and
13 segregation by both race and class, has longstanding effects on
14 community institutions and on families.

15 And so in my experience -- and you see this in some of the
16 vignettes that we -- that I present in the report to you
17 that -- for example, one woman who's in her early 70s grew up
18 in a family of eight, sharecropper family, and she and her
19 young husband repeated that sharecropper experience. So she
20 was in her 20s in the 1960s, in her 30s in the 1970s, and she
21 was experiencing a limited set of opportunities in rural east
22 North Carolina.

23 And I find that in my interviews, especially in rural
24 places that -- but often with people whose family might have
25 grown up in rural places, that this is a very recent

1 phenomenon, that people's parents may have only gone as far as
2 eighth grade and the assumptions that went along with the
3 separation by race for so long in the rural south persists --
4 have a legacy in what opportunities people are exposed to.

5 Q Thank you, Dr. Duncan.

6 **MS. RIGGS:** I have no further questions right now.

7 **THE COURT:** Any cross?

8 **MR. STRACH:** Thank you, Your Honor.

9 CROSS-EXAMINATION

10 **BY MR. STRACH**

11 Q Good morning. It's still morning, Dr. Duncan. My name is
12 Phil Strach. I am one of the lawyers for Defendants. I just
13 have a few questions to ask you about your report.

14 A Okay.

15 Q I think I heard you say that you described this as a
16 report describing the poor. That's what you were asked to do?

17 A That's right.

18 Q And so is it fair to say this is descriptive research
19 regarding the poor in North Carolina?

20 A That's right. I bring my understanding about poverty to
21 the description --

22 Q Okay.

23 A -- as you noticed.

24 Q Right. And in your descriptive research, you are not
25 attempting to assess the causes of poverty, are you?

1 A I am not describing the causes of poverty when I am
2 reporting the results of the American Community Survey
3 analysis. I guess I'm seeing some -- I think we can see some
4 ways to better understand why people are poor when we look at
5 the interviews that I did and when we look at the scholarly
6 literature on poverty.

7 Q All right. So -- but to the extent in this report that
8 you are looking at causes of poverty, it is based on the 47
9 interviews that you did with individuals?

10 A No. I would say it is more based on my experience
11 interviewing hundreds of people in the '90s and then 50 people
12 in the last couple of years, you know, in my book.

13 Q All right. So you are saying that some of the conclusions
14 you draw are based on interviews outside of the 47 interviews
15 you report in this report?

16 A I would say they were drawn on the basis of what I learned
17 over the years about poverty, yes.

18 Q All right. Is it fair to say, though, that nothing in
19 this report attempts a quantitative assessment of the causes of
20 poverty?

21 A That's correct.

22 Q And, Dr. Duncan, in this report have you expressed any
23 opinions on the effect of poverty on one's ability to vote?

24 A No. I have described aspects of poor people's lives that
25 make it hard to participate in many aspects of the mainstream

1 and daily life, but I have not specifically addressed voting.

2 Q Okay. So you have not attempted any specific assessment
3 of the impact of poverty on one's ability to comply with
4 whatever processes there are that you have to comply with to
5 vote?

6 A No. I have described people who tell me they are
7 scratching and scrabbling to get by, but I have not related
8 that directly to voting.

9 Q All right. And as I -- if I use the term "House
10 Bill 589," do you know what I am talking about?

11 A I have not read it, but I do know what you are talking
12 about.

13 Q So you know that's the bill that's the subject of this
14 lawsuit. But are you familiar at all with the contents of the
15 bill?

16 A Very broadly speaking. I've read newspaper articles
17 and --

18 Q All right.

19 A -- talked with my counsel here.

20 Q As I flip through your report, one of the things that
21 struck me -- and I want to know if I'm reading this
22 correctly -- is that the race, ethnicity in North Carolina that
23 appears to be most struggling with poverty is actually Native
24 Americans. Is that a fair conclusion?

25 A Right. The rate is highest for Native Americans, who make

1 up a relatively small portion of the population in the state
2 but have very high rates of poverty.

3 Q Do you have a copy of your report in front of you?

4 A Uh-huh.

5 Q Would you turn to page 10?

6 A Uh-huh. Yeah.

7 Q In the middle of the page, Dr. Duncan, in the second
8 paragraph, there is a sentence that says, "While only
9 10.1 percent of non-Hispanic whites 25 years and older have
10 less than a high school degree, the same is true of
11 15.7 percent of non-Hispanics blacks, 23.5 percent of
12 non-Hispanic Native Americans, and 44.0 of Hispanics."

13 Do you see where I am?

14 A Yes.

15 Q Is it fair to say that the percent of non-Hispanic whites
16 and blacks who have less than a high school degree is fairly
17 close?

18 A Well, there is a 5 percentage point difference, and I
19 believe that that was a statistically significant difference.
20 I don't have the appendix in front of me, but I believe that
21 that was not by chance.

22 Q All right. Sitting up there today, are you able to tell
23 me for sure whether it is statistically significant?

24 A No, I would have to check.

25 Q If you will look at page 12 --

1 A Yep.

2 Q -- of the report. You have a chart -- or a table
3 actually, Table 2.

4 A Right. So there is the answer to our question.

5 Q And what is the answer?

6 A That the -- at the -- that the educational achievement
7 between blacks and whites only differs statistically
8 significantly at the college level.

9 Q All right. And if you look at this --

10 A This is of poor -- this is of the poor; right?

11 Q Right.

12 A Not of all?

13 Q I'm sorry?

14 A Not of all North Carolinians who are white and black.

15 Only of poor white North Carolinians and black --

16 Q Right. Got you. Thank you. That's helpful.

17 So according to Table 2, the differences between poor
18 whites and poor blacks in terms of education, less than high
19 school or high school and some college, are fairly minor; is
20 that correct?

21 A That's right, among the poor population.

22 Q Then if you will look at page 15, Dr. Duncan.

23 A Uh-huh.

24 Q The last paragraph on that page, near the bottom, it says,
25 "For instance, while non-Hispanic whites and non-Hispanic

1 blacks living in 'SNAP households' are statistically equally
2 likely to be poor at 49.2 and 53.0 percent, respectively,
3 non-Hispanic Native Americans and Hispanics in 'SNAP
4 households' are disproportionately likely to be poor
5 (66.8 percent and 65.3 percent)." Do you see that?

6 A Yes.

7 Q So it is the case that non-Hispanic whites and
8 non-Hispanic blacks living in SNAP households are statistically
9 equally likely to be poor; is that correct?

10 A Right.

11 Q And SNAP households are the households receiving certain
12 benefits from the government?

13 A That's what the Food Stamp program is now called.

14 Q Right. Okay. Thank you. Have you done any similar
15 descriptive research of the extent of poverty in any other
16 states?

17 A Back when I was doing the original research for my first
18 edition of my book, I did this kind of analysis for most of
19 eastern Kentucky and for the northern Mississippi counties.

20 Q All right. None beyond that?

21 A No. I have done some work in New Hampshire, but it is a
22 different scene entirely.

23 Q You mentioned in your direct testimony, I believe, that
24 the 47 interview subjects were not selected randomly; is that
25 correct?

1 A That's right.

2 Q Can you tell me how they were selected?

3 A Yes. We were in a very condensed time frame, and we
4 worked with some nonprofits in the state to identify people who
5 had contact with -- in helping professions or in programs with
6 poor individuals.

7 Q All right. And can you tell me what nonprofits those
8 were?

9 A I guess to protect them, I would rather not unless I
10 really need to. I did the interviews in Raleigh-Durham and had
11 an assistant help me in Siler City, and then we went to
12 Conetoe. It's near Rocky Mount. Am I saying it wrong?

13 **MR. PETERS:** Conetoe.

14 **THE WITNESS:** Conetoe, right. It's been a couple of
15 years.

16 **BY MR. STRACH**

17 Q Are you saying that these nonprofits were nonprofits based
18 in the state of North Carolina?

19 A Yes.

20 Q And they helped you select the 47 individuals?

21 A No, they helped us find people whom we could ask if they
22 would do an interview with us.

23 Q Did they provide you a pool of people to select your 47
24 individuals from?

25 A Right, people self-selected.

1 Q All right. And so ...

2 **MR. STRACH:** Your Honor, I do feel like the names of
3 the nonprofits, if she remembers them, to the extent that they
4 may be nonprofits that are also nonprofits involved in this
5 case through other various witnesses, would be relevant to the
6 case.

7 **THE COURT:** Do you know which ones you are interested
8 in? Maybe you can ask her those first, and she can rule them
9 out perhaps.

10 **BY MR. STRACH**

11 Q Sure. Were you provided any assistance by Democracy North
12 Carolina?

13 A No.

14 Q Or Common Cause North Carolina?

15 A No.

16 Q Or the Southern Coalition for Social Justice?

17 A No.

18 Q All right.

19 **MR. STRACH:** Thank you, Your Honor. That's all the
20 questions I have.

21 **THE COURT:** Any redirect, Ms. Riggs?

22 REDIRECT EXAMINATION

23 **BY MS. RIGGS**

24 Q Just briefly, Dr. Duncan, I want to explain -- have you
25 explain the difference between assessing statistics amongst the

1 poor versus across the population of North Carolina.

2 A Well, I think that the difference is evident in the
3 results and the tables and figures that are in the report.
4 People who are poor, not surprisingly, tend to work less, to
5 have lower education, tend to be in lone-parent families. So
6 once you are looking at a poverty population, you are looking
7 at people who are more likely to have lower education, no
8 matter what their race, work less, or not have full-time,
9 full-year work, although that doesn't mean you aren't poor in
10 North Carolina or elsewhere.

11 And there is a higher rate of poverty among single-parent
12 families, as one would expect with only one income possible.

13 Q So looking at the total population of North Carolina, what
14 did the indicators that you found tell you about racial
15 disparities using all of the poverty indicators?

16 A On just about every measure that we looked at, the rate of
17 poverty would be higher for people of color in North Carolina
18 than it would be for non-Hispanic whites.

19 **MS. RIGGS:** No further questions.

20 **MR. STRACH:** Nothing further.

21 **THE COURT:** I wanted to ask you a question about
22 page 9 of your report, pages 8 and 9. Can you explain how
23 marital status factors in, or does it factor in to your poverty
24 analysis?

25 **THE WITNESS:** Well, as I just said, it does. If you

1 are a lone parent, as we call it now, male or female, your
2 likelihood of poverty is higher and children in those families
3 have higher rates of poverty. Does that answer your question?

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

5 **THE WITNESS:** So whether you are white or black, if
6 you are in a married couple family, child poverty is high at
7 16 percent for whites and 20.5 percent for blacks -- or, no, 16
8 percent for blacks and 9.5 percent whites; but if you are in a
9 single-female-headed household, your poverty rate for both
10 races is higher, although the boldness means that it's
11 statistically significant that it is higher for blacks than
12 whites, that the difference is not chance. It's 55 percent
13 among black single-family households and 40 percent among
14 whites. Still very, very high, of course.

15 **THE COURT:** Hold on just a minute, please. Now, are
16 these rates of poverty?

17 **THE WITNESS:** Yes.

18 **THE COURT:** What does a rate mean?

19 **THE WITNESS:** It's the -- for example, and this is --
20 Table 1 is looking at child poverty, of course, not adult
21 poverty, but in married couple families that have a black head
22 of household, 16 percent of those married couple families, the
23 children are poor. In single-headed households, 55 percent are
24 poor. So it's what proportion are poor of that universe of
25 female-headed households who are black that are living in

1 poverty; in other words, the majority in that case compared to
2 not living in poverty.

3 And that poverty level, of course, as we were saying,
4 is for -- say, a mother with two children is as low as 18,000 a
5 year, and if you made slightly more than that, you wouldn't be
6 in this statistic.

7 **THE COURT:** Do you know to what extent the poverty in
8 the state of North Carolina relates to the marital status of
9 the parent, that is, the poverty rates in North Carolina
10 overall?

11 **THE WITNESS:** I don't think it's different in North
12 Carolina than it is in other places in that a high proportion
13 of this kind of female-headed or male-headed household is
14 likely to be poor, no matter where they are.

15 I can't say off the top of my head what proportion of
16 families who are poor in North Carolina are single-parent
17 families, but it's -- well, yeah, no, this is just the child
18 poverty, but it is high. It is high everywhere. You are at
19 much greater risk for poverty in a lone-parent family than in a
20 married-couple family.

21 **THE COURT:** How about education? Is there any
22 correlation with educational achievement and lone-parent family
23 versus married couple?

24 **THE WITNESS:** Yes, I believe there is. It isn't
25 something that I took apart for this report, but there is a

1 correlation. In fact, there is very interesting new work that
2 Robert Putnam at Harvard has done looking at the growing
3 opportunity gap, which sort of people across the spectrum and
4 the country are worried about. Among the things he compares is
5 children in households that have only a high school or less
6 compared with children in a household where the head of
7 household has a college degree. And on indicator after
8 indicator, he finds what he calls scissor graphs, which is to
9 say that over these recent decades, because of the concentrated
10 poverty that -- growing concentration of poverty that I talk
11 about, the gap used to be small, and now it is getting bigger.
12 And among those gaps is the education of single parents
13 compared to -- the gap between single parents with a college
14 education and single parents with a high school education is
15 growing.

16 I don't know if that answers your question, but there
17 is a growing gap on a number of indicators, and low education
18 is very much a part of poverty status, as you can see in the
19 table that we were talking about earlier.

20 **THE COURT:** Thank you. Any further questions in
21 light of what I asked about?

22 **MS. RIGGS:** No, Your Honor. I would --

23 **THE COURT:** Let me ask, Mr. Strach, any questions?

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

25 **MS. RIGGS:** I would like to mark and admit for

1 demonstrative purposes the slides that were displayed to the
2 Court, which I showed to defense counsel. They are marked as
3 PX Exhibit 729.

4 **THE COURT:** Any objection?

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

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

7 **MS. RIGGS:** Your Honor, we are ready to play another
8 video.

9 **THE COURT:** Let me thank you, and you may step down
10 off the stand. How long does this one run? Do you know?

11 **MS. RIGGS:** Nine minutes, thirty-nine seconds.

12 **THE COURT:** You must choreograph this because they
13 all seem to run about the right time.

14 **MS. RIGGS:** The League of Women Voters Plaintiffs
15 would like to play excerpts from the video deposition of Joseph
16 Windsor. May I approach with the transcript?

17 **THE COURT:** Yes.

18 (Designated portions from the video deposition of Joseph
19 Windsor were played.)

20 **MS. RIGGS:** Your Honor, I have what's been marked as
21 Plaintiffs' Exhibit 802, which is the highlighted deposition
22 transcript from the video we just watched. May I approach?

23 **THE COURT:** Yes.

24 **MS. RIGGS:** Plaintiffs move for the admission of
25 Exhibit 802.

1 **MR. STRACH:** No objection.

2 **THE COURT:** Admitted. Is 802 broader than the
3 transcript that I just got as we watched the video?

4 **MS. RIGGS:** Yes.

5 **THE COURT:** Thank you.

6 **MR. DONOVAN:** Good time for the break, Your Honor?

7 **THE COURT:** Yeah, we are going to take our lunch
8 break. Is there anything you wanted to bring to my attention
9 before?

10 **MR. DONOVAN:** Just back at 2:00?

11 **THE COURT:** Yes. What's the plan for this afternoon?

12 **MR. DONOVAN:** We have more witnesses. I actually
13 need to check some people's schedule. Do you want a brief
14 update on kind of where we're at?

15 **THE COURT:** I just didn't know if you thought you'd
16 finish today or tomorrow.

17 **MR. DONOVAN:** There is a chance. It depends on some
18 witnesses' schedules. We may need to shuffle a few things. We
19 are in that range.

20 **THE COURT:** Just as long as you stay in touch with
21 your other counsel, so that they are not surprised, when you
22 think you are going to finish. We'll take a break. We'll see
23 you all at 2:00.

24 (The Court recessed at 12:29 p.m.)

25 (The Court was called back to order at 2:09 p.m.)

1 **THE COURT:** Ms. O'Connor.

2 **MS. O'CONNOR:** Good afternoon, Your Honor. I am
3 afraid that when you see me, you are going to start knowing
4 what I am going to be doing, which is enter --

5 **THE COURT:** Time for new notebooks.

6 **MS. O'CONNOR:** So at least we're all fresh off lunch.
7 We have several categories of exhibits. A couple of
8 them are clearly unobjected, and the last category that I will
9 present had objections, but we've resolved them as to this
10 batch.

11 Let me start with this first set that I will
12 introduce are various memoranda reports and other documents
13 that were issued by government agencies in North Carolina.
14 These are unobjected to.

15 Plaintiffs' Exhibit 563 -- and is it -- before I
16 proceed, is it your preference that I -- I have the
17 descriptions of the documents here, but I also have all the
18 plaintiffs' exhibit numbers.

19 **THE COURT:** It would help me to have the exhibit
20 number and then just a summary of what's in the exhibit so I
21 know what it is.

22 **MS. O'CONNOR:** Sure.

23 **THE COURT:** And then if the exhibit has a title, I'm
24 sure it speaks for itself.

25 **MS. O'CONNOR:** So I will go ahead and give you -- it

1 will take a little bit.

2 But Plaintiffs' Exhibit 563 is a memo from Cosner to
3 Strach, Re: Robeson status report. Plaintiffs' Exhibit 567 is
4 a memo from Burris to director. Plaintiffs' Exhibit 574 is a
5 State Board of Elections staff review of H.B. 587.

6 Plaintiffs' Exhibit 582 is a memo from McLean to
7 Senator Nesbitt. Plaintiffs' Exhibit 583 is one-stop,
8 in-person absentee voter turnout spreadsheet. Plaintiffs'
9 Exhibit 584 is county one-stop site voter counts spreadsheet.
10 Plaintiffs' Exhibit 585 is a memo from Gary Bartlett to the
11 county board of elections. Plaintiffs' Exhibit 586 is one-stop
12 sites and times for the general election.

13 Plaintiffs' Exhibit 857 is one-stop voting sites for
14 the November 4, 2008, general election. Plaintiffs'
15 Exhibit 588 is one-stop voting sites for the May 24, 2010,
16 primary election. Plaintiffs' Exhibit 589 is one-stop voting
17 sites for the November 2nd, 2010, general election.
18 Plaintiffs' Exhibit 590 is one-stop voting site list, 2012
19 primary.

20 Plaintiffs' Exhibit 591, one-stop voting sites for
21 the November 6th, 2012, general election. Plaintiffs'
22 Exhibit 592, North Carolina one-stop voting sites for the
23 May 6, 2014, election. Plaintiffs' Exhibit 593, 2006 general
24 election one-stop locations. Plaintiffs' Exhibit 594, North
25 Carolina one-stop voting sites for the November 4th, 2014,

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

1 election.

2 Plaintiffs' Exhibit 595, letter template,
3 Re: incomplete voter registration application. Plaintiffs'
4 Exhibit 596, memo from J. McLean to directors. Plaintiffs'
5 Exhibit 597, North Carolina voter registration application.
6 Plaintiffs' Exhibit 598, 2014 provisional ballot envelope,
7 Durham County. Plaintiffs' Exhibit 599, 2014 Presidential
8 voter instructions, Durham County. Plaintiffs' Exhibit 600,
9 2014 voting application, Durham County. Plaintiffs'
10 Exhibit 601, provisional voting administrative procedures.

11 Plaintiffs' Exhibit 602, memo from Gary Bartlett to
12 Veronica Degraffenreid. Plaintiffs' Exhibit 603, memo from
13 Gary Bartlett to Representative Lewis. Plaintiffs'
14 Exhibit 604, press release, "Board of Elections Finalizes
15 Citizenship Audit" of the North Carolina State Board of
16 Elections. Plaintiffs' Exhibit 605 is an email from Kim Strach
17 to the SBOE group directors, Re: citizenship audit results.
18 Plaintiffs' Exhibit 615 is a memo from Kim Strach to the County
19 Board of Elections, Re: one-stop voting for the 2014 general
20 election. Plaintiffs' Exhibit 616 is a memo from Kim Strach to
21 the County Board of Elections, Re: one-stop early voting in the
22 2014 primary and Session Law 2013-381's hours-matching
23 requirement.

24 Plaintiffs' Exhibit 617 is a memo from Kim Strach to
25 the County Board of Elections, Re: one-stop implementation

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

1 plans for the May 2014 primary. Plaintiffs' Exhibit 618 is
2 memo from Kim Strach to the County Board of Elections, Re: May
3 2014 primary one-stop hours reduction requests. Plaintiffs'
4 Exhibit 620 is Orders, *in re One-Stop Absentee Voting Required*
5 *Hours Reduction*.

6 Plaintiffs' Exhibit 621 is North Carolina State Board
7 of Elections provisional voting post-H.B. 589, and PX622 is a
8 memo from Gary Bartlett to directors, Re: proof of residency
9 for same-day registration.

10 **THE COURT:** Did we skip a 619?

11 **MS. O'CONNOR:** We did skip a 619. I will check on
12 why that is. It may be that we either didn't use the number or
13 for some other reason.

14 That is the first set. So we would move that those
15 exhibits be admitted, Your Honor.

16 **THE COURT:** Any objection?

17 **MR. STRACH:** No objection.

18 **THE COURT:** All right. Those are all admitted.

19 **MS. O'CONNOR:** Second category that I will introduce
20 are a shorter list of miscellaneous unobjected-to exhibits that
21 don't really fall into a particular category. But they are
22 Plaintiffs' Exhibit 433, an email from Veronica Degraffenreid
23 to the directors, Re: 2008 to 2009. Plaintiffs' Exhibit 46 is
24 an email from Veronica Degraffenreid to A. Penny. Plaintiffs'
25 Exhibit 469 is an email from George McCue to the SBOE group

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

1 directors.

2 Plaintiffs' Exhibit 515 is U.S. Election Assistance
3 Commission report. Plaintiffs' Exhibit 557, administration of
4 voting -- voter registration policies and procedures for the
5 implementation of the National Registration Voter Act of 1993.
6 Plaintiffs' Exhibit 558, United States Government
7 Accountability Office Report to Congressional Requester,
8 Elections. Plaintiffs' Exhibit 630, U.S. Department of
9 Justice, the National Voter Registration Act of 1993.
10 Plaintiffs' Exhibit 634, North Carolina State Board of
11 Elections registration applications submitted from NVRA public
12 assistance agencies by year. Plaintiffs' Exhibit 635, U.S.
13 Election Assistance Commission, the impact of National Voter
14 Registration Act of 1993 on the administration of elections for
15 federal office 2011 to 2012.

16 Plaintiffs' Exhibit 646, Durham County voter
17 information precinct level, and Plaintiffs' Exhibit 647, voter
18 registration applications.

19 **THE COURT:** That's a different application from the
20 other voter application we had earlier?

21 **MS. O'CONNOR:** I can check on that.

22 **THE COURT:** I presume it must be.

23 **MS. O'CONNOR:** I suspect that it's --

24 **MR. DONOVAN:** Judge, rather than a different form,
25 these are actually registration applications that go with

1 certain depositions. So it is not a different form.

2 **THE COURT:** That's fine. Thank you. Any objection
3 to any of those?

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

5 **THE COURT:** All right. Those are all admitted.

6 **MS. O'CONNOR:** And the last batch here -- two more
7 batches, this batch is the group that had been objected to that
8 we have been able to resolve the objections. These are
9 Plaintiffs' Exhibit 335, it is an email from Wright to
10 Degraffenreid attaching concerns about S47. Plaintiffs'
11 Exhibit 337, email from Degraffenreid to Jones, Re: VIVA
12 requirements and direction. Plaintiffs' Exhibit 343, email
13 from Carbo to Bartlett, Re: thank you. Plaintiffs'
14 Exhibit 363, email from Wright to Degraffenreid. And for the
15 rest of these, there is a lot of emails, I won't plan to read
16 the Re line.

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

18 **MS. O'CONNOR:** So I think I just did Plaintiffs'
19 Exhibit 363. So the next one is Plaintiffs' Exhibit 365, email
20 from Wright to Poucher. Plaintiffs' Exhibit 384, email from
21 Degraffenreid to Boyd-Malette.

22 Plaintiffs' Exhibit 388, email from
23 merlin1246@aol.com to Representative Warren. Plaintiffs'
24 Exhibit 389, email from Representative Warren to Rasmussen,
25 et al. Plaintiffs' Exhibit 390, email from Representative

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

1 Warren to Maestas, M-A-E-S-T-A-S. Plaintiffs' Exhibit 391,
2 email from DeLancy to Representative Murray.

3 Plaintiffs' Exhibit 392, email from
4 Representative Lewis to Molinaro. Plaintiffs' Exhibit 393,
5 email from Jones to Churchill, et al. Plaintiffs' Exhibit 399,
6 email from Representative Warren to Latos. Plaintiffs'
7 Exhibit 401, email from Representative Warren to Rhodes.

8 Plaintiffs' Exhibit 401A is the same as 401 except
9 that it has redactions, I believe, for personal information.
10 Plaintiffs' Exhibit 402 is an email from Gephardt to Bonnet,
11 et al. Plaintiffs' Exhibit 404 is an email from Representative
12 Warren to Ware. Plaintiffs' Exhibit 405 is an email from Fliss
13 to Representative Lewis.

14 Plaintiffs' Exhibit 407 is an email from Williams to
15 Representative Lewis. Plaintiffs' Exhibit 407A is the same as
16 Plaintiffs' Exhibit 407 with redactions. Plaintiffs'
17 Exhibit 408 is an email from Representative Lewis to Tyler,
18 et al.

19 Plaintiffs' Exhibit 410 is an email from
20 Representative Warren to Dvoracek. Plaintiffs' Exhibit 413 is
21 an email from DeLancy to Representative Lewis, et al.
22 Plaintiffs' Exhibit 414 is an email from Clyne to
23 Representative Brawley.

24 Plaintiffs' Exhibit 415 is an email from
25 Representative Lewis to von Spakovsky. Plaintiffs' Exhibit 416

1 is an email from Rogers to von Spakovsky. Plaintiffs'
2 Exhibit 418 is an email from Evans to Representative Warren.
3 Plaintiffs' Exhibit 419 is an email from Representative Warren
4 to Evans.

5 Plaintiffs' Exhibit 420 is an email from Pittman to
6 Hoover, an email address. Plaintiffs' Exhibit 421 is an email
7 from Starling to Burris. Plaintiffs' Exhibit 422 is an email
8 from Burris to Farr. Plaintiffs' Exhibit 423 is a an email to
9 from Starling to Degraffenreid. Plaintiffs' Exhibit 424 is an
10 email from Nichols to Bartlett.

11 Plaintiffs' Exhibit 425 is an email from Burris to
12 Starling. Plaintiffs' Exhibit 426 is an email from Farr to
13 Nichols. Plaintiffs' Exhibit 427 is an email from McLean to
14 Nichols. Plaintiffs' Exhibit 428 is an email from Starling to
15 McLean.

16 Plaintiffs' Exhibit 429 is an email from Starling to
17 McLean. Plaintiffs' Exhibit 430 is an email from Starling to
18 Burris. Plaintiffs' Exhibit 434 is an email from Starling to
19 Burris. Plaintiffs' Exhibit 435 is an email from Degraffenreid
20 to Bartlett. Plaintiffs' Exhibit 446 is an email from
21 Churchill to Burris.

22 Plaintiffs' Exhibit 437 is an email from Burris to
23 Sherrin. Plaintiffs' Exhibit 438 is an email from Churchill to
24 Degraffenreid. Plaintiffs' Exhibit 439 is an email from
25 Degraffenreid to Bartlett. Plaintiffs' Exhibit 440 is an email

1 from Bartlett to Starling. Plaintiffs' Exhibit 441 is an email
2 from Garrett-Jones to Churchill. Plaintiffs' Exhibit 442 is an
3 email from Degraffenreid to Strach.

4 Plaintiffs' Exhibit 443 is an email from
5 Degraffenreid to Collicutt. Plaintiffs' Exhibit 44 is an email
6 from Degraffenreid to Collicutt. Plaintiffs' Exhibit 445 is an
7 email from Collicutt to Degraffenreid. Plaintiffs' Exhibit 447
8 is an email from Bartlett to Starling.

9 Plaintiffs' Exhibit 448 is an email from Perry to
10 Degraffenreid. Plaintiffs' Exhibit 449 is an email from
11 Campbell to Ms. Strach. Plaintiffs' Exhibit 452 is an email
12 from McFadyen to Strach. Plaintiffs' Exhibit 557 (sic) is an
13 email from Wright to Churchill. Plaintiffs' Exhibit 458 is an
14 email from Degraffenreid to Churchill.

15 Plaintiffs' Exhibit 459 is an email from Burris to
16 Churchill. Plaintiffs' Exhibit 460 is an email from Churchill
17 to Bartlett. Plaintiffs' Exhibit 466 is an email from
18 Representative Lewis to Oudeh, O-U-D-E-H. Plaintiffs'
19 Exhibit 470 is an email from Degraffenreid to LiVecchi.

20 Plaintiffs' Exhibit 471 is an email from Tutor to
21 Rhinehart. Plaintiffs' Exhibit 472 is an email from Wright to
22 Rhinehart. Plaintiffs' Exhibit 473 is an email from Tutor to
23 Rhinehart. Plaintiffs' Exhibit 474 is an email from Wright to
24 Tutor. Plaintiffs' Exhibit 494 is an email from Wright to
25 Degraffenreid. Plaintiffs' Exhibit 496 is an email from Tutor

1 to Bartlett. Plaintiffs' Exhibit 497 is an email from Bartlett
2 to Tutor. Plaintiffs' Exhibit 498 is an email from Holland to
3 Tutor. Plaintiffs' Exhibit 499 is an email from Tutor to
4 Wright.

5 And Plaintiffs' Exhibit 501 is an email from Wright
6 to Ms. Strach. Plaintiffs' Exhibit 502 is an email from Wright
7 to Robinson. Plaintiffs' Exhibit 503 is an email between
8 Degraffenreid and Lovedahl. Plaintiffs' Exhibit 504 is an
9 email from Degraffenreid. Plaintiffs' Exhibit 507 is an email
10 from Bartlett to representative Cotham, and the last one in
11 this set is Plaintiffs' Exhibit 562, a letter from Murphy to
12 Ms. Strach.

13 **THE COURT:** Is there anything in the two that involve
14 a copy that's redacted, 401, 407 -- is there anything in the
15 unredacted copy that's important that I need to rely on?
16 Otherwise, I am going to suggest maybe we only move in the
17 redacted version, because then I don't have to deal with
18 anything being under seal.

19 **MS. O'CONNOR:** That is, I think, the better way to go
20 is just to admit the A versions. We actually just redacted the
21 A versions this morning just to redact out personal
22 information.

23 **MR. STRACH:** Your Honor, just to give a little
24 additional information on the agreement that I think we have.
25 Regarding this particular set of emails, what we've agreed is

1 where a third party's communicating with a legislator, that
2 that communication is only coming in to provide context and not
3 for the truth of the matter asserted by the third party. And
4 then with respect to DMV emails that are in this bunch, we
5 agreed that emails reflecting complaints from customers are
6 coming in to provide context and not for the truth of the
7 matter asserted.

8 **MS. O'CONNOR:** So just to confirm, then the email or
9 response from the legislator or from the agency, that portion
10 would come in for the truth of the matter asserted as to that
11 portion, but the incoming from some third party would only be
12 not for the truth of the matter asserted.

13 **MR. STRACH:** That's fine, Your Honor.

14 **THE COURT:** Okay. Those are all admitted then for
15 that purpose only with the exceptions of 401 and 407, which I
16 am going to regard as withdrawn. So if you would pull 401 and
17 407 out of your packages.

18 **MS. O'CONNOR:** Okay. I just got a note that I think
19 I may have misspoke. I meant to say that there was a
20 Plaintiffs' Exhibit 457, which is an email from Wright to
21 Churchill, and I may have said it as 557. So it's Plaintiffs'
22 Exhibit 457.

23 **THE COURT:** Okay.

24 **MS. O'CONNOR:** And then the last set that we will
25 move to admit right now are fortunately not a multiple-page

1 list of emails but are a group of one or two stipulations and a
2 number of the Defendants' discovery responses. So those are
3 Plaintiffs' Exhibit 662, Defendants' third amended initial
4 disclosures; Plaintiffs' Exhibit 663, Defendants' objections
5 and responses to Plaintiff United States' first set of requests
6 for admission; Plaintiffs' Exhibit 664, Defendants'
7 supplemental and amended objections and responses to requests
8 for admission; Plaintiffs' Exhibit 665, Defendants' objections
9 and responses to the United States' first set of requests for
10 production to Defendants; Plaintiffs' Exhibit 666, Defendants'
11 objections and responses to Plaintiff League of Women Voters'
12 first interrogatories to Defendants; Plaintiffs' 667,
13 Defendants' objections and responses to the NAACP Plaintiffs'
14 second set of interrogatories to Defendants; Plaintiffs'
15 Exhibit 668, Defendants' objections and responses to the United
16 States' fourth set of interrogatories; Plaintiffs' Exhibit 669,
17 Defendants' objections and responses to the United States'
18 third set of interrogatories; Plaintiffs' Exhibit 670,
19 Defendants' objections and responses to the United States'
20 second set of interrogatories to Defendants; Plaintiffs'
21 Exhibit 671, United States' request for judicial notice with
22 Exhibits A through H; Plaintiffs' Exhibit 672, which is
23 Defendants' answer; Plaintiffs' Exhibit 673, Defendants'
24 objections and responses to the United States' third set of
25 interrogatories; Plaintiffs' Exhibit 675, Defendants'

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

1 objections and responses to the League of Women Voters' first
2 request for production; Plaintiffs' Exhibit 676, the
3 declaration of Carolyn Coleman; and Plaintiffs' Exhibit 677,
4 the declaration of Reverend Mendez.

5 We would actually -- I apologize. For the last two
6 here, Plaintiffs' Exhibits 676 and 677, let me hold those back,
7 and we'll see if we can enter those into another group because
8 they really don't fit into this category.

9 **THE COURT:** Any objection?

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

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

12 **MS. O'CONNOR:** The last thing I would like to do in
13 this session of evidence entry, there were a couple of either
14 misstatements or corrections that I need to make to things that
15 had been moved in previously; and just for the clarity of the
16 record, I want to clarify those now.

17 The Meadows deposition designation transcript was
18 introduced as Plaintiffs' Exhibit 767. That should be
19 Plaintiffs' Exhibit 766.

20 The Paylor deposition transcript --

21 **THE COURT:** Is it marked on the front of the exhibit?

22 **MS. O'CONNOR:** I believe the exhibit itself is
23 correct. It was either the way I said it or someone else said
24 it over the course -- yeah.

25 **THE COURT:** Okay.

1 **MS. O'CONNOR:** I think for all of these the materials
2 in the record are correct. It was just what was stated on the
3 record.

4 **THE COURT:** All right.

5 **MS. O'CONNOR:** So the Paylor deposition designation
6 transcript was introduced as Plaintiffs' Exhibit 768. It
7 should be Plaintiffs' Exhibit 767. The Pitt deposition
8 transcript was introduced as Plaintiffs' Exhibit 769. It
9 should be Plaintiffs' Exhibit 768. And the transcript of the
10 Weant deposition designation transcript --

11 **THE COURT:** Went?

12 **MS. O'CONNOR:** Weant, it's W-E-A-N-T.

13 **THE COURT:** Thank you.

14 **MS. O'CONNOR:** It was introduced on the record as
15 Marianne Murphy, and it should have been Marianne Weant. And
16 that was Plaintiffs' Exhibit 774.

17 Plaintiffs' Exhibit 12 in the course of an
18 examination, the declaration of Bob Phillips was used and
19 discussed and it wasn't clear that it was moved in or admitted,
20 but the Plaintiffs would move to admit Plaintiffs' Exhibit 12,
21 to be clear, and I don't know if there is any objection to
22 that.

23 **MR. STRACH:** What was that again?

24 **THE COURT:** That was the declaration of Bob Phillips.

25 **MR. STRACH:** We don't have any objection to that.

1 **THE COURT:** It is admitted.

2 (Plaintiffs' Exhibit No. 12 was already admitted on July
3 12, 2015.)

4 **MS. O'CONNOR:** The last one for this group is the
5 transcript of and dep designation for the Cunningham
6 deposition. That was Plaintiffs' Exhibit 753. Ms. Cunningham
7 testified live, so we would just withdraw the written
8 deposition designation for her. That's all for that grouping.
9 Thank you.

10 **THE COURT:** All right.

11 **MR. DONOVAN:** I didn't want Ms. O'Connor to have all
12 the fun. I have a couple items for you, Judge. One, PX533A,
13 we've agreed -- and this is just the transcription of the video
14 of Mr. Tillis. So we transcribed it, and the Defendants have
15 agreed to the transcription. So if I may hand that up as
16 Plaintiffs' Exhibit 533A.

17 **THE COURT:** All right.

18 **MR. DONOVAN:** We would request that be admitted as
19 well.

20 **THE COURT:** Is the video 533?

21 **MR. DONOVAN:** Yes, it is, Your Honor.

22 **MR. STRACH:** We don't have any objection.

23 **THE COURT:** That's admitted.

24 **MR. DONOVAN:** Then, Your Honor, I am going to hand up
25 what we have given to the Defendants, which is the edited

1 version of the Apodaca video, and that is Plaintiffs'
2 Exhibit 714, and we would move admission of the video.

3 **THE COURT:** Any objection?

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

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

6 **MR. DONOVAN:** With that Your Honor, we will move on
7 to our next witness by video.

8 **MS. RIGGS:** Your Honor, the Plaintiffs will now play
9 excerpts from the video deposition of Gary Sims, who was, at
10 the time of his deposition, the deputy director of the Wake
11 County Board of Elections. He has since been hired as the
12 director of the Wake County Board of Elections.

13 May I approach?

14 **THE COURT:** Yes.

15 **MS. RIGGS:** The Plaintiffs' designations are
16 11 minutes, 51 seconds. Defendants' counter-designations are
17 36 minutes, 48 seconds.

18 (Designated portions from the video deposition of Gary
19 Sims were played.)

20 **MS. RIGGS:** Your Honor, I have the highlighted
21 deposition designations for Mr. Sims, which is marked PX800. I
22 also have the unobjected-to exhibits from Mr. Sims' deposition,
23 which are PX304 and PX581. We move for admission of all three
24 of these documents.

25 **THE COURT:** Is 800 more transcript than what we just

1 heard?

2 **MS. RIGGS:** Yes, it is.

3 **THE COURT:** Any objection?

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

5 **THE COURT:** Admitted.

6 **MS. RIGGS:** May I approach?

7 **THE COURT:** Yes.

8 **MR. DONOVAN:** Is it a good time for the afternoon
9 break, Your Honor?

10 **THE COURT:** Yes. That will be fine. We'll take our
11 20-minute break, and then we'll continue from there.

12 (The Court recessed at 3:27 p.m.)

13 (The Court was called back to order at 3:53 p.m.)

14 **THE COURT:** All right. Mr. Donovan.

15 **MR. DONOVAN:** We have a few depositions that
16 Mr. Maner is going to move in. Then we are going to have a
17 live witness. After that, Mr. Kaul would like to briefly
18 address the Cook statement and the subpoena issue, and then we
19 have a couple short videos, and that should take us through the
20 end of the day.

21 **THE COURT:** Thank you.

22 **MR. MANER:** Thank you, Your Honor. We have two
23 different separate sets of deposition designation transcripts,
24 both the affirmative and counter-designations, to move in. Do
25 you want me to just go through and read the name for each of

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

1 the witnesses?

2 **THE COURT:** Give me the deposition -- the exhibit
3 number and then the name.

4 **MR. MANER:** So the first is Plaintiffs' Exhibit 788,
5 and the name is Carlton Jordan, Junior. And the next one is
6 Plaintiffs' Exhibit 789, and that's Carolyn Justice. And after
7 that we've got Elizabeth Kuniholm, and it's Plaintiffs'
8 Exhibit 790. The next one is Plaintiffs' Exhibit 791, and it
9 is Nancy Lund.

10 And we have Plaintiffs' Exhibit 793, which is John
11 Mendez. And 794, Brian Miller; 795, Mary Perry; 796, Susan
12 Schaffer; and 797, Timothy Washington. And with this set, we
13 would also ask to admit a couple of exhibits from Ms. Justice's
14 deposition, and those are Plaintiffs' Exhibit 541 and 555.

15 And that's the first set.

16 **THE COURT:** Are these all what you call fact
17 witnesses that are affected voters?

18 **MR. MANER:** Yes, Your Honor.

19 **THE COURT:** Any objection to those?

20 **MR. STRACH:** None other than the objections we've
21 already lodged in our objections and counter-designations,
22 which we would be happy for the Court to consider later.

23 **THE COURT:** All right. So these exhibits you've just
24 indicated all have the complete examination and
25 counter-designations along with whatever objections are

1 separately lodged as to these depositions; is that correct?

2 **MR. STRACH:** Yes.

3 **THE COURT:** Okay. Now, where are the objections
4 lodged to these? What document is that?

5 **MR. STRACH:** The one I called out earlier. It's
6 Document Number 302 in Case 660.

7 **THE COURT:** Okay.

8 **MR. MANER:** Your Honor, we do have one additional
9 small set again.

10 **THE COURT:** Before we go further, so are the
11 Plaintiffs fine with my resolving the objections separately
12 without hearing that now as to each of them?

13 **MR. MANER:** Yes, Your Honor.

14 **THE COURT:** So I will admit all of those subject to
15 my reviewing the objections at a later date.

16 **MR. STRACH:** Your Honor, I'm sorry, let me correct
17 something. It is actually Case 861.

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

19 **MR. MANER:** And then for the next set, we have again
20 some affected voter -- actually no, Your Honor, correction. I
21 think we've got some Plaintiffs' transcripts here, and the
22 first is Plaintiffs' Exhibit 778, Victoria Banks, and
23 Plaintiffs' Exhibit 779, Sandra Beatty.

24 And it looks like we have some fact witnesses here,
25 too. It is Plaintiffs' Exhibit 780, Tracy Bucholtz;

1 **BY MS. LIEBERMAN**

2 Q Good afternoon, Ms. Compton.

3 A Good afternoon.

4 Q Can you please state your name for the record.

5 A My name is Helen Compton.

6 Q And where do you live?

7 A I live in Durham, North Carolina.

8 Q Are you a registered voter in North Carolina?

9 A I am.

10 Q And what is your profession?

11 A I am a retired high school mathematics teacher.

12 Q Where did you first start teaching?

13 A I first began teaching in Durham city schools at Durham
14 High School.

15 Q And when was that?

16 A That was in 1969.

17 Q And where else did you teach?

18 A I was moved the next year to Hillside High School, which
19 was in Durham city schools, and that was -- that move was as a
20 part of the desegregation order.

21 Q And where else did you teach?

22 A I stayed at Hillside for ten years, and after that, I
23 taught at the North Carolina School of Science and Mathematics.

24 Q Are all these schools located in Durham?

25 A They are.

1 Q Are you still involved in Durham area schools now that you
2 are retired?

3 A I am a volunteer at the Durham Performance Learning Center
4 in Durham Public Schools, and I also register voters in the
5 schools.

6 Q Ms. Compton, what is the racial composition of the
7 Performance Learning Center where you tutor?

8 A That school is probably about 90 percent African-American
9 and Hispanic students.

10 Q I would like to talk about your voter registration
11 activity. You indicated that you work to register high school
12 students?

13 A I do.

14 Q Do you do this in a volunteer capacity?

15 A I am a volunteer.

16 Q And where do you register high school students?

17 A I register in the schools, and most recently at Southern,
18 Riverside, Hillside High Schools, and the Durham Performance
19 Learning Center.

20 Q Are all of these Durham Public Schools?

21 A They are.

22 Q And do you know the racial composition of Durham Public
23 Schools?

24 A It's majority African-American and Hispanic students.

25 Q Okay. Specifically, can you describe the racial

1 composition of the students that you register to vote?

2 A Again, it reflects the school system. It's essentially a
3 large -- high percentage of minority students.

4 Q Okay. When did you begin registering high school students
5 to vote?

6 A The first time I did that was in 2012.

7 Q Is this work important to you?

8 A It is very important. I mean, I spent over 35 years as a
9 high school teacher. So I am interested in students moving
10 forward in their lives and being the very best prepared to go
11 forth in the world, and being a registered voter, in my mind,
12 goes along with that. It's a component of being an adult and
13 being a contributor in the community.

14 Q Okay. You mentioned you began registering high school
15 students in 2012. Did you register students in advance of the
16 2012 general elections?

17 A I did.

18 Q Ms. Compton, are you familiar with a practice known as
19 preregistration?

20 A I am.

21 Q And at a high level, can you explain your understanding of
22 preregistration?

23 A So in preregistration, students who are 16 and 17 can
24 complete a voter registration form that is then given to the
25 Board of Elections and is processed when that student becomes

1 eligible to vote, i.e., turns 18.

2 Q Okay. Did you preregister 16- and 17-year-olds?

3 A I did.

4 Q Can you explain how preregistration worked in 2012?

5 A So in 2012, essentially, I could ask a student if they
6 were 16 or older, and they could complete that registration
7 form.

8 Q Was preregistration confusing in your experience?

9 A No, I didn't find it confusing at all.

10 Q Ms. Compton, how did 16- and 17-year-olds react to
11 preregistration?

12 A Well, when I did this preregistration in 2012, I was
13 working with kids from the Durham Performance Learning Center,
14 and, essentially, they were super excited that they were going
15 to get to fill out voter registration forms. I wish all of you
16 could have been there.

17 They knew what was going on. It was clear that they had
18 talked about it in school, and I went from classroom to
19 classroom, and the kids filled out the forms. I was there to
20 try to make sure that they filled them out correctly. They
21 were all smiles, highs-fives, all kinds of things that you
22 would expect 16- and 17-year-olds to do.

23 Q Ms. Compton, are you aware of whether your volunteer
24 registration work was complemented by any programming in the
25 classroom?

1 A It is.

2 Q Are you aware of whether that curriculum component was
3 part of the preregistration law?

4 A My understanding is it was.

5 Q Well, now I would like to turn to the 2014 elections. Did
6 you register high school students in Durham Public Schools in
7 advance of the 2014 general elections?

8 A I did.

9 Q Were you able to preregister 16- and 17-year-olds in 2014?

10 A No, we were not.

11 Q Why not?

12 A Well, there was a new law, and we weren't -- and that was
13 not an option.

14 Q And by that law, are you referring to House Bill 589?

15 A I am.

16 Q So what was the process for registering high school
17 students in 2014?

18 A I found it much more complicated. So, essentially, I
19 could ask at that point if somebody was 18, and that certainly
20 did the trick, but I didn't have many 18-year-olds at that
21 point in the high school setting. So then there was
22 conversation about when they were going to turn 18. I was
23 essentially -- had to have a conversation, a fairly long
24 conversation with pretty much every student that I met that was
25 interested in registering to vote.

1 Q Ms. Compton, in your experience registering high school
2 students in Durham Public Schools, was voter registration in
3 high schools more confusing in 2012 when preregistration was
4 available or in 2014 when it was not available?

5 A I think that it was more confusing in 2014.

6 Q Why is that?

7 A Well, I mean, there were -- seemed to be many more
8 questions to ask. It did not address as large a population of
9 the students. So -- and I'm not sure that the kids knew as
10 much about what was going on. So we just had a lot of things
11 to go through to figure out whether I could register a student
12 to vote or not.

13 Q In 2014, did you encounter any 16- and 17-year-olds who
14 attempted to register to vote but who you were unable to
15 register due to the loss of preregistration?

16 A Yes, I did.

17 Q Can you estimate the proportion of students who attempted
18 to register with you in 2014 that you were actually able to
19 register?

20 A My guess would be that ten kids would approach me about
21 being interested and maybe one I could register.

22 Q In contrast, back in 2012, can you estimate what
23 proportion of students who attempted to register with you you
24 were actually able to register?

25 A I think I was probably able to register something on the

1 order of 80, 85 percent, something like that in 2012.

2 Q Okay. Ms. Compton, based on your three decades of work in
3 Durham schools, do you believe that the loss of preregistration
4 under House Bill 589 impacts the ability of the particular
5 students you work with to register to vote?

6 A I do think it impacts them.

7 Q How so?

8 A So if I think about what voter registration takes, it
9 takes two things. It takes motivation and it takes
10 opportunity. The kids, because of the nature of being in an
11 educational program, are, I believe, very motivated to register
12 to vote. They understand that they are members of a democracy.
13 They have talked about that in class, so they understand that,
14 you know, they have a right to a vote, and that's an important
15 component of being an adult.

16 The second part, the opportunity part, goes with the
17 preregistration idea, because here the kids are at school. I
18 mean, the transportation, for instance, isn't an issue. They
19 have the real opportunity at this point in time to register to
20 vote. So from my point of view, to remove that option, to
21 remove preregistration removes the opportunity. The
22 motivation, I think, is still there.

23 And then, you know, the second component to this is not
24 only did we lose preregistration, but we also lost same-day
25 voter registration. So the kids, again, motivated, loss of

1 opportunity to register in the school setting. Also if, you
2 know, they get to the polls to vote early, they have lost the
3 opportunity of same-day registration.

4 Q Do you have any examples of this lost opportunity?

5 A Well, when I work at the Performance Learning Center, we
6 have a pretty close relationship with the students that we work
7 with, and I had one young lady that I worked with for a year
8 who had just returned to school after having a baby. She went
9 to school all day. She worked in a grocery store as a cashier
10 in the evening. When I think about her chance of actually
11 getting to register to vote, I don't know how she would fit
12 that into the day. And I think a lot of kids have that kind of
13 situation.

14 Q Ms. Compton, what is the impact of the loss of
15 preregistration for the largely African-American and Latino
16 students that you work with in Durham Public Schools?

17 **MS. MURPHY:** Objection. She is not an expert.

18 **THE COURT:** Sustained.

19 **BY MS. LIEBERMAN**

20 Q Based on your experience with the students that you have
21 worked with for three decades in Durham Public Schools, how do
22 you feel the loss of preregistration will impact the largely
23 African-American and Latino students that you work with?

24 A Well, I, quite frankly, fear that they won't get
25 registered. I fear that they will not become the productive

1 citizen who is a voter at the point where it can really set
2 that as their way to deal with their lives, as all lifetime
3 voters. I think -- I think we lose people.

4 **MS. LIEBERMAN:** Thank you, Ms. Compton. No further
5 questions.

6 **THE COURT:** Any cross?

7 **MS. MURPHY:** Yes, Your Honor.

8 CROSS-EXAMINATION

9 **BY MS. MURPHY**

10 Q Good afternoon, Ms. Compton.

11 A Good afternoon.

12 Q We met before. I'm Kathy Murphy with the Defendants. I
13 took your deposition in June.

14 A I remember.

15 Q You testified, I believe, that you did go into the schools
16 to register before the 2014 election; is that correct?

17 A Yes.

18 Q And you did register students at that time?

19 A It was a much smaller number.

20 Q Right. But you were able to register those students who
21 were either 18 or 17 and would be 18 by the upcoming election;
22 is that correct?

23 A That's true.

24 Q Okay. And the students who were 16 or 17 at that point
25 who could no longer use preregistration, you would be able to

1 register those students when they were the correct age the
2 following year; correct?

3 A I should be if they are still there. I mean, when you
4 sort of think about what high school populations do, they move
5 around and don't come back to school. I mean, there are all
6 kinds of things that happen.

7 Q How many of the 16- and 17-year-olds who expressed
8 interest to you in 2014 did not come back to school the
9 following year?

10 A I have no way to know that.

11 Q Okay. You yourself have not had problems voting in 2014;
12 correct?

13 A No, I have not.

14 Q And you don't know anyone who was unable to vote in 2014;
15 isn't that correct?

16 A In 2014, I actually did encounter people at early voting
17 in large part that expected to do same-day voter registration
18 and were not able to. I don't know their names. I didn't meet
19 people that had that problem.

20 Q And I understand your testimony to be that your
21 registration efforts in the high schools were easier when
22 preregistration was available?

23 A That is my belief.

24 Q Okay. But easier for you because you only had to ask if
25 they were 16?

1 A Well, I think it was easier for everybody in the sense
2 that, you know, it was an accomplished task. The kids -- this
3 has happened for those kids. And, you know, one of your jobs
4 when you are registering voters is to help people decide if
5 this is a legitimate thing. I am not the decider. I'm just
6 working with the forms, but, you know, I try to explain what
7 would be the next steps, and I think it was harder to do in
8 2014.

9 Q You are aware that high schools are still required to have
10 registration applications available?

11 A That is my understanding.

12 Q Okay. And are you aware that county boards of elections
13 make a school employee available to help with registrations?

14 A I am not aware of that.

15 Q Okay. And you are there to assist with registrations at
16 the school that you volunteer in?

17 A That's true, but I don't know whether the Board of
18 Elections has somebody who's connected in that fashion.

19 Q Now, 2014 was not a Presidential election; correct?

20 A Right.

21 Q Is it your experience that when it is a Presidential
22 election, there is more excitement within the school system
23 among the students?

24 A My guess is that that is true. I think that young people
25 sort of know more about Presidential elections going on than

1 other elections, but I am, of course, hoping that they will go
2 vote at every election. So I want to change that point of
3 view.

4 **MS. MURPHY:** I have no further questions. Thank you,
5 Ms. Compton.

6 **THE COURT:** Any redirect?

7 **MS. LIEBERMAN:** No redirect, Your Honor.

8 **THE COURT:** You may step down.

9 **MR. KAUL:** Your Honor, I just wanted to come up and
10 address the legislative privilege issue. I am also happy, if
11 the Court wants, to address the admissibility issue, depending
12 on the resolution of this, or address that tomorrow. The
13 legislative privilege issue is the Defendants' motion, although
14 I take it that it probably makes sense for me to be the one to
15 address the issue first.

16 **THE COURT:** I am happy to hear from your side first.
17 I noticed that you all did file a response, and I've read that.

18 **MR. KAUL:** Thank you, Your Honor. Just briefly, I
19 want to make a few points with respect to the Defendants'
20 motion to quash. First, our subpoena is for the limited
21 purpose of questioning Senator Cook about a statement that he
22 made to a reporter outside of the legislative context. We
23 don't intend to delve into questions with respect to his
24 decision-making while he was on the floor, communications he
25 had with the floor; in short, nothing that's protected by the

1 legislative privilege.

2 I would note, as a few general background principles,
3 that the privilege is strictly construed. It is not as broad
4 for state legislators as it is for members of Congress, and it
5 is not as broad when there's a federal right at issue, as there
6 is in this case.

7 In *Hutchinson* against *Proxmire*, one of the cases we
8 cited in our brief, the Supreme Court held that an allegedly
9 defamatory statement in a press release and a newsletter was
10 not protected. And so in that case the legislator not only --
11 that was not a situation the legislator had to testify. The
12 legislator was actually a Defendant in the case.

13 **THE COURT:** That was a case involving whether they
14 had immunity from suit for what they said in a press release?

15 **MR. KAUL:** That's correct. Your Honor, I think being
16 made a Defendant in a suit is more burdensome on a lawmaker
17 certainly than what we are requesting here, which is being
18 called to testify for a limited purpose.

19 **THE COURT:** Isn't that case more like the *Brewster*
20 case where the Court held the Speech or Debate Clause didn't
21 protect a legislator who engages in criminal activity like
22 taking a bribe?

23 **MR. KAUL:** I do think it's like the *Brewster* case in
24 that respect, but in either situation --

25 **THE COURT:** In other words, if you violate the law

1 independently, you can't use your legislative privilege as a
2 shield to avoid prosecution.

3 **MR. KAUL:** Well, the allegation was that they had
4 violated the law --

5 **THE COURT:** Correct.

6 **MR. KAUL:** -- in *Hutchinson* against *Proxmire*, for
7 example. But again, the burden that we are talking about in
8 those cases on the legislators being Defendants in a case --

9 **THE COURT:** Well, I understand that part, but it's
10 because they allegedly engaged in illegal or unlawful activity
11 personally.

12 **MR. KAUL:** That's correct. I don't think the cases
13 rested on that distinction, though, Your Honor. I think it was
14 about the fact that their actions weren't legislative in
15 nature; and I would note that in the Court's original opinion
16 in this case on legislative privilege, the Court noted that
17 there have been many cases that have distinguished between
18 statements made in the legislative forum and those that
19 weren't.

20 **THE COURT:** As to whether the statement enjoys the
21 privilege.

22 **MR. KAUL:** Yes.

23 **THE COURT:** There is a separate question, I think, of
24 whether the legislator nevertheless has a testimonial privilege
25 so that they are not called into court.

1 Let me tell you the concern I have. It is
2 commonplace for legislators to speak publicly about their jobs,
3 and I think we want them to do that because they have a public
4 function and so they commonly speak to reporters and to give
5 interviews; and so if any time they do that, they can then be
6 called under subpoena of a Court to explain what they said or
7 even to acknowledge that they said it, theoretically, they
8 could be subject to being called into litigation in a variety
9 of matters, everything affecting every piece of legislation
10 that they work on, could they not?

11 **MR. KAUL:** I don't think it is nearly that broad,
12 Your Honor, and the reason is that in a case dealing with
13 legislative intent, the fundamental question is not what the
14 legislators intended; it's what the statute means. So in a
15 typical challenge to a statute, and a challenge to the way that
16 it should be interpreted, I don't think that the legislator's
17 testimony would be critical as it is in a case like this where
18 the central issue is their intent.

19 So to the extent that we are talking about other
20 cases in which there are allegations that the legislators acted
21 with discriminatory intent, that's the type of case where
22 potentially those statements would subject them --

23 **THE COURT:** Even in those cases, *Arlington Heights*,
24 the Supreme Court said in I think a footnote that even in most
25 of these cases, any attempt to get the legislator to have to

1 come into court is likely going to be quashed under some
2 privilege.

3 **MR. KAUL:** I believe it said in exceptional cases
4 they could testify, Your Honor. And going back to the point
5 about illegal activity, the allegation in this case is that
6 legislators have adopted laws with the intent to discriminate
7 against certain voters.

8 **THE COURT:** Wouldn't that be true in every Voting
9 Rights Act case, that they are acting with an improper intent?

10 **MR. KAUL:** Not in an undue burden case, which is
11 about the effects of the law versus --

12 **THE COURT:** Was *Arlington Heights* an undue burden
13 case?

14 **MR. KAUL:** *Arlington Heights* was an intent case, Your
15 Honor. But *Arlington Heights* contemplates the possibility of
16 legislators testifying.

17 I concede that it indicates that it is a high
18 standard, but here we have a statement that is, we believe,
19 centrally relevant to our claim that the laws were intended to
20 discriminate against young voters. I cited it in the opening
21 paragraph of my opening statement because we think it is a
22 significant statement.

23 You know, on top of that, the burden is limited. It
24 is not one where we plan to do any sort of exploratory
25 questioning of Senator Cook, any sort of expansive discussion.

1 It is simply going to be, did you make the statement? If he
2 says yes, that's the end of the questioning. If he says no, we
3 would attempt to impeach him.

4 **THE COURT:** Why did you not try to at least ask the
5 other side if they would admit that he had made that statement,
6 or did you ask that?

7 **MR. KAUL:** Well, Your Honor --

8 **THE COURT:** Which would not require them necessarily
9 to claim privilege. You are simply asking whether they will
10 admit that. It may be that they would say, well, we admit he
11 said that.

12 **MR. KAUL:** Candidly, Your Honor, there are a few
13 reasons. One is we never -- first of all, our sort of
14 assumption, which was apparently mistaken, was that we were
15 talking about a public statement that's never been disputed
16 that we cited in our preliminary injunction filings more than a
17 year ago that, again, has never been disputed or contradicted.
18 It was argued, just as a matter of assessing the case, that in
19 all likelihood the statement would either come in through a
20 specific stipulation or through a broad omnibus stipulation. I
21 would note that we actually did reach that broad omnibus
22 stipulation here --

23 **THE COURT:** I understand your argument on the
24 stipulation.

25 **MR. KAUL:** And the other point, Your Honor, is we

1 believe that the statement is admissible for several reasons,
2 which I can turn to in a minute; and so for all of those
3 reasons, we didn't think it was particularly urgent to address
4 that one particular issue.

5 I would add that we actually attempted to contact the
6 reporter and spoke to her yesterday evening. She, for I think
7 reasons that are obvious, was very reluctant to be a witness in
8 a case because she thought that might bring her reporter
9 integrity into question and make her --

10 **THE COURT:** Well, reporters enjoy a First Amendment
11 privilege as well, and they typically don't want to have people
12 calling them in to testify. I understand that.

13 **MR. KAUL:** Right. So -- but if we had had extra time
14 to pursue that issue without the stipulation, we certainly
15 could have gone down that road --

16 **THE COURT:** Well, the stipulation point, as I
17 mentioned before, is -- I understand the argument. Having been
18 a trial lawyer, I understand the position you must feel
19 yourself in. I can appreciate it. On the other hand, you had
20 a year and a half to do discovery. So my sympathy factor is a
21 little low on that one in that you had a lot of time, and I was
22 brought into that discussion on a couple of occasions when the
23 privilege issue came to me. So I know you all were working on
24 it and, frankly, was a little surprised that you all had this
25 issue at this point without having had an attempt to push it

1 and see if there was a waiver argument and serve some discovery
2 on it and that kind of thing.

3 **MR. KAUL:** I understand the Court's point. I will
4 say that, again, given that it is a public statement that was
5 undisputed, we thought there was a very high likelihood of a
6 stipulation, and that if there wasn't one, we always had a
7 resort to the subpoena power.

8 **THE COURT:** There might have been a high likelihood
9 of a stipulation during discovery. I guess that part you'll
10 never know because you didn't ask.

11 **MR. KAUL:** Yes.

12 **THE COURT:** I understand. Before you get to the
13 statements, anything else on Senator Cook, because I think I
14 will deal with that issue separately and then we'll get to the
15 statements?

16 **MR. KAUL:** You know, I don't think so, Your Honor.
17 One option would be that we could potentially serve a request
18 for admission today on the Defendants, if the Court would allow
19 that. That way we would prevent any prejudice from the
20 stipulation. I don't know how they would respond to that, but
21 that would be one way to potentially address this issue.

22 **THE COURT:** Did you read -- let me see if I can find
23 it. Give me a minute.

24 Did you read Judge Catherine Blake's from Maryland's
25 opinion in a case called *A HELPING HAND v. Baltimore County?*

1 Does that ring a bell? It's found at 295 F. Supp. 2d 585. It
2 is a 2003 opinion.

3 **MR. KAUL:** I don't believe I did, Your Honor.

4 **THE COURT:** This very issue came up before her, and
5 the argument was made that one counsel member had waived
6 immunity by speaking to the press about a pending bill, and it
7 goes on with some discussion about general waiver; but then
8 Judge Blake says, among other things, "The Fourth Circuit has
9 indicated that meetings with constituents and interests group
10 are ordinary legislative business, and they fall within the
11 scope of immunity. By the same token, public statements about
12 legislative matters would appear to be an ordinary function of
13 representative government and therefore a matter covered by
14 legislator's testimonial privilege," which means whether you
15 can call them in and get a deposition or testimony.

16 So in that case, she refused to allow a very similar
17 request for a legislator to testify about something they had
18 said in that press report. So --

19 **MR. KAUL:** Again, I haven't read the case, Your
20 Honor. I would suspect that there are probably a few things
21 that come to mind as bases for distinguishing it. One is that
22 if it's a city council matter, it likely did not involve
23 significant federal constitutional rights. So the significance
24 of the testimony was probably less. It likely also involved
25 legislative intent for interpretation of a law rather than a

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

1 claim of discriminatory purpose. Again, I am speculating
2 because I haven't --

3 **THE COURT:** Well, it was an ADA case, and it did
4 involve claims of discrimination, an allegation that someone
5 had acted with discriminatory intent as to -- to discriminate
6 against people based on disabilities.

7 **MR. KAUL:** This is why I shouldn't speculate without
8 reading the case.

9 **THE COURT:** It's a little -- I grant, it is not the
10 same law, but it's not that far afield to where I think it's
11 easily distinguishable. I understand. Thank you. Do you want
12 to be heard as to the --

13 **MR. STRACH:** Subpoena itself?

14 **THE COURT:** -- subpoena?

15 **MR. STRACH:** Your Honor, I would just make --

16 **THE COURT:** Now, you're appearing on behalf of
17 Senator Cook specifically?

18 **MR. STRACH:** Yes.

19 **THE COURT:** Okay.

20 **MR. STRACH:** Just two points, Your Honor. The first
21 point is one that the Court has raised before, which is we do
22 need to stay focused on the fact -- I believe the statements
23 were about two bills, 666 and 667, that aren't even related or
24 relevant to the case. So I wanted to bring that point up
25 again.

1 And the other thing, I do have some correspondence
2 between me and Mr. Kaul that I wanted to share with the Court
3 on this issue of whether or not this issue could have been
4 brought to the Court's attention earlier. I wanted to make
5 sure that that was addressed.

6 May I approach?

7 **THE COURT:** Yes. I have to say this is the part of
8 lawsuits that's not -- how do I put it? It's the hardest part
9 to be involved in because I really hate to get involved in
10 lawyers saying somebody told me this and somebody told me that,
11 but I understand.

12 **MR. STRACH:** Your Honor, I really do this more for
13 full completeness. We talked about Mr. Farr's emails, and so I
14 was a little jealous I didn't get in on that.

15 This email was June 11th. Your Honor, it just makes
16 it clear that on June 11th, we made it clear that we weren't
17 going to stipulate to the admissibility of the statements and
18 that we were going to object to any trial subpoenas.

19 Frankly, I fully expected in early June that trial
20 subpoenas would be served and it would tee the issue up at that
21 point in time, but it didn't until we got to trial. So I just
22 wanted the Court to have the benefit of that context.

23 **THE COURT:** Was the other email marked as an exhibit?
24 Do you recall?

25 **MR. STRACH:** I don't know, but we can mark this one

1 as an exhibit.

2 **MR. DONOVAN:** That's on my to-do list still.

3 **THE COURT:** Give this one a number so everything is
4 in the record, if you would.

5 **MR. STRACH:** All right. We will do that, but that's
6 all I wanted to say, Your Honor.

7 **THE COURT:** Okay. I looked at the subpoena. I
8 didn't see that it had any attachment that said you are being
9 called for the following purpose, did it?

10 **MR. KAUL:** It did not, Your Honor. Our intent was to
11 make that point clear in court.

12 **THE COURT:** I understand. I am going to grant the
13 motion to quash. I think the senator enjoys the testimonial
14 privilege, and the question relates to a statement that he
15 allegedly made about a matter within his legislative realm.
16 And, furthermore, it is -- the statement is made about two
17 separate bills, which are not bills that are at issue in this
18 lawsuit. So it's a little more attenuated.

19 And I do rely on the *Helping Hand* analysis from Judge
20 Blake, which was found at 295 F. Supp. 2d. 585, more
21 specifically at page 591. I think the other cases that you
22 rely on, Mr. Kaul, are distinguishable.

23 If the senator or a legislator engages in personal
24 wrongdoing or crimes, then that's an exception, and they can't
25 use the privilege as a shield; but I think legislators engage

1 in discussions with the press, and, frankly, we want them to do
2 that as a matter of public policy, I would think. And if I
3 were to allow them to be called into court anytime they say
4 something on lawsuits, I think that sets a very difficult
5 precedent. And there is certainly authority from the Supreme
6 Court on down that acknowledges the strength of the privilege.

7 So I am going to grant the motion. Why don't we go
8 to the other two pieces then, and we'll talk about those.

9 **MR. KAUL:** Yes, Your Honor. At this point we would
10 move the admission of exhibit -- Plaintiffs' Exhibit 79. May I
11 approach?

12 **THE COURT:** Now, I have one if that's what you are
13 approaching for.

14 **MR. KAUL:** Sure.

15 **THE COURT:** I think I have more than one actually.

16 **MR. KAUL:** We've been doing our best, Your Honor.

17 **THE COURT:** I understand. Give me just a moment,
18 please.

19 All right. So we are starting with 79?

20 **MR. KAUL:** That's correct, Your Honor.

21 **THE COURT:** All right.

22 **MR. KAUL:** To begin with, I would note that we do
23 believe the plain language of the stipulation is clear. We
24 understand the Court has ruled on that issue.

25 **THE COURT:** Well, Mr. Strach handed me the email just

1 a minute ago, though, that seems to cast some significant
2 question on that because, as I read that email -- hold on just
3 a minute. I just had it. Now I seemed to have put it
4 somewhere.

5 There was some discussion about news articles, and
6 the response was that they are not willing to stipulate to the
7 authenticity or admissibility of the statements themselves, and
8 this came on June the 11th, which was a day before the
9 stipulation was signed. I've already ruled on the stipulation,
10 but this does seem to suggest that there was some confusion, at
11 a minimum, about the scope of the stipulation.

12 **MR. KAUL:** I'll just make two quick points. One is
13 that this did precede the stipulation, and, secondly, my
14 recollection -- and I admit that a month and a half later it
15 may not be perfect, but my recollection is that this
16 stipulation that we are discussing did encompass those that
17 ended up in the stipulation but also other statements that were
18 not part of the ultimate stipulation; but the Court's ruled on
19 that issue.

20 The main point I want to make is we believe that
21 Exhibit 79 is admissible for a few different reasons. First,
22 as I mentioned the other day, these statements are not being
23 offered for the truth of Senator Cook's statements. Quite the
24 contrary. We think the statements are widely inaccurate. They
25 are instead being admitted to show his motive and intent in

1 making those statements.

2 Secondly, Your Honor, the statements are public
3 statements --

4 **THE COURT:** His motive and intent to do what?

5 **MR. KAUL:** Discriminate against young voters, Your
6 Honor.

7 **THE COURT:** Generally?

8 **MR. KAUL:** Yes. Three months approximately -- four
9 months before the enactment of H.B. 589.

10 And I do want to note a point about the relevance of
11 666 and 667. First, just as a general matter, the intent of a
12 legislator to discriminate within the same session as that in
13 which the bill at issue is passed we think is clearly relevant
14 under the *Arlington Heights* factors, but the other thing is the
15 Defendants have asked questions about -- two different
16 witnesses about, I believe, one of the two bills. I believe it
17 is 666. So this has actually been an issue in this case that's
18 been cited by the Defendants as a precursor to H.B. 589.

19 **THE COURT:** What was the inquiry about --

20 **MR. KAUL:** There were questions to Dr. Lawson about
21 666. I believe he was asked if he knew that there was -- that
22 bill existed prior to H.B. 589, because it includes the
23 same-day registration elimination provision. And Josh Stein
24 was also asked about that bill.

25 But the broader point, Your Honor, is that *Arlington*

1 *Heights* instructs that the inquiry into legislative intent in
2 this context, the intent that the State, in passing a bill when
3 there is an allegation of discrimination, should be broad and
4 far reaching and that we look to the historical sequence of
5 events leading up to the passage of the law, the legislative
6 events that preceded it. So we think it is clearly relevant
7 under that inquiry.

8 Second, Your Honor, other legislators likely would
9 have knowledge of this statement because it was made in the
10 press several months before H.B. 589 was passed.

11 **THE COURT:** Where is *Lumina News*, which is where it
12 was published?

13 **MR. KAUL:** I know that the reporter lived in
14 Wilmington. So I believe it's in that area.

15 **THE COURT:** Do you have any idea what the circulation
16 of that paper is?

17 **MR. KAUL:** I do not, Your Honor, but I would note
18 that this is the type of statement that gets attention.

19 **THE COURT:** You don't get it back in Madison
20 probably?

21 **MR. KAUL:** I do not, but we do hear about when state
22 senators say that "college students don't pay squat taxes" and
23 that "they skew the results of elections in local areas."
24 That's the type of thing that tends to get the attention of
25 some folks.

1 **THE COURT:** Fair enough.

2 **MR. KAUL:** I would add that -- so it's certainly
3 evidence of the intent.

4 And then it is evidence of the broader historical
5 context in which this is passed, which is one of the factors
6 of -- that *Arlington Heights* looks to. I mean, there is
7 clearly an intent reflected by this statement to make voting
8 harder for young people.

9 And then last, Your Honor -- two points, actually, I
10 would add. One is we think this is the precise type of case in
11 which the residual hearsay exception applies. There is
12 significant circumstantial evidence of its reliability, both in
13 that Senator Cook, in fact, did introduce a bill that would tax
14 students if their parents -- if they registered to vote -- I'm
15 sorry, would tax the parents of students if they registered to
16 vote at a location other than college. And the Court just
17 heard the video from Jay DeLancy in which he made statements
18 very similar to those made by Bill Cook here, and the video
19 makes clear that they were working together in preparing this
20 bill.

21 Again, we believe it's highly probative on the
22 material issues in this case, and it's certainly better than
23 any other available evidence for the reasons we've been
24 discussing today.

25 And then finally --

1 **THE COURT:** Tell me exactly which statements you
2 wanted. I had highlighted two of them. I want to make sure I
3 still have that right.

4 **MR. KAUL:** There are two, Your Honor. That's
5 correct. It's the fourth paragraph.

6 **THE COURT:** All right.

7 **MR. KAUL:** It begins with the word "they," which is
8 clearly a reference to college students.

9 **THE COURT:** Okay.

10 **MR. KAUL:** And says, "They live at home, but they
11 often will vote where they are going to school, and their
12 parents keep them on as a deduction. And also where they are
13 going to school and voting, they don't pay squat in taxes."

14 And then he continues in the same paragraph, "They
15 skew the results of elections in local areas...but they don't
16 have any skin in the game."

17 Your Honor, the final point I was going to make is
18 that this is a Court trial. It's one where the Court has the
19 opportunity to weigh the evidence and give it the weight that's
20 appropriate. So unlike a jury trial, where we would have
21 concerns that a jury may rely too heavily on hearsay, here we
22 have a fact finder who is able appropriately to weigh those
23 considerations.

24 I would note that there are cases in which there is
25 references to the relevance of news articles in decision-making

1 in cases involving allegations of discriminatory legislative
2 intent. Two I would note. One is *Bethune-Hill v. Virginia*
3 *State Board of Elections*, which is cited in DOJ's opposition to
4 the Defendants' motion in limine. It is 2015 WL 3404869. It
5 is from May 2015.

6 And there the Court, in discussing a legislative
7 privilege inquiry, looks to the availability of evidence --
8 other available evidence, and notes that a lot of evidence can
9 be considered in this type of inquiry, including newspaper
10 articles. And it doesn't specify whether that's meant for the
11 purpose the Court was discussing earlier in the case or as
12 substantive evidence, but it does refer to that. And that case
13 cites another case, *Committee For A Fair And Balanced Map*.

14 **THE COURT:** What page of that opinion are you relying
15 on?

16 **MR. KAUL:** *Bethune-Hill* is page 12, Your Honor.

17 **THE COURT:** Star 12?

18 **MR. KAUL:** That's correct. I will read the relevant
19 paragraph, which says, "For evidentiary purposes" --

20 **THE COURT:** You can just tell me which one. I've got
21 the opinion here.

22 **MR. KAUL:** It's in -- under subpoint 2.

23 **THE COURT:** Yes.

24 **MR. KAUL:** There is a block quote, the paragraph that
25 follows that.

1 **THE COURT:** Okay.

2 **MR. KAUL:** And the case it cites at the end of that
3 paragraph is the other case that I was referring to.

4 **THE COURT:** Is that the Seventh Circuit opinion?

5 **MR. KAUL:** I believe it's a District Court opinion.

6 **THE COURT:** It is a three-judge panel, if I'm not
7 mistaken. *Fair and Balanced Map*, is that the one that's out of
8 Illinois?

9 **MR. KAUL:** Yes, that's correct.

10 **THE COURT:** All right. I may be mistaken, but the
11 last time I looked at that, I think that may be a three-judge
12 opinion that's reported, for some reason, as a single-judge
13 opinion.

14 **MR. KAUL:** *Bethune-Hill*, Your Honor, was a
15 three-judge case. Mr. Spiva was involved in it, so I may have
16 him speak to this, but I believe the decision was issued by a
17 single judge because it was a discovery issue.

18 **THE COURT:** Hold on just a minute. I'm sorry. I am
19 having some technical issues where I can't get access to my
20 Westlaw from my computer.

21 **MR. KAUL:** That's all right, Your Honor. That gave
22 me time to let my colleague think of one more point for me that
23 I was going to make --

24 **THE COURT:** Terrific.

25 **MR. KAUL:** -- which is that one other indicia of

1 reliability here is that the statement is very similar to a
2 party opponent statement. The legislature is not a party
3 opponent, but their actions are at issue in much the same way
4 that a party opponent's would be in a typical case. So for
5 that reason as well, we think it should be admitted.

6 **THE COURT:** I understand. That's that one. Are you
7 dealing with the other one, or is someone else dealing with the
8 other one?

9 **MR. KAUL:** That's the statement of Senator Blust. I
10 believe --

11 **THE COURT:** Is that one still at issue, or have you
12 all reached --

13 **MR. KAUL:** It is still at issue. I just need to
14 figure out if my colleagues are willing to rest on the same
15 argument. Obviously, the specifics are a bit different, but
16 the basic points are the same.

17 Nothing further from us.

18 **THE COURT:** Okay. All right. Thank you very much.

19 **MR. STRACH:** Your Honor, the first thing that I took
20 note of, Your Honor, is that counsel has said that they don't
21 want to introduce this for the truth of the matter asserted but
22 for motive, intent to discriminate against young voters
23 generally, and I think that's a -- I have no idea what that
24 means.

25 I think it would be very dangerous for a Court to let

1 in a clear hearsay statement from a legislator to show some
2 sort of general animus against somebody. I am not aware of any
3 authority for a Court allowing something in that's hearsay to
4 show a general animus as opposed to a specific animus in
5 connection with a specific event.

6 So, for instance, in the *Arlington Heights* case, that
7 involved a specific intent regarding a particular ordinance, or
8 whatever, that was passed.

9 The other thing I would point out, Your Honor, is
10 that as I recall the testimony from the Intervenors' experts,
11 their case is about young voters in general. And as I recall
12 the testimony from perhaps Mr. Levine, that college students,
13 in his opinion, were a small subset of young voters overall.

14 So even to the extent that this would allegedly show
15 an animus against college students, which are folks that are
16 specifically named, that's not probative necessarily of some
17 sort of animus against young people in general. So it's even
18 more attenuated from their case than the fact that it involves
19 Senate Bill 666 and 667, which really have nothing to do with
20 589.

21 Your Honor, we certainly did ask Dr. Lawson and
22 Senator Stein questions about those bills, but they were
23 limited to whether or not those were in the Rules Committee in
24 response, of course, to the argument that's been made that no
25 election bills ever go through the Senate Rules Committee. So

1 that was the only point we made about those bills. We didn't
2 expand beyond that.

3 We would submit, Your Honor, that in any event, the
4 statement itself doesn't show discrimination on its face. What
5 it does show, and certainly what I think the testimony of Jay
6 DeLancy shows, is that there is significant confusion about
7 student residency and the rules that apply to students and
8 residency for voting purposes. So it is not even necessarily
9 an indication of any sort of discriminatory intent.

10 Regarding the residual exception to the hearsay rule,
11 what we would submit about the Jay DeLancy video, Your Honor,
12 is that the only thing that that shows is that these statements
13 are not probative of anything in this case.

14 Jay DeLancy is obviously some sort of special
15 interest operative, and it's in his interest to make himself
16 sound good, make himself sound like he has got more influence
17 with the legislature than he might actually have, and it is in
18 his interest to overstate the impact that he's had on any bill
19 in the legislature, much less these two Senate bills and/or
20 House Bill 589.

21 So we think that trying to corroborate this statement
22 in a newspaper with a statement from a special interest
23 operative, whose interest it is to make himself sound more
24 important than what he may actually be, actually makes it
25 actually less probative than more probative of anything else.

1 Regarding the party opponent, Your Honor, we would
2 just simply note that Senator Cook is obviously -- he is one
3 member of 170 in the North Carolina legislature, one of 50 in
4 the Senate, and he was obviously not a party to this case in
5 this way.

6 **THE COURT:** Okay.

7 **MR. KAUL:** Just very briefly, I would note that we
8 think those arguments mainly go to weight, not admissibility,
9 that we don't think that was an accurate characterization of
10 Dr. Levine's testimony, and -- and that we do intend to move
11 tomorrow the inadmissibility of emails related to that
12 deposition, which we believe do show a clear connection between
13 DeLancy and Cook.

14 **THE COURT:** Okay. Do you want to be heard on this,
15 too?

16 **MR. DONOVAN:** Not really. I did want --

17 **THE COURT:** I would say something, but I won't.

18 **MR. DONOVAN:** You had mentioned two, and I wanted to
19 let you know there's one more that's still out there. It's
20 PX81, which is the Apodaca quotes.

21 **THE COURT:** I thought that was resolved from the
22 video.

23 **MR. DONOVAN:** We have the video, but there are
24 additional consistent statements in here that are not contained
25 in the video. I don't have any additional arguments.

1 **THE COURT:** Let me deal with these two, and then I
2 will deal with Apodaca.

3 Okay. Let me deal first with Plaintiffs' Exhibit 79.
4 I appreciate the dilemma the Plaintiffs are in to prove intent
5 in a case like this and their desire to prove it with whatever
6 they can get because the legislators do enjoy legislature
7 privilege. So I understand the issue.

8 Let me tell you my concern with this document, and
9 there are two or three of them. One is it does deal with a
10 separate bill, so it goes to intent generally instead of
11 specifically as to anything involved in this case. So, if
12 anything, it goes to animus generally.

13 Second, it doesn't necessarily express intent, in my
14 view, on denying 18-year-olds the right to vote. It only
15 expresses a view about where they should vote. That's what
16 part of apparently Bill 666 or 667 was about. So that's a
17 little bit attenuated in terms of intent in this case.

18 The other concern I have is one of these quotes has
19 an ellipsis in it. So I have no idea how it was edited. It
20 says, "They skew the results of elections in local areas...but
21 they don't have any skin in the game." I don't know what was
22 taken out, and so I don't know what a fair statement is. It
23 could be that something very important that's contrary to the
24 inference I am being to asked to draw is there. It could be it
25 is totally unrelated. I simply don't know, and that's one of

1 the problems when relying on press reports, because I am
2 subject to the editing, if you will, of the writer of the
3 article, and even which quotes to publish sometimes constitute
4 a form of messaging because it's the others that are left out
5 that I don't have, which then puts the burden on the legislator
6 to come forward and testify to put them into context.

7 So I have a real concern about relying on newspaper
8 articles that contain double hearsay in a situation like this.
9 That's why having a reporter would take one level of the
10 hearsay out, which would make it easier for me to determine the
11 reliability of the statement.

12 In looking at the *Bethune-Hill* cases and the *Fair and*
13 *Balanced Map* cases, those cases were about whether or not you
14 could depose or get discovery of legislators; and the
15 references to newspaper articles in those cases were made in
16 the context of saying that the Plaintiffs had other materials
17 they could look to for their proof in the case, and they
18 included press releases, which I think have their own indicia
19 of reliability -- in fact, one's been admitted in this case
20 from the Governor -- census report, registered voter data, and
21 election returns, et cetera, and special interest group
22 position papers, which, by the way, would probably be hearsay
23 but could come in to show intent if it was shown that the paper
24 was given to a legislator in advance of a ruling so they would
25 have notice of it.

1 Here the newspaper article is being offered for the
2 truth of the statement to prove intent in the case, and so the
3 intent purpose here is qualitatively different from the intent
4 purpose typically offered for an exception to hearsay.
5 Typically, the intent is to explain a later action, and in this
6 case, the intent is to demonstrate an element of the offense,
7 which is that somebody passed legislation with improper,
8 unlawful, unconstitutional intent.

9 So I am going to exclude 79 because of the reasons I
10 have given, and I think it's farther removed from this issue in
11 this case. It deals with a whole separate bill. The
12 Defendants' questions about the legislation don't, in my view,
13 open the door to this kind of material coming in. So the
14 objection to 79, I am going to sustain that.

15 Let me turn then to 91. And as I recall, there were
16 two quotes from that. One was the quote on page 2 that starts,
17 "But I can tell you I have for years heard complaints that
18 college students ought to vote in their hometowns." Is that
19 the first one? Am I right about that?

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

21 **THE COURT:** Okay. And then the second one was, "It
22 was received by the House only at 6:11 p.m. on the last night
23 of the session for concurrence only. I readily admit that is
24 not good practice. That is something we can be justly
25 criticized for doing."

1 **MR. KAUL:** Correct.

2 **THE COURT:** Okay. Did you say, was there any attempt
3 on this one to get the actual email from the reporter? That
4 would be better evidence of what was said.

5 **MR. KAUL:** Not to my knowledge, Your Honor.

6 **THE COURT:** Okay. This is another situation where I
7 now have double hearsay because I have the reporter quoting
8 from what purportedly was in the email.

9 I also did note this -- even though it says *News &*
10 *Record*, this appears to be from a blog and not from the actual
11 newspaper. Am I correct in that?

12 **MR. KAUL:** I don't know the answer, Your Honor. I am
13 actually not the counsel who printed it. I'm not sure if
14 anybody else does.

15 **THE COURT:** Does anybody know the answer to that? My
16 review suggests it's from a blog. So --

17 **MR. KAUL:** I do know that a number of newspapers
18 include blogs on them.

19 **THE COURT:** So the level of preparation and, if you
20 will, accuracy might be higher in a newspaper article prepared
21 for print than for a blog that is kind of ongoing as a
22 dialogue. That is not a criticism of any newspaper. That's
23 simply a recognition of the time involved on these. That's a
24 concern on this one for me.

25 The other concern I have is there is obvious

1 animosity between the writer of this blog and Representative
2 Blust. It's expressed throughout the piece.

3 It also really -- to the extent the intent exception
4 is argued, this came after passage of 589 and after it was
5 signed by the Governor, as I read it, because this was posted
6 August 21, 2013, which I believe was after Governor McCrory
7 signed Session Law 381.

8 So the intent exception here doesn't fit. It's not
9 under oath. It is apparently voluntarily made. It appears to
10 be based on personal knowledge. There is no videotape of it,
11 like we have in the others, but it is double hearsay.

12 As I said, there could have been a more reliable way
13 to get it into evidence, and that would have been to actually
14 get the email from Representative Blust that the reporter had,
15 if the reporter was willing to share it, if you asked, or if
16 you could tell me the reporter won't be doing that, or to have
17 the reporter testify; but, certainly, to have the original
18 email would be more reliable.

19 So while that's a closer call, in my view, because it
20 purports to quote the email, it's still double hearsay, and I
21 am troubled relying on double hearsay in an important case like
22 this. So I am going to exclude that one as well for that
23 reason and reliability grounds. Okay.

24 **MR. DONOVAN:** I've got the one for you now, Judge.

25 **THE COURT:** Which one is this?

1 **MR. DONOVAN:** This is the Apodaca. Do you have a
2 copy, or do you need another copy? PX81.

3 **THE COURT:** I am sure I have a copy. Give me a
4 moment and I will -- PX --

5 **MR. DONOVAN:** PX81.

6 **THE COURT:** Okay.

7 **MR. DONOVAN:** Let me identify you -- there was two
8 statements attributed to Representative -- or, excuse me,
9 Senator Apodaca in this. There is one quote -- and this, by
10 the way, is the day of the *Shelby County* decision -- "I guess
11 we are safe in saying this decision was what we were
12 expecting." That's the first quote. And then further down we
13 see, "'So now we can go with the full bill,' he added."

14 And on this day, there were a fair amount of press
15 conferences and statements by some of the sponsors. And let me
16 first show you the video because -- I am not going to repeat
17 any of the arguments, but I think this has additional
18 verifications and confirmation. We are going to play the video
19 for you, and then I have one other point.

20 (The video was played.)

21 **MR. DONOVAN:** So that's his statement from that
22 particular questioning, which is consistent with this
23 additional quote.

24 **THE COURT:** What is the date of this video?

25 **MR. DONOVAN:** I believe it's also June 25, Your

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

1 Honor. So it's the same day.

2 **THE COURT:** Is it the same reporter?

3 **MR. DONOVAN:** I don't know if it is or it isn't. So
4 here they are making similar statements to the press, and this
5 one says -- two separate statements, but they are consistent
6 with what we have in the video.

7 I would also refer you, Judge, what is already in
8 evidence from the declaration of Senator Stein. In his
9 declaration that he submitted, he stated, "I recall" -- I'm on
10 paragraph 13. "I recall that immediately after the Supreme
11 Court struck down Section 4 of the Voting Rights Act in *Shelby*
12 *County*, North Carolina, Senator Tom Apodaca stated to the press
13 that, 'Now we can go with the full bill.'"

14 So it's already -- again, that's Senator Stein's
15 memory of it, but that gives additional confirmation. And, of
16 course, Senator Stein was here and he wasn't asked about it.
17 So I think this has the attributes of the residual exception.
18 We have consistent video. We have another senator. What
19 that's probative of is it shows senators were aware of this
20 statement.

21 Obviously, Senator Stein was opposed to the bill, but
22 it does show the relevance is that not only did Mr. Apodaca say
23 it, other senators were aware of it. So this one, Your Honor,
24 I think is quite different than the other two that you just
25 ruled upon. Thank you.

1 **THE COURT:** All right. Do you want to be heard on
2 this one?

3 **MR. STRACH:** Yes, Your Honor. I frankly thought that
4 by agreeing to the admission of the video, we were -- we had
5 agreed that we dealt with this one already.

6 **THE COURT:** In which way? Are you agreeing to this
7 or are you --

8 **MR. STRACH:** No. We were agreeing to the video. So
9 I thought, frankly, that resolved the issue; but to the extent
10 now we got to argue about this one, PX81, Your Honor, I think
11 it is a stretch to say that anything in that video they just
12 showed you corroborates specifically what Senator Apodaca is
13 quoted as saying, double hearsay of course, in the newspaper
14 article because in the quotes, he's tying what they refer to as
15 the full bill to the decision, and that's a key point. That's
16 missing from the video. That's why they want the statement and
17 the double hearsay statement in from the reporter, even though
18 they don't have it on the video.

19 So I think that makes this a materially different
20 thing and, of course --

21 **THE COURT:** I am not sure I followed that. Say that
22 again.

23 **MR. STRACH:** In other words, as I understand the
24 argument, the video corroborates the statement in the newspaper
25 article; and what I am saying is nothing in the video statement

1 connected what he referred to as an omnibus to the *Shelby*
2 *County* decision like the double hearsay statement in the news
3 article does.

4 And, of course, that's the key point that they are
5 trying to make, and they are trying to use that as evidence of
6 intent, at least of Senator Apodaca's intent, regarding
7 connecting moving a bill with the *Shelby County* decision.
8 That's absent in the video. It's in the news article, and it
9 would be very prejudicial to use the video that does not
10 contain that to corroborate --

11 **THE COURT:** Let me see the video again.

12 (The video was played.)

13 **MR. STRACH:** So we don't think the video should be
14 used to corroborate the statement and to bootstrap the double
15 hearsay statement of the news article; and we think for all the
16 other reasons that we've argued throughout the week, you know,
17 allowing a double hearsay statement to come in essentially
18 would be an inrun around the privilege because it would require
19 potentially a legislator to come in and offer more explanation.

20 **MR. DONOVAN:** Two quick points, Your Honor. First is
21 just to note this was the day of the *Shelby County* decision.
22 So I don't think the fact that the article had a quote of
23 Mr. Apodaca saying it was the decision he was expecting was out
24 of place.

25 And this quote, Your Honor, is a little bit

1 different, right. Your Honor cited this in your opinion. The
2 Fourth Circuit cited --

3 **THE COURT:** I cited the -- whatever I cited that was
4 hearsay I cited because, on preliminary injunction, hearsay is
5 admissible. The Fourth Circuit had their own reasons. You'd
6 have to talk to them about that.

7 **MR. DONOVAN:** But the point being -- and I wasn't
8 doing it that you cited it, because I understand that point.
9 Interestingly, we had a public, you know, four-day hearing last
10 time. No one had even objected to it as hearsay at that point.
11 So, you know, it is a little odd now that it's been cited by
12 Your Honor and the Fourth Circuit. It's consistent with the
13 video, referred to by Senator Stein. I mean, this is about as
14 corroborative as it gets.

15 So I think all that, Your Honor, getting back to
16 basic evidence, is the residual exception, especially when a
17 situation where the residual talks about -- there is no other
18 way to do it. We've been blocked. We did try to go get
19 discovery. We understand your ruling and we are following it
20 on legislative privilege, but that's one of this --

21 **THE COURT:** How does the first statement get
22 corroborated by what's on the video? The argument as to the
23 second statement I followed because he makes a reference to an
24 omnibus bill, which could be argued to be a full bill.

25 **MR. DONOVAN:** Sure.

1 **THE COURT:** The first one strikes me as it's less
2 related.

3 **MR. DONOVAN:** I would agree there is less
4 corroboration, but I think what gives it to you is it's the
5 same day, and he was giving press conferences and press
6 statements; but the same day is what gets the corroboration and
7 the reliability.

8 **THE COURT:** Okay. I am going to deny the motion as
9 to -- the objection as to "So now we can go with the full
10 bill." I will consider that. The first one is less
11 corroborated. I am going to consider the statement "So now we
12 can go with the full bill" because it's -- even though it's not
13 under oath, it appears to have been voluntarily made, from what
14 I can tell from the article. I continue to be concerned it is
15 double hearsay, but it is corroborated by the video, in my
16 view, because the video references an omnibus bill. This talks
17 about a full bill. They apparently were made on the same
18 day -- were reported on the same day, at least. So in the
19 context, I think it is sufficiently reliable for me to rely on
20 it for whatever purpose I rely on it for.

21 **MR. DONOVAN:** Your Honor, I don't know if it's
22 necessary for a record, but I have been asked to just note our
23 exception to your prior ruling.

24 **THE COURT:** It is not necessary. Everything is
25 preserved under the rules, but --

1 **MR. DONOVAN:** That's what I thought.

2 **THE COURT:** -- redundancy never viciates.

3 **MR. DONOVAN:** Your Honor, you asked before, and it
4 was on my list, just since we're doing the same type -- I did
5 mark the Mr. Farr email that we referred to. It's PX729. I'll
6 hand them copies.

7 **THE COURT:** Did you give a number to the Defendants?

8 **MR. STRACH:** I believe, Your Honor, it is going to be
9 DX363.

10 **THE COURT:** We haven't gotten to a thousand, from
11 what I can tell, but we're getting close.

12 **MR. DONOVAN:** We'll get there, Your Honor. We have
13 been moving --

14 **THE COURT:** If Ms. O'Connor steps to the podium, we
15 might get to it.

16 **MR. DONOVAN:** It is PX730 is the Farr.
17 Unfortunately, 729 was used.

18 So we will pick up with testimony for tomorrow. We
19 do plan to rest our case-in-chief. Tomorrow, I will probably
20 have some housekeeping and planning questions and requests for
21 you tomorrow morning after I caucus with the group and we have
22 our plan, but we do plan -- by midmorning, we expect the case
23 will be passed to the Defendants.

24 **THE COURT:** Okay. I don't know what your
25 expectations are. Now, I know you have been keeping up with

NAACP, et al. v. NC, et al. - Trial Day 9 - 7/23/15

1 Ms. Engle on how much time you have.

2 **MR. DONOVAN:** That's going to be one of my requests
3 in the morning.

4 **THE COURT:** For more?

5 **MR. DONOVAN:** It will be, but not much more. The
6 issue, Your Honor, is I think we are at about 30 hours, or
7 maybe a little over. I think we are going to be within our 45
8 hours; but my concern is, as we do our cross-examination and
9 consider our final closing, I don't want to feel hamstrung.

10 I think, frankly, we have been pretty efficient. I'm
11 sure that is in the eye of the beholder. So if we have kind of
12 three to four more hours, I think that I'm not hamstrung.

13 **THE COURT:** Well, let me encourage you to talk with
14 the Defendants. You all be fair on who you think you are going
15 to call and give them some idea, and then they will have some
16 idea of what they think their cross will be and get through
17 that process. Why don't you do that, if you can, between now
18 and whenever you want to ask for more time.

19 I told you at the outset I give time limits because I
20 want the risk to be on the lawyers because, if I don't, we'll
21 be here until Christmas, and I've had that happen. So you know
22 what's important. You know what cross points are important.
23 And you are giving me a lot of other reading material to have
24 in addition to what we are hearing in court. So I really want
25 to give you those limitations to be fair, but I wanted you to

1 decide what's most important because that's going to help me
2 decide the case.

3 So talk to the Defendants, find out how many
4 witnesses they have, make an estimate of your time. If you
5 find that you are going to come up unreasonably short, as I
6 said at the outset, I will entertain the request for some
7 slight more time, but don't expect to get lots because that's
8 one of the reasons I give time limits.

9 The Supreme Court gives everybody, I think, 30
10 minutes to argue the most important cases in the land. So
11 there is a reason for time limits. So if you would do that,
12 and then I will be glad to entertain your request.

13 The other point I was going to make, before we leave,
14 is with some sensitivity to the fact that I have given you some
15 time parameters, I am going to hear all the evidence in this
16 case. I won't be ruling at the end of anybody's case. I am
17 not going to rule from the bench at the end of the trial, I
18 think particularly in light of the fact that I have these
19 homework assignments to do.

20 So whatever arguments you want to make at the close
21 of your evidence on either side, you are welcome to make them,
22 but I won't be ruling. So think about that, about how much
23 time you want to use, if any, when you argue. Certainly
24 preserve whatever points you want to make, but I am going to
25 reserve on this case.

1 **MR. DONOVAN:** And our plan just -- then we can talk
2 about the best way -- was to kind of just save everything to
3 the end and have closing arguments.

4 **THE COURT:** That's fine. So I didn't want you
5 burning up time on an argument, expecting me to rule from the
6 bench because I'm trying to be fair.

7 **MR. DONOVAN:** We'll preserve, but we were going to
8 save the real argument --

9 **THE COURT:** Right, because I won't be doing that, not
10 in a case like this.

11 Okay. Any other issue we have to deal with before
12 the evening, which has already come and gone?

13 **MR. DONOVAN:** 9:00 a.m.?

14 **THE COURT:** 9:00 a.m tomorrow. You all have a good
15 evening. We'll see you in the morning.

16 (The Court recessed at 5:15 p.m.)

17

18 END OF TRIAL DAY NINE

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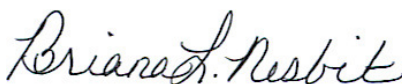
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1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER
4
5

6 I, Briana L. Nesbit, Official Court Reporter,
7 certify that the foregoing transcript is a true and correct
8 transcript of the proceedings in the above-entitled matter.
9

10 Dated this 6th day of August 2015.
11

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14 Briana L. Nesbit, RPR
15 Official Court Reporter
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