

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

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

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

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16 UNITED STATES OF AMERICA, ) CASE NO. 1:13CV861  
17 Plaintiff, )  
18 V. )  
19 STATE OF NORTH CAROLINA, et al., ) Winston-Salem, North Carolina  
20 Defendants. ) July 8, 2014  
9:01 a.m.

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22 TRANSCRIPT OF THE **PRELIMINARY INJUNCTION MOTION HEARING**  
23 **VOLUME II OF IV**  
24 BEFORE THE HONORABLE THOMAS D. SCHROEDER  
UNITED STATES DISTRICT JUDGE

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

2 **THE COURT:** Good morning. We'll continue with the  
3 testimony of Mr. Gilbert. He can retake the stand, please. I  
4 remind you you are still under oath. The defendants were going  
5 to examine. Mr. Farr?

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

7 CROSS-EXAMINATION

8 **BY MR. FARR**

9 Q Hello, Mr. Gilbert.

10 A Good morning.

11 Q How are you today?

12 A I'm not used to getting up this early, but I am here.

13 Q We know each other, do we not?

14 A Yes, we do.

15 Q I thank you for your service to the citizens of North  
16 Carolina as the elections director of Guilford County. I would  
17 also like to thank you for the help you have given me over the  
18 years when I have called you and asked you questions.

19 I didn't get to depose you in this case, so I've just got  
20 a couple of background questions that came up yesterday.

21 You said yesterday you had worked for two senators. Could  
22 you tell us who those senators were?

23 A Senator John Culver from Iowa and Senator Chris Dodd from  
24 Connecticut.

25 Q What is the partisan affiliation of those two senators?

1 A They were both Democrats.

2 Q All right. And are you registered as a Democrat, an  
3 unaffiliated Republican?

4 A I'm registered as a Democrat.

5 Q Have you always been registered as a Democrat?

6 A Yes, I have.

7 Q Have you given political contributions to candidates?

8 A No, I have not.

9 Q Have you done that since you've retired as executive  
10 director from the board of elections?

11 A No, I have not.

12 Q I want to start out with something that Senator Blue said  
13 yesterday. I don't know -- were you in the courtroom when he  
14 testified?

15 A I caught the end of his testimony.

16 Q He made a comment that he thought that the rules for  
17 determining when someone is eligible to vote ought to be the  
18 same for all voters. Would you agree with that?

19 A In general, yes. What I have found -- I mean -- but, in  
20 fact, the rules aren't exactly the same.

21 Q In a perfect world --

22 A -- for all voters even now. So I think, in general, the  
23 effect of those rules should be the same, but the necessary --  
24 the details are not necessarily going to fit all situations.  
25 You've got registration by mail, you've got registration in

1 person, you've got registration through various means, and the  
2 circumstances dictate the procedures, I think.

3 Q But everyone who registers by mail is eligible to vote  
4 based upon the way everyone else is registered by mail; is that  
5 correct?

6 A Based upon the way everybody else by mail is registered,  
7 yes.

8 Q Right. And people that register in person, they are  
9 eligible to vote based upon the same rules that apply to  
10 everyone else who registers in person?

11 A That is correct, but they are not the same as the rules  
12 that apply to the person who registers by mail.

13 Q Okay. But, in theory, you'd agree that the rules ought to  
14 be -- whatever the rules on registration are for different  
15 types of registration, they ought to be the same for all  
16 voters?

17 A Certainly the standards for eligibility are the same for  
18 all voters.

19 Q Okay. And that's a good thing?

20 A Yes, it is.

21 Q Just hold that thought for a little bit. You said in your  
22 direct -- I don't want to be flippant, but you said it wasn't  
23 like a really big deal to retrieve absentee ballots. Can you  
24 kind of explain that, what you meant by that?

25 A I just meant that all the absentee ballots, and that is



1 all early voting and by-mail ballots, which are classified as  
2 absentee ballots under North Carolina law, are identifiable and  
3 retrievable.

4 Q And how do they get retrieved? Can George Gilbert just  
5 say, I am going to go retrieve a ballot, or does something else  
6 have to happen?

7 A They are ballots on the iVotronic system. That's the type  
8 of voting system that we use, the electronic voting system.  
9 Once the election is over, we retrieve the cartridges from each  
10 machine that contains the ballot images for each vote that has  
11 been cast, and those ballot images are stored in the central  
12 tabulation system by precinct, and they have a number  
13 associated with each ballot. That number is the voter's  
14 absentee voting number. So when I want to retrieve a ballot  
15 from the iVotronic system, all I have to do is process those  
16 ballot images within the central tabulation system, go to that  
17 precinct, call up all the ballot ID numbers, and then select  
18 the one that needs to be retrieved and deleted.

19 Q Okay. But the question is how do you know -- why are you  
20 retrieving a ballot? You just don't go retrieve any ballot.  
21 How do you get to the point where you want to retrieve a  
22 ballot?

23 A I would want to retrieve a ballot if it's a same-day  
24 registrant and two verification notices had come back  
25 undeliverable prior to the canvas. That ballot would be

1 canceled.

2       If we find that someone voted Election Day and voted  
3 absentee, we would need to retrieve that ballot and cancel the  
4 absentee ballots. Provisional ballots that are cast on the  
5 iVotronic machines -- and there are a few of those still.  
6 There would be quite a few of them. There were prior to  
7 same-day registration, quite a few provisional ballots, that  
8 you don't determine whether or not those should be counted  
9 until the canvas. So those have to be retrieved and then the  
10 determination made as to whether they should be tabulated or  
11 not.

12       So there are quite a few circumstances under which you  
13 need to retrieve those ballots.

14 Q     Is there a challenge process that relates to whether or  
15 not a ballot is retrieved?

16 A     No, because the challenge process -- ballots under --  
17 ballots that are cast under the challenge process are not  
18 counted in that election if that challenge is sustained unless  
19 there is a court order to open and count those ballots. So if  
20 there is a challenged ballot where the challenge is sustained,  
21 then that ballot would not be involved.

22 Q     How do you know whether -- let's talk about the mail  
23 verification system because I think there was some confusion  
24 about that.

25       When someone registers to vote and a registration is

1 submitted to the county board, the county board sends a  
2 verification letter to that voter?

3 A That's correct.

4 Q And that's sent by First-Class Mail?

5 A Yes, that's correct. It's nonforwardable.

6 Q And there is return service request on it?

7 A That is correct.

8 Q If 15 days expire and the card doesn't come back, the  
9 voter is considered verified?

10 A The voter is considered verified unless the card does come  
11 back later.

12 Q Right.

13 A Yes.

14 Q But if it doesn't come back within 15 days --

15 A The state system then automatically changes their status;  
16 that's correct.

17 Q Okay. And then if the card comes back, how did you know  
18 at the Guilford County Board of Elections that the card would  
19 come back?

20 A Any cards that come back are scanned by staff into the  
21 system. There is a return mail module in the computer system;  
22 and when you scan those cards, it automatically records in the  
23 central registration system that the card was returned, and the  
24 central registration system has a set of rules in it that  
25 dictate what occurs.

1 Q Central registration system meaning the state system?

2 A The state's voter registration system, yes.

3 Q And that's -- is that called SEIMS?

4 A That's correct.

5 Q Do you know what that stands for?

6 A State elections information something system.

7 Q Close enough.

8 A Close enough.

9 Q All right, sir. So who sends the second card?

10 A We do. The system automatically generates that second  
11 card actually. If you scan in the bar code on the first card,  
12 the system automatically generates that second card, and it  
13 goes out in the next mailing.

14 Q Okay. And if one of those cards comes back before canvas  
15 day, that voter's ballot is counted, is it not?

16 A That's correct.

17 Q And if no cards come back before canvas day, but two come  
18 back after canvas day, that voter's vote would be counted?

19 A That's correct.

20 Q So what happens to a voter who has both cards returned to  
21 the board of elections after they voted?

22 A The system is and what -- as I mentioned yesterday, state  
23 statute provides that that voter would automatically be put in  
24 the confirmation process. So the system would produce a  
25 confirmation notice, which is a forwardable notice, to that

1 voter, asking that voter to return this card with your current  
2 address on it. If that confirmation notice is not returned by  
3 the voter within a certain period of time, I think maybe 45  
4 days, then that voter is, I believe, flagged as inactive.

5 Q Okay.

6 A And when they come to vote the next time, they would be  
7 specifically asked to update their address.

8 Q Right. But explain to His Honor. That someone in that  
9 situation who has had two verification cards returned and the  
10 confirmation card not returned, they're placed in what's called  
11 inactive status?

12 A That's to the best of my recollection.

13 Q And that person -- if he shows up or if someone shows up  
14 impersonating that person at the next election, that person  
15 will be allowed to vote, will they not?

16 A If that person provides the updated address information.

17 Q Well, he could claim that the original address that he  
18 gave was his address, could he not?

19 A That happens, and that -- sometimes that is true if the  
20 Postal Service didn't deliver the mail properly. You know, we  
21 know that that occurs.

22 Q There is also the potential for someone giving a false  
23 address originally, failing mail verification after they voted,  
24 becoming inactive, and then coming back and voting again in the  
25 next election, giving the same address they had given

1 initially; isn't that correct?

2 A Well, that's more likely for people who register by mail  
3 or who register in person or through -- you know, than it is  
4 for same-day registrants since the same day registrant has to  
5 produce documentation showing their name and their current  
6 address before they are allowed to do that same-day  
7 registration. So they have to provide, you know, current  
8 documentation of that; whereas, other voters do not.

9 Q Okay. So you say it is more likely for someone who  
10 registers 25 days before the election to game the system by  
11 giving a wrong address, failing mail verification, going  
12 inactive and then coming back and giving the same incorrect  
13 address in the next election than for same-day registration  
14 people?

15 A I would say theoretically it's more likely.

16 Q Okay.

17 A I don't recall having -- we didn't have that kind of  
18 situation or any reason to believe that that had occurred, but  
19 theoretically, yes.

20 Q Okay. Sir, did you ever go back and analyze what  
21 percentage of voters, say, in 2012 who voted -- who registered  
22 25 days before the election and then subsequently became  
23 inactive because they mailed -- or failed mail verification?  
24 Did you ever look at that?

25 A Yes, I did.

1 Q Oh, you did?

2 A Yes.

3 Q And do you have a report on that?

4 A I had a report on it. I no longer have it in my  
5 possession, but it's probably somewhere in the computer at the  
6 board of elections.

7 Q Okay. Did you do a study --

8 A I sent a copy of that to the state.

9 Q Did you do a study on how many people who did same-day  
10 registration voted -- had their vote counted at canvas and then  
11 subsequently failed mail verification and became inactive?

12 A That data would be in that report, yes.

13 Q And it's your testimony that the percentage of people who  
14 may have gamed the system by giving a wrong address, voting,  
15 and then failing mail verification is higher for people who  
16 register 25 days before the election than it is for those who  
17 register during same-day registration?

18 A That's correct. It was roughly double the rate.

19 Q Okay.

20 A I think characterizing that as people potentially gaming  
21 the system ignores many of the realistic factors regarding mail  
22 delivery that we have encountered over the years.

23 Q Okay. Is that -- your study was limited to Guilford  
24 County?

25 A My study was limited to Guilford County.

1 Q All right. So as compared to people who register 25 days  
2 before the election versus people who do same-day registration,  
3 between those two people, which one of those voters has more  
4 time to either pass or fail the mail verification process?

5 A The ones who register 25 days prior to election have more  
6 time to pass or fail.

7 Q Okay. Mr. Gilbert, if somebody fails mail verification  
8 before they vote, what is their status?

9 A They are valid -- if they fail mail verification before  
10 they vote, then their status is that of a denied voter.

11 Q And that particular person, if they come back and vote  
12 again, they have to reregister, do they not?

13 A They have to reregister; that is correct.

14 Q And this is in contrast to somebody who fails mail  
15 verification after they vote and becomes inactive; they can  
16 come back and vote at the next election and claim the same  
17 address that they had used previously?

18 A That is correct, but that was because that was anticipated  
19 in North Carolina statute.

20 Q Well, I didn't ask you what was anticipated in North  
21 Carolina statutes. I was asking you there is a difference  
22 between people who fail mail verification before they vote  
23 versus those who fail mail verification after they vote?

24 A I heard that.

25 Q Is that correct?



1 A That is correct.

2 Q Someone who fails mail verification before they vote is  
3 denied and asked to reregister the next time?

4 A That is correct.

5 Q And someone who fails after they vote does not have to  
6 reregister; they can claim the same address that they had  
7 initially used?

8 A That is correct.

9 Q I don't have your declaration in front of me, but I seem  
10 to recall, and you correct me if I'm wrong, that you stated in  
11 your declaration that you had no trouble completing the mail  
12 verification process for same-day registration individuals  
13 prior to the county canvas. Did you say that?

14 A Yes. I would say that today, yes.

15 Q Okay. What if 100 people came in on the last day of early  
16 voting and did same-day registration -- which would be the  
17 Saturday before the election under the prior system, I think;  
18 is that correct?

19 A That is correct.

20 Q -- those people could not possibly complete mail  
21 verification before the canvas, could they, Mr. Gilbert?

22 A Yes, they can.

23 Q Oh, really?

24 A Really.

25 Q You've had people who have had two cards returned who did

1 same-day registration the Saturday before the election, and you  
2 had those cards returned before the canvas?

3 A Mail turnaround in Guilford County typically is two to  
4 three days. When we do a mass mailing out -- let's say we  
5 split precincts, and we send a new verification notice to all  
6 the voters notifying them of their new polling place change, or  
7 something like that. If I mail that notice out on Monday, the  
8 majority of return mail would be back to that office by Friday.  
9 We would get some of it back on Wednesday, we would get a bulk  
10 of it back on Thursday, and another bulk back on Friday. What  
11 trickles in later -- I don't know why it trickles in later. It  
12 may be it got mishandled to begin with, but the later that  
13 return mail comes in, the more likely the Postal Service  
14 mishandled it anyway.

15 Q Right.

16 A So most of it comes back within a week.

17 Q Most of it comes back within a week?

18 A After mailing.

19 Q The first cards come back within a week?

20 A The bulk of it will come back in three days. You put out  
21 another mailing the next day and another three days. You are  
22 talking about a total of six to seven days.

23 Q So that would mean under your theory that people who  
24 register 25 days before the election would most certainly have  
25 a better chance of going through the mail verification process

1 than someone who registered at the end of same-day  
2 registration?

3 A And when we get a card back --

4 Q Was that a yes or no?

5 A Yes, it is.

6 Q You testified that you had very little knowledge of voter  
7 fraud in Guilford County?

8 A That's correct, a little experience. Little to none, I  
9 would say.

10 Q Mr. Gilbert, tell us what a precinct worker does when he  
11 checks in a voter.

12 A A precinct worker is instructed to ask that voter to state  
13 their name and where they live. You are talking about in early  
14 voting or Election Day?

15 Q Well, are they different?

16 A Slightly.

17 Q Let's do both then.

18 A In early voting, they ask the voter -- what they are  
19 asking the voter is the same thing. In early voting, they  
20 would then look that voter up on the electronic poll book that  
21 they have available and determine what that voter -- one, if  
22 that voter is registered at the address that they stated. If  
23 so, then they provide the voter with a voter authorization  
24 form, which the voter has to sign, and it also identifies the  
25 ballot style for that voter since they are -- all ballot styles

1 in the county are available at every early voting site. The  
2 voter would then sign that affidavit, stating that, you know,  
3 they are who they say they are and they haven't moved, and then  
4 the precinct official or the polling place official in early  
5 voting initials that form to authorize that person to vote.

6 The voter is then put in line to be taken to a voting machine.

7 On Election Day, instead of looking up the voter by name  
8 and address on the electronic poll book, we have a printed poll  
9 book that we send to the polling place. So they look the voter  
10 up there. On that printed poll book, there is a label that has  
11 all of the voter's information on it, and that label is peeled  
12 off and placed on the authorization-to-vote form, and the voter  
13 is asked once again to verify that all of that information is  
14 correct and to sign the authorization-to-vote form, which  
15 becomes the poll book for that precinct.

16 Q So if the voter states his name and address and signs the  
17 form, the precinct official has to give them the ballot?

18 A That's correct.

19 Q Okay. What tools or resources does a precinct official  
20 have to determine whether or not the person who is giving that  
21 information might be impersonating someone else?

22 A At the polling place, only their knowledge of local people  
23 and that's limited. In the early voting, it is even more  
24 limited there.

25 Q So, basically, poll workers pretty much have to take the

1 word of the voter that they are who they say they are?

2 A That's the way the system works, yes.

3 Q And they have no way at the present time in North Carolina  
4 to have any availability to confirm if the person is who he  
5 says they are?

6 A Independently, no.

7 Q All right. And so, for example, if someone wanted to come  
8 in and vote for an inactive voter and had the information for  
9 the voter's address and he was not that person, he could fraud  
10 a poll worker by stating the inactive voter's name, stating the  
11 address, and signing the affidavit?

12 A Hypothetically.

13 Q Well, that's true, isn't it? That could happen?

14 A Yes, sir.

15 Q And there would be no way for the precinct worker to know  
16 whether that had happened or not?

17 A That's correct.

18 Q All right. Now, I wanted to ask you about some testimony  
19 you gave that -- I think you said that the provisional ballots  
20 have gone down after same-day registration?

21 A That's correct.

22 Q Okay. What sort of studies did you conduct to show a  
23 causal relationship between that? Was this a correlation, or  
24 did you actually hire someone to see if the introduction of  
25 same-day registration was a cause of the reduction of

1 provisional ballots?

2 A Well, it's not a question of doing a study. It is a  
3 question of the process itself. If a person came in -- prior  
4 to same-day registration, if a person came in and presented  
5 themselves to vote and we could not find their name in the  
6 registration rolls, they were offered a provisional ballot.

7 After the advent of same-day registration, if a person  
8 came in to early voting and their name was not on the  
9 registration record, they were asked if they wanted to register  
10 and vote as a same-day registrant. So you have a direct  
11 one-to-one correlation in switching from provisional to  
12 same-day registration ballots.

13 When people learned of same-day registration, more of them  
14 went to vote early rather than wait until Election Day and find  
15 out that they weren't registered.

16 Q Did you conduct any surveys of people to determine if that  
17 was said, or this is just your supposition based on your years  
18 of experience?

19 A It is my observation based upon the data that we  
20 experienced in Guilford County.

21 Q You observed that there were same-day registration and you  
22 observed the number of provisional ballots went down, but did  
23 you ever survey people who did same-day registration to decide  
24 if that was the cause for the decline of provisional ballots?  
25 That's a yes-or-no answer.

1 A Well, I don't think it is a yes-or-no answer. I don't  
2 perceive it as a relevant question.

3 If a person is given two options, you either vote a  
4 provisional ballot or you vote same-day registration when you  
5 go to early vote -- when we initiated same-day registration,  
6 provisional voting during early voting evaporated. That was no  
7 longer the option that the voter was presented with.

8 Q So there is a correlation?

9 A Absolutely, a one-to-one correlation.

10 Q But you didn't do a study showing if that was the cause of  
11 the drop of provisional ballots?

12 A I think we are on different tracks here.

13 Q I think we are, too, but I'll drop that question.

14 A Thank you.

15 Q What about -- how has your poll book technology improved  
16 over the years?

17 A Twenty-five years ago the poll book was produced by the  
18 precinct officials. When the voter came in to vote, the  
19 precinct official wrote the voter's name in the poll book.  
20 Sometimes they would remember to do so; sometimes they  
21 wouldn't. Now we use the voter authorization form as the poll  
22 book itself.

23 The law changed in North Carolina some years ago requiring  
24 that the voter sign the poll book rather than have the precinct  
25 officials write their name in it. At that point we went to

1 this voter authorization form, which the voter then -- voter  
2 signs, and the voter has to hand the voter authorization form  
3 to the machine assistant to have the machine activated to let  
4 them vote. So we have a much better system of tracking and  
5 getting the signatures of all voters into the poll book.

6 Occasionally, a precinct official might lose or forget to  
7 put -- or a voter might walk out with the voter authorization  
8 card, but, by and large, the system worked much more accurately  
9 than it did in the past.

10 Q Do you have the capacity to update the poll books more  
11 rapidly than in the past?

12 A Oh, yes. The labels that we place on the poll book --  
13 one, the poll book for early voting is automatic. It's updated  
14 automatically from the computer when you activate a voter --  
15 when you print out their authorization-to-vote form. That does  
16 not require any additional manual handling by the poll worker.

17 On Election Day, the labels that are printed in the poll  
18 book have a bar code on them, and when those come back into the  
19 office, we scan all of those bar codes so that updating voter  
20 history can be performed in three or four days; whereas, in  
21 1988, it took us until December.

22 Q Has the technology in this regard improved even since 2006  
23 to the present?

24 A Pretty much the same, but it's -- I mean, I think the  
25 modules that the state has developed for updating voting



1 history are working pretty well. I don't recall what changes  
2 took place from 2006 to present.

3 Q Do you know Cherie Poucher?

4 A Yes, I do.

5 Q She is the director in Wake County?

6 A Sure. We worked together very closely over the years.

7 Q You say she is a good elections director?

8 A To the best of my knowledge, they haven't had any new  
9 elections in Wake County.

10 Q In this case, Cherie has testified -- she has given an  
11 opinion that the drop in provisional ballots is related to the  
12 improved technology of poll books. Do you think that's a  
13 possible explanation for the drop in provisional ballots?

14 A Probably so because we always had -- Guilford County was  
15 the first county in the State of North Carolina to employ  
16 electronic poll books, which gave us access to much better  
17 information on the voters. If a voter came into the wrong  
18 precinct on Election Day, we could look them up on the  
19 electronic poll book and direct them to the correct precinct.  
20 That helped minimize our provisional voting, and Guilford  
21 County has always had the lowest level of provisional voting in  
22 the state. We probably had not more than 15 percent the number  
23 of provisional voters that they had in Wake County. Wake  
24 County always had extremely high provisional voting because of  
25 their own procedures.

1 Q You and Cherie can have a nice talk about that.

2 A We have, many times.

3 Q All right. I've got just -- I just have one more line of  
4 questions that I want to ask you so it's clear in the record  
5 and His Honor understands the difference in the voting  
6 equipment that you have versus other counties.

7 We talked about the DRE machine. What does that mean?

8 A Direct record electronic.

9 Q That's also called a touchscreen machine?

10 A Some direct record electronic machines are touchscreen and  
11 some are push-button.

12 Q Right. And how do those -- explain to His Honor how those  
13 work. Don't you have to touch -- the voter touches the screen?

14 A The names of the candidates are displayed on a page just  
15 like they are on an ATM machine, let's say.

16 Q That's on a computer screen; right?

17 A Yes. Well, it's a voting machine screen, but it is like a  
18 computer screen.

19 Q I liken it to an iPhone.

20 A Similar, same technology.

21 Q Right.

22 A Same technology. The voter has to touch the square beside  
23 the name of the candidate for which they wish to vote, and the  
24 X generally lights up in that square, and that name is  
25 highlighted to show the voter that their selection has been

1 made. When they go through the entire ballot and they get to  
2 the last page, they are asked to review their ballot, and it  
3 shows all of the selections that they have made, it shows them  
4 any contest that they did not vote in, and they are asked to  
5 verify that. If they choose to go back and vote in a contest  
6 they missed, they simply touch that contest, and it takes them  
7 right directly back to that. So the voter has two  
8 opportunities to verify that the selections that they have made  
9 are the ones that they want.

10 When they complete that process, they ask you to confirm  
11 your vote, and so they press the confirm button, and it says,  
12 "Thank You for Voting."

13 Q All right. Now, there is a touchscreen machine that the  
14 voter is putting his finger on for the races of each candidate  
15 that he wants to vote for?

16 A That's correct.

17 Q Is that the machine that actually records the vote?

18 A The vote is recorded in that machine in multiple locations  
19 actually. I think they have three locations within the machine  
20 that record the vote and that communicate among each other so  
21 that it keeps a double-check to make sure that all of those  
22 three memory locations are reconciled as a security measure.

23 Q Mr. Gilbert, I haven't observed elections in Guilford  
24 County before, but I have observed elections in other counties  
25 with touchscreen machines where they actually put a cartridge

1 into the machine to record the vote.

2 A The cartridge is put into the machine to activate the  
3 ballot.

4 Q Okay. And that's done in Guilford County also?

5 A Yes.

6 Q So like, for example, because there may be different  
7 ballot styles in a precinct, a voter might be given a different  
8 cartridge to use?

9 A Well, when you insert the cartridge in the machine, if  
10 there are multiple ballot styles in that precinct, the first  
11 screen that would come up would ask you to select the ballot  
12 style for that voter. That's the information that's on the  
13 authorization-to-vote form. So you select the ballot style for  
14 that voter and --

15 Q Who does that? The poll worker?

16 A The poll worker.

17 Q Okay. All right. Now, most counties in North Carolina do  
18 not have these touchscreen systems?

19 A Most counties in North Carolina -- I would say  
20 three-quarters of the counties on Election Day use operable  
21 scan ballots. During early voting, I believe there are 40 or  
22 so counties that use the touchscreen technology during early  
23 voting. That was the case a year and a half ago when I was  
24 director.

25 Q Did I understand that you said that in Guilford County

1 your machines could actually count the provisional ballots?

2 A Yes.

3 Q Was that the case at the time you retired?

4 A Yes.

5 Q So the provisional ballots in Guilford County, up to the  
6 time you retired, were cast and counted on the touchscreen  
7 machines?

8 A During early voting, provisional ballots and, then  
9 subsequently, the same-day registrations were cast and counted  
10 on the electronic voting machines. At the precincts, we had  
11 the provisional ballots. On Election Day, we had the  
12 provisional ballots cast on optical scan ballots.

13 Q Okay. All right. Now, are you aware that the legislature  
14 has passed a law directing that all the counties get rid of  
15 their touchscreen machines?

16 A I heard that.

17 Q What is your reaction to that?

18 A It's too bad.

19 Q You are not in favor of that, are you?

20 A No.

21 Q All right. Mr. Gilbert, those are all the questions I  
22 have for you. Thank you very much.

23 **THE COURT:** Any other defendant? All right. Any  
24 redirect?

25 **MS. RIGGS:** Just a few, Your Honor.

1 REDIRECT EXAMINATION

2 **BY MS. RIGGS**

3 Q Good morning, Mr. Gilbert.

4 A Good morning.

5 Q Just a few questions. What was the partisan makeup of the  
6 board that hired you in Guilford County in 1988?

7 A It was a Republican majority board.

8 Q Did you serve under a Republican majority board for some  
9 time?

10 A For the first four years of my term, yes.

11 Q Okay. Mr. Farr asked you a line of questions about  
12 verifications. There are a couple of things that I want to  
13 clarify there, too.

14 What are some reasons a verification mailing could come  
15 back where the voter was eligible to vote?

16 A A variety of reasons that we uncovered over the years.  
17 One, and one of the more obvious ones, is that the mail was  
18 mishandled, which happens occasionally, you know. I mean, I  
19 have a lot of respect for the Postal Service, and they do a  
20 good job, but sometimes mails get mishandled.

21 We had -- I would say quite frequently that first  
22 verification notices would come back undeliverable, but second  
23 verification notices did not.

24 Q What did that tell you?

25 A Well, it told me -- technically, it told me that the voter

1 was verified, and it could just be that there was some  
2 mishandling of the mail on the first verification notice for  
3 some reason. We were not able to actually track individual  
4 pieces of mail to find out what the reason for that was.

5 Another reason is that voters have moved from the time  
6 that they registered until the mail was delivered. As I said,  
7 the verification notices are non-forwardable mail. We are a  
8 highly mobile society, and I think part of the explanation in  
9 my mind for why we had a higher rate of return mail from  
10 preregistrants than we did from same-day registrants is that  
11 the mail -- the verification notices to the people who  
12 registered early typically went out every two weeks or every  
13 week as we got closer to an election; but when you were further  
14 away from an election, it was a longer period of time between  
15 the registration being filed and the notice going out, and,  
16 statistically, more people would have moved.

17 Q Did you ever -- I'm sorry. Did you ever do an analysis to  
18 see whether same-day registrants moved?

19 A Well, yes, same-day registrants do move, and I know that  
20 we -- last year, I think there was some question raised -- not  
21 last year, in 2013, a question raised about the voters that had  
22 two notices returned undeliverable -- the same-day registrants  
23 who had two notices returned undeliverable. We followed up  
24 with a number of them, and, in fact, they had moved.

25 Q Were those --

1 A In fact, also, there is a problem with the registration  
2 standards. A person is suppose to register at the address they  
3 live at 30 days prior to the election. Now, if a person is  
4 voting 10 days prior to the election, they may have already  
5 moved; but if the poll worker says, where did you live 30 days  
6 prior to the election, that would be the address at which they  
7 registered, and unless they got their new address as the  
8 mailing address, then it would automatically come back  
9 undeliverable.

10 Q Were there voters who had moved who were eligible to vote  
11 when they did?

12 A Yes.

13 **THE COURT:** When they did what? When they moved or  
14 when they voted?

15 **MS. RIGGS:** When they registered and voted, same-day  
16 registrants.

17 **THE WITNESS:** Yes.

18 **THE COURT:** For my benefit, re-ask the question. The  
19 question was: Were there voters who had moved who were  
20 eligible to vote when they did?

21 **BY MS. RIGGS**

22 Q My question that related back to my first question was  
23 were there ever same-day registrants who registered and voted,  
24 you got notifications back, and you found out that they had  
25 moved?



1 A Yes, there were cases of that.

2 Q Were those same-day registrants eligible to vote on the  
3 day that they did vote?

4 A Yes, they were.

5 Q You talked with Mr. Farr a little bit about voter  
6 impersonation. Have you ever had a case of voter impersonation  
7 in Guilford County?

8 A No, not --

9 Q When a voter registers to vote, is there a signature on  
10 file for that voter?

11 A Yes, there is.

12 Q And when a voter goes to vote at a later date, are they  
13 required to put a signature down?

14 A Yes, they are.

15 Q Would it be possible to match those signatures if there  
16 was a question?

17 A Yes, there would be; and when we had cases of double  
18 voting, that was one of the things that we always did was match  
19 signatures.

20 Q Okay. When did Guilford County get electronic poll books?

21 A We first tested electronic poll books I believe in the  
22 year 2000 and implemented them -- we've always had electronic  
23 poll books in early voting. So we started in 2000 with that,  
24 and then we added electronic poll books at the polling places  
25 on Election Day to aid in getting voters to the correct

1 precinct, probably about 2004.

2 Q Had you had time to observe the effect of electronic poll  
3 books on the rate of provisional votes cast before same-day  
4 registration became law?

5 A We had far more provisional ballots prior to same-day  
6 registration, but as I said, we always had -- we had the  
7 electronic poll books even at the precincts on Election Day  
8 starting by 2004. So the comparison -- the only comparison I  
9 can make is with other counties, and our rate of provisional  
10 voting was always substantially lower than most other counties.

11 Q Does your opinion change about the relationship between  
12 same-day registration and provisional ballots in light of the  
13 electronic poll books?

14 A Well, I'm not sure I understand quite what you are trying  
15 to get at.

16 Q Mr. Farr asked you about something that Ms. Poucher had  
17 asserted in this case. I just want to make sure I understand.  
18 Is it still your experience that same-day registration  
19 dramatically reduced the amount of provisional voting?

20 A Oh, certainly and directly in early voting. The  
21 alternative -- instead of a provisional ballot, the alternative  
22 was same-day registration. Almost all people that would have  
23 voted a provisional ballot previously then voted same-day  
24 registration.

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



1           Sometimes it was mistakes by poll workers who selected the  
2 wrong label for, say, a father and a son who had the same name,  
3 or a mother and daughter. If the father had voted early and  
4 then the son came in and they would take the father's label off  
5 and put it on there, it looked like the father voted twice.  
6 That's when we could look at the signatures and see that they  
7 were two different signatures, and we would call them and  
8 follow up, and if the father and son said, yeah, we both voted,  
9 and the son's signature matched the one we had on record for  
10 him and the father's signature matched the record we had on  
11 him, we knew that there was not an irregularity there. There  
12 was not, in fact, a double vote; it was a mistake by the  
13 precinct officials.

14           So situations like that were the times when we would look  
15 at signatures.

16 Q       Are there any other instances where you looked at the  
17 signatures?

18 A       As a rule, no, except in absentee voting sometime by mail.

19 Q       Okay.

20 A       Sometimes there were circumstances under which we would  
21 need to check signatures, but in general, no.

22 Q       So, like, you've never compared the signature of somebody  
23 who voted, failed mail verification, became inactive, then came  
24 back the next election, and gave the same address and voted  
25 again?

1 A We would look at those signatures when we were looking at  
2 the registration record on someone like that.

3 Q Do you recall doing that specifically?

4 A Personally, no.

5 Q Okay.

6 A But that's part of the routine that the staff does when  
7 they're processing registration applications.

8 Q But you don't recall doing that yourself?

9 A No.

10 **MR. FARR:** I have no further questions, Your Honor.

11 **THE COURT:** All right. You may step down, sir.

12 (At 9:48 a.m., the witness was excused.)

13 **THE COURT:** The plaintiffs can call their next  
14 witness, please.

15 **MS. O'CONNOR:** We would now call Rosanell Eaton to  
16 the stand, please.

17 **ROSANELL EATON, PLAINTIFFS' WITNESS,** at 9:50 a.m., being first  
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 **BY MS. O'CONNOR**

21 Q Good morning, Mrs. Eaton. Would you please introduce  
22 yourself to the Court.

23 A Yes, I will. My name is Rosanell Eaton, and I was born in  
24 Franklin County, Louisburg, North Carolina, and I am 93 years  
25 old, and I have lived there frankly all my life and I attended

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1 school there, elementary and high school.

2 Q And, Mrs. Eaton, you are a plaintiff in this case; is that  
3 right?

4 A Say what?

5 Q Are you a plaintiff in this case?

6 A And I am a plaintiff in this case.

7 Q Have you submitted a declaration in this case?

8 A Yes, I have.

9 Q And for the record, that's PX5, JA30. Are you a member of  
10 the North Carolina Chapter of the NAACP?

11 A Yes, I am.

12 Q How long have you been a member of the NAACP?

13 A Sixty-five years.

14 Q And also for the record, are you African American?

15 A Yes, I am.

16 Q Mrs. Eaton, are you registered to vote in North Carolina?

17 A Yes.

18 Q When you first registered to vote, where did you go to do  
19 that?

20 A After finishing school, I asked my mom and brother to take  
21 me to the county seat, which is Louisburg in Franklin County,  
22 because I wanted to get registered so when time came for me to  
23 vote, I would be capable. So they did. They took me down  
24 there on a mule and a wagon, and it took about two hours or  
25 more to get there.

1 We went into the courthouse, and when I walked in, there  
2 were three men sitting there. I didn't know what to expect,  
3 but whatever was expected, I was ready for it. So one asked  
4 me, he said, well, what are you here for, little lady? And I  
5 said, well, I'm here to get registered to vote when the time  
6 comes.

7 So that gentleman looked at the others and it was two --  
8 three of them in all, and he looked at them and said, well,  
9 what are we going to do? They said, well, I don't know. So  
10 they went around, and then they told me -- he told me that what  
11 he wanted me to do was stand up straight with my hands down  
12 beside of me, look straight on the wall, don't look at either  
13 one, and don't miss a word and speak the Preamble of the  
14 Constitution of the United States of America.

15 Q Did you do that?

16 A Yes, I stood up and did what he said.

17 Q And just for a second, do you remember approximately what  
18 year this was?

19 A When I did it?

20 Q Yes.

21 A He said that was wonderful and, mom, you should be proud  
22 of this little girl.

23 Q Were you able to register to vote at that point?

24 A Then he told me that there would be some materials for me  
25 to fill out, which was my address and name in full and

1 whatever. So they give me those materials. I filled them out  
2 and turned -- give them back to them and they sketched -- they  
3 looked at them, and then they said, well, I don't see any  
4 reason for you not to be able to vote when the time comes. So  
5 I told them, thank you very much, and they thanked us and we  
6 left.

7 Q Mrs. Eaton, approximately when was this? What year did  
8 you register to vote?

9 A What year?

10 Q Yes.

11 A It was -- I was like 19 years old.

12 Q So that would have been in the 1940s?

13 A Yes.

14 Q And at that time were there many African Americans  
15 registered to vote?

16 A What?

17 Q Were many other African Americans registered to vote at  
18 that time?

19 A No, very few. All the ones -- you know, not any young  
20 ones, people of my age.

21 Q Okay. Let's talk about your experiences with voting since  
22 that time. Have you ever served as a poll worker in elections?

23 A Yes, I served as a poll worker. I began as an observer.  
24 After observing eight or nine years at the poll, I then began  
25 to work on the polls. I went to work on the polls as an



1 assistant. I worked as an assistant for about 30-some years, I  
2 guess. Then after being on there a long time, I mostly was the  
3 first judge they selected, and they selected me to work as a  
4 judge and as -- when I took that position, I kept that position  
5 until '12, '13. I worked that position about 30-odd years  
6 dealing with the ballots.

7 Q And you served as a poll judge until the year -- last  
8 year, 2013?

9 A I worked in 2013.

10 Q Mrs. Eaton, let's also talk about -- have you been  
11 involved in efforts to help others register to vote?

12 A Yes. After a period of two, three years and people got a  
13 little accustomed of registering, I was selected by the county  
14 commissioner of the county, along with two others, to try and  
15 get people registered to vote. We were called and named  
16 commissioners, registrar commissioners. After our jobs -- we  
17 just volunteered. I volunteered to work the county, but we  
18 worked for years like that.

19 Q Did you only help African Americans register to vote, or  
20 who did you help register?

21 A I helped any and everybody. When I went to college to  
22 register people, I registered all races. If I had a drive, I  
23 registered all parties, anybody that came.

24 Q And over the years, do you have an idea of how many people  
25 you helped to register to vote?

1 A Yes, I helped people with health issues. I went to their  
2 homes and helped them and trained them how to register and what  
3 to do and explained it to them.

4 Q Do you have an idea of how many people you helped to  
5 register over the years?

6 A Well, over the early years, I remember over 4,000 --  
7 between 4- and 5,000. Then after that, it become -- my job got  
8 so pinchy I just stopped keeping record, but I still -- I am  
9 available.

10 Q When you were helping folks to register, did any of the  
11 African Americans that you helped express to you any fears that  
12 they had about registering to vote or voting?

13 A Yes, I had people that was afraid to register, and I would  
14 try to explain to them why would they be, and they would say  
15 they lived on a sharecrop, and they would be afraid that the  
16 landlord would make them move, and they didn't have anywhere to  
17 go. So they would resent us, and then I went around and back  
18 and around -- I would come back around to them and ask them,  
19 and some would agree to register on the second turn and some  
20 would not because of that.

21 Q And do you believe that any African Americans still have  
22 fears or anxiety related to voting?

23 A Yes. Most of the time, they -- they kind of feel like  
24 some resents, and wherever they are after they vote, they are  
25 real thrilled about it afterwards. They are coming up. They

1 are better.

2 Q Have you also worked in efforts to help people actually  
3 vote, what they refer to as "Get Out the Vote" efforts?

4 A Yeah. Like I have voter registrations and I have  
5 canvassing and classes and church affairs and, you know, like  
6 party affairs, anything that I would see people and know that  
7 they were there.

8 Q Mrs. Eaton, why have you dedicated so much of your time  
9 and effort over the years to helping people vote and to  
10 voting-related activities?

11 A Well, I think it is because my foreparents or forefathers  
12 didn't have the opportunity of registering and voting and any  
13 opportunity. So when I was young -- I love history, so I read  
14 the history, and then I decided it was just my intention to try  
15 and help people to reach to their point that they could do  
16 something since they couldn't do anything.

17 Q Do you remember when early voting was first introduced in  
18 North Carolina?

19 A Early voting was established in 2007 -- 2000.

20 Q And do you remember -- well, first of all, I guess have  
21 you yourself used early voting?

22 A Yes, I've used -- I use early voting most of the time.

23 Q And do you remember the first time that you used early  
24 voting?

25 A The first time early voting came about I was thrilled to

1 death. My daughter and I were the first to get to the election  
2 board to sign the papers.

3 Q And why was it important to you to get there first and use  
4 that early voting opportunity?

5 A Well, by working on the polls so many years and being  
6 around the polls, I realized that that would be an asset that  
7 would give them a little more time. Time is very important at  
8 a poll, and that would give them time to get started and get  
9 registered and get voting before the main day came up. The day  
10 of the election, it was just going to be very crowded, of  
11 course. At first, it wasn't bad, but as the people moved in to  
12 North Carolina -- North Carolina is a growing state. There are  
13 many, many people here, and they are coming every day. So it's  
14 just impossible for them to get there on that day, and if they  
15 don't be there on the time when we say 7:30, close the polls,  
16 they can be all down the walk, but they cannot vote. People  
17 work in Raleigh from Louisburg and different places, and they  
18 cannot get there -- they are afraid they can't get there and  
19 vote before they go to work. After going to work, they are  
20 afraid they can't get back, and it is just mob-like trying to  
21 get in from Raleigh and places where they work.

22 Q Okay. Specifically with respect to African American  
23 voters, have you observed whether they -- whether African  
24 American voters use early voting?

25 A Yes, they use it quite a bit, quite a bit, a lot.

1 Q Based on your experience in connection with voting  
2 efforts, why do you believe that early voting is important to  
3 African Americans?

4 A The reason I believe early voting is a great help is  
5 because that gives people time, time is very important, and it  
6 gives them a time for people that are at home and can't get  
7 there because someone have to take them because they don't have  
8 vehicles. That will give people -- some workers maybe,  
9 volunteers to take them to the polls and vote, and that will  
10 give people time for people to come from their jobs.

11 That's why it's so important to me for people to be able  
12 to cast their vote because we should have accessible time  
13 instead of cutting down.

14 Q And, finally, Mrs. Eaton, are you concerned about the  
15 reduction in the early voting period that is resulting from the  
16 HB589 legislation?

17 A Yes. I think it is very important that we have time for  
18 them to get there.

19 Q And why are you concerned about that?

20 A So that they can have more opportunities because others  
21 feel like voting should be free and accessible to everyone and  
22 give everybody a chance.

23 **MS. O'CONNOR:** Thank you, Mrs. Eaton.

24 **THE COURT:** Any questions for Mrs. Eaton?

25 **MR. PETERS:** No, Your Honor, not from the defendants.



1 years as a law clerk to the Honorable James C. Fox in the  
2 Eastern District of North Carolina and then served an  
3 additional two years to the United States Magistrate Judge  
4 Wallace Dixon in the Eastern District of North Carolina as his  
5 law clerk.

6       Following my five years of law clerking, I was hired as an  
7 associate in the Fayetteville law firm of Beaver Holt &  
8 Richardson, became the partner and managing partner a year and  
9 a half later at that firm, and stayed as a partner in the law  
10 firm for 16 years.

11       I then served one year as counsel with a Raleigh law firm  
12 after I had gotten in the legislature and then went into  
13 full-time teaching outside the legislature. I've served -- for  
14 the last seven years, I've served as a 75-percent visiting  
15 professor at Fayetteville State University, teaching their  
16 undergraduate law-related courses, and a 25-percent adjunct  
17 professor of law at Campbell University, School of Law.

18 Q       And what do you teach at Campbell University, School of  
19 Law?

20 A       I teach two courses, pretrial civil litigation, which I've  
21 taught either once a year or twice, depending on when it's  
22 offered since 1991, with three years as an exception, and then  
23 I also teach -- or I've taught four semesters of state  
24 legislative policy-making and ethics.

25 Q       You referenced in the course of that answer your tenure in

1 the legislature. When were you first elected to the  
2 legislature?

3 A I was first elected to the legislature in 2002 and have  
4 been reelected each time since.

5 Q And which of the two bodies in the legislature have you  
6 served in?

7 A The House of Representatives.

8 Q Has that been since 2002?

9 A It has.

10 Q Prior to being elected to the North Carolina House in  
11 2002, did you have electoral experience?

12 A I did. I served from 1996 to 2002 on the Cumberland  
13 County Board of Education, elected in '96 and reelected in  
14 2000.

15 Q Any further experience with the electoral process,  
16 electoral politics?

17 A Certainly experience in terms of working on other folks'  
18 campaigns that dated back to college, but in terms of my  
19 experience, those are my two elected offices.

20 Q What sort of experience did you have working on other  
21 people's campaigns?

22 A I worked back in college -- when I was registered with a  
23 different party as a Republican, I worked for Senator John  
24 Hines in Pennsylvania in his campaign and then worked for the  
25 1980 primary campaign for later President Bush. He didn't win



1 the 1980 primary.

2 I switched my party registration after that 1980 election,  
3 and my campaigning work after that time was for both Republican  
4 and Democratic candidates locally, and eventually my law  
5 partner, Billy Richardson, ran for the legislature in 1990. I  
6 was his campaign manager then and again in '92 when he won and  
7 in '94 when he won.

8 Q Going back to your tenure in the legislature, can you tell  
9 me a little bit about what the district or districts that you  
10 have represented have looked like throughout the years?

11 A Certainly. I've actually represented three districts  
12 since I have been in the legislature. I represented a district  
13 for two years from 2003 to 2004, which was House District 44.  
14 I served since 2004 in the second district that I was given,  
15 which was House District 45, and then that went until this last  
16 round of redistricting. So I served that district for eight  
17 years and then went back, and now these two last years, I have  
18 been serving House District 44 again.

19 Q What are some of the distinct features of the districts  
20 that you've represented in the House?

21 A They are both -- all three of the districts were  
22 Cumberland County-specific districts. I was a one-county  
23 district, but they had very different demographics. The  
24 majority of the time when I was in House District 45, that  
25 district had some inner city, where I lived, but was dominantly

1 a rural district. Our county is separated by the Cape Fear  
2 River, and so a lot of our county is what we call "East of the  
3 River," much more suburban and rural.

4 My district in 45 had a lot of that population; whereas,  
5 my current district is all compact and in the city, so it's  
6 separated or very different in that regard.

7 The district that I am currently in is very much a two-way  
8 district, that is, I represent some of the most wealthy  
9 neighborhoods in Cumberland County precincts, and I represent  
10 some of the poorest, and literally the district is not divided  
11 by the railroad tracks but all but.

12 Q Are there particular different distinct groups that you've  
13 represented in your time representing Cumberland County in the  
14 House?

15 A Certainly. From a demographic point of view, the current  
16 district, for example, I have is 70 percent or so Caucasian,  
17 about 25 percent African American, the remainder Native  
18 American or Hispanic Latino or Asian American. The district  
19 that I previously represented had a slightly higher African  
20 American population to it. One thing that was similar to both  
21 is I happen to represent an awful lot of military service  
22 members, their families, and veterans because my district  
23 borders Fort Bragg, North Carolina.

24 Q You referenced Fayetteville State previously in your  
25 testimony. Are there other colleges, universities in

1 Cumberland County?

2 A Certainly. There are actually three. There is  
3 Fayetteville State University, which has about 6,000 students  
4 full-time; Methodist University, which is a private four-year  
5 liberal arts institution where my wife works, and that has an  
6 enrollment of about 23-, 2,400 students, which was in the  
7 center of my previous district; and then Fayetteville Technical  
8 Community College, which is one of the largest community  
9 colleges in North Carolina and in the country, which has an  
10 enrollment about of about 12,000 FTE but a partial enrollment  
11 of close to 45,000 students, and that's in the heart of my  
12 district and has been all the way through.

13 Q Have you represented in your time in the legislature  
14 students at those particular institutions?

15 A Yes, at all those institutions.

16 Q How many times since you first ran for the North Carolina  
17 House in 2002 have you been on the ballot?

18 A I have been on the ballot for primary and general  
19 elections each time since 2002. So that would make it  
20 approximately 13 times coming up, and then I was on the ballot  
21 twice for the school board.

22 Q What do your efforts typically entail when you are on the  
23 ballot?

24 A It depends a little bit obviously on the nature of the  
25 campaign, whether I'm tenaciously opposed or whether it's a

1 more limited opposition, but I have won because my district  
2 has, on all three types of districts, been a swing district;  
3 and so I have tried to emphasize a ground game, and I tend to  
4 do an awful lot of door-to-door campaigning. That is, in fact,  
5 how I won my first election for the school board, and I've  
6 maintained that since. I do a lot of telephone banking  
7 personally or with volunteers, and I do a lot of town hall  
8 meetings and one-on-one group meetings with different  
9 organizations and social groups throughout the city; and then,  
10 obviously, like any campaign, there is a media component and a  
11 component that deals with press and mailing and television and  
12 radio.

13 Q Do you work at the polls when you are on the ballot?

14 A I do.

15 Q Can you tell me a little bit about what that entails?

16 A I am at every election. Partly -- we are all creatures of  
17 superstition. For me, my first election I won I think over the  
18 last five days by doing -- hitting about 3,000 doors and then  
19 spending all of Election Day at two precincts, and I try to  
20 greet all of the voters and pick the precincts that are the  
21 most highly contested or the largest turnout precincts, and I  
22 tend to spend all day there. I have done that now throughout  
23 my career, and so I am there from 6:30 in the morning until  
24 7:30 in the evening greeting voters at either one or two  
25 precincts only that day.

1           And then in early vote, what I've tried to do, again given  
2 job responsibilities, is I try to be there for a quarter to  
3 half the day at one of the three early vote sites that really  
4 connect with my district. We have seven in Cumberland County,  
5 but three are where the vast majority of voters in my district  
6 vote.

7 Q       So you just referenced early voting. You've been involved  
8 in electoral politics in North Carolina before and after the  
9 advent of no-excuse early voting; is that right?

10 A       That's correct.

11 Q       Did that advent of no-excuse early voting change your  
12 electoral tactics?

13 A       Certainly. I would think they changed most everyone's  
14 tactics. You wanted to encourage as many of your voters to go  
15 into early vote so that there wasn't an excuse or something  
16 that might have happened that would prevent them from voting on  
17 Election Day. It was certainly easier for you to be able to  
18 then target what you needed to do as you went through Election  
19 Day. As the technological has moved to allow me to determine  
20 each night who's voted that day, it's actually made it easier  
21 and a bit cheaper for me to be able to then parse down my  
22 targeting and final mailing and final work as we know those who  
23 have already voted.

24           So from a candidate's perspective, you've had to change  
25 sort of your technological campaigning. On a personal level,

1 it has changed as well. I've really tried to increase voter  
2 contact even earlier than I did before, and I've tried to  
3 follow up, and that follow-up wasn't, for example, necessary on  
4 Election Day very much; but now, for example, the first week of  
5 early vote, we will have folks either by telephone or  
6 door-to-door determining that the people who are going to early  
7 vote say they will.

8       Then part of my job that night as the candidate is I will  
9 get a list of maybe 50 to 100 people who said they were going  
10 to vote the next day, and I will usually call them up and say  
11 thank you for telling my campaign worker or me that you are  
12 going vote, and I just wanted to tell you how much I  
13 appreciated that as a way to get them to make sure that they  
14 are going to early vote and sort of ask them and commit them to  
15 do that, and I found it to be very successful.

16 Q     You referenced in passing just then the impact on campaign  
17 costs that early voting has had. Can you amplify on that?  
18 What impact, if any, has the advent of no-excuse early voting  
19 had on campaign costs?

20 A     There is certainly a lot of things that have impacted  
21 campaign costs, which have gone up dramatically. Early vote is  
22 not one of them. The price of media has been extraordinary.  
23 The gerrymandering and polarization of districts that were  
24 there where there has been a narrowing over the years of those  
25 that are competitive has meant that more and more money is

1 pushed into the competitive districts that might have been more  
2 spread out 20 years ago.

3       You end up as well with tremendous influence, whether we  
4 like it or not, for both sides of outside money which, of  
5 course, didn't exist much 10 and 15 years. To give you the  
6 best example, I said that I ran my law partner's campaign for  
7 the legislature in 1990, '92, and '94. We raised approximately  
8 35- to \$40,000 for those campaigns and thought that was a great  
9 deal of money. It was to run those elections. When I ran in  
10 2010, I had to raise \$275,000 for my House seat, for my  
11 13,000-dollar House seat, and that gives you a sense, I think,  
12 of how the money has changed; but early vote wasn't a reason  
13 for that.

14 Q     I'm going to transition here to the specific topic that  
15 brings us into court today. Are you familiar with what has  
16 been referred to in this proceeding as House Bill 589?

17 A     I am.

18 Q     Do you recollect it's introduction in the North Carolina  
19 House of Representatives?

20 A     I do.

21 Q     And can you tell us about what the general focus of this  
22 version -- the original version of House Bill 589 was?

23 A     Sure. When it was introduced in April of 2013, it had won  
24 premise, and that was the issue of photo voter identification.  
25 It was approximately a 10- to 15-page bill that focused solely

1 on that issue.

2 Q And can you tell me what the initial House consideration  
3 of this version of House Bill 589 entailed?

4 A I can. I was not on the Elections Committee, but I was  
5 tasked at that time in my caucus, along with Representative  
6 Michaux, as being the two leads in our caucus to prepare for  
7 that bill.

8 In that vein, I was involved in discussions with  
9 Republican majority on that bill as it was being drafted, as it  
10 was being prepared. Representative Lewis was basically in  
11 charge, although there were several members who were  
12 instrumental on the House side of the putting the bill  
13 together.

14 There was, I would tell you, I think perhaps the best  
15 process I have seen outside of a workers' comp bill where -- a  
16 few years ago where there was an extraordinary stakeholder  
17 process. For a large bill, I thought it was the best process  
18 possible on the House side. There was a compete agreement for  
19 open discussions before the bill got drafted. There were two  
20 large public forums announced days in advance. I think in each  
21 case people were allowed to sign up online. There were  
22 probably about 100 people on each of the public forums that  
23 spoke for several hours. There was a large committee hearing  
24 in the Elections Committee that went on for a number of hours.  
25 All amendments were taken. All amendments were debated. All



1 amendments were voted.

2       Following the committee process, there was an extended  
3 floor debate on that bill. Again, amendments were possible.  
4 There was full debate and not time limited. Although I voted  
5 against that bill, there was nothing I can say except that  
6 process was an excellent process and one that you would expect  
7 a very substantial bill to undertake.

8 Q       Who did the legislature hear from during their April  
9 consideration of House Bill 589?

10 A       Part of the discussions with Representative Lewis was that  
11 we wanted to make sure that we heard from experiences out of  
12 state and on other states that were looking at photo ID or had  
13 already passed that and were implementing. So both minority  
14 and majority parties brought in experts. For example, Ion  
15 Sancho I believe we brought in from Leon County in Florida to  
16 talk about the Florida experience. There was an expert brought  
17 from Indiana to talk about Indiana's experience. We brought in  
18 an expert from the Brennan Center to talk about national trends  
19 and information. Civitas had an expert that was brought in to  
20 testify. So there were a number of people heard from, both to  
21 get legal issues out in the open and to get cost issues on it  
22 and to get just practical implementation issues.

23 Q       You referenced the opportunity to work with the majority  
24 during the consideration of the April version of House Bill  
25 589. Can you tell us what that entailed?

1 A Again, there was open discussion with Representative Lewis  
2 about what provisions might be likely in the bill. He  
3 encouraged folks to come in to talk about possible changes in  
4 language we might like so that they could consider it. There  
5 was an open agreement that -- how many experts we would bring,  
6 and that each side would have an equal opportunity to present  
7 those to the committee. We tried to share, where we could,  
8 amendments that were being considered or thought about. So  
9 there was a pretty open process.

10 Q Did you have an adequate amount of time to review this  
11 April version of House Bill 589 before the full House voted on  
12 it?

13 A Oh, sure. It was a multi-week, almost a month process  
14 from the time it was -- really multi-month process in the  
15 development, but at least a three- or four-week process from  
16 the time the bill was introduced in the committee until it was  
17 voted on on the House floor.

18 Q After it's voted on on the House floor, what happened  
19 next?

20 A The bill passed. It was sent over to the Senate, and it  
21 sat in the Senate for some time pending the United States  
22 Supreme Court's decision in *Shelby County*.

23 Q What happened when the *Shelby County* decision came down?

24 A When the *Shelby County* decision came out, my first  
25 recollection was -- either that day or the next day, there was

1 a statement in the press by the majority leader of the Senate,  
2 Tom Apodaca, that said, essentially, now we get to put the full  
3 provisions in the bill, and we are going to put everything in  
4 the bill. It wasn't any more clear than that.

5 So the next thing following that statement that I heard  
6 was the morning that the bill -- now 57-page bill, I believe,  
7 with some 40-plus provisions emerged was the morning it was to  
8 go into Senate Rules Committee at lunchtime or early in that  
9 afternoon.

10 Q Could you compare the April House version of House Bill  
11 589 with the Senate version that emerged in the Senate Rules  
12 Committee?

13 A Well, there was no comparison. It was a 90-percent  
14 different bill. Again, it went from about a 14-page bill to 57  
15 pages. It went from provisions dealing with one subject matter  
16 that was photo ID to provisions that ensconced an elimination  
17 of public financing, an increase in contribution limits, a  
18 decrease in transparency reporting, an elimination of same-day  
19 registration, an elimination of 16- and 17-year-old early  
20 registration capacity, cutback by a third on early voting, an  
21 elimination of Sunday early voting, limitations on local  
22 control over weekend hours, an increase in who would be  
23 acceptable to challenge voters at the polls; and then, as I  
24 recall, there were a number of technical provisions, and there  
25 was the out-of-precinct limitation, which is, I think, a pretty

1 important part of the bill that also was included that  
2 eliminated people from having their vote counted if they voted  
3 out-of-precinct. So none of that was earlier.

4 **THE COURT:** Excuse me. Are you done with your  
5 answer?

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

7 **THE COURT:** Is this a good time we can take a break  
8 this morning?

9 **MR. BROOK:** Absolutely, Your Honor.

10 **THE COURT:** We'll take a break for 20 minutes.

11 (The Court recessed at 10:39 a.m.)

12 (The Court was called back to order at 10:51 a.m.)

13 **THE COURT:** Mr. Brook, you may continue, sir.

14 **MR. BROOK:** Thank you, sir.

15 **BY MR. BROOK**

16 Q Before the break, we were talking about the April 2013  
17 version of House Bill 589 and the Senate version of House Bill  
18 589 from July 2013, and you were comparing and contrasting  
19 those different versions. Can you talk a little bit about how  
20 the voter photo identification provisions in those respective  
21 versions compare to one another?

22 A Sure. There were several amendments that were done on the  
23 House side in that work between the Republicans and Democrats  
24 to try to expand access and availability by increasing the  
25 numbers of identification cards that would be acceptable. For

1 example, there was an amendment passed that would allow the use  
2 of university and community college identifications. There  
3 were provisions passed that would allow certain local and state  
4 governmental identity cards. My recollection is that there was  
5 also an amendment passed that would include certain government  
6 benefit cards as legitimate forms of identification for vote.

7 When the Senate version came over, those compromises that  
8 were part of the debate -- I thought thoughtful debate process  
9 in the House were stripped.

10 Q So that thoughtful House April 2013 legislative process,  
11 how relevant was it to the House consideration of the July 2013  
12 version of House Bill 589?

13 A All but irrelevant in a variety of ways. First, the vast  
14 majority of the new bill were new provisions that were never  
15 discussed or debated or talked about on the House side.

16 Second, some of the, as I suggested, compromises and  
17 amendments that were adopted were taken out.

18 Third, and I am going to phrase this a little differently,  
19 but I think it is important, built up in that House debate was  
20 an importance of relationships. Legislators work best when  
21 they work together, and you can only do that by developing  
22 credibility and relationships with each other. There were some  
23 real relationships I thought for a very tough issue -- there  
24 was a philosophical divide on voter ID -- that were created by  
25 very a thoughtful, intelligent, and informed process on the

1 House side. To have that all stripped out effectively with  
2 what emerged from the Senate and then the next 24 hours of  
3 process in the House obliterated those relationships, which  
4 have extraordinary impact on how you work with each other, not  
5 just on that piece of legislation, but on all of the public's  
6 business.

7 Q After the Senate passed House Bill 589, how long did you  
8 have to review that version of 589 before it came to the House  
9 floor?

10 A My recollection is that the second reading on the Senate  
11 side occurred on an afternoon, and then they passed it, I  
12 think, the next morning. The bill was sent over by special  
13 messenger to the House. It was calendared for immediate  
14 consideration, as I recall, that afternoon. So from the time  
15 it left the Senate to us, several hours.

16 Q Was that an adequate amount of time?

17 A No, certainly not. It was a new bill with 40 more pages  
18 and 40 more provisions and fundamentally affecting, I think,  
19 the constitutional rights of every citizen of the state and  
20 effectively changing decades of electoral reform in the state.  
21 So, no, a couple of hours was not sufficient.

22 Q Can you take me through and the Court through the House  
23 consideration of this July 2013 version of House Bill 589?

24 A Certainly. It came over, as I said, Your Honor, from  
25 special messenger from the Senate. It did not go to any

1 committee. It was placed on the House calendar. We were in  
2 session that afternoon. It was placed on the House calendar at  
3 some point that afternoon for immediate consideration. There  
4 was a time limitation imposed on the debate on the House floor,  
5 and my recollection is a two-hour limit, give or take a few  
6 minutes. I think the minority party was given either 90  
7 minutes or 100 minutes. The majority party took 30 minutes.  
8 That was imposed at the beginning of the debate.

9       Because of the bill coming over strictly in the manner  
10 that it did, there was no amendment process, no committee  
11 process that was used, and so the limited debate that occurred  
12 was the discussion on the House floor and then the limited time  
13 to prepare was about an hour of House -- each side caucusing  
14 before the scheduled floor session.

15 Q       Can you take the Court through what that House debate on  
16 the July 2013 version of House Bill 589 entailed?

17 A       I can, although I suspect that words are not going to be  
18 sufficient here. It was the most emotional two hours I've ever  
19 spent in public office, and that includes, for me, large  
20 debates that I was involved in on a number of controversial  
21 issues in the House. This was for some of our members -- for  
22 many of our members, a feeling that their life's work was being  
23 rolled back in one two-hour session. For a number of African  
24 American members on the floor -- and I remember Representative  
25 Michaux clearly having tears in his eyes and speaking about all

1 the civil rights battles that he had fought and that he thought  
2 he had won now being lost and having to be refought yet again.

3       It was a very emotional time. What I will tell you and  
4 maybe the best way to describe it, Your Honor, it's the only  
5 time that I know of since I was in public office, and I am told  
6 the only time in modern North Carolina legislature, where every  
7 member of the minority asked to speak on the bill. We were  
8 having to cut short time because of that time limit, but every  
9 one of the 41 members of the minority spoke. There were two  
10 who were absent. One minority member's son was undergoing open  
11 heart surgery, and I believe it was Representative Brisson who  
12 may have been off the floor as well.

13       So every member spoke. At the end of those speeches, as  
14 we cast our votes, we had decided that we would all stand up,  
15 which is not protocol, and cast our votes together at the same  
16 time; and then a number of legislators simply stood together  
17 and prayed for a moment.

18       I have never been through anything like that in public  
19 life. I doubt I will again, but I think it stresses the  
20 importance of what was being done that evening and the  
21 prevalent feeling on the minority, or the opposition, side of  
22 the bill about not only the process but the substance of what  
23 was occurring on the House floor. I think most of us felt that  
24 it was an ambush to the people of North Carolina that was  
25 taking place, and I pretty much said that in my speech.



1 Q How long did legislators who were opposed to this measure  
2 have to speak during the floor debate?

3 A Again, we were limited to between 90 and 100 minutes. We  
4 were running out of time. I think there were three lights  
5 still on and the speaker had granted several additional minutes  
6 so that they could each have one or two minutes to talk so that  
7 every member got heard.

8 I was one of the few that was given lead authority, and I  
9 think my comments were about eight minutes, give or take, to  
10 set out the arguments that we had. I would say that all --  
11 several of the people who spoke had voted for the photo ID bill  
12 when it emerged from the House. No member of the minority, our  
13 opposition, voted for this bill.

14 I am not sure if that answers your question.

15 Q I guess just on average, how long did those voting against  
16 have to address these 57 pages worth of new measures?

17 A Well, if you simply take the 100 minutes and divide it by  
18 the 41 people, two and a half minutes a person.

19 Q Who spoke in support of this measure?

20 A That also was most interesting. There was only one person  
21 that I recall who spoke for the bill, which was very unusual.  
22 In fact, I have not ever seen that on a substantial bill  
23 before. Representative Lewis appropriately, who was lead on  
24 the bill, gave the opening statement about the general  
25 provisions of the bill in the first few minutes. Then the rest

1 of the time was taken by the minority members and their  
2 opposition speeches, and then it came back to Representative  
3 Lewis at the end of the debate, and he held up a legal pad that  
4 he had been taking notes and had about six or seven points that  
5 he wanted to rebut, and he gave a paragraph or two about each  
6 of those six or seven points, and that was the debate for the  
7 majority side. There was no one else that I recall being  
8 recognized or being asked to be recognized, and you can tell  
9 that by the electronic screen and see who is -- if their light  
10 is on.

11 Q You've gone through a number of different elements of what  
12 the House's consideration of the July 2013 version of House  
13 Bill 589 entailed. I want to sort of circle back through some  
14 of those individual components.

15 A Sure.

16 Q You indicated that it was a matter of hours that you had  
17 to review the new version of House Bill 589. Was that typical  
18 in your legislative experience?

19 A This was the most atypical process that I've ever seen on  
20 a -- what I believe is one of the most substantial and  
21 certainly constitutional bills that we had done in my tenure or  
22 probably will ever do in my tenure in the House. It was what I  
23 would tell you, bar none, the worst legislative process that I  
24 had ever been through, and I have been through some bad ones in  
25 the Jim Black era, and I have been through some through the

1 last several years. This is in a league by itself.

2 This was the most -- a combination of truncated,  
3 nontransparent, limited capacity for any public notice, public  
4 input, scholarly discussion, understanding of the provisions of  
5 a bill that was, to say the least, controversial, full of  
6 substance, and dealt fundamentally with the most important part  
7 of democracy, the right to vote.

8 I was shocked by it, not by, in some respects, some of the  
9 provisions, but by the -- and, again, my comments on the floor  
10 that night made it clear -- by the process I had -- I have to  
11 clarify in this regard. When you're in the majority for eight  
12 years and you switch to the minority, your role switches. For  
13 me and lot of us in the minority, you have to sort of  
14 understand what that role is, and it is twofold. It is, one,  
15 to help govern wherever you can do that, to work across the  
16 aisle to create the best legislation you can for the state and  
17 where you need to to fight for your principles where there  
18 isn't a compromise available.

19 I had spent a lot of time that year being one of the  
20 leaders in my caucus of trying to work through and help modify  
21 and get bipartisan legislation through. That process really  
22 takes time, and it takes relationships, but it is, I think, the  
23 right thing to do.

24 To have that sort of explode on you on the floor on the  
25 most important bill of the session, to undercut all of those

1 relationships by engaging in a process that was -- I can think  
2 of no other word to say but pure ambush of a critical piece of  
3 legislation. The anger and the disappointment that existed was  
4 as bad as I have ever seen it in the legislative process.

5 Q You referenced that there was no committee process when  
6 House Bill 589 in its July 2013 version came back to the House?

7 A That's correct.

8 Q Is that typical?

9 A No. When a bill comes back after one body passes it and  
10 the other body makes substantial changes, there really are two  
11 options that normally would be available to use. One is to put  
12 the bill on the floor quickly for a nonconcurrency vote with  
13 the understanding that you are going to not agree to the  
14 changes the other side made, put the bill into conference,  
15 appoint conferees, and start working through your differences.  
16 Also that allows input from the outside on those provisions so  
17 that you get a better sense of maybe where you might should go  
18 with the differences between the Senate and House version.

19 The other option that might occur is that the bill, before  
20 it is put on the floor after coming back from the body that  
21 just passed the second set of it, would be sent to a committee,  
22 back, in this case, in the House, so that the new provisions  
23 could be explained and vetted and discussed in committee, the  
24 ultimate goal of getting a recommendation out of that committee  
25 of whether to concur or not concur.

1       So there are plenty of bills that come over with changes  
2 that may be substantial changes. Once you learn of them, the  
3 body that was the originating body says, you know, I think the  
4 other body has done a good job; we are going to agree to those.  
5 Then it will be put on the floor following the committee for a  
6 vote with an understanding that it's been vetted, and that you  
7 will eventually pass it, or if there is disagreement, a  
8 committee wouldn't have helped to understand it any better.

9       Those are the normal way, the way you would do it in  
10 any substantial change. The process this bill got was nothing  
11 more than what we give to a golf cart bill.

12 Q     Without a committee process, did you have an opportunity  
13 to hear from experts about the impact of the Senate version of  
14 House Bill 589?

15 A     No. I think there was some very, very short limited open  
16 comment when the bill came up in Senate Rules. I was not in  
17 Senate Rules for a short period of time, and so whoever  
18 happened to be there that day got two minutes to talk. There  
19 may have been eight to ten people who said something, but there  
20 was no notice, so it was whoever happened to be monitoring the  
21 committees that day. On the House side, of course, there was  
22 no committee; therefore, there was no hearing and no  
23 opportunity to vet with anyone.

24 Q     You also noted that the only legislator who spoke in favor  
25 of House Bill 589 in its July 2013 version was Representative

1 David Lewis previously?

2 A That's my recollection.

3 Q How typical is it for a bill of this magnitude to only  
4 have one supporter speak in its favor during House debate?

5 A Very atypical. It was clear to me that directions were  
6 given that only Representative Lewis was to speak on the  
7 majority side and that there were not to be other comments.

8 In any candor -- I said this in my deposition -- if I was  
9 the lawyer representing the other side, that would have been  
10 the legal advice I gave because of the enormous implications of  
11 the case and the creation of the record; and so it was pretty  
12 clear that Representative Lewis was going to be the only one  
13 speaking and the only one answering. They certainly were not  
14 given the time limitations we had, the ability to engage,  
15 beyond getting our comments out as best we could.

16 Q After the House passed this July Senate version of House  
17 Bill 589, did you have any conversations with Republicans about  
18 the measure in the immediate aftermath of that vote?

19 A I did. I will preface it by saying when I was -- when the  
20 debate was occurring on the measure, it was very clear that the  
21 chamber was clearly different.

22 Normally, you have colleagues -- and I will be standing on  
23 one side, and you will be talking, and those of us in the  
24 minority often are talking across the aisle to try to engage;  
25 and colleagues all the time are looking and following -- maybe

1 doing other things on occasion, but there is -- particularly,  
2 on critical bills, following the debate. There was hardly a  
3 person on the other side looking up from their notes or their  
4 computer or following the debate, and I sensed that early on,  
5 and I sensed what that meant.

6 At the end of the debate, after it was over and the vote  
7 was taken and emotions were still high, one of my very good  
8 friends on the Republican side came over because I had -- I'm  
9 generally pretty circumspect in my comments on the floor, but I  
10 think I was fairly emotional in my speech and had told them at  
11 the end of it, and I have it up here -- my last comment was  
12 "Tonight the majority ambushes the people of North Carolina.  
13 Instead of writing a bill protecting their interests, it passes  
14 one protecting only its own."

15 When I finished that and sat down, I looked over to my  
16 friend, and he looked me in the eye at that point; and when the  
17 debate was finally over, he came around to my table area and  
18 said to me, I'm sorry. I'm sorry for what we did tonight. I  
19 wish we had just passed the House version and the technical  
20 change that needed to be made, and I just apologize for the  
21 process.

22 And I looked at him and said, I appreciate that, but you  
23 and I probably don't need to talk any more this evening. I  
24 might regret something I say, and I will get with you in the  
25 morning.

1 Q Who was that member?

2 A Representative Harry Warren.

3 **MR. BROOK:** Your Honor, may I approach the witness?

4 **THE COURT:** Yes.

5 **THE CLERK:** Plaintiffs' Exhibit Number 1 marked for  
6 identification.

7 **MR. BROOK:** Your Honor, I've provided Representative  
8 Glazier as well as opposing counsel what's previously been  
9 marked as Plaintiffs' Exhibits 0216 and is now -- 221 and 216.

10 **BY MR. BROOK**

11 Q Are you familiar with this document, Representative  
12 Glazier?

13 A I am.

14 Q Can you tell the Court what this document is?

15 A It's a legislative fiscal note prepared by legislative  
16 fiscal staff for House Bill 589.

17 Q What is a fiscal note?

18 A A fiscal note is often requested either by the bill  
19 sponsors or by leadership to look at the fiscal implications of  
20 a particular bill, and fiscal staff does an analysis. That's  
21 what this represents.

22 Q How much time did you have to review this fiscal note for  
23 House Bill 589?

24 A None.

25 Q Can you amplify on that?



1 A We didn't get it on the minority side. I don't know when  
2 it was produced. It may well have been produced in direct time  
3 for the House floor vote. I don't know that. We didn't have  
4 it, and so the first time I really saw this document was after  
5 the vote, sometime after; and then the next time I really  
6 looked at it was in preparation for my deposition and this  
7 hearing as well.

8 Q Is that typical House process to receive a fiscal note for  
9 the first time after the debate is concluded?

10 A No. In fact, I don't know if it was as a result of this,  
11 but the House has correctly, in my view, done something that we  
12 didn't use to do but I think is right, and fiscal notes are now  
13 posted online with the bill so that everyone can have access to  
14 it, which I think is the absolute and correct way to proceed;  
15 and that was started, I believe, after this particular session.

16 Q Now that you've had the opportunity to review this fiscal  
17 note, how helpful is it substantively?

18 A A bit. It certainly provides some basic information on  
19 costs going out a five-year period, but it's limited. It was  
20 limited because, obviously, the fiscal staff had very little  
21 amount of time to prepare it. They indicate in the document at  
22 several pages they haven't had time to talk much to state  
23 counterparts across the country, and there are certainly  
24 provisions in which they just didn't have enough time to  
25 analyze the impact.

1       So it's a bit helpful but not -- it would not be a solid  
2 fiscal note for purposes, if you had time and resources, to  
3 really do the job I'm sure fiscal staff would have wanted to do  
4 for this bill.

5 Q       Can you put the House's consideration in that one day, in  
6 July 2013, of House Bill 589 into the broader context of your  
7 decades-plus service in the North Carolina House?

8 A       It was on a scope that I can't even begin to compare, the  
9 worst legislative process that I ever saw for a bill of serious  
10 substance. I would tell you, and I have told classes since  
11 then and forums and groups, that if you were writing a textbook  
12 on how to run a bill and how to govern in a legislature, this  
13 would be the textbook example of how not to do it.

14 Q       To close here, I want to transition briefly to talk about  
15 the substance and impact of House Bill 589. Do you have  
16 concerns about the impact House Bill 589 will have on your  
17 constituents?

18 A       Very many, yes, and I think I spoke to those in the House  
19 debate as best I could.

20 Q       Can you tell me what some of those concerns are linking  
21 them to particular provisions where relevant?

22 A       First, I'm very concerned that there will be a  
23 disenfranchisement of a number of voters on the photo ID  
24 provision, although that doesn't go into effect for several  
25 years. I am extremely concerned that it will have a very

1 deleterious effect on turnout in the general election this fall  
2 and potentially in 2016 as a result of the truncation of early  
3 vote, as a result of the elimination of same-day registration.

4 I think in my district, which is a classic district where  
5 this is going to have a tremendous impact, the out-of-precinct  
6 limitation is going to, in my view, disenfranchise voters who  
7 are eligible to vote for a number of races, even though they  
8 have, for one reason or not, often not their fault, voted out  
9 of precinct.

10 Part of the reason we put in years ago the out-of-precinct  
11 ability to cast your vote for those offices to which their  
12 ballot is eligible was to increase access, to increase  
13 availability, to increase participation, and to increase  
14 confidence in the electoral system. Taking that out obviously  
15 reverses all of those.

16 In my district, which is very highly military, that is  
17 important. We have a lot of out-of-precinct voters. They may  
18 just be moving by deployments and redeployments into my area  
19 and getting the kids in school and getting their home started  
20 and returning from war, kind of more important than figuring  
21 out where your voting may be, and so that has been an issue.

22 We had in the last maybe three election cycles a number of  
23 split precincts because of the growth of our urban area. So  
24 people who may have voted for 20 years in College Lakes, Cross  
25 Creek 23, now vote in 23A, and they show up to vote and on

1 Election Day, because their history is to always vote on  
2 Election Day and it used to count, now they are told you got to  
3 go here, and they can't get there in time, so we lose them;  
4 whereas, before, their vote would count for all those at least  
5 that were eligible to vote for. I am very concerned about  
6 that.

7 I am concerned deeply about the message we send to 16- and  
8 17-year-olds. I have been lucky enough to listen to Justice  
9 O'Connor and several lectures on the importance of engaging  
10 youth in the electoral process and in civics and in social  
11 studies, and we took that seriously in Cumberland County and  
12 had started a number of high school registration drives and  
13 hooking them in to substantive issues that were affecting their  
14 high school or college career. You know, we have now taken  
15 out -- what message do we send when we take out 16- and  
16 17-year-old registration?

17 I am concerned for a number of the poor folks in my  
18 district, and we don't have poverty the way there are in places  
19 in a number of other countries, but there are pockets of severe  
20 poverty in our state, and I plead ignorance to not knowing them  
21 all in my district; but I will give you one example that I  
22 think I spoke of in my deposition.

23 In my old district, which was more rural, there is a  
24 number of miles in the northern part of Cumberland County that  
25 are part of a precinct called Linden. Linden town is small,

1 but the precinct is very large because it has all of these  
2 rural communities that are unincorporated. There were,  
3 unbeknownst to me, literally several hundred very senior  
4 African American, dominantly African American, citizens who  
5 were living in shacks deep in the woods in different parts of  
6 that county who hadn't seen a doctor in 25 years, who had never  
7 been to a library.

8 I took a tour one time not -- just not knowing with a  
9 community activist and said, Why haven't we ever done anything  
10 and got engaged with the public library to bring bookmobiles up  
11 there once a year and to have a health fair that the hospital  
12 would put on in Linden with the churches tied in to use church  
13 vans to bring these folks to get basic health checks? You  
14 don't realize that.

15 For these people having an opportunity to go vote is  
16 totally dependent on the church van getting them or maybe in a  
17 few cases a relative. They are isolated, and I worry a great  
18 deal about the provisions that we put in that now limit access  
19 and availability time.

20 I fundamentally believe that widespread participation in  
21 elections is the fulfillment of democracy and gives greater  
22 confidence in every portion of our citizenry to the operation  
23 of the government. When you reduce that availability and you  
24 reduce that access and when legislators fail to look when  
25 they're legislating outside of their cultural lens about what

1 their actions mean, we reduce the capacity to govern, and that  
2 is fundamentally what this was. That's fundamentally what this  
3 bill does, and I worry a great deal about its effect.

4 **MR. BROOK:** No further questions, Your Honor. Thank  
5 you.

6 **THE COURT:** All right. Any examination?

7 **MR. STRACH:** Yes, Your Honor, thank you.

8 CROSS-EXAMINATION

9 **BY MR. STRACH**

10 Q Representative Glazier, good to see you again. I am Phil  
11 Strach. We spent some time together in a deposition already in  
12 this case; is that right?

13 A We have.

14 Q And you submitted a declaration that we talked about at  
15 your deposition?

16 A Yes, sir.

17 Q And so I am not going to rehash all of that because the  
18 deposition and the declaration will eventually be in the court  
19 record for the Court to review. I just want to highlight a few  
20 things to talk about with you today.

21 A Certainly.

22 Q Representative Glazier, is it the case that many issues  
23 that come up in the legislature are seen through a partisan  
24 lens?

25 A I think it's the case that there are a number of issues.

1 I don't know if I classify them as many. Each session has its  
2 own dynamic, but there are certainly issues that are seen  
3 through a partisan lens.

4 Q And is it also the case that sometimes members will see  
5 issues involving access to voting through a partisan lens?

6 A It has rarely been the case that all members have seen it  
7 through partisan lenses. There certainly have been one or two  
8 votes -- and I think we talked about that in deposition -- that  
9 were purely partisan votes, but the vast majority of the time  
10 that I have been in the legislature the issues relating to  
11 voting have been bipartisan, at least in some measure and in  
12 many cases in full measure. The absentee voting provisions,  
13 the uniform military absentee act that I was a sponsor of,  
14 along with two Republicans and another Democrat, would be  
15 examples of that; but, then again, there certainly were -- was  
16 one bill, and it may have been the out-of-precinct bill, that  
17 when it first passed, it was fairly detailed partisan.

18 Q So isn't it true, Representative Glazier, that even you  
19 have seen some voting access issues, at least initially,  
20 through a partisan lens?

21 A I think -- sure. I think that -- and part of our job is  
22 to get past that; right? Part of our job is to know that we  
23 tend to see some things in a partisan way, but voting ought not  
24 be one of them.

25 I go back to the uniform military bill, and I will

1 highlight that because you've raised the question. So in 2010,  
2 I won by 44 votes. I think I know all of those 44 people  
3 pretty well, and it was a close election. Like a lot of  
4 elections in my area, the absentee ballots went decidedly for  
5 my opponent, the Republican candidate. In 2011, Representative  
6 Grier Martin, a Democrat out of Raleigh, who also was in the  
7 Army Reserves, approached me as being a cosponsor with two  
8 Republican cosponsors, Representative Lewis and Representative  
9 Ric Killian out of Charlotte, to amend our statute with regard  
10 to absentee voting by military members to create more time for  
11 them to get their ballots in, to eliminate the witness  
12 requirement, and to give them more opportunity to participate.

13 He asked me to be a sponsor, and I had to think about it  
14 that night frankly because that bill, had it been in effect in  
15 2010, would have been -- I would have lost the election. No  
16 question. I thought about it that night, and so I had to reach  
17 the issue you've just raised; and, for me, I decided that that  
18 was just a response I had to overcome. It's far more important  
19 to give the people who were serving my district and our nation  
20 the increased access and opportunity to vote than it is  
21 whether, as a temporary occupant, I get to hold my seat.

22 And so, yeah, I think you are right, Mr. Strach. I think  
23 that there is an initial tendency on occasion to think about  
24 these issues in a partisan way, but our job when we take our  
25 oath under the constitution is to find a way to get past that



1 and to legislate for all the citizens regardless of what the  
2 outcome is going to be for us, and we did not do that in this  
3 bill.

4 Q So with regard to the military absentee ballot bill, which  
5 is called UOCAVA, something like that?

6 A I think that's right.

7 Q Okay. You initially hesitated to support UOCAVA in North  
8 Carolina; is that correct?

9 A For the first night when it was approached to me, yes.

10 Q And, now, it's true, isn't it, that you -- your initial  
11 reservation was not just limited to your close election? It  
12 was also more partisan than that, wasn't it?

13 A Yes.

14 Q Isn't it true that what you told Representative Martin,  
15 when he initially approached you about this, was as a partisan  
16 matter this is not going to help Democrats; is that true?

17 A It was part of what I said, but most of what I talked to  
18 him about was a brief conversation on the floor. He sat behind  
19 me and handed it to me and said, I want to you to consider  
20 being a sponsor on this. I remember reading the bill at the  
21 moment because we were in a debate, and I had a time to do  
22 that; and that's when I had the conversation with him, and I  
23 turned to him and I remember very clearly making the comment,  
24 "If this bill were in effect last year, I wouldn't be sitting  
25 here. So let me think about it this evening."

1       So, yes, the answer to your question is clearly yes. My  
2 initial reaction was how did it affect my election. My second  
3 reaction is how it is a partisan, and then you take a minute  
4 and you get past that and you realize you have a bigger  
5 obligation.

6 Q       Do you believe your initial reaction was improper?

7 A       It was improper in the sense that if that was my final  
8 view on it, that would be, in my view, fundamentally improper.  
9 It was not improper in the sense that I am a human being and I  
10 had those initial reactions.

11 Q       Representative Glazier, we have been talking about House  
12 Bill 589, which was a voting bill in general. You were also  
13 involved in another bill affecting voters in 2003 regarding the  
14 redistricting plan; is that correct?

15 A       I was.

16 Q       And there was an extra session in late 2003 to pass a  
17 new -- I guess it was legislative and congressional  
18 redistricting plans; is that correct?

19 A       I believe so, yes.

20 Q       And so those districting plans were going to affect -- was  
21 it just legislative?

22 A       I think it was just legislative now that I am thinking  
23 about it. I don't think it was congressional.

24 Q       So it was going to affect -- and it was as a result of the  
25 litigation that had challenged those districts earlier in the

1 decade; is that correct?

2 A It is.

3 Q So the redistricting plan that the legislature was going  
4 to pass in that extra session would affect every single voter  
5 in the state; is that correct?

6 A It would.

7 Q And we talked about this a little bit at your deposition,  
8 but you agree with me that redistricting is a controversial  
9 subject when it comes up in the legislature?

10 A By its nature, yes.

11 Q And also, by its nature, it is something that is of great  
12 importance to the citizens of the state; is that correct?

13 A Yes.

14 Q And do you recall how many days it took for the  
15 legislature to pass that redistricting plan?

16 A It was, I'm thinking, a day and a half, as I recall, but I  
17 could be off a half a day.

18 Let me put that in context. The context is that the  
19 redistricting plan that initially passed had gone through  
20 enormous discussion and hearings and votes. It was struck down  
21 by Judge Jenkins, as I remember. It came back. This was a  
22 special session, and so there was a lot of time that went in to  
23 the planning of what that plan was going to be both in the  
24 Republican and Democrat caucuses. They had access to mapping.  
25 They had access to look at -- proposals were brought in.

1       If you remember back then, we were split in the House  
2 60/60. We had a Democrat speaker and a Republican speaker, and  
3 so Republicans met -- or those that Speaker Morgan wanted to  
4 meet with met with him. Speaker Black met with almost, if not  
5 all, of the Democrats. So there was an enormous discussion.  
6 There was public discussions going on about what those would  
7 look like; and by the time it came to that day-and-a-half  
8 session, everyone had sort of had their input, and everyone had  
9 had access to mapping capacity. There had been a large  
10 discussion.

11       And I think, as I indicated in my deposition, I am sort of  
12 the rare case where my district was actually changed at my  
13 request the night before -- or two nights before when I had  
14 originally been shown a map; and I was in my first term in the  
15 legislature, and my colleague from Cumberland, Margaret  
16 Dickson, was also in her first term. Our districts abutted.  
17 The original proposal was to place us in a singular district  
18 against each other. Because of the nature of the  
19 redistricting, Cumberland was going to lose half a seat. Both  
20 she and I objected, and I indicated I would rather face one of  
21 the more veteran members, and I thought that was a more  
22 appropriate allocation of communities of interest and  
23 compactness than the way it was being presented originally.

24       And so the speaker heard us out, and, in fact, the  
25 district was changed to do that, and I was pitted against an

1 eight- or nine-term incumbent in the next election cycle.

2 Q When the bill was introduced on the first day of session,  
3 the redistricting bill, did members of the public get any  
4 chance to comment on that bill?

5 A I don't recall that. It's been a while. I didn't go back  
6 and look at the records, but I don't think so.

7 Q When the bill passed the House and went over to the  
8 Senate, the Senate made some changes to the redistricting bill;  
9 is that right?

10 A I believe so, yes.

11 Q And when we talked about this in your deposition, you  
12 agreed, didn't you, that they made some significant changes to  
13 the bill?

14 A Yeah, I believe that they did, and I think that's when we  
15 talked about them adding the three-judge court.

16 Q Right. So they added a three-judge court and some other  
17 provisions regarding how citizens could challenge redistricting  
18 plans going forward?

19 A That's my recollection.

20 Q And those changes were added by the Senate, and it came  
21 back to the House the next day on a motion -- on a vote for  
22 concurrence; is that correct?

23 A I believe that's correct.

24 Q Was the bill referred to a committee?

25 A Not to my knowledge.

1 Q Did the House vote not to concur?

2 A It did not.

3 Q Was a conference committee ever formed?

4 A It was not.

5 Q In fact, the House voted to concur in the Senate changes;  
6 is that correct?

7 A It did.

8 Q Regarding your particular district, were you particularly  
9 happy with your district?

10 A Unhappy would be a pleasant term to use. I was pitted  
11 against a nine-term incumbent. The only other alternative was  
12 against my friend, who was a first-termers like me, and because,  
13 again, I think it probably represented a better way to approach  
14 the district. No, I wasn't happy at all. And the speaker,  
15 then Speaker Black, was friends with the nine-term incumbent.  
16 So I think the plan had sort have been for that nine-term  
17 incumbent to win the primary. That didn't happen, and I  
18 managed to hold on to that new seat.

19 Q So you think there were some conversations between the  
20 speaker and his friend that you weren't in on that affected the  
21 location of that district?

22 A There certainly, in my opinion, were private  
23 conversations, but private conversations were happening between  
24 the speaker -- between Speaker Black and all the Democratic  
25 members and between Speaker Morgan and, again, the Republican

1 members he chose to have conversations with.

2 Q We talked about in your deposition a couple of bills that  
3 passed in the 2013 session: The Sharia law bill and the  
4 Regulatory Reform bill. Do you remember those or our  
5 discussion of those?

6 A I remember our discussion, and I have very vivid memories  
7 of the Sharia law motorcycle safety/abortion bill.

8 Q Right. It was -- to put it kindly, it was a controversial  
9 bill; right?

10 A I would agree.

11 Q It was not a golf cart bill; is that correct?

12 A It was not.

13 Q And didn't that bill pass by coming back to the House on a  
14 motion to concur?

15 A Many differences. The answer to your question is yes, but  
16 let me explain.

17 All of the provisions in that bill had been filed in  
18 either the House or Senate earlier in the session. Some had  
19 passed the House, maybe some had passed the Senate, but they  
20 were consolidated on the Senate side and sent over to the  
21 House.

22 When it came over to the House, it was sent to committee,  
23 and there was a committee hearing, including a public forum,  
24 that was held several days later that the speaker ordered in  
25 the House Health Committee where my recollection is there was

1 notice given, and, in fact, Secretary Wos testified and was --  
2 gave her recommendations about the bill at some length. That  
3 committee went for two hours, and it was then re-referred, as I  
4 recall, to Judiciary B, where it was placed on the calendar  
5 early one morning and heard for a multi-hour hearing in that  
6 committee, and then placed on the floor.

7 That's my recollection of the process of that bill. So  
8 there was not only extended committee and public debate and  
9 discussion -- I wouldn't say the best of notice I think for the  
10 JB Committee, but certainly good notice for the Health  
11 Committee hearing, and there was extended debate -- I don't  
12 remember it being time limited -- on the floor.

13 Q All right. But it came back on a motion to concur and  
14 passed?

15 A It did.

16 Q Okay. And the same thing was true for the Regulatory  
17 Reform bill?

18 A I have less recollection because I don't think that went  
19 through any committee that I served on, but I think that you  
20 are correct about its final outcome.

21 Q So speaking of having knowledge of other ideas that are  
22 pending in the legislature, isn't it true that sometimes bills  
23 are pending in the legislature and the ideas in those bills  
24 appear in bills that are likely going to pass sometime later in  
25 the session?



1 A Sure.

2 Q In other words, ideas in various bills get cobbled  
3 together and get put in a bill and pass, you know, sometime  
4 during the session?

5 A Yeah. We generally call that stripping a bill or gutting  
6 a bill and adding in new content, and that goes on more in  
7 short session than it does in long session.

8 Q And when we talked about this in your deposition, didn't  
9 you tell me -- or actually you may have told your counsel that  
10 you knew that there were certain changes that were going to  
11 come -- be put in the 589 because of the existence of pending  
12 bills that had other ideas?

13 A I had strong suspicions, I think, that a number of the  
14 bills that had been filed would in some way, shape, or form be  
15 put in whatever the final bill was following Senator Apodaca's  
16 comment.

17 Q So there were pending bills in the legislature, the ideas  
18 of which ultimately made their way into House Bill 589?

19 A Some, and then, of course, the provisions in 589 that were  
20 never part of any bill at all.

21 Q With regard -- you mentioned a conversation with  
22 Representative Harry Warren. I just want to ask you this:  
23 Have you asked Representative Warren if you have permission to  
24 disclose that conversation?

25 A No.

1 Q Did you tell him you were going to disclose it in this  
2 courtroom today?

3 A I, first, wasn't sure what I was going to be asked in this  
4 courtroom, but I certainly had already disclosed it in my  
5 deposition, and, no, I did not.

6 Q Okay. Regarding the fiscal note that you talked about a  
7 little while earlier, I believe you testified that you did not  
8 receive it until after the bill passed; is that correct?

9 A That's correct, and I don't recall anyone on the House  
10 Democratic side receiving it.

11 Q But to that extent, you can only speak for yourself in  
12 terms of who received it; correct?

13 A I can only speak for myself and those around me on the  
14 Democratic side that I talked to.

15 Q How many people would that have been?

16 A Probably the vast majority because I was one of the  
17 leaders on this bill in the caucus session the hour or two  
18 before.

19 Q All right. But you have no idea if any Republicans got a  
20 copy of the fiscal note?

21 A I can't speak to that.

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

24 **THE COURT:** Any redirect?

25 **MR. BROOK:** No redirect, Your Honor.



1 from Johnson C. Smith Theological Seminary.

2 Q And your church is one of the plaintiffs in this case; is  
3 that correct?

4 A Correct.

5 Q And have you submitted a declaration to the Court in  
6 support of this motion for preliminary injunction?

7 A Yes, I have.

8 Q I want to kind of talk to you a little bit about -- well,  
9 I want you to tell the Court about the involvement of Covenant  
10 Presbyterian Church in voting in the Durham community.

11 A I have been the pastor of Covenant since 1996. Since that  
12 time, we've had a wide array of involvement in voting  
13 activities. We have participated in voter registration,  
14 participated in taking people to the polls. We have  
15 participated at early voting, as far as taking people to vote,  
16 and also in "Souls to the Polls" where on Sunday we take people  
17 to the church -- we obviously take people to the church, but  
18 take people to the polls as well.

19 I myself have participated throughout the time I have been  
20 there. I have one story that I like to tell that's kind of  
21 reflective of my experience in Durham. I got a call from a  
22 nursing home saying that we have a resident here who would like  
23 to participate in curbside voting. When I got there, there was  
24 a lady in a wheelchair, and she was by the door, and she said,  
25 Have you come to get me? I said, Yes, I have.

1 I began to wheel her out the door, and one of the staff  
2 members ran up and said, Where are you taking her? I said,  
3 Well, I am taking her to vote, and she says, Well, that lady  
4 really doesn't know anything about voting. She thinks you're  
5 her son who she says --

6 **THE COURT REPORTER:** I'm sorry, sir. I'm going to  
7 have to ask you to slow down, please.

8 **THE WITNESS:** So I took her basically to curbside  
9 voting, and it's been a rich experience at Covenant as far as  
10 participating in the voter process. The church is very active  
11 in the Durham community. We have a lot of members who are  
12 working to ensure that the voter rights of individuals in the  
13 Durham community are upheld and to see that there is  
14 participation in encouraging people to vote.

15 **BY MR. JOYNER**

16 Q Okay. Would you just describe to the Court the  
17 congregation that you serve, its makeup and its composition?

18 A We have 220 members. We are in the central part of  
19 Durham. They are all African Americans historically -- we have  
20 had members from other races -- made up of a variety of  
21 political parties. We have Republicans and Democrats in the  
22 congregation, a good mixture. I would say a little over  
23 one-third are senior citizens, a little over one-third are  
24 middle age and young adults, and then almost a third are  
25 children and teenagers.

1 Q Would you also describe the community around you where the  
2 church is located?

3 A Sure. We are in a residential area. To our area that's  
4 south, there is a public housing community called Wallace  
5 Public Housing. Two hours south of the community is primarily  
6 made up of Hispanics who live in the apartment complexes there,  
7 and to our west and north, there is a middle-class black  
8 community.

9 Q And based on your experience in working with both your  
10 congregation and the community, what difficulties basically did  
11 people experience in their effort to register and vote in their  
12 community?

13 A There are several issues that people have to contend with  
14 that I think are always appreciated. Our primary one is  
15 transportation. We know that in the black community up to  
16 one-third of -- in any -- most populations African Americans  
17 are emersed in poverty. I think a lot of people don't have  
18 cars. They have to rely on public transportation. So I think  
19 there is an assumption that you can just run down to the DMV  
20 and get a voter ID or run down to the grocery store.

21 One of the major -- it's a major issue in life for many  
22 individuals. I think that the ability of individuals to be  
23 able to access resources within the community -- we get calls  
24 from the church almost on a weekly basis of people asking for  
25 help dealing with issues of rent and paying their bills.

1 I think that when we look at individuals and their desire  
2 to participate in the community, I think they have to deal with  
3 the elements of family. We have one grandmother in our church  
4 who is raising her son's five children, and she catches the bus  
5 to church, and there have been times when we've had to assist  
6 her with transportation and assist her as far as getting to the  
7 polls.

8 Q I want to talk with you a little bit about the early  
9 voting. Has the church been involved in early voting efforts?

10 A Yes, it has.

11 Q Could you describe that to the Court?

12 A We have participated in "Souls to the Polls," which is  
13 basically the churches coming together, saying that we are  
14 going to -- once worship is over on Sunday, we are going to  
15 provide transportation to individuals who wish to vote.

16 In early voting, we have set up a database where  
17 individuals can call to the church and say I would like a ride  
18 to a different precinct or wherever the voting is being held.  
19 We also on the original 17 days tried to encourage people to be  
20 aware of the time constraints, that you need to vote within  
21 this time frame if you don't want to vote on the day of  
22 election.

23 Q Now, can you kind of describe some of the specific  
24 activities that you engaged in during that 17-day early voting  
25 process?

1 A Yes. We set up a committee at the church and basically  
2 had the leadership to come up with some strategies as far as  
3 how to disseminate information in the surrounding community.  
4 We targeted the public housing community and talked to  
5 residents there about do you want to participate in early  
6 voting, do you need a ride to the polls.

7 We also recruited volunteers in the life of the church who  
8 would volunteer to drive the van and also volunteer to ride  
9 along in the van. We have had a strong partnership with many  
10 of the organizations in the Durham community which have  
11 assisted and participated in voter -- I mean, in early voting  
12 with the Durham branch of the NAACP. They have used the church  
13 on several occasions to encourage voter registration and  
14 participation during the early voting with the Durham Committee  
15 on the Affairs of Black People.

16 Members of the church have been very involved in an  
17 organization which primarily focuses on voting rights and been  
18 an advocate for the African American community and for the  
19 entire community. We have partnered with Durham CAN, which is  
20 Congregations in Action. Basically, it's an advocacy group  
21 made up of religious congregations and clergy. We have also  
22 been a partner with the Durham IMA. I am the chair of the  
23 Social Justice Committee, which my responsibility has been to  
24 communicate issues that are affecting the residents of Durham.

25 Q How important is this early voting process in the



1 community in which your church is located?

2 A Durham -- particularly, the African American community in  
3 Durham has a high level of participation in early voting. I  
4 think the numbers that I have seen state that up to 70 percent  
5 of African Americans participate in early voting. I know in  
6 the church that I pastor many of the members use early voting.  
7 It is amazing to see within that original 17-day span members  
8 that come to committee meetings with their "I have voted"  
9 sticker on.

10 **THE COURT REPORTER:** I'm sorry, sir. I'm going to  
11 have to ask you to slow down.

12 **THE WITNESS:** I've been impressed by members of the  
13 church who have come to committee meetings with their "I have  
14 voted" stickers on, and I can personally say that in the church  
15 that I pastor early voting is definitely adhered to and members  
16 participate in.

17 **BY MR. JOYNER**

18 Q Now, are you familiar with same-day registration?

19 A Yes.

20 Q And how important has same-day registration been to you  
21 and the church as you pursue your voter education activity?

22 A It has really been very beneficial. I think the fact  
23 that -- I don't think a lot of people -- if you've not been  
24 involved in voter registration, you don't appreciate how  
25 difficult it can be. People are just not rushing up to you

1 saying that I want to sign up to register to vote, especially  
2 in families where they might not have a strong history of  
3 voting, and so it can be an arduous task to go out and to spend  
4 the day trying to recruit people to sign up to vote.

5 To tell individuals that you can sign up and vote at the  
6 same time without having to reconnect with them, without having  
7 to try to locate them if you don't necessarily have all the  
8 information can be valuable tool. I think that it's a great  
9 loss to the state and to the Durham community not to have  
10 access to that tool anymore.

11 Q Okay. Well, following up on that, what is the impact of  
12 the loss of same-day registration?

13 A I think it is going to diminish the ranks. I think that  
14 it's going to say to people who are already frustrated with the  
15 voting process, people who might not necessarily be inclined to  
16 make a special effort to go out and vote -- I read an article  
17 in *The New York Times* which said that some of the reasons that  
18 people give for nonvoting is inconvenience. It takes up too  
19 much time for individuals who are working in industry or  
20 working in fast food who don't have the privilege of being able  
21 to say, well, I am going to go out and vote. It takes up --  
22 again, it makes it more difficult for them to participate in  
23 the process because, again, I just don't think that it has been  
24 fully appreciated.

25 I love same-day voter registration and voting. I think

1 that anything we can do to enhance the voting processed,  
2 anything we can do to say to citizens it is your right and your  
3 privilege to vote, and we are going to make it easier for you,  
4 and I think it sends a message out to different parts of the  
5 community, especially in the African American community.

6 I was born in 1959 in Vance County, and when I was -- when  
7 I went to school for the first five years of my life, it was at  
8 a segregated school. I did not go to school with a white  
9 person until I was in the sixth grade. I still remember when I  
10 left Vance County in 1977, and the movie theater there, the  
11 Embassy Theater, was still segregated. Blacks were sitting in  
12 the balcony and only if you were white could you sit on the  
13 floor. After a couple of years in college, I finally got word  
14 that the Embassy Theatre is now integrated, and I went home  
15 that weekend just so that I could sit on the floor.

16 And that is what voting means to so many individuals.  
17 It's just not something that's a political activity. It's  
18 personal. It is something that has touched particularly the  
19 lives of African Americans in a way that very few appreciate  
20 when individuals such as Mrs. Eaton, who is 93 years of age,  
21 can remember vividly the first time that she voted.

22 And I think for individuals who are examining what is  
23 happening with our legislators, who are examining HB589, and  
24 saying this is deliberate, this is not just something to deal  
25 with voter fraud -- because individuals are not stupid. They

1 see that there is very little evidence of voter fraud.

2 I have heard from people who are members of the  
3 congregation that I serve who have said this is personal. They  
4 are trying to take away our vote. I remember a conversation  
5 with a grandmother who said to me, I can't believe that in the  
6 State of North Carolina that this is happening.

7 The consensus is, regardless of what political spectrum  
8 you stand on, this is an attempt to disenfranchise African  
9 Americans. It is so sadly reminiscent of the Jim Crow era  
10 where many individuals who are now committed to voting, senior  
11 citizens, are saying this is taking us back in time.

12 Q What is the impact, based on your experience in the  
13 community, of the loss of the seven days of early voting?

14 A When they -- for me, personally, when we had 17 days, that  
15 was not enough. I think we need a whole month of early voting.  
16 To take it down from 17 to 10 days makes it more difficult  
17 to -- you have a shorter time frame where you have to recruit a  
18 committee, a shorter time frame to work with them, a shorter  
19 time frame to try to get as many individuals as you can to  
20 register to vote, to participate in the voting process.

21 Again, I think it's not just the restraints on those who  
22 are involved in the process. What is the emotional -- and the  
23 message that is being sent out to people is that this is an  
24 attempt to say we don't want you to participate.

25 Q Now, how many vans do you have available to you at

1 Covenant for your voting activities?

2 A We are the proud owners of one van, and, you know, it's a  
3 15-passenger van, including the driver. That means we are  
4 going to take more trips as far as we are going to have to  
5 drive further and put more -- to try to do much more in  
6 providing transportation within a shorter period of time.

7 Q Well, with respect to both the congregation and the  
8 community, how important is the supplying of transportation to  
9 individuals to get to the polls?

10 A Transportation is vital. I mentioned earlier the story of  
11 the time I went to the nursing home to pick up a resident. On  
12 that day, I still remember that most of the individuals that I  
13 picked up were in some type of living facility, and so they had  
14 no way to get to the precinct to vote or get to wherever the  
15 voting was located. So that one van that we have has had a lot  
16 of wear and tear on it when we are talking about taking people  
17 to the polls.

18 Q Have you been able to gauge the reaction of members of  
19 your community and of the congregation to the passage of House  
20 Bill 589?

21 A The response in my community, the church that I serve, has  
22 been overwhelmingly negative. As a matter of fact, I just  
23 see -- I've had conversations with people who are questioning  
24 the validity of the state of motivation, who are taking it very  
25 personal in that they see this as an attack upon the voting

1 rights of the African American community.

2 I have not had one conversation with anyone in the  
3 congregation or in the church or any other organizations, which  
4 I have been involved, who see this as a benefit to the state,  
5 who see that this will reduce voter fraud, which is almost  
6 nonexistent, who see this -- that this will meet any of the  
7 stated purposes.

8 And just a lot of -- and a lot of frustration in the  
9 hearts of people who are saying that we have made progress.  
10 When we look at the last ten years in the State of North  
11 Carolina, we were moving in a direction where we were  
12 increasing our voter participation. Again, early voting is so  
13 popular in the African American community, and, yet, right now,  
14 we seem to have reversed course, again not only through the  
15 legislation, but I think through the message that it is sending  
16 out to our citizens that, you know, our primary concern is  
17 staying in power. Our primary concern is taking steps that  
18 will ensure that the individuals that we think should be  
19 governing this state will be elected, and our primary concern  
20 is not that you participate.

21 **MR. JOYNER:** Your Honor, I have no further questions  
22 at this time.

23 **THE COURT:** All right. Any cross-examination?

24 **MR. PETERS:** Yes, Your Honor, thank you.

25 CROSS-EXAMINATION

1 **BY MR. PETERS**

2 Q Good morning, Reverend Hawkins. My name is Alexander  
3 Peters from the Attorney General's Office. I think I've got  
4 just a few questions I would like to ask you.

5 I believe I understood you to say that the church has set  
6 up a committee that actually kind of --

7 A Well --

8 Q I will let you tell me.

9 A As I think about that question, there are two sort of  
10 committees we set up. We have the established committees in  
11 the life of the church, such as the women who are the backbone  
12 of the church. We have the men's committee. We have youth  
13 committees, stewardship, and vendors. Those are ongoing  
14 committees. Whenever we are involved in some type of mission  
15 to the community, such as to get into -- to be involved in  
16 encouraging people to vote, that's a temporary committee. So  
17 each time we have to re-establish a new committee.

18 Q So it is not a standing one; it is one that kind of gets  
19 recreated as the occasion arises, because an election is coming  
20 up?

21 A Yes.

22 Q Was that committee active for the May primary this year?

23 A For the May primary, we did not have that committee.

24 Q Was there a reason you didn't establish it for the May  
25 primary?

1 A A lot of times what happens is that we will have -- on  
2 committees that are not permanently established, someone will  
3 say we need to go ahead and do this and take the leadership on  
4 that. We did do some activities in the life of the church  
5 concerning the May primary. We partnered with the Durham  
6 Committee on the Affairs of Black People, and we had Ben  
7 Chambers come and speak.

8 Q Do you plan at this point for -- to reconstitute or  
9 reactivate that committee or one like it for the general  
10 election?

11 A Chances are, yes. I got a text from one of our officers  
12 in the church saying that we need to be involved in the fall  
13 concerning getting people out to the polls.

14 Q Have any specific plans been made at this point for the  
15 general election, or is it just the initial stages of we need  
16 to get this going?

17 A Yeah, we right now are in the initial stages. I will say  
18 that a lot of our members don't just express their activity in  
19 the community through the church. A lot of them are very  
20 involved in a lot of different organizations. One of our  
21 members is the chair of the political committee for the Durham  
22 Committee on the Affairs of Black People. So I think the  
23 church is one agency through which our members are active, but  
24 they are not limited to the church.

25 Q Consistent with what you were saying earlier, I take that



1 to mean that when that committee and when Covenant Presbyterian  
2 is organizing "Get Out the Vote" and "Souls to the Polls," or  
3 the various activities, you are doing it in conjunction with  
4 numerous other agencies or groups, or what have you, in Durham?

5 A Yeah, a little bit of both. Sometimes we are -- the  
6 leadership is coming directly from the church and sometimes  
7 when we respond to an initiative from another group to partner  
8 with them.

9 Q Is there ever any conversation among the different groups  
10 who are organizing things like "Get Out the Vote" efforts, the  
11 kind of conversations of what are you doing, how are you  
12 handling this, what do you do if the church van is being used  
13 all it can be used, what other options are for helping people  
14 to get to the polls?

15 A I'm not quite sure what you are asking.

16 Q I guess what I am saying is you gave the example of the  
17 church van and having the one church van, and I believe you  
18 said you set up a database for when people call in and they  
19 need a ride to the polls?

20 A Uh-huh.

21 Q If the situation were to be that there was no more room on  
22 the church van or you didn't have anybody to drive at that  
23 particular time, would it stop there or might you refer them to  
24 other groups within the county who could provide a similar  
25 service?

1 A Yeah, you know, churches are made up primarily of  
2 volunteers, so you have to rely upon their database if there  
3 was no one else there. I do know, one, that there are other  
4 churches which are basically participating in some of the same  
5 operations. So I would feel very free to say you could call  
6 this church or you could -- I think the Durham committee is one  
7 that does take a lot of the responsibility for communicating  
8 with the churches about these efforts. So that would  
9 definitely be a place that I could call and say you can do  
10 this.

11 Q Do you ever look into how "Get Out the Vote" efforts and  
12 things of that sort are done by churches or groups in other  
13 counties or in other states?

14 A No, we have not done real studies along that line.

15 Q So, for example, at least up to now, you haven't looked at  
16 how "Get Out the Vote" efforts might work in a state that does  
17 not have early voting?

18 A No, I have not because I have been primarily focusing in  
19 on the State of North Carolina, saying that we are a municipal  
20 situation wherein the rules have been changed, and we are going  
21 to have to re-strategize in the best ways in which we can do  
22 with our current situation.

23 **MR. PETERS:** I think that's all questions I have.  
24 Thank you.

25 **THE COURT:** Anything further from the plaintiffs?



1 specifically gave duties to the executive director, and also I  
2 served the board in whatever duties and responsibilities that  
3 they gave me, and I had oversight over campaign finance,  
4 administration, and any activities within the auspices of the  
5 State Board of Elections.

6 Q How big was the staff when you first joined the State  
7 Board of Elections?

8 A There were five staff members and one temp.

9 Q How big was the staff of the State Board of Elections at  
10 the end of your tenure?

11 A I believe we had approximately 56 staff members.

12 Q Can you describe your interactions with the county boards  
13 of elections?

14 A My interactions with the county boards of elections was on  
15 a daily basis either by phone or through email or by  
16 visitation. We were very active in keeping up with the  
17 counties, especially the counties that were distressed or  
18 counties that were needing information. We tried to provide  
19 the best service possible.

20 Q Did you oversee voter registration in your role?

21 A I had oversight and I had a staff that assisted, too.

22 Q How many elections do you think you administered over the  
23 course of your 20-year career?

24 A Well over 100.

25 Q What kind of elections would those have included?

1 A It would have included municipal elections, first primary  
2 and second primary elections. It would also include, in rare  
3 cases, recall elections, also special elections, and whenever  
4 there was an election dispute that the State Board called for a  
5 new election and then a new election, and there were several of  
6 those, too.

7 Q Were you involved -- as your tenure -- in your tenure as  
8 the state director, were you involved in any national election  
9 groups?

10 A Yes. I was a member NASD, which is the National  
11 Association of State Directors. I also served on the board of  
12 the Election Center.

13 Q What -- can you tell us a little bit about those two  
14 groups?

15 A NASD was made up of my counterparts, and we would meet  
16 twice a year, and we would discuss everything that was  
17 happening in our world and things that would make an impact or  
18 things that we had issues that we were trying to find  
19 solutions.

20 Similarly, the Election Center did some of that. Both  
21 groups worked hand in hand. In fact, we had the same  
22 secretary. We shared resources, and, basically, the purpose of  
23 the Election Center was to provide continuing education for  
24 election officials and to hold not only workshops on specific  
25 activities, but also to hold conferences where we would bring

1 in guest speakers who would give us a preview of things  
2 happening at the federal level and around the various states.

3 Q How often did these groups meet?

4 A There were usually about four workshops a year and one  
5 national conference, and there was also something that was  
6 utilized for certification -- national certification for  
7 election officials, and that was a two-week camp where courses  
8 were taught to go towards their certification.

9 Q Did you ever serve on any task forces for the Election  
10 Center?

11 A I did.

12 Q Can you tell us about those?

13 A I was the co-chair of the national task force on election  
14 disabilities.

15 Q What was your role as the co-chair of the committee?

16 A The role of the co-chair is to try to find solutions for  
17 elections officials and those who were disabled to ensure that  
18 they can go to the polling place and vote as any other voter.

19 Q Were there any other task forces that you were involved?

20 A After the 2000 elections, we had a task force on what to  
21 do about the election process that occurred out of the Florida  
22 contest, the presidential election.

23 Q What was your role with that group?

24 A My role was just to be on the task force to discuss ideas  
25 and to go forward with whatever we could do to make the process

1 better.

2 Q Did you ever serve on any advisory panels for federal  
3 agencies?

4 A I served on the federal elections advisory panel before it  
5 was replaced by the Help America Vote Act.

6 Q What did you do while on that advisory panel?

7 A The advisory panel would look at different issues  
8 involving elections, and we would provide a form of discussion  
9 and a form of possible best acts in order for jurisdictions to  
10 take those ideas and information and see what they could do to  
11 do a better job in elections.

12 Q Did you ever have any role with the EAC?

13 A My role was with the technical standards board. I served  
14 and represented North Carolina for three years on that board,  
15 and that board was basically in regard to voting equipment  
16 issues and probably the biggest issue that is still an issue,  
17 and that is getting certification of voting equipment to ensure  
18 that it was the best quality that it could be.

19 Q What was the purpose of this involvement with these  
20 national groups?

21 A The purpose is to represent North Carolina and provide  
22 North Carolina with a voice so that we could be current with  
23 everything and hopefully more forward-thinking than some other  
24 states. What we tried to do is give the best service that we  
25 possibly could to the voters in North Carolina.

1 Q Mr. Bartlett, are you familiar with House Bill 589?

2 A I am.

3 Q I would like to talk to you a little bit about this.

4 When during the legislative process did your -- the end of  
5 your tenure fall with regard to House Bill 589?

6 A Well, 589 was passed after I left.

7 Q Had there been some consideration of it before you left?

8 A There were some committee meetings with General Assembly  
9 members requesting specific information and asking for certain  
10 reports that we met with and provided whatever they asked.

11 Q Okay. In prior legislative sessions, what kind of  
12 interactions would the Board of Elections have with members of  
13 the legislature or committees?

14 A During -- before 2010, we always had this process of  
15 meeting at least at the very beginning of the session and maybe  
16 during the middle of the session. We would provide ideas and  
17 suggestions. Usually, the committee chairs would say what they  
18 would like to look at and what they did not want to look at,  
19 and they would also share what their ideas were, and we would  
20 go to committee meetings and answer any questions that anyone  
21 might have. A similar process in 2010, but after 2012, we  
22 basically provided information either by request, or if it was  
23 not by request, it was answering questions for the committee  
24 itself when asked.

25 Q Was there the same level of interest in the advice and



1 expertise at the State Board of Elections?

2 A At that point in time, I believe, this is my belief, that  
3 they saw me as a lame duck, and they were just waiting for my  
4 term to end.

5 Q When you had been asked about potential legislation in  
6 past years, was your advice taken?

7 A Yes, it was. Sometimes it wasn't.

8 Q Can you tell me about -- we'll talk more about this later,  
9 but can you tell me more about the process for developing the  
10 legislation that became same-day registration?

11 A I was asked by Deborah Ross to meet with her in a  
12 legislative grill, and Johnnie McLean and I went, and with her  
13 was Bob Hall, and I had known that Bob Hall had been promoting  
14 the same-day registration ever since I became an executive  
15 director; and she sat down and said, I don't know if this bill  
16 will go anywhere, but I want same-day registration on Election  
17 Day, and I told her that I did not think that the election  
18 officials had the resources and the manpower to make that  
19 happen and still have integrity in the election. I thought  
20 that it would be just too much of a bite at that time.

21 And she in turn said, okay, I would like for you to work  
22 on an idea where we can have a second chance for people who  
23 missed a deadline to be able to register, and we would like for  
24 you to come up with something that could possibly work.

25 So Johnnie McLean and I went back -- it was on a Friday --

1 went back to our office, and within 30 minutes, Johnnie McLean  
2 had the outline for what became the same-day registration bill,  
3 and what she tried to do, along with me assisting her while she  
4 was writing it down -- we tried to follow the policies and  
5 procedures that were already in place in law.

6 Q Can you explain very briefly what the difference is  
7 between same-day registration and Election Day registration?

8 A Same-day registration is a second chance for those voters  
9 who were not able, for one reason or another, to register while  
10 the books were open, and this is during the 17 days where  
11 one-stop, in-person absentee voting takes place. It is a  
12 combined step where you must register and vote that day for it  
13 to count.

14 There are certain things that differ with same-day. For  
15 instance, we wanted a driver's license first, and if you did  
16 not have a driver's license, then HAVA required an ID. Then  
17 you had to send out verification letters within 48 hours, and  
18 the voter had to go through the voter process, or they would  
19 have to wait until another day to register.

20 Q And what Representative Ross was asking for didn't include  
21 all of those things you just listed?

22 A Yes, it included.

23 Q But that's what I am trying to understand. What you  
24 delivered was a little bit different than what she asked for?

25 A I would say that about 80 percent of what we suggested was

1 incorporated in that bill. What we did, once we finished with  
2 our outline, was we sent it over to Legislative Services, and I  
3 believe the attorney that worked on that at that time was Bill  
4 Gulbis (phonetic).

5 Q I want to talk to you now about early voting. Are you  
6 aware of the provision in House Bill 589 that reduces the early  
7 voting period from 17 days to 10 days?

8 A Yes.

9 Q Can you tell the Court a little bit about your initial  
10 experiences with early voting in the State of North Carolina?

11 A Before 2000, one-stop, in-person absentee voting was by  
12 excuse; and as former Senator Martin Nesbitt used to say, it  
13 was the liars act because people would lie about whether they  
14 had an excuse or not just so they could go vote. That was one  
15 of the phrases he used: "Let's make people more honest."

16 When that passed, we were able to have fewer lines on  
17 Election Day as opposed to the 1990s. There were some  
18 tremendous lines, tremendous waits, anywhere from an hour and a  
19 half to as many as four or five hours after the deadline for  
20 voting occurred. The process was at that time if you were in  
21 line by 7:30 p.m., then you could vote. I've heard horror  
22 stories about how long it would take to get some people  
23 processed.

24 Q On that topic, what is your definition of a long line?

25 A My definition of a long line, except for peak periods

1 during voting on Election Day, and those peak periods are 6:30  
2 to 8:30, 11:30 to 1:30, and then again from 5:00 -- well, about  
3 4:00 to 6:00, there should not be any longer than 20 minutes  
4 waiting.

5 Q Did you have any goals for waiting times during those peak  
6 periods?

7 A No, because you cannot control what time a voter chooses  
8 to participate. In some counties, we learned that they vote  
9 real early in the morning, and then it trends off in the  
10 afternoon, and there might be another county that has a lot of  
11 shift workers that would be in reverse where most of their  
12 voting would take place in the middle to late afternoon.

13 Q As the executive director of the State Board, how would  
14 you become aware of problems with long lines in the counties?

15 A We would get phone calls from the media. We would get  
16 phone calls from distressed voters or angry voters. We would  
17 get calls from the counties themselves saying we have lines; we  
18 are swamped.

19 Q When you would get those calls from the counties, what  
20 kinds of wait times were triggering those calls?

21 A I would say at least longer than an hour.

22 Q What about those phone calls from the media?

23 A The media was continuous, so I really can't help you  
24 there.

25 Q Would the media complain about 20-minute waits?

1 A We never got down to that conversation. It was basically  
2 there are wait lines.

3 Q Would you ever visit polling places on Election Day?

4 A I have.

5 Q What about during early voting?

6 A I have.

7 Q Have you ever witnessed long lines?

8 A Yes, in both.

9 Q In both. What happens -- based on your observations and  
10 your election administration experience, what happens when  
11 lines get long? Let's first start with what happens to voters  
12 when the lines get long?

13 A Well, first of all, let's take the early voting. I  
14 remember the first time it was implemented. We wanted to make  
15 sure that it was done the best we could possibly make it. So  
16 we went and visited every county that had an additional  
17 one-stop site. There was at least one member to go review what  
18 they were doing and share the accuracy of procedures and ensure  
19 that things were going well.

20 And I will never forget that there was a long line. It  
21 was somewhere in Eastern North Carolina. I believe it was  
22 either Nash County or Edgecombe County, but I am not sure.  
23 There was a long line, and I asked a woman who was waiting in  
24 line -- you know you might be able to come on Election Day and  
25 not wait this long. And she says, The reason why I am voting

1 today is because it's convenient for me today, and I have other  
2 things that I must do.

3 And that was the general feeling that was reported back,  
4 that the voters liked picking and choosing the time because of  
5 how it would meet with their schedule.

6 As it related on Election Day, we did get some calls from  
7 angry voters saying that they had to leave the line to go to  
8 work or pick up a child or to do something; but, usually, there  
9 is not any remedy that we could give them except you must be  
10 timely on Election Day because when the voting period is over  
11 and you are not in line, it's over.

12 Q What was the effect on poll workers when lines got long?

13 A Usually, this is a generality, they would become a little  
14 more stressful because of the volume that they would have to  
15 serve; and whenever there was some type of issue there, they  
16 would get a little snappy, and I would get phone calls about  
17 people not being as pleasant as they should, but those were  
18 isolated incidents, but it happened.

19 Q Did you find that workers were more prone to mistakes when  
20 lines got longer?

21 A Whenever you have a large volume of work under a timeline,  
22 you are prone to make mistakes.

23 Q Real quickly, can you --

24 **MS. RIGGS:** First, do you want to -- I have a short  
25 topic, and then we can take lunch.

1           **THE COURT:** How much longer is the topic?

2           **MS. RIGGS:** Five minutes on this one.

3           **THE COURT:** Why don't we go ahead and stop. You may  
4 step down, sir, but don't go away. You need to come back after  
5 lunch, okay?

6           We are going to take a break until 2:00. Does  
7 anybody have any issue they need to raise with me?

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

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

10          **THE COURT:** Enjoy your lunch. See you at 2:00.

11          (The Court recessed at 12:30 p.m.)

12          (The Court was called back to order at 2:01 p.m.)

13          **THE COURT:** Ms. Riggs, are you ready to proceed?

14          **MS. RIGGS:** I am, Your Honor.

15          **THE COURT:** All right.

16 **BY MS. RIGGS**

17 Q        Good afternoon, Mr. Bartlett.

18 A        Good afternoon.

19 Q        When we left off, I was just about to ask you about Sunday  
20 voting. Can you tell me how Sunday voting got started in North  
21 Carolina?

22 A        Sunday voting got started I believe around 2000. I'm not  
23 sure if that's the correct time; but it seems like that those  
24 counties that were more interested in it were the urban areas,  
25 but every now and then, you would have a more rural area try

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1 Sunday voting.

2 And it appears that through my observations that whenever  
3 we had Sunday voting, it was utilized, and not every  
4 jurisdiction would have it continuously, but the urban areas  
5 usually did, such as Guilford, Wake, Mecklenburg, and Forsyth.

6 Q Was the decision to have Sunday voting left up to the  
7 discretion of the counties?

8 A It was the county's discretion.

9 Q Did you ever get any feedback about whether voters who  
10 used it enjoyed using it?

11 A The feedback that we would get is that everybody liked  
12 one-stop absentee voting regardless of what day it was. It was  
13 very popular -- it is very popular.

14 Q Mr. Bartlett, did you notice any racial disparities in who  
15 was using early voting?

16 A We kept records of who came each day, but as it relates to  
17 disparities, what we were trying to do is ensure that the  
18 administration of that one-stop site was done properly and that  
19 everybody had a chance to utilize the opportunity to vote.  
20 That was our main focus.

21 Q Of course. Under -- after elections, though, would you  
22 look at the demographics of who was using early voting?

23 A We did that daily during the early voting period and  
24 afterwards.

25 Q Okay. Now, I want to switch to talking about early voting



1 cost savings, and I would like to you hand an exhibit.

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

3 **THE COURT:** Yes.

4 **BY MS. RIGGS**

5 Q I am handing you what's previously been marked Plaintiffs'  
6 Exhibit 60 -- however you want to mark it.

7 **THE CLERK:** If you've already marked it, I don't need  
8 to mark it.

9 **BY MS. RIGGS**

10 Q Mr. Bartlett, do you recognize this document?

11 A I do.

12 Q What is this?

13 A This is a memorandum on House Bill 658, which would cut  
14 off the voting period by 7 days.

15 Q When did you write this memorandum?

16 A This memorandum was written when the secretary of our  
17 board, Bob Cordle, had some concerns with that happening. So  
18 he asked me to write a memorandum on this bill. And also about  
19 the same time, Jim Morrill of *The Charlotte Observer*, who is a  
20 reporter, was asking for similar information.

21 Q What kinds of things did Mr. Cordle ask you to look at?

22 A He thought that it would hurt participation in the  
23 election process, and he asked me to provide what thoughts --  
24 he pretty much gave me an open page. He did not give me  
25 instructions on how to do the work.

1 Q And who conducted the analysis for this memorandum?

2 A I did the original draft and had Johnnie McLean and  
3 Veronica DeGraffenreid do edits.

4 Q Who did you give it to when you were done with it?

5 A When it was done, Bob Cordle was the first to get it, Jim  
6 Morrill was the second to get it, and shortly thereafter, there  
7 were lots of requests.

8 Q Okay. In the course of your analysis, what did you  
9 conclude?

10 A What I concluded was that it could impact the general  
11 election, especially presidential election, in many ways.  
12 First of all, yes, there could be some cost savings in low  
13 turnout elections, but as it relates to a general election or a  
14 presidential general election, it could be very harmful, and it  
15 could be very, very expensive.

16 Q Let's --

17 **MS. RIGGS:** Your Honor, may I publish to the  
18 courtroom on the screen the exhibit?

19 **THE COURT:** Yes.

20 **BY MS. RIGGS**

21 Q On page 2, I think you go step by step through what you  
22 saw as the findings of the report. Can we highlight the first  
23 finding. Do you see that?

24 A I see it's the first paragraph on the top of the page.

25 Q And what were your findings with regard to that paragraph?

1 A Well, first of all, if you were to reduce -- if you were  
2 to reduce the time period -- the beauty about additional  
3 one-stop sites in early voting is that you can rev up for  
4 turnout or go down, depending on how you believe the election  
5 is going to be participated.

6 And if you were in a presidential general election and you  
7 shorten the time period, you are going to have longer lines at  
8 the one-stop sites and longer lines on Election Day. The only  
9 way that you can have relief from that is to split the  
10 precincts, and when you split precincts, you are going to have  
11 added costs. You will have the equipment costs. You will have  
12 the setup costs. You would have the polling places cost. You  
13 would have the labor costs. And in a general election, you  
14 might have as many 5 or 6 up to 15 people, and that labor cost  
15 can get very expensive, and you would also have to spend a  
16 first-class mailing to any change that you have, which is a  
17 good thing, because all the voters need to be informed, and it  
18 also serves as a fail-safe, too, because if those first-class  
19 letters are returned, then we can start a list maintenance  
20 process to try to find out if those voters moved within the  
21 county or moved outside the county.

22 Q Were you generally pleased with the trend that you had  
23 seen of not having to open new precincts or combine precincts?

24 A It helped tremendously by allowing counties to combine  
25 precincts, and they have done that; and now I have seen some

1 combining of precincts with the possible shortening of the  
2 one-stop election period that could cause tremendous lines if  
3 this was not addressed.

4 Q Okay. And then what is the second finding of the report?

5 A Basically, you might start generating more mail absentee  
6 voting. The only difference is there is nothing wrong with  
7 mail absentee voting because that is allowed by law, but the  
8 issue here is people in North Carolina have showed that they  
9 like voting in person; and, certainly, if they choose to go to  
10 mail elections, you have pluses and you have minuses in  
11 managing that.

12 Q What was the third finding of the report?

13 A You would need a voter education campaign so that you  
14 could get as much information out to the voters.

15 Q What was the fourth finding?

16 A Something that I mentioned earlier. The way that we have  
17 got this set up -- or the way that it was set up is that you  
18 have different -- you had flexibility. The county had the  
19 flexibility of having as many additional one-stop sites that  
20 they think is needed in that election. They could set the  
21 hours, whether it be early in the morning or late at night,  
22 whatever their county thought was best for their county; and  
23 the flexibility, in contrast to a municipal election, is that  
24 instead of having several one-stop sites you may not only need  
25 but one. So the flexibility helped in cost savings.

1 Q Did you get feedback from the counties that they  
2 recognized the cost savings that early voting provided them?

3 A Yes. The urban counties -- and I had several  
4 conversations with Wake County, Guilford County, Mecklenburg  
5 County, Forsyth County. Through the years, they said that  
6 having additional one-stop sites was much easier for them to  
7 manage than it would be if they had to put in new precincts  
8 because, whenever you have a new precinct, as I said earlier,  
9 you are going to have at a minimum three precinct judges, and  
10 you are going to have setup costs, and then on Election Day,  
11 depending on the election, you are going to have your labor  
12 cost of additional help.

13 Q Was Cherie Poucher the director of the Wake County Board  
14 of Elections at the time?

15 A Yes.

16 Q Mr. Bartlett, I want to ask you a question about the  
17 hours-matching requirement. Do you know what I am referring to  
18 when I say that?

19 A I am. Senator Stein's amendment?

20 Q Yes. What is that?

21 A It is my understanding that you would try to cram as many  
22 hours utilized before into the shortened period. Like, if you  
23 had so many hours during the 17-day period, when you dropped it  
24 down to 10, you would still have as many hours open.

25 Q What was your first reaction to hearing about that

1 amendment?

2 A I did not think it was a good idea.

3 Q Why is that?

4 A The reason why I didn't is because each county needs to  
5 make sure that they have their additional one-stop sights open  
6 at the times that voters will use them. If you have to have  
7 the polling place open at 7:00 a.m. in the morning and  
8 traditionally nobody shows up until 9:30 to 10:00, you are  
9 wasting a lot of resources.

10 Q Mr. Barrett, can you explain to me -- is every primary  
11 election -- would you expect consistent turnout from primary  
12 election to primary election?

13 A No.

14 Q Why not?

15 A Each primary and each election have their own  
16 characteristics even though you have the same laws and  
17 procedures that you are governed by. To give you an example,  
18 in a primary, you may not have a contested office, and then you  
19 might have an open seat that will attract several candidates,  
20 and you might have five or six candidates on -- in a primary,  
21 which, in the next year, you may not have a primary at all.

22 Q What does having an open seat mean?

23 A An open seat is when the incumbent, for whatever reason,  
24 is not running again, and anyone that can get the most votes  
25 wins.

1 Q Did that have an effect on participation?

2 A It does. It varies from year to year. To give you an  
3 example, we will soon be approaching on what you call a "Blue  
4 Moon" election, and that is when you do not have a presidential  
5 office at the top of the ticket or a North Carolina U.S. Senate  
6 race at the top of the ballot; and you usually have your lowest  
7 turnouts during these cycles, and it happens about every 12  
8 years.

9 Q Mr. Bartlett, what does having a longer early voting  
10 period mean for Election Day administration?

11 A Election Day administration -- it certainly assists us in  
12 processing as many voters who use it and have less of a burden  
13 on Election Day. It also assists -- every now and then, there  
14 will be minor mistakes. As much as we try to do proofing,  
15 there might be a time where a candidate's name is left off one  
16 of the split precincts ballot, or there might be the wrong  
17 ballot style given out. You have time to correct these errors  
18 during that period. However, if something like that happened  
19 on Election Day, you may not get a chance to correct that.  
20 That might be a fatal error.

21 Q Just so I understand clearly, during the early voting  
22 period?

23 A That's correct.

24 Q What do you think a longer early voting period means for  
25 lines?

1 A During the presidential general election, you are going to  
2 have lines continuously. However, the voter has the  
3 opportunity to choose the time that they participate.

4 As it relates to Election Day, if you have a long line,  
5 based on my experience in the 1990s, you will have angry  
6 voters. You will have upset voters. You will have voters who  
7 choose to leave the line, and it might be because -- I remember  
8 getting cussed out one afternoon when a man was on his way to  
9 work. He says, I have shift work and I cannot go back and  
10 vote, and I just could not get processed and I'm mad as hell  
11 and you all just aren't doing a good job.

12 Q Would you expect problems with lines to increase as  
13 turnout increases?

14 A I think, as turnout increases, it will have a chilling  
15 effect on participation.

16 Q Mr. Bartlett, are you aware of the provision in House Bill  
17 589 that repeals same-day registration?

18 A Yes.

19 Q We talked about this earlier, but I will be brief now.  
20 When you were working with the General Assembly to develop that  
21 legislation, were there safeguards built in to the same-day  
22 registration process?

23 A There is safeguards. First of all, you've got driver's  
24 license or the HAVA ID requirements. You have 48 hours to  
25 check either the driver's license number or the last four



1 digits of the Social Security.

2 Q Why is that a safeguard?

3 A The safeguard is something that the National Voter  
4 Registration Act -- the powers that be at that time, I believe  
5 it was a compromise, stated that if we could just get some type  
6 of identification with that person that matches, that will show  
7 that they truly are who they say they are.

8 Q I meant the 48 hours.

9 A Oh, the 48 hours. Because usually during the time that  
10 you are not near an election, there might be a certain day or  
11 days during the month that a county board of elections will do  
12 that, and what this does is prompt the process.

13 Now, I do think that through the years, at least this is  
14 my experience, that most counties now try to do it within 48  
15 hours instead of having a designated time during a week or a  
16 month.

17 Q Okay. What other safeguards were there?

18 A Well, first of all, the biggest safeguard that you had  
19 was, it being an absentee ballot, you could retrieve that  
20 ballot if there was something fraudulent about that.

21 Q Okay. Were there other safeguards?

22 A I'm certain that there are, but I can't recall right now.

23 Q Was there a mechanism for challenging same-day  
24 registration?

25 A Yes, you get two ways to challenge. On Election Day, you

1 only have from noon to 5:00 on Election Day; but for one-stop  
2 absentee voting, you have that same period like any other voter  
3 that shows up on Election Day, but also when the voter presents  
4 themselves at the one-stop site, you get a chance also. So  
5 there were two chances versus one on Election Day.

6 Q Was registering in person part of a safeguard?

7 A It is because instead of coming through by mail, you have  
8 a person that has usually experience. What counties  
9 traditionally try to do is use their seasoned veterans that  
10 work on Election Day, and it's usually some of their better  
11 trained and qualified people. We try to have them all trained  
12 and qualified, but they usually try to get the best of the  
13 best, and I believe that -- it is my opinion that these people  
14 can sniff out something that is wrong.

15 A good example -- something happened where this gentleman  
16 was acting kind of funny and goofy during the -- I believe it  
17 was the primary of 2012 in Wake County, and it was reported to  
18 the director. The director reported it to me. We started  
19 investigating it. We found out who the gentleman was, and he  
20 was shocked. He was shocked that we were able to find out who  
21 he was within 24 hours.

22 **MS. RIGGS:** May I approach, Your Honor?

23 **THE COURT:** Yes.

24 **MS. RIGGS:** Your Honor, I am handing up what's been  
25 previously marked Plaintiffs' Exhibit 56.

1           **THE COURT:** Are all of those exhibits that were  
2 already part of the record in the case?

3           **MS. RIGGS:** Yes, they were part of the joint  
4 appendix, and they are on our exhibit list we filed.

5           **THE COURT:** Thank you.

6 **BY MS. RIGGS**

7 Q       Mr. Bartlett, do you recognize what I handed you up?

8 A       I do.

9 Q       What is this?

10 A       This is a report to the General Assembly on our experience  
11 with same-day voter registration in 2008, the primary and  
12 general election.

13 Q       Why did you perform this study?

14 A       This study was performed at the request of the General  
15 Assembly.

16 Q       When did the General Assembly make that request?

17 A       It was part of the enactment of that bill.

18 Q       Okay. Who worked on this study?

19 A       Veronica DeGraffenreid, Johnnie McLean, and myself and  
20 also Mark Burris.

21 Q       And do you remember; did the statute say what the purpose  
22 of the study was?

23 A       I do not know what the language said.

24           **MS. RIGGS:** Your Honor, may I have permission to  
25 publish this to the Court?

1           **THE COURT:** Yes.

2 **BY MS. RIGGS**

3 Q     Mr. Bartlett, when was this study performed?

4 A     There was a deadline. I think that it had to be done  
5 sometime in February or March of 2009.

6 Q     Okay. What elections were you looking at?

7 A     It is my understanding that we did not do any for the 2007  
8 municipal elections. It was just a primary and the general  
9 election of 2008.

10 Q    When was same-day registration first implemented?

11 A    2007.

12 Q    Okay.

13 A    We thought it would be a good trial run during the  
14 municipals elections because there would be lower turnout and  
15 lessons would be learned for 2008.

16 Q    What did the results of the study indicate?

17 A    Well, we had a lot of people utilize this, and they had  
18 the opportunity to get registered and vote and let their voice  
19 be heard. That was the biggest success of that.

20 Q    Did you do any comparison about verification rates?

21 A    Yes. We, throughout this period and the time that I was  
22 at the State Board of Elections, would go back and look at  
23 verification rates to see what they were and how we might could  
24 help do a better job; and also in this report, we alerted the  
25 General Assembly what those issues were.

1 Q I'm sorry. That was probably not the clearest question.  
2 What verification rates were you comparing?

3 A We were comparing the verification rates of same-day with  
4 the time when we -- the books were open.

5 Q Did you conclude that same-day registration was a success?

6 A Yes.

7 Q Did you make any conclusions about the effect of same-day  
8 registration on provisional ballots?

9 A It reduced provisional ballots.

10 Q How did you conclude that?

11 A You looked at the raw numbers, participation versus the  
12 provisional ballots for that year, and I believe that we looked  
13 at 2004; and you could see that there were fewer provisional  
14 ballots.

15 Q Okay. Did you come to any conclusions about voter  
16 satisfaction with same-day registration?

17 A We did not get any complaints regarding the same-day that  
18 came up to my level. I am certain that there were some here  
19 and there, and, usually, what I was told that were an issue is  
20 types of verification; but aside from that, people seemed to  
21 enjoy the opportunity to register and vote as a one-stop  
22 package.

23 Q Sorry to be jumping around, but going back to  
24 verifications, did you conclude -- what conclusions did you  
25 make about the effect of same-day registration on returned

1 verification mailings?

2 A It is my understanding that Veronica DeGraffenreid did  
3 comparisons and shared with me that the same-day verifications  
4 were more than when the books were open, and I was told that by  
5 a few directors, including George Gilbert.

6 Q Okay. Do you know if other counties besides Guilford  
7 performed that kind of analysis as well?

8 A That was not information I sought out.

9 Q Okay. Going to verification mailings generally, are there  
10 some reasons other than ineligibility that a verification  
11 mailing might be returned?

12 A There are several reasons. One, it could be election  
13 administrator error, it could be Postal Service error, it could  
14 be students who just graduated, or it could be a deployment.  
15 We live in a transient society. It could be people moving.

16 We saw a little bit of all that because in -- when we were  
17 doing this study, I asked Veronica to do the best she could to  
18 find out some of these reasons, and those were some of the  
19 reasons that she was able to find out.

20 Q What kinds of poll worker error would lead to returned  
21 mailings?

22 A Not typing in the correct address or leaving off a letter  
23 or even putting in a wrong city address.

24 Q Were there multiple points at which that error could  
25 happen?

1 A Not multiple points. If the information was put in the  
2 computer wrong, it usually stayed wrong until it was found, and  
3 it was found usually during the return of the mailing and they  
4 look at the records.

5 Q Would all of those reasons be true for both regular  
6 registration and same-day registration?

7 A Yes.

8 Q Mr. Bartlett, do you know what I mean by the term  
9 "inflated voter rolls"?

10 A Yes, I am familiar with that term.

11 Q What would that mean to you?

12 A Inflated voter rolls are people that are considered not  
13 active on the voter registration, and they may not -- no longer  
14 be residing within that county.

15 Q What might cause inflated rolls?

16 A There are several ways that it could be inflated, and it  
17 is all related back to law. There is a list maintenance  
18 process, which we must follow with the National Voter  
19 Registration Act of 1993 that was implemented in '95, that  
20 allows a voter to stay on -- well, first of all, you got to  
21 come up with a process to have a voter stay on; and if you do  
22 not have any contact within those two federal elections, you  
23 can then take them off. You cannot take them off for  
24 nonvoting.

25 So we had a lot of processes to determine what is contact,

1 and those people were temporarily on the books. Some may be  
2 deceased, and we never got a record to verify that. Some may  
3 have moved out of the county, and some may -- there just may be  
4 an error.

5 To give you an example, we took one man off from North  
6 Topsail Beach because we got a record from DHHS saying he was  
7 deceased, and he said, Mr. Bartlett, I am alive; and I had the  
8 director send me the records, and I started reading his  
9 records. He was born in Kentucky, and he said, Yes, sir, all  
10 this information is correct, and he says, Are you going to  
11 allow me to vote? And I said, Yes, because we have proven that  
12 you aren't dead. And he says, Well, do I don't have to pay my  
13 taxes now that the feds think I'm dead? And I said, You are  
14 going to have to work that out with the IRS.

15 Q In your years at the State Board of Elections, were there  
16 any other reasons you suspected might be contributing to what  
17 might be perceived as inflated voter rolls?

18 A Well, another thing that I don't think I mentioned is we  
19 may not always get a full felons list. We usually get a very,  
20 very comprehensive list from the Department of Corrections; but  
21 for several years, we did not get many lists from federal  
22 jurisdictions, and that sort of started changing in 2010 and  
23 '11. I do not know how that has progressed, but it was getting  
24 better.

25 Q Okay. Mr. Bartlett, what was the effect of same-day



1 registration on voter roll inflation?

2 A I don't know where it would have any impact at all except  
3 for those where the verification came back the second time and  
4 they, in person, voted. There is a provision in the law that  
5 says if someone votes absentee and shows up in person and their  
6 verification process had not been completed, then they are  
7 placed on the inactive list, and they go through the list  
8 maintenance procedures.

9 Q I just want to clarify. If the same-day registrant had  
10 two verifications returned, that registration would have been  
11 denied; right?

12 A If they know it in time, but you don't always get that  
13 information in time.

14 Q What was your experience with the time it took to get  
15 mailings back -- verification mailings back for same-day  
16 registration?

17 A I do not recall that specifically.

18 Q Did you report in your analyses, the one that's in front  
19 of you and the others ones that you did, that folks were  
20 satisfied that there had been enough time for the verification  
21 mailings to be completed?

22 A I did not receive any information back from persons of the  
23 public until this started to be attacked, and then that took on  
24 another life of its own.

25 Q What has been the impact of same-day registration for

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1 voters in North Carolina?

2 A It has given those who, for some reason or another, that  
3 did not do it during the open books a chance to participate in  
4 the voting franchise.

5 Q Okay. What did it do insofar as potential mistakes made  
6 by a county board of elections or the State Board of Elections?

7 A I am not following you.

8 Q Were there opportunities to fix mistakes?

9 A Yes, there was always time during the early voting to fix  
10 mistakes if there were some.

11 Q What would have happened without same-day registration  
12 with those mistakes?

13 A If there were mistakes that kept somebody from casting a  
14 vote -- or having an application accepted and casting a ballot,  
15 they would not be able to have their voice heard.

16 Q Would that have kept eligible voters from voting?

17 A It shouldn't.

18 Q If there had been no same-day registration?

19 A There would probably have been a provisional ballot.

20 The provisional ballot works two ways: If a voter  
21 requests it, they must be given it; and if an election official  
22 does not find a record of that voter, they must offer it. So  
23 there would be more provisional ballots.

24 Q Mr. Bartlett, in your experience, was there -- were there  
25 times when regular mail registration verification mailings were

1 not returned before the end of the canvas?

2 A There were.

3 Q Would those voters still have been allowed to vote?

4 A They were. Those that are the ones that you would  
5 eventually put on the inactive list.

6 Q Mr. Bartlett, I want to turn now to out-of-precinct  
7 voting. Did any of your county boards of elections directors  
8 ever not finish counting out-of-precinct provisional ballots?

9 A No.

10 Q Were you ever asked by the General Assembly to provide  
11 out-of-precinct data by race?

12 A We were asked that during the election contest between  
13 June Atkinson and Bill Fletcher that was decided by the General  
14 Assembly.

15 Q When was that election contest?

16 A 2004.

17 Q Was 2004 when the election was?

18 A Yes. The decision was in 2005.

19 Q Okay. And what was the process for gathering that  
20 out-of-precinct data by race?

21 A For 96 counties, it was done by our IT department. We had  
22 four counties that were not on our statewide elections  
23 management system, and they were the four big ones: Wake,  
24 Guilford, Forsyth, and Mecklenburg. They had standards that  
25 they must meet, and they had delayed information sent to us.

1 Q How did you go about getting that information from them?

2 A We had to wait until voter history was completed, and  
3 eventually we received that information.

4 Q Okay. What did you do with that information when you did  
5 receive it?

6 A My best recollection is that Johnnie McLean sent all  
7 materials of requested information through Susan Nichols to  
8 whomever Susan Nichols of the Attorney General's Office was  
9 dealing with at the General Assembly.

10 Q Mr. Bartlett, are you aware of the provision of House Bill  
11 589 that ends preregistration for 16- and 17-year-olds?

12 A Yes.

13 Q What was your experience administering that program?

14 A The experience, once we had it automated, I thought was a  
15 wonderful way of introducing young people into the elections  
16 process, and it was not burdensome. We would hold in a queue  
17 at the state level the information for those who were not  
18 eligible to vote in a primary or in an election, depending on  
19 where the birthdate fell, and we would notify the county board  
20 of elections to do the processing.

21 What appears to be some grief from some were returns, but  
22 I did not get a lot of grief. Everybody just took it as this  
23 is business.

24 Q Okay. Are you aware of the provision of House Bill 589  
25 that removes the discretion of the county boards to keep polls

1 open an extra hour in case of an emergency?

2 A Yes.

3 Q Can you explain to the Court some examples of where that  
4 might be necessary?

5 A It was utilized a lot in various precincts during my  
6 tenure. From time to time, we would have bomb threats where a  
7 polling place would be closed for an hour, hour and a half, and  
8 we would usually get a request to have an extra hour extended  
9 during the day.

10 There was one time where we had a chemical spill on the  
11 only road leading to the polling place, and we had to shut down  
12 that place and move the polling place so that we could finish  
13 that election, and we used extended time.

14 We also had a tropical storm come through the northeast,  
15 and we had to shut down the polls there; and we also had a  
16 retired highway patrolman who cast their ballot and had parked  
17 across the street and was struck by a car and killed, and it  
18 kept that polling place down for an hour.

19 There appears from time to time to be unusual things that  
20 happen in the elections process where that extra hour is needed  
21 for fairness.

22 **MS. RIGGS:** Your Honor, may I approach with some  
23 water?

24 **THE COURT:** Do you need a drink of water?

25 **THE WITNESS:** Please.

1 **BY MS. RIGGS**

2 Q Mr. Bartlett, can I talk to you a minute about voter  
3 education? What kinds of efforts would you engage in when  
4 there were major changes to the state's election laws?

5 A Most of our resources were limited, so we utilized it in  
6 several ways. We encouraged -- we had this period in September  
7 every other year in which we would ask boards of elections to  
8 go out in their community and share what new information was  
9 happening in the elections process. We would utilize our  
10 website; and when we had the Judicial Voter Guide, we would put  
11 new information there. Outside of that, we did not have many  
12 resources.

13 Q Did voters take longer to adjust to some changes than  
14 others?

15 A Yes, I would say so; but as familiarity came about, that  
16 would change in time, but there is always going to be that  
17 transition that's going to be rough.

18 Q Are there some situations where voters just may not be  
19 able to adjust to the changes?

20 A I can't answer that.

21 Q Finally, I just want to ask you some questions -- during  
22 your tenure, what kind of efforts were taken by the State Board  
23 of Elections to detect and deter voter fraud?

24 A Well, we did -- what we did was cross-checks with several  
25 things before and after an election.

1 To give you an example, before each election, we would do  
2 a cross-check with the voter registration and the driver's  
3 license offices to find illegal presence so that we could  
4 identify any noncitizens that might be registered and also that  
5 might have voted, and we would -- anything that we found that  
6 was troublesome, we would certainly send it to the appropriate  
7 DA for any action that they thought was proper.

8 Also, during and after the election, we would do  
9 cross-checks for double voting, double voting during the  
10 one-stop period and mail absentee, and also between those two  
11 and Election Day. We would also cross-check for felons, and we  
12 would also check death, death -- those who had died, and those  
13 were the types of checks that we would do continuously.

14 Q How would you assign staff members to investigate cases of  
15 alleged fraud?

16 A It depends on where it was, the volume, and how many  
17 people it took, but we had -- at one time we had two  
18 investigators, and we lost one to the budget, and what we did  
19 was we utilized all our staff. Sometimes the entry might be  
20 from me. It could be from our counsel. It could be from our  
21 investigator. It could be from the deputy director and others.  
22 We just utilized as many people as it took to get the job done.

23 Q During your tenure, was there a new introduction to the  
24 voting process whereby voters had to sign an affirmation?

25 A It was not a new process. It was in lieu of a poll book.

1 Q Can you explain that to us?

2 A And, basically, what that was is an authorization-to-vote  
3 form, and you would have the same information as you would have  
4 on the poll book except it was a label, and you would sign that  
5 this information is correct, and it is a more automated  
6 process.

7 Q What was the penalty for signing that illegally?

8 A It is a Class I felony.

9 Q What does that mean?

10 A It's a low-end felony. Attorneys here could answer that  
11 better than me.

12 Q Did you have any experiences with voter -- with election  
13 mistakes being mistaken for fraud?

14 A Yes, that has occurred.

15 Q Can you tell us about it?

16 A Mainly, a junior or senior would go different times to the  
17 polls, and the election official might mark the wrong name.  
18 Another time something that could happen is that the person  
19 above or the person below would be checked as voting. Another  
20 issue could be in voter history, the wrong information be  
21 placed into the computer system. Those are the main ones.

22 Q What was your general sense of the extent of voter fraud  
23 in the state?

24 A Fraud does happen; and when it happens, you deal with it,  
25 and you do the best you can to get the information and forward



1 it to the proper persons. The State Board had the SBI, or it  
2 would be directly referred to the district attorney, and the  
3 counties had that authority, too. They could do that, but  
4 there was a reporting requirement that if the county did send  
5 something to a DA, they had to send us a copy.

6 Q Okay. What -- based on your years of administering  
7 elections in North Carolina, what do you expect the effect to  
8 be of all the changes that we talked about in House Bill 589?

9 A I think that standing alone is not like all of them  
10 together. I think that it will cause long lines at the polls  
11 during high turnout elections. I think that it could suppress  
12 people from participating; but for the most part, I think that  
13 what we need to do is to give the voter the best experience  
14 that we possibly can within our means, and I think that they  
15 should not have to have long waits at the polling place unless  
16 they go during one-stop, and it is their choice, their option.  
17 I believe that what we have got to do is serve the voter.

18 Q Thank you, Mr. Bartlett.

19 **MS. RIGGS:** I pass the witness.

20 **THE COURT:** All right. Any cross-examination?

21 **MR. FARR:** Your Honor, may I approach the witness?

22 **THE COURT:** Yes, you may.

23 **MR. FARR:** Your Honor, I am going to give him a copy  
24 of his deposition, a calculator, and a pen.

25 CROSS-EXAMINATION

1 **BY MR. FARR**

2 Q Mr. Bartlett, my name is Tom Farr, and we know each other,  
3 do we not?

4 A Correct.

5 Q And Mr. Gilbert was here earlier today, and I want to do  
6 the same thing that I did with him. I want to thank you for  
7 your service to the public over the years, and also thank you  
8 for the help you provided me when I had questions in the past.

9 A Thank you.

10 Q I wanted to ask you a bit about your experience. And,  
11 Gary, I took your deposition in this case, did I not?

12 A Correct.

13 Q I am not going -- I am going to try not to go through that  
14 whole deposition because the judge has said that we can submit  
15 the deposition. I am going to try to hit on the things that I  
16 think are most important in your examination here today.

17 Have you ever served as a county director of elections?

18 A No.

19 Q So you've never administered elections within a county as  
20 a county director?

21 A Not as a county director.

22 Q Right. And you've never done something like been  
23 personally in charge of county provisional ballots?

24 A I have witnessed and instructed it.

25 Q But you've never actually been responsible for that?

1 A No.

2 Q You've never had to hire the staff to do that?

3 A No.

4 Q You've never had to give people instructions on how to do  
5 the counting of provisional ballots as an elections director  
6 for a county?

7 A Not as an elections director.

8 Q Okay. I may ask some questions more specifically on  
9 various topics during the course of your examination here, but  
10 you've given a lot of opinions about what voters like and what  
11 voters don't like, why people do out-of-precinct voting, why  
12 people do early voting.

13 Has the State Board of Elections ever conducted a survey  
14 of voters to ask them why they voted out-of-precinct?

15 A No.

16 Q Has the State Board of Elections ever done a survey of  
17 voters to ask them why they do early voting?

18 A No.

19 Q So these are just opinions based upon your experience?

20 A Exactly.

21 Q Okay. Now, I want you to turn to Exhibit 153 of your  
22 deposition, and this is why I gave you a calculator and a pen  
23 because I want you to walk through this exhibit with me. Do  
24 you recall that we talked about this exhibit at your  
25 deposition?

1 A There were many that we have done.

2 Q Okay. That's your deposition, is it not?

3 A It is.

4 Q Is this not one of the reports that --

5 A Yes.

6 Q -- that we've mentioned before about --

7 **MR. FARR:** Your Honor, would you like a copy of the  
8 deposition? I have one.

9 **THE COURT:** Do I have it already in my materials?

10 **MR. FARR:** Well, it's been filed.

11 **THE COURT:** If you would tell me which of the books  
12 you are reading from. I already have a copy of it.

13 **MR. FARR:** Your Honor, I tell you what, I don't know  
14 what's in any of the books. Can I hand up a copy of it to you?

15 **THE COURT:** That will be fine.

16 **MR. FARR:** We'll take it back, Your Honor. I know  
17 you don't want to keep it, but this might help you. Your  
18 Honor, I am thinking we haven't filed this yet. I don't know  
19 if the clerk would like a copy to follow along.

20 **THE COURT:** If you have an extra one, that would be  
21 fine. Thank you.

22 **MR. FARR:** I do.

23 **BY MR. FARR**

24 Q Okay. Gary, Exhibit 153 is one of these reports that  
25 Veronica did about mail verification?

1 A Correct.

2 Q Okay. I want to look at -- this report reports for  
3 different time frames. Can you tell the judge what all these  
4 time frames are that are in this report?

5 A Okay. At the very top, 1/01/2012 through 4/13/2012, that  
6 is during an open period for voter registration. 4/14/2012  
7 through 7/17/2012 is a closed period because we had a first and  
8 second primary. Then, for 2012, we had a closed period of  
9 4/19/12 to 5/5/12 and then an open period from 7/18/12 from  
10 10/12/2012 and then a closed period between 10/18/12 to  
11 11/3/2012.

12 Q All right. Gary, could I ask you, the period from  
13 4/19/2012 to 5/15/2012, was that same-day registration period  
14 for the primary?

15 A Yes.

16 Q And then from 7/18/2012 to 10/12/2012, that was the period  
17 of time after same-day registration for the primary and before  
18 same-day registration for the general election?

19 A Yes.

20 Q And then the last report is for 10/18/2012 through  
21 11/3/2012, and that's for same-day registration in the 2012  
22 general election, is it not?

23 A Correct.

24 Q All right. So what I wanted to do is I want to turn and  
25 compare information reported by this report for the time frame

1 starting 7/18/2012 through 10/12/2012, and I want to compare  
2 that with the same-day registration time frame for the general  
3 election. All right. So that would start on page -- it's page  
4 4 of the report. I think it is the -- excuse me. My mistake.  
5 It would start on page 5 of the report. Are you there?

6 A Not yet.

7 Q Let me know.

8 A Okay.

9 Q All right. Now, in general, just tell His Honor what this  
10 report is supposed to reflect on page 5?

11 A This basically is a breakdown of voter and verification  
12 status.

13 Q And it's looking at the people who registered during the  
14 time frame from 7/18/2012 to 10/12/2012; correct?

15 A Yes.

16 Q And this information was taken off of your SEIMS system?

17 A Yes.

18 Q And this was done by Veronica DeGraffenreid?

19 A Yes.

20 Q And can you tell the judge who she is?

21 A Veronica DeGraffenreid was our voter registration director  
22 along with other duties, during my tenure.

23 Q So on page 5, if you go all the way to the bottom where it  
24 says "grand total," does that not report the total number of  
25 people who registered during this time frame?

1 A Yes.

2 Q All right. And then the report breaks them -- these  
3 people who registered into different categories, and the first  
4 category that is listed is active. Do you see that?

5 A I do.

6 Q And what does the term "verified" mean there?

7 A Verified means that they have gone through a period of  
8 time where no mailings have been returned.

9 Q So that's someone who has registered who -- he's either  
10 had no cards returned or one card returned and the second card  
11 hasn't returned; is that right?

12 A That's correct.

13 Q Okay.

14 A Hold it. Say that second one again.

15 Q It's confusing.

16 A No, no, no. I think that -- did I hear you say that the  
17 second card had not been confirmed?

18 Q No, sir, returned is what I meant to say.

19 A Okay.

20 Q So my understanding is if one of those two cards is not  
21 returned, you are verified?

22 A That's correct.

23 Q That's what I meant to say. I'm sorry. What does the  
24 term "confirmation pending" mean?

25 A Confirmation pending means that a first-class piece of

1 mail with a forwardable address has been sent. That  
2 probably -- this is my -- I am not going to guess.

3 Q Well, this is -- can we say this is someone who has not  
4 finished the verification process?

5 A I would say that the confirmation is, to my  
6 understanding -- there are two terms that you use. You use the  
7 verification process and the confirmation process. A  
8 confirmation mailing is a first-class forwardable piece of  
9 mail, and that's usually done when they have made the list  
10 maintenance, and that is to determine whether they live in the  
11 county, they lived out, what information that you can get to  
12 determine that voter.

13 Q Okay. That can be somebody who voted and then had their  
14 first or second or both cards come back after they voted?

15 A Or after the canvas period.

16 Q Okay. And what does unverified mean?

17 A Unverified means that that period of time has not lapsed  
18 where a verification could possibly return.

19 Q Okay. Do you know what unverified new means?

20 A I don't.

21 Q Okay. Can we agree that means that they are still going  
22 through the verification process?

23 A Yes, sir.

24 Q All right. We talked about verification pending. What  
25 does that mean?



1 A Verification pending means that the time period has not  
2 been completed.

3 Q But these are people who registered between July 18, 2012,  
4 and October 12, 2012; right?

5 A Right.

6 Q So that would mean that the cards have not yet been  
7 returned?

8 A Right.

9 Q Okay. Now, denied, what does that mean?

10 A Denied means that there were two verification mailings  
11 returned.

12 Q So that person was denied and was not allowed to vote; is  
13 that right?

14 A Yes.

15 Q Okay. And what does inactive mean?

16 A Inactive is part of our list maintenance system where what  
17 you do is at certain periods you send out a confirmation  
18 mailing, and if it is returned, then you put that voter on the  
19 list for two federal elections. If they are a no contact, then  
20 that person will be taken off.

21 Also it means, as it relates to same-day registration,  
22 that a person showed up, presented proper verification, and  
23 then failed the verification process, and by law, they go  
24 directly through the inactive status -- the list maintenance  
25 process.

1 Q Okay. So Gary, if you would, I would like for you to -- I  
2 want to know what the percentage is for these categories as  
3 compared to the grand total of registered voters. So what I  
4 would like for you to do is -- let's start with confirmation  
5 pending. Could you divide 317 by 337,051 and tell us what we  
6 get there, and could you mark that on the exhibit next to that  
7 category?

8 A 300 what?

9 Q I want you to divide confirmation pending by the total --  
10 grand total of registrants?

11 A Okay.

12 Q I got .0009.

13 A I have three zeros. If you got three zeros, that's  
14 correct.

15 Q Yes, sir.

16 A Okay.

17 Q Could you do the same thing now for the category that says  
18 "unverified" under active?

19 A I got 0015.

20 Q I did, too. What about unverified new?

21 A 0001.

22 Q All right. And how about verification pending?

23 A 011.

24 Q I got that also. Now, as far as verification verified,  
25 that figure has already been calculated by Ms. DeGraffenreid on

1 page 1; is that accurate?

2 A I would have to look at page 1. It is.

3 Q Okay. And she's got 1.9 percent there, does she not?

4 A That's correct.

5 Q Now, let's go to inactive. Did we do denied?

6 **MS. RIGGS:** Your Honor, I think we're -- objection.

7 We are getting a little confused here. I think there are some  
8 wrong numbers being stated for the record. Page 1 is the  
9 undeliverable rate, not verified.

10 **MR. FARR:** Okay. Thank you.

11 **BY MR. FARR**

12 Q Let's go back and do the verified. My mistake.

13 A .93.

14 Q And then could you please do that for denied?

15 A Okay. I got five zeros and a five.

16 Q For denied? I got .015.

17 A Did you start with confirmed, not returned?

18 Q I want just the denied number, 5,096.

19 A Okay. Well, I will do that one. .15 percent.

20 Q Fifteen or was it 015, Mr. Bartlett?

21 A I will do it again. You are correct.

22 Q So the number for denied should be .015?

23 A Correct.

24 Q What about inactive? Can you do that for me?

25 A Do you want me to do --

1 Q Just inactive, 1,632.

2 A I got .004.

3 Q Okay. I got .0048, so I think we got the same number  
4 there.

5 A We do.

6 Q All right. Now, could you add up for me the total number  
7 for the following categories: Confirmation pending, which is  
8 317, unverified, which is 534 --

9 A Wait just a second. Let me start it. Okay. I am with  
10 you.

11 Q So confirmation pending, 317; unverified, 534; unverified  
12 new, 39; verification pending, 3,957; and inactive, 1,632.

13 A So every one that I have done, you want me to add up?

14 Q Yes. I want to know what the total is for those  
15 categories.

16 A All right. Okay. I got .95.

17 Q Whoops. I want you to add the gross totals. So, like, I  
18 want to add confirmation pending, 317; unverified, 534;  
19 unverified new, 539; verification pending, 3,957; and inactive,  
20 1632. And the number I get is 6,479.

21 **THE COURT:** Just for record, the unverified new is 39  
22 not 539.

23 **MR. FARR:** Yes, sir, Your Honor.

24 **THE COURT:** You didn't know he would be giving you a  
25 math test. Do you want me to let you examine him on a

1 calculator?

2           **THE WITNESS:** That would be wonderful. So we can get  
3 through this quicker, you call out the number, and I will put  
4 it in this calculator for you, or you can just tell the Court  
5 what it is and swear under law.

6 **BY MR. FARR**

7 Q Okay. Well, I added up those figures. I added up  
8 confirmation pending, unverified, unverified new, verification  
9 pending, and inactive, and I got 6,479.

10           **THE COURT:** I have a marker board. Do you want to  
11 use a marker board?

12 **BY MR. FARR**

13 Q Will you accept that, Mr. Bartlett?

14 A I will accept it.

15 Q And the inactive is -- just the inactive number alone is  
16 1,632; is that right?

17 A That is correct.

18 Q Okay. So now I want you to divide the number that we put  
19 together for all of the active categories, other than verified,  
20 plus inactive. So that would be 6,479 and divide that by  
21 337,051.

22 A Okay.

23 Q And what did you get?

24 A I got .0192.

25 Q Okay. Could you go ahead and then divide the number for

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1 inactive, which is 1,632, by 337,051, and tell me what you come  
2 up with.

3 A Now, repeat that, please.

4 Q Divide the total for inactive voters.

5 A The 1,632?

6 Q Divide that by 337,051.

7 A Okay. I got .0048.

8 Q Okay. Me, too. All right. Now, let's -- unfortunately,  
9 Mr. Bartlett, I need for you to do the same thing for the next  
10 page. So we've got to walk through that because we are going  
11 to make some comparisons between the people who registered  
12 during the normal time frame versus same-day registration. So  
13 I want you to -- will you agree that on page 6 that's the page  
14 for the same-day registration in the 2012 election?

15 A As it appears during the snapshot of that time, yes.

16 Q Okay. And so there were a total of 97,100 people who did  
17 same-day registration? It's at the bottom, grand total.

18 A I'm on the wrong page. Got you.

19 Q Okay.

20 A All right. So you want me to divide active, then denied,  
21 then inactive and --

22 Q No, we are going to first start with confirmation pending,  
23 which is 440. Divide that by 97,100.

24 A Okay. I got .0045.

25 Q I got the same thing. Now, please divide unverified,

1 which is 2,482, by 97,100?

2 A I got .25.

3 Q Good. Unverified?

4 A Excuse me -- 025.

5 Q That's what I got, too, Mr. Bartlett. Thank you. What  
6 about unverified new?

7 A I got .0008.

8 Q All right. And then the next one I want you to do is  
9 verification pending, which is 540 divided by 97,100?

10 A I got .0055. Is that what you have, Counselor?

11 Q Was that verification pending?

12 A Yes.

13 Q It's close. Good enough. All right. And let's do  
14 denied. Divide 83 by 97,100.

15 A Could you repeat, please?

16 Q Yes, sir. I would like you to take the category for  
17 denied voters during same-day registration, which is 83, and  
18 divide that by 97,100.

19 A Okay. I got zero --

20 **THE COURT:** You need to tell us if there is a point  
21 somewhere.

22 **THE WITNESS:** Point zero -- there is three zeros and  
23 three threes.

24 **BY MR. FARR**

25 Q I got three zeros and an eight.

1 A Okay. Let me do it again. Okay. I must have used  
2 another number. Okay. Got it.

3 Q You got the same thing?

4 A Yes.

5 Q That would be .0008?

6 A Correct.

7 Q And what about inactive? Divide 1,236 by 97,100.

8 A I got .012.

9 Q I got the same thing. All right. Now, Mr. Bartlett, if  
10 you add the categories under active, besides verified, with  
11 inactive, I get the number 4,777.

12 A Okay.

13 Q Did you get that same number, or are you just going to  
14 accept that as being accurate?

15 A I am accepting it.

16 Q And then the inactive number alone is 1,236; right?

17 A Right.

18 Q Now, I would like for you to divide the number we came up  
19 with for the active categories, other than verified, plus  
20 active, which is 4,777 -- please divide that by 97,100 and tell  
21 me what number you come up with.

22 A Okay. Let's start over again and take the active?

23 Q No, you are going to divide 4,777 by 97,100.

24 A Okay. I got .049.

25 Q And please divide the inactive number of 1,236 by 97,100?



1 A Wait just a second. I got .012 again.

2 Q All right. Good. Thank you. We are done with the  
3 calculator. I am sure everyone is happy about that.

4 I now have some questions to ask you about the figures we  
5 just arrived at. Earlier today, Mr. Bartlett, the director --  
6 the former director, George Gilbert, of the Guilford County  
7 Board of Elections testified that he thought it was equally  
8 likely for someone to fail mail verification if they registered  
9 during that July to October 12th period as it would be for  
10 someone to fail mail registration during the same-day  
11 registration.

12 **MS. RIGGS:** Objection, mischaracterizes evidence.

13 **MR. FARR:** Can I finish my question, Your Honor?

14 **THE COURT:** Go ahead and state your question, and  
15 then I will hear the objection.

16 **BY MR. FARR**

17 Q It is my recollection that Mr. Gilbert testified that it  
18 was equally likely for somebody to fail mail registration  
19 before they voted in both the normal time frame for  
20 registering, say, the 7/18/2012 period to October 12, 2012, as  
21 it would be for someone who did same-day registration?

22 **MS. RIGGS:** Objection, mischaracterizes earlier  
23 testimony.

24 **THE COURT:** Well, you can just assume that he may  
25 have said that as a hypothetical. All right.

1 **BY MR. FARR**

2 Q Do you agree with that?

3 A I would say that what little did I remember was that  
4 same-day registration verifications from 2008 to the time that  
5 I left seemed to get better and better, and it seemed like that  
6 those times that were open books were slightly more; but they  
7 were similar statistically.

8 Q Let me rephrase the question. Let's say you have a  
9 same-day registration person who has two cards returned, and  
10 you have someone who registers during the normal time frame has  
11 two cards returned. Between those two, which one of those  
12 individuals is more likely to have his vote counted at the  
13 county canvas before the second card returns?

14 A If the county board of elections had not received that  
15 information, it is the same-day registration.

16 Q Okay. Now, let's look at some of these figures. When you  
17 have your second card returned after you vote, you've testified  
18 that you become inactive; isn't that your testimony?

19 A No.

20 Q Okay. What is your testimony?

21 A You become inactive if you have registered and voted  
22 during one-stop and the verification comes back at a later  
23 time. Then they become inactive.

24 Q That's what I meant to say. You would have to have the  
25 second verification card come back after you voted to become

1 inactive?

2 A Correct.

3 Q Okay. All right. Now, you calculated that the number of  
4 inactive voters for the period from 7/18/2012 through  
5 10/12/2012 was .0048 percent of the total number of people who  
6 registered during that time; right?

7 A Correct.

8 Q But for the people who registered during same-day  
9 registration, you calculated that .012 percent of those voters  
10 had become inactive; right?

11 A Correct.

12 Q So based upon these figures, it's at least, what, three  
13 times more likely that somebody who voted during same-day  
14 registration would become inactive as compared to someone who  
15 voted between the time frame of 7/18/2012 and 10/12/2012?

16 A Only during this snapshot of time.

17 Q But based upon this document --

18 A Yes.

19 Q -- it appears as though it's four times more likely that a  
20 same-day registration person would become inactive?

21 A Yes.

22 Q All right. And when you look at the -- let's look at page  
23 6, at the part of the graph that is for active voters. That  
24 means they are still on the active voter list? They haven't  
25 been removed from that at this point in time; right?

1 A Correct.

2 Q But the folks that have got confirmation pending,  
3 unverified, unverified new, and verification pending, there is  
4 a possibility that all those people could ultimately fail the  
5 mail verification and become inactive?

6 A You could also assume the other, that they are all active.

7 Q But they could fail?

8 A Yeah, they could.

9 Q All right. And when we added up the number of active  
10 voters in those categories with inactive for the people who  
11 registered from July 18, 2012, to October 12, 2012, you came up  
12 with a figure of .0192 percent as the percentage of the people  
13 who registered during that time?

14 A Correct.

15 Q And for the same-day registration folks from October 10,  
16 2012, to November 3, 2012, you came up with a figure of  
17 .05 percent; is that right?

18 A I do not see that in my notes. Repeat, please.

19 Q Excuse me. I am wrong. It was .049 percent, I think.

20 A Yes.

21 Q So folks who registered during same-day registration are  
22 more than twice as likely to be in the category which includes  
23 inactive voters and other voters who may become inactive as  
24 compared to voters who voted from July 18, 2012, through  
25 October 12, 2012?

1 A Correct.

2 Q All right. Now, you said -- let's look at the denied  
3 columns for the period from 7/18/2012 through 10/12/2012. That  
4 number was -- the people who were denied were 5,096; correct?

5 A Correct.

6 Q And those people are not allowed to vote. If they show up  
7 again, they've got to go and reregister; right?

8 A Correct.

9 Q And is it -- you say that same-day registration cuts down  
10 on the denied voters for same-day registration, even though  
11 we've just shown that the numbers --

12 A Repeat that, please.

13 Q Okay. You've testified, have you not, that same-day  
14 registration results in a higher verification rate?

15 A I said that that was the information that I was told, yes.

16 Q Okay. All right. Now, you can see that during the normal  
17 time for registering from 7/18/2012 to 10/12/2012, 5,096 people  
18 who attempted to register were denied; is that right?

19 A Correct.

20 Q And that was .015 percent of the total folks who attempted  
21 to register -- or .015 of the total people who attempted to  
22 register? It is not a percentage. You got my question.  
23 That's right?

24 A Yes.

25 Q So then we go to the data for same-day registration, and

1 there was only 83 folks who were denied, and that amounted to  
2 well less than 1 percent of the number of people who registered  
3 during the same-day registration?

4 A Correct.

5 Q Okay. Now, Mr. Bartlett, is it possible that the reason  
6 why there are more denied voters during the regular  
7 registration period from 7/18/2012 through 10/12/2012 is  
8 because there was more time for the mail verification process  
9 to work?

10 A That is a possibility.

11 Q Isn't that likely?

12 A Yes.

13 **THE COURT:** Is this a good time to take an afternoon  
14 break?

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

16 **THE COURT:** All right. We are going to take our  
17 20-minute break. So be back at ten until 4:00 ready to go.  
18 We'll go until 5:30.

19 (The Court recessed at 3:30 p.m.)

20 (The Court was called back to order at 3:50 p.m.)

21 **THE COURT:** All right. Mr. Farr, you may proceed,  
22 please.

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

24 **BY MR. FARR**

25 Q Mr. Bartlett, when you had your deposition taken in this

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1 case, did you have a personal attorney at that deposition?

2 A Yes.

3 Q And that was Mr. Cordle?

4 A Correct.

5 Q Is he here today?

6 A No.

7 Q During our break, did you speak with some of the lawyers  
8 who represent plaintiffs in this case?

9 A Are you talking about the people sitting at the table?

10 Q My friends over to the left of me.

11 A I did not speak to them about this case, no.

12 Q Did you go into a room with them?

13 A Yes.

14 Q Did you talk about your testimony?

15 A No.

16 Q Okay. All right. Mr. Bartlett, there's been some  
17 discussion and some testimony about what the State Board --  
18 what sort of information the State Board provided the  
19 legislature when they passed the -- what was described as a  
20 clarification to the out-of-precinct voting law. Do you recall  
21 that in your deposition?

22 A I do.

23 Q And do you recall the issue of whether the State Board was  
24 able to provide information on the race of voters who voted out  
25 of precinct in Forsyth, Guilford, Mecklenburg, and Wake County?

1 A To the best of my knowledge, I still believe that  
2 information eventually made it to the General Assembly.

3 Q Now, if I told you that that bill was enacted in March of  
4 2005, would you accept that as being true?

5 A Yes, I would.

6 Q And when you say it eventually made it to the General  
7 Assembly, do you know whether today that the information was  
8 given before or after the legislature passed that law?

9 A I do not know.

10 Q Did you happen to see an affidavit that I shared with  
11 Ms. Riggs earlier today?

12 A I have.

13 **MR. FARR:** May I approach the witness, Your Honor?

14 **THE COURT:** Yes, you may.

15 **MR. FARR:** Mark this as what? I will let you decide.

16 **THE CLERK:** Hearing Exhibit Number 1 for defendant.

17 **MR. FARR:** I have one for the judge, the witness, and  
18 I am going to get one for the law clerk.

19 **BY MR. FARR**

20 Q Mr. Bartlett, here is the exhibit that we are going to  
21 talk about. Mr. Bartlett, let me know when you have had a  
22 chance to look this over.

23 A I have seen it.

24 Q Is this an affidavit that you signed?

25 A Correct.



1 Q The date you signed it was July 13, 2005?

2 A Correct.

3 Q And do you see, in paragraph 12 of that affidavit, there  
4 is a discussion about Forsyth, Guilford, Mecklenburg, and Wake  
5 County were not fully integrated into the SEIMS -- Mr.  
6 Bartlett, I am looking at paragraph 12. About halfway down the  
7 page, there is a statement by you that "Forsyth, Guilford,  
8 Mecklenburg, and Wake Counties were not fully integrated into  
9 the SEIMS for the 2004 elections. Therefore, their data is not  
10 included in our records or analysis."

11 A Correct.

12 Q Okay. So the date of this affidavit was July 13, 2005?

13 A Right.

14 Q This was several months after the out-of-precinct  
15 clarification was passed?

16 A Correct.

17 Q So at the time the out-of-precinct clarification was  
18 passed, these four counties had not been integrated into your  
19 SEIMS system?

20 A No, they did not come in until 2006.

21 Q All right. So that would mean in the SEIMS system, at the  
22 time the clarification bill was passed, you would not have been  
23 able to determine out-of-precinct voters in those four  
24 counties?

25 A No. I know that the information was requested and

1 eventually received, and it is my belief that it was sent  
2 through Johnnie McLean and Susan Nichols to whomever at the  
3 General Assembly that was requesting this information.

4       The reason why I think the way I do, I recall looking at  
5 the numbers and was seeing that there was quite a jump with the  
6 four counties. I recall that, and I also recall asking Johnnie  
7 McLean to have someone call the counties to see what was taking  
8 so long, and the answer that I got at that time was that they  
9 were still entering voter history. Those were the two things  
10 that I recall the most, but it is somewhere. Where, I cannot  
11 tell you.

12 Q     Did you personally deliver it to the General Assembly?

13 A     That would have been Johnnie McLean through Susan Nichols.

14 Q     So you didn't deliver it?

15 A     No.

16 Q     You didn't see what was delivered to the General Assembly?

17 A     I did.

18 Q     Well, you didn't deliver it?

19 A     Well, I didn't deliver it, but I saw it before it left the  
20 office.

21 Q     Do you know what the source was for the information  
22 regarding Wake and Mecklenburg and Forsyth and Guilford County?

23 A     I would assume that it was received by someone in  
24 administration and put in the database by someone from IT.

25 Q     Do you know if that information might have come from Bob

1 Hall?

2 A No.

3 Q I want to ask you a question. Mr. Bartlett, in your  
4 deposition, you agreed that registration rolls were inflated?

5 A Yes, I said it was temporarily inflated.

6 Q Okay. And how do the rolls get inflated?

7 A The rolls get inflated because there are inactive voters  
8 who, by federal and state law, must be on the books as an  
9 active voter for two federal elections, and it is put there as  
10 a safeguard to ensure that someone is not taken off the voter  
11 rolls by mistake.

12 Q Okay. I want to ask you a few questions about that. If  
13 haven't voted in two federal elections, do you become inactive  
14 right away, or do you get some sort of mailing?

15 A It's not voted. It's contact. You cannot remove somebody  
16 for nonvoting.

17 Q Okay. So what do you mean by contact?

18 A There could be contact, like someone signing a petition,  
19 somebody showing up at the board of elections' office and  
20 signing a request for a new relative or an absentee ballot.  
21 There are a variety of contacts that the office gets. That  
22 was -- if that was captured in some way as a record that could  
23 be referred back to by the board, then they would not be sent a  
24 list maintenance mailing.

25 Q Okay. So no contact for two federal elections, what type

1 of mailing do you receive? Do you receive a first-class mail,  
2 return service requested, or do you receive something that's  
3 supposed to be forwarded?

4 A The confirmation mailing is forwardable.

5 Q And what happens if you never -- if the county board  
6 doesn't receive that confirmation letter back? Does that  
7 person go on a removal list at that point in time?

8 A If the confirmation mailing is not returned -- it's been a  
9 long time.

10 Q This is not a memory test, Mr. Bartlett. I know you are  
11 telling the truth. If you can't remember, that's fine.

12 A At this moment, I don't. If I recall, I will let you  
13 know.

14 Q Okay. Thanks. Are there -- on the registration rolls,  
15 are there a lot of people, I mean, tens of thousands people,  
16 who haven't voted in the last two elections, last two general  
17 elections? Did you ever look at that?

18 A I did.

19 Q Is that a statement of fact?

20 A It is tens of thousands? There are quite a bit, yes.

21 Q It could be hundreds of thousands?

22 A I don't think it -- I do not recall, but it's a sizable  
23 number.

24 Q So there is a sizable number of folks on the registration  
25 list who haven't voted in the last two general elections?

1 A Correct.

2 Q Are there -- is there a sizable number that haven't voted  
3 in the last three federal elections?

4 A Correct.

5 Q And is there a sizable number that haven't voted in the  
6 last four federal elections?

7 A Correct.

8 Q Is there a sizable number who haven't voted in the last  
9 five general elections?

10 A If they have not been taken off through the list  
11 maintenance process, that is correct.

12 Q But even in light of operation of the list maintenance  
13 process, aren't there a sizable number of people on the voter  
14 rolls, either active or inactive, who have not voted in the  
15 last five general elections?

16 A I would say for the last five general elections, there are  
17 not as many as there would be for two or three.

18 Q Okay. That's fair enough. But still tens of thousands  
19 perhaps?

20 A Perhaps.

21 Q All right. Has the State Board of Elections ever done a  
22 survey or conducted a study to determine all of the causes for  
23 long lines in precincts?

24 A No.

25 Q Has -- you testified that in 2008 and 2012 the longest

1 lines were during early voting?

2 A Correct.

3 Q All right. And in those years, 2008 and 2010, there were  
4 record turnouts of African American voters in North Carolina;  
5 correct?

6 A I cannot tell you about 2010, but I say that 2008, you are  
7 correct.

8 Q I meant to say 2012, Mr. Bartlett. I am sorry. So in  
9 2008 and 2012, there was very, very high turnout of African  
10 American voters?

11 A Yes, but if I recall, 2008 was larger.

12 Q Okay. But 2012 was still higher than normal or in past  
13 elections?

14 A I would say for -- if you compare that to the 1990s, you  
15 are correct.

16 Q Okay. If you compare it to prior presidential elections  
17 before 2008, the black turnout was higher, was it not, in 2012?

18 A I do not recall the difference between 2008 and '12, but I  
19 believe that 2008 was the larger turnout.

20 Q All right. And isn't it true that most of the African  
21 Americans voters in both 2008 and 2012 voted during early  
22 voting?

23 A There was a large number of participation, yes.

24 Q Okay. And, Mr. Bartlett, I could be completely wrong  
25 about this. I am sure I will get an objection if I am, but

1 there is a lot of stuff going on in this case. I may very well  
2 be wrong, but my memory is that 70 percent, or something around  
3 that figure, of the African Americans who voted in 2008 and  
4 2012 did so in early voting. Does that sound about right to  
5 you?

6 A I do not recall. I know it was a high number.

7 Q Okay. And a high number of African Americans voted during  
8 early voting even though the lines were longer during early  
9 voting than on Election Day?

10 A Correct.

11 Q You made some -- you did a report that we put on the  
12 screen about how you -- what you thought the results would be  
13 of cutting early voting from 17 days to 10 days. Do you recall  
14 that during your examination?

15 A I do.

16 Q And in your deposition -- in your deposition, did you not  
17 agree that you have never studied whether there is sufficient  
18 excess capacity in precincts throughout North Carolina to take  
19 on new voters that previously had voted in early voting who may  
20 now decide to vote on Election Day?

21 A We have not. However, I did caution you that you got to  
22 do the math, like you were having me do earlier, about how many  
23 people show up, how long they take at the polling place, and  
24 how many pieces of voting equipment or tables. There is a lot  
25 of variations that could cause -- and, of course, we also

1 talked about the size of the polling place and did it have  
2 parking. There are a lot of variables.

3 Q I agree. I think you are right about that, Mr. Bartlett,  
4 but the truth of it is you have never -- you didn't study, in  
5 your reports you made, what the excess capacity might be in  
6 precincts for Election Day during a presidential election?

7 A No.

8 Q And the lines in 2008 and 2012 on Election Day were much  
9 shorter than they were during early voting; is that correct?

10 A That is correct.

11 Q Now, you talked about -- you thought that counties should  
12 have the discretion to open early voting sites at different  
13 times and different days?

14 A Yes.

15 Q Do you think it would be fair if on Election Day a county  
16 board opened a precinct at a different time than the other  
17 precincts?

18 A Not on Election Day, no. If it was left up to me, which  
19 it never was -- and, of course, as an administrator, I would  
20 have uniformity from the beginning of the period to the end,  
21 but I can also tell you that counties have different needs, and  
22 they like the flexibility.

23 Q Okay. But you could use that same argument, that the  
24 counties have different needs on Election Day, and they might  
25 ought to have discretion to open up precincts on different



1 times on Election Day? Could you not use that logic?

2 A You could, but I don't think it would get you very far.

3 Q That wouldn't be something that you would support on  
4 Election Day?

5 A No. That is a final act.

6 Q All right. In your deposition, you testified that you are  
7 more concerned about long lines during presidential elections  
8 as opposed to off-year elections; is that true?

9 A Correct.

10 Q When you measured turnout at the State Board, did you do  
11 that by reference to registered voters or by voting-age  
12 population?

13 A We did it by registered voters.

14 Q Mr. Bartlett, I have no further questions.

15 A Thank you.

16 **THE COURT:** Any other defendant?

17 **MS. RIGGS:** Yes, Your Honor.

18 **THE COURT:** Any redirect?

19 REDIRECT EXAMINATION

20 **BY MS. RIGGS**

21 Q Mr. Bartlett, do you still have Mr. Farr's calculator?

22 A I do.

23 **MR. FARR:** Can I have it back?

24 **THE WITNESS:** Only the judge can save me.

25

1 **BY MS. RIGGS**

2 Q This is going to be relatively painless. You were looking  
3 with Mr. Farr at Exhibit 153. Do you have that open still?

4 A It is closed, but I will open it.

5 Q Thank you.

6 A Okay.

7 Q All right. Please turn to page 5.

8 A I am there.

9 Q You are on registration date 7/18 through 10/12?

10 A Correct.

11 Q What I am going to ask you to do is divide the verified  
12 number by the grand total number, and I will read those numbers  
13 aloud to you as you type them into the calculator.

14 A Okay.

15 Q So the verified number is 313,773 and divided by 337,051.

16 A You get .93 percent.

17 Q So that would be 93 percent; correct?

18 A Correct.

19 Q Now, I would like you to switch to page 6, and we are  
20 going to do the same thing. I am going to read the verified  
21 number to you and the grand total. We'll divide by the grand  
22 total. Okay?

23 A Okay.

24 Q The verified number is 920 --

25 A Okay.

1 Q -- 85.

2 A Okay.

3 Q Divided by 97,100.

4 A Got .948.

5 Q So that would be 94.8 percent?

6 A That's correct.

7 Q So it is correct that same-day registrants -- I'm sorry.

8 Page 6 is during the same-day registration period?

9 A Correct.

10 Q So same-day registrations verified at a higher rate than  
11 regular registrations?

12 A Yes.

13 Q Because 94.8 is greater than 93?

14 A Correct.

15 Q I want you to switch quickly to page 1 of the report.

16 A Okay.

17 Q And am I right that what is being measured on the chart on  
18 this page is the rate at which registrants failed the mail  
19 verification?

20 A Correct.

21 Q Okay. And so for the same-day registration period, from  
22 10/18 to 11/03, registrants failed at the rate of 1.30 percent?

23 A Correct.

24 Q And for the regular registration period of 7/18 through  
25 10/12, registrants failed at the rate of 1.99 percent; is that

1 correct?

2 A Correct.

3 Q So registrants failed at a higher rate during regular  
4 registration than same-day registration?

5 A Correct.

6 Q I want you to flip back to pages 5 and 6 just for a  
7 second. Looking under the active category, am I right that  
8 just because a registration is unverified that doesn't mean  
9 that the voter is ineligible to vote, does it?

10 A Correct.

11 Q A perfectly eligible voter could be unverified?

12 A That's correct.

13 Q Is that -- did you give some of those reasons earlier in  
14 your direct for why that could be?

15 A I forgot already.

16 Q Was moving a reason?

17 A Yes, moving, transient society, deployment by our troops.  
18 We have a large number of military in our state.

19 Q Postal error was another mistake?

20 A Not only that, but also you have homeless.

21 Q Can you turn to page 6 very quickly. So I am looking at  
22 the verified number again. Mr. Bartlett, am I right that  
23 92,085 voters use same-day registration to vote and were  
24 verified; is that correct?

25 A Correct.

1 Q Am I right that 92,085 voters were enfranchised via  
2 same-day registration?

3 A Correct.

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

5 **MR. FARR:** Can I have a few questions, Your Honor?

6 **THE COURT:** Limited to the redirect, yes.

7 **MR. FARR:** I will, thank you, Your Honor.

8 RECCROSS-EXAMINATION

9 **BY MR. FARR**

10 Q Mr. Bartlett, people that have failed mail verification,  
11 have you ever conducted a survey as to why the mail was  
12 returned?

13 A There have been projects of that taken on by staff, but it  
14 was not a formal survey. What would happen is I believe staff  
15 would contact the counties and ask them to gather information.

16 Q Okay. But this is essentially anecdotal stories about why  
17 the mail came back?

18 A I believe so.

19 Q And is it also true that you've never evaluated how many  
20 of these folks who have failed mail verification actually  
21 moved? That's not been looked at and studied and determined,  
22 has it?

23 A What we have studied is to see if they showed back up as a  
24 new registrant in another county, or if they changed your  
25 address within the county. Yes, that has been done.

1 Q Did you ever decide what percentage of same-day  
2 registration people had mail returned because they had moved?  
3 Was there a study?

4 A There was a study that was done, yes. You would have to  
5 get that from the State Board of Elections.

6 Q Okay. Did you ever conduct a study about mail that wasn't  
7 returned when the person didn't actually live at the address  
8 that they gave?

9 A I do not think that we went into that detail.

10 Q Do you agree, do you not, Mr. Bartlett, that sometimes the  
11 mail is not returned because the person doesn't live at the  
12 address, and whoever actually does live there throws the card  
13 away? That happens, does it not?

14 A That does happen.

15 Q Also, are the cards not returned because the post office  
16 just doesn't return the cards?

17 A That's correct.

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

19 **MS. RIGGS:** Nothing further, Your Honor.

20 **THE COURT:** You may step down, sir.

21 **THE WITNESS:** Thank you.

22 (At 4:14 p.m., the witness was excused.)

23 **MR. DONOVAN:** Good afternoon, Your Honor, Mr. Donovan  
24 for the plaintiffs. Our next witness we are calling by video  
25 testimony. I will hand up the transcript. It is the testimony

1 of Mr. Bartlett's successor, Kim Strach. May we proceed, Your  
2 Honor?

3 **THE COURT:** Yes.

4 (Video deposition was played.)

5 **MR. DONOVAN:** Good afternoon, Your Honor. Before  
6 continuing, maybe I can provide an update of where we are at.

7 **THE COURT:** All right.

8 **MR. DONOVAN:** From the plaintiffs' side, Your Honor,  
9 we believe we have only two witnesses left. They are both  
10 expert witnesses that would probably be somewhat lengthier than  
11 the directs that have been -- I have been confirming with  
12 Mr. Farr. I think they may have one witness tomorrow. So we  
13 are fairly -- we are getting a higher confidence level we'll be  
14 done right after lunch tomorrow is my estimate. Our suggestion  
15 would be to start fresh with Dr. Stewart tomorrow morning, if  
16 that's amenable to you.

17 **THE COURT:** Are you guaranteeing that you are going  
18 to finish tomorrow?

19 **MR. DONOVAN:** I am going to have to confer with  
20 Mr. Farr, but I think there is a high likelihood.

21 **MR. FARR:** Your Honor, I'm sure I am going to have an  
22 hour and a half or two hours of cross-examination on  
23 Dr. Stewart and probably that amount on Dr. Burden, who I have  
24 not taken his deposition.

25 **MR. DONOVAN:** Are you calling anyone -- I'm sorry.

1           **MR. FARR:** We would call -- we don't know yet. We  
2 may call Ms. Strach as a rebuttal witness. That would be it.

3           **THE COURT:** Is your expert ready?

4           **MR. DONOVAN:** Sure.

5           **THE COURT:** All right. Let's proceed.

6           **MR. COOPER:** Good afternoon. My name is David Cooper  
7 with the Department of Justice representing the United States.  
8 The plaintiffs call Dr. Charles Stewart.

9           **CHARLES HAINES STEWART, III, PH.D.,** PLAINTIFFS' WITNESS, at  
10 4:55 p.m., being first duly sworn, testified as follows:

11   DIRECT EXAMINATION

12           **BY MR. COOPER**

13 Q       Dr. Stewart, can you please state your name for the  
14 record.

15 A       I am Charles Haines Stewart, III.

16 Q       And can you introduce yourself to the Court?

17 A       Yes. I'm the Kenan Sahin distinguished professor of  
18 political science at MIT where I have been on the faculty since  
19 1985. As a member of the faculty at MIT, I teach graduate and  
20 undergraduate subjects in American politics in general and  
21 specifically elections, voting technology, legislative  
22 politics, and American government in general.

23           I am a member of the Voting Technology Project, the  
24 Caltech/MIT Voting Technology Project, which is a disciplinary  
25 project that was begun after the 2000 elections to provide

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1 scientific analysis of voting technology and election reform.

2 For roughly the last decade, I have been the MIT co-director or  
3 the MIT director of this project.

4 For the last several years, I have been a consultant with  
5 the Pew Charitable Trust as they have developed the elections  
6 performance index, which is a method of assessing the  
7 performance of elections across the 50 states and the District  
8 of Columbia.

9 Last year, I worked with the bipartisan Presidential  
10 Commission on election administration, helped organize a group  
11 of experts who provided advice, white papers, and testimony  
12 considering -- concerning a variety of agenda items that were  
13 given to the commission. I myself testified three times before  
14 the commission about a variety of questions, and I also  
15 developed and implemented -- help develop and implement a  
16 survey of local election officials so that their voices could  
17 be heard in a systematic way before the commission.

18 Finally, I am a fellow of the American Academy of Arts and  
19 Sciences.

20 Q Have you ever worked as an expert witness before?

21 A Yes, I have.

22 Q In what cases?

23 A Three cases previously, all elections. In 2006, I was an  
24 expert in a contested elections case in Florida concerning  
25 voting technology and a question about why votes had been lost

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1 by electronic voting machines. And then in 2012, I was an  
2 expert into Section 5 cases, one concerning the State of  
3 Florida and the other concerning the State of South Carolina.

4 Q And in those two 2012 cases, did the Court rely on your  
5 work?

6 A Yes, they did.

7 Q And as part of your work, both as an expert and your other  
8 professional work, have you performed quantitative analysis  
9 using large data sets?

10 A Yes, I have.

11 Q And has that work included voter databases?

12 A Yes, it has.

13 Q Could you give a couple of examples?

14 A On the academic side, I've co-authored a paper with  
15 Professor Paul Gronke that I mentioned in my expert report in  
16 which I used voter databases, voter data sets from the State of  
17 Florida to analyze changes to their early voting laws after the  
18 2010 election.

19 For my work with the Pew Charitable Trust, I am beginning  
20 to look at large databases across -- election databases across  
21 the country to try to understand election and voting  
22 maintenance procedures across different states; and then for  
23 the two expert reports, the Section 5 reports, I also did  
24 database matching from voter registration files.

25 **MR. COOPER:** Your Honor, the United States offers

1 Dr. Stewart as an expert in American politics, election  
2 administration, research methods, and political science and as  
3 an expert in the effect of election reforms on the American  
4 electorate.

5 **THE COURT:** Any objection?

6 **MR. FARR:** Your Honor, we acknowledge that  
7 Dr. Stewart is an esteemed expert.

8 **THE COURT:** All right. He can give his opinion.

9 **BY MR. COOPER**

10 Q Dr. Stewart, what were you asked to do for this case?

11 A I was asked to examine the effects of three changes of  
12 North Carolina's voter voting law on the likelihood or the  
13 possibility that those changes would produce disparate impacts  
14 on African American voters in the State of North Carolina.

15 Q And specifically which provisions of HB589 did you  
16 examine?

17 A The three provisions were the so-called "same-day  
18 registration" provision, the so-called "early voting"  
19 provisions, and the out-of-precinct provisions as well.

20 Q And were there any others?

21 A No, there were not.

22 Q Briefly, could you summarize your overall conclusion?

23 A Well, very briefly, overall, I concluded that in each  
24 particular the changes and their implementation in the future  
25 will disproportionately burden African Americans in North

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1 Carolina.

2 Q Before I ask you to explain your conclusion in more  
3 detail, could you describe the way that you approached your  
4 analysis for the case?

5 A Yes. In general, the bulk of the analysis was empirical,  
6 and the bulk of the empirical analysis was taken from the voter  
7 registration records provided to me from the state. So I  
8 received data from the state. I received a voter registration  
9 file, which records registered voters in the state. That's  
10 kind of the core uberdata set, and then there are other data  
11 sets as well. There is the voter history data set, there is a  
12 data set recording absentee voting, and there is a data set  
13 recording provisional voters as well. There are other data as  
14 well that come from the state, and I rely on that from time to  
15 time, too, and I note that in my report. So those are the main  
16 data sets that I relied on provided from the state.

17 I also, in a couple of instances, rely on survey research,  
18 one data set that is produced by the Census Bureau, the voting  
19 and registration supplement of the current population survey,  
20 and the other is a survey called the Survey of the Performance  
21 of American Elections, which I have conducted and been  
22 responsible for running since 2008.

23 Q And regarding the voter data that you received from the  
24 state, how would you characterize its quality?

25 A North Carolina has a well-deserved reputation of having

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1 very high quality data in their voter files. I found that to  
2 be the case. Particularly, in the files I received from the  
3 state, registration records from 2006 onward, when all of the  
4 counties were integrated into the SEIMS system, that individual  
5 data I was able to rely on.

6 Q And did the data contain race information?

7 A Yes, it did. And this is an important feature of the  
8 North Carolina voter registration database. Only around I  
9 believe it's eight states nationwide actually record the race  
10 of voters in their voter registration database, which means  
11 that we can come to very precise conclusions using this data  
12 about racial impacts of -- or at least the use of different  
13 features of the voter laws by different racial groups. We  
14 don't have to infer what different voters' races are.

15 Q Is the method that you used in this case a reliable method  
16 for analyzing the questions that you were investigating?

17 A Yes, it is.

18 Q Are there other reliable methods that could be used?

19 A I used the only reliable method that I knew of to answer  
20 these particular questions, particular in reference to the  
21 issues that arise by using the voter registration data, yes.

22 Q And is that method generally accepted in the field of  
23 political science?

24 A Yes, it is.

25 Q And have you used it before in your work?

1 A Yes, I have. And I mentioned previously that I've used it  
2 in my academic work, I have used it in, say, applied consulting  
3 work with the Pew Charitable Trust, and I have used it in my  
4 work previously as an expert witness.

5 **MR. COOPER:** May I approach the witness, Your Honor?

6 **THE COURT:** Yes.

7 **MR. COOPER:** I handed the witness a binder that has a  
8 tab marked Plaintiffs' Exhibit 42, and that document -- the  
9 first page is marked as the joint appendix, page Number 779.

10 **BY MR. COOPER**

11 Q Dr. Stewart, does that exhibit contain the expert report  
12 and the surrebuttal report that you submitted in this case?

13 A There is my expert report and there is my surrebuttal  
14 report, yes.

15 **MR. COOPER:** And may I approach again?

16 **THE COURT:** Yes.

17 **MR. COOPER:** I handed the witness Plaintiffs' Exhibit  
18 168, also previously marked, and the first page of that exhibit  
19 is marked joint appendix, page Number 2,790.

20 **BY MR. COOPER**

21 Q Dr. Stewart, does that -- is that exhibit your  
22 supplemental report that you submitted for this case?

23 A Yes, it is.

24 Q And so do those three reports -- your initial report, your  
25 surrebuttal report, and your supplemental report -- describe

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1 the analyses that you undertook?

2 A Yes, they do.

3 **MR. COOPER:** Your Honor, I move for the admission of  
4 Exhibits 42 and 168.

5 **MR. FARR:** Your Honor, I have a question about this.  
6 I've never seen the supplemental report. When was this  
7 produced?

8 **MR. COOPER:** That was produced along with the  
9 plaintiffs' reply brief.

10 **MR. FARR:** All right. My mistake.

11 **THE COURT:** Hold on just a minute, please. I have  
12 the supplemental declaration filed along with the joint  
13 appendix to the reply brief in support of plaintiffs' motion  
14 for preliminary injunction filed July -- or dated July 1; is  
15 that right?

16 **MR. COOPER:** That's correct.

17 **THE COURT:** Okay.

18 **MR. FARR:** Your Honor, may I just say one thing about  
19 that? I know there were deadlines for the original report and  
20 surrebuttal report, and I didn't have a chance -- my mistake.  
21 I haven't read all the paperwork in this case. I will confess  
22 that. I didn't know this was filed, but I certainly did not  
23 have a chance to take Dr. Stewart's deposition on this, and it  
24 did not comply with the scheduling order for when reports were  
25 supposed to be filed. So we would object to it on those

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1 grounds.

2           **MR. COOPER:** Your Honor, the supplemental report is  
3 limited to a response to a document prepared by the defendants'  
4 expert and provided at her deposition, which was well after the  
5 expert deadlines, and it also responds to a document that was  
6 included with the Amici's filing.

7           **THE COURT:** All right. Well, let's proceed, and then  
8 I will determine, as we get into it, whether or not there's  
9 been any unfair advantage in the case or not. Just preserve  
10 for that question, Mr. Farr, and raise it when we get into  
11 that, if we get to that topic. I don't know what it is the  
12 witness is going to say at this point and how relevant it is  
13 going to be to the issues that are before me.

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

15           **MR. DONOVAN:** Your Honor, if that's so, I would like  
16 to state for the plaintiffs our objection to the out-of-time  
17 that was filed by Dr. Thornton. So if one is out, I think  
18 fairly they both have to be out.

19           **THE COURT:** All right. You all may want to talk  
20 about that at 5:30 and decide whether you want the goose-gander  
21 rule to apply in your case because it may.

22           All right. Please proceed.

23           **MR. COOPER:** Thank you.

24 **BY MR. COOPER**

25 Q     Dr. Stewart, when you summarized your conclusion a few



1 moments ago, I think you said that the post-HB589 laws will  
2 burden African American voters disproportionately; is that  
3 right?

4 A That's correct, yes.

5 Q What did you mean by "burden"?

6 A When I think of burdens, I think in two frame -- using two  
7 framing devices. The first is with respect to cost, and I  
8 think this is the traditional way that political scientists,  
9 the election community have considered matters of election law  
10 over many, many years, the idea being that voting is a costly  
11 act. In order for people to vote, they need to pay either  
12 literal money costs or costs in terms of time and attention,  
13 costs in terms of mental capacity in order to vote -- actually,  
14 in order to register and then to vote.

15 A lot of attention has been paid on both the reform side  
16 and the academic side over at least the last half century, if  
17 not longer, in understanding those costs within political  
18 science and within activism and legislation, by and large,  
19 lowering those costs so that more people can register and more  
20 people can vote.

21 And so within that framing, anything -- it is possible to  
22 raise or lower costs; and when costs are raised for voters,  
23 that is a burden. So that is one of way of thinking about  
24 costs. I would say that's the traditional way of thinking  
25 about burdens, at least within political science.

1           The other way is, I think, a more recent way of thinking  
2 about burdens, which has arisen really in response to the 2000  
3 presidential election and thinking about people within the  
4 election community, including political scientists, about the  
5 role of election administration and ensuring that every vote is  
6 counted as cast because, after all, when we think about the  
7 problems that were brought to light in the case of Florida,  
8 hanging chad and butterfly ballots and people who were  
9 supposedly on voting rolls and were not and those sorts of  
10 things, in almost every instance, those were stories of people  
11 who had actually borne the costs, had done everything that they  
12 were asked to do, and at the end of the day, their vote wasn't  
13 counted as cast because of some sort of failure or shortcoming  
14 of the election administration system, and much of the last  
15 decade has been spent trying to improve election  
16 administration. In fact, I would say that the purpose of the  
17 Caltech/MIT Voting Technology Project has been to quantify,  
18 first of all, lost votes due to failures like hanging chad and  
19 then to ameliorate them.

20           So when I think about a burden being imposed, I also think  
21 in terms of changes to election administration that make it  
22 more likely that a vote cast will not be a vote counted.

23 Q       And when you looked at the three aspects of election law,  
24 did you look at them together? Did they have a cumulative  
25 effect?

1 A Well, I looked at them both. You know, my analysis and my  
2 report is I do look at them separately; but when you step back,  
3 there is a striking cumulative effect, if you will.

4 And the way I like to frame it is, again, within the  
5 Caltech/MIT Voting Technology Project, we have long made  
6 reference to voting as a chain, or the metaphor is that voting  
7 is a chain, and a voter -- in order to have their vote counted,  
8 every link in that chain has to hold strong; and if one link  
9 breaks, then the ability of that voter to have their vote  
10 counted as cast is broken.

11 And so what's striking about this law is that the three --  
12 HB589 and the three provisions that I studied, which apply to  
13 registration, which apply to voting, and which apply to  
14 fail-safe devices in cases of breakdown in voting registration,  
15 each of those cases, seems to me, either imposed costs, as I  
16 mentioned, or reduced the quality of election administration,  
17 all of them in ways that disproportionately affect African  
18 Americans, certainly affect whites as well, but  
19 disproportionately affect African Americans so that there are  
20 more ways in which a vote counted as cast will unlikely be -- a  
21 vote will be unlikely counted as cast or more votes -- or the  
22 cost of voting will be raised across all three.

23 Q Okay. I would like to ask you some more specific  
24 questions about same-day registration.

25 A Sure.

1 Q What did you conclude about the lack of same-day  
2 registration in the post-HB589 regime?

3 A There are two things, and the first thing is the empirical  
4 finding, which is that African Americans were  
5 disproportionately likely to utilize the same-day registration  
6 provisions before the passage of HB589 and, therefore, taking  
7 away or abolishing this provision would disproportionately  
8 affect African Americans.

9 It's also the case that -- well, yes, so it would  
10 empirically more likely affect African Americans. Also,  
11 understanding within political science, that people who  
12 register to vote the closer and closer one gets to Election Day  
13 tend to be less sophisticated voters, tend to be less educated  
14 voters, tend to be voters who are less attuned to public  
15 affairs. That also tells me from the literature of political  
16 science that there are likely to be people who will end up not  
17 registering and not voting. People who correspond to those  
18 factors tend to be African Americans, and, therefore, that's  
19 another vehicle through which African Americans would be  
20 disproportionately affected by this law.

21 Q And in addition to the likelihood that some individuals,  
22 African Americans, won't register, is it also the case that  
23 fewer African Americans will be likely to vote?

24 A Yes, it is, and there is a couple of ways of seeing this.  
25 First of all, given the nature of the law itself, which ties

1 registration and voting together, it follows that if you don't  
2 have the provision, there are, you know, people who will not be  
3 registering and voting simultaneously. As I said before, this  
4 is particularly a mechanism and a time that's well situated for  
5 less sophisticated voters, and, therefore, it's less likely to  
6 imagine that these voters would -- can figure out or would  
7 avail themselves of other forms of registering and voting.

8       The other thing that I would point out is that just  
9 empirically, which I report in -- which I note in my report,  
10 that if we look at the voter participation rate among  
11 registrants who vote in the election year, something between 60  
12 and 80 percent of those people end up voting, say, in a  
13 presidential election year, depending on the day on which they  
14 register. People who vote during the same-day registration  
15 period are voting at 100 percent. So there is no dropoff  
16 between the registration act and the voting act.

17       Finally, there is the interesting and new research that I  
18 cite from Google searches in which I report research from  
19 Street, et al., and collaborators, which looks at searching  
20 patterns in every state in the nation on search terms like  
21 "voter registration" on a day-by-day basis. This is a similar  
22 methodology that's being used increasingly, for instance, by  
23 the CDC to try to find where there are flu outbreaks when  
24 people ask for a search on flu remedies or cough and cold, what  
25 do I do.

1 And so what that research shows is that not only do search  
2 terms or searches on voter registration ebb and flow across the  
3 year, but there are also those searches that go in lockstep  
4 with the number of people who register on those particular  
5 days. So the search term activity can tell us something about  
6 the interests of nonregistrants in registering.

7 And we know that in states without voter -- that have a  
8 hard deadline, say 25 days before the election, like North  
9 Carolina does post-589, that we know in states like that people  
10 continue to search on how do I register in X state, and we know  
11 that will happen in North Carolina, and we know that the answer  
12 they are going to get back in the future will be you can't  
13 register and vote in the upcoming election.

14 Q Let me ask you a question about individuals that  
15 successfully used same-day registration when it was available.  
16 Does the lack of same-day registration now have any effect on  
17 them?

18 A Yes, it does because the same-day registration procedures  
19 can also be used to update registration and to deal with people  
20 moving and those sorts of things, yes.

21 Q And is that moving between counties?

22 A Yes, sir, that's moving between counties.

23 **THE COURT:** I'm not sure I understood that answer.

24 **THE WITNESS:** Well, same-day registration is a period  
25 in which, if you have moved between counties, you could show up

1 in your new county during this period. You missed the 25-day  
2 cutoff. You can go to your new county, and you can register or  
3 vote, having moved.

4 **THE COURT:** Is that post-589 in terms of updating  
5 your address?

6 **THE WITNESS:** I don't believe you can between  
7 counties. Within counties, I believe you can.

8 **BY MR. COOPER**

9 Q Is it the case that -- is there any evidence that  
10 people -- there is a demand for same-day registration for that  
11 particular purpose, people moving between counties?

12 A Well, in the case of North Carolina, I mean, it's a highly  
13 mobile state. It is a highly mobile nation in that African  
14 Americans -- the relevance here for disparate impact is that  
15 African Americans are more mobile and are more likely to move  
16 between counties than whites are.

17 Q Just so I make sure this is completely clear, in order for  
18 a person to reregister after a move, they actually have to  
19 submit a registration form?

20 A That's correct.

21 Q So the post office form isn't going to do that for them,  
22 for instance?

23 A So one of the issues that we have to think about in people  
24 moving is that we know from academic research that a large -- a  
25 large number of people, perhaps a majority of Americans,

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1 believe that the national change of address form updates their  
2 registration automatically, and so, again, folks within the  
3 same-day registration -- you know, sophisticated people believe  
4 this, but folks who are less attuned to the formalities of  
5 governmental procedure are the most -- are more likely to  
6 believe that, you know, registration will follow them in the  
7 same way that everything else follows them when they change  
8 their address, yes.

9 Q Okay. In your report you refer to something called  
10 "churn"?

11 A Yes.

12 Q Can you explain what that is?

13 A I introduced the idea of churn, which I borrowed from  
14 finance, to note that in the same way the size of a mutual fund  
15 can stay relatively constant or can grow over time, yet, there  
16 is a lot of trading of stocks and bonds within that, that we  
17 can look at a voter registration list and see that it's very  
18 large, that it might grow, you know, say relatively gradually  
19 compared to the size of the list over time, and, yet, there is  
20 a lot of activity within the list.

21 So, for instance, according to Election Assistance  
22 Commission statistics, over the most -- the two-year period  
23 leading up to 2012, 30 percent -- North Carolina recorded that  
24 30 percent of voter records were changed somehow, oftentimes a  
25 change of address or name update and those sorts of things.



1 I know from my analysis of the voter records that  
2 18 percent of the records -- 18 percent of the registrants have  
3 records in more than one county, which suggests that people  
4 have been moving around.

5 And the importance of the idea of churn is that  
6 although -- the aggregate numbers can look pretty stable at any  
7 given time. In fact, there is a lot of change underneath; and  
8 with new registrants coming in, it is quite possible for new  
9 changes to voter registration laws to have an effect in very  
10 quick order because of, you know, people already registered  
11 moving around within the database system.

12 Q Now, in your report you discuss historical registration  
13 rates of African Americans in North Carolina as compared to  
14 whites; is that right?

15 A That's correct.

16 Q And what did you find?

17 A Well, what I found and what I reported was registration  
18 rates in basically the last decade, since 2000, expressed in  
19 terms of voting-age population -- I make reference to the trend  
20 before 2000, but the bottom line here is we start with this  
21 period. Whites were registered at a higher rate than the  
22 fraction of population in 2000, registered at a higher rate  
23 than blacks. By the 2012 election, African Americans were  
24 registered at a higher rate than whites.

25 It seemed -- in setting the context of the analysis of

1 change to registration law, this seemed relevant for a couple  
2 of reasons, the first being that it was simply notable as  
3 setting context, that given the long history of the barriers to  
4 voting -- registering and voting that African Americans have  
5 faced in the South and North Carolina, that African Americans  
6 have reached numerical parity and, by at least this measure,  
7 have exceeded at least the registration rates of whites in the  
8 state. That's a notable -- that's a notable landmark. Efforts  
9 to extend the franchise in North Carolina, such as the same-day  
10 registration provisions, no doubt contributed to that.

11 I also, again in setting context, note that North  
12 Carolina, as many southern states, has a long history such that  
13 when whites and blacks reach some form of numerical parity,  
14 that there have been in the past efforts to try to challenge  
15 that parity, and this happened before in the 19th Century; and  
16 I noted, again noting in passage, that, yet again, parity  
17 having been achieved, there are threats now to that parity  
18 through changes to registration law.

19 Q And did you determine that African Americans  
20 disproportionately use same-day registration as compared to  
21 whites?

22 A Yes, I did.

23 Q How did you make that determination?

24 A Very briefly, I used directly the voter registration files  
25 which have, as I mentioned before, both information about the

1 racial -- the race of the registrant and the day on which they  
2 registered, and I used that information to draw a number of  
3 figures and report various tables related to same-day  
4 registration.

5 **MR. COOPER:** Your Honor, I have about three or four  
6 tables I would like to show the witness at various times. May  
7 I have your permission to publish those?

8 **THE COURT:** Yes.

9 **BY MR. COOPER**

10 Q Can you turn, Dr. Stewart, to Exhibit 32 to your initial  
11 report, which is on joint appendix, page 966.

12 A Okay.

13 Q Does this exhibit summarize your findings about the use of  
14 same-day registration?

15 A Yes. As I said, I had a number of tables and figures.  
16 This comprehensively and graphically summarizes the findings  
17 and shows through the -- very briefly shows on a day-by-day  
18 basis in the post -- this 25-day window on a day-by-day basis  
19 the fraction of blacks and whites who are registering, with the  
20 solid line being the fraction of African Americans who register  
21 on a particular day and the dashed line being the fraction of  
22 whites who registered on a particular day.

23 So that's what these are, and it summarizes a number of  
24 other analyses, yes.

25 Q Did you conclude that the differences between use of

1 same-day registration by black and white voters is  
2 statistically significant?

3 A Yes. When I tested for the period of same-day  
4 registration, which would be the 2008, 2010, and 2012  
5 elections, for the entire period, African Americans utilized  
6 same-day registration at a higher degree than whites, and that  
7 difference is statistically significant at traditional levels  
8 used in the social sciences.

9 **MR. COOPER:** Your Honor, this is a pretty good  
10 stopping point, if that would be amendable to the Court.

11 **THE COURT:** All right. Okay. We'll stop right  
12 there. We'll pick up tomorrow morning at 9:00.

13 Does anybody have any issue you need to raise with me  
14 at this time?

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

16 **MR. DONOVAN:** Just real quick, if I could, Your  
17 Honor, just a planning question.

18 **THE COURT:** All right.

19 **MR. DONOVAN:** Based on the estimates of Mr. Farr and  
20 where we are at, it appears we would be done at about 3:00,  
21 3:30 before there is any rebuttal. I just wanted to ask you,  
22 for our planning purposes, how you want to -- shall we just be  
23 ready to argue at 3:00, 3:30? Do you want to start Thursday  
24 morning?

25 **THE COURT:** Well, I appreciate that concern. If we

1 have a reasonable amount of time left tomorrow afternoon, then  
2 I would like to keep moving forward. If we are getting closer  
3 toward the end of the day, I would say close to 4:00 or later,  
4 then we can start first thing Thursday morning.

5 I am hopeful that we can spend a significant amount  
6 of time as necessary on the legal arguments because that's  
7 where I have the most questions in these cases. I don't know  
8 how long that will take, but certainly if we had Thursday to do  
9 it, I would imagine -- I would hope we would be done either by  
10 lunch, if we extend the time a little bit, or at least early  
11 afternoon.

12 Are you having a different thought than that?

13 **MR. DONOVAN:** No, I think that works. Just for your  
14 purposes, we've been coordinating on plaintiffs' side. Our  
15 plan is to kind of argue the preliminary injunction motion but,  
16 within that, address the legal issues that are raised by the  
17 12(c) motion. They kind of go together. Our plan, so you  
18 know, is to kind of do it all together, if that's acceptable to  
19 you. I know there may be separate questions.

20 **THE COURT:** I think the legal issues are going to be  
21 intertwined, so the discussion of the law, I think, is going to  
22 at least be similar. That would be my plan.

23 **MR. DONOVAN:** Thank you, Your Honor.

24 **MR. FARR:** We have nothing else, Your Honor.

25 **THE COURT:** Yes, ma'am?

1           **MS. O'CONNOR:** Your Honor, briefly, one housekeeping  
2 issue. I have spoken with Ms. Solomon earlier about this.

3           There was a little bit of confusion on the record  
4 earlier today about the numbering of exhibits, and so we said  
5 we would just for the record put in what was in today so that  
6 it's clean, and I will just read those off quickly. There is  
7 only a couple.

8           **THE COURT:** All right.

9           **MS. O'CONNOR:** In Senator Glazier's exam, it was  
10 PX216, legislative fiscal note. In Mr. Bartlett's exam, it was  
11 PX56, the State Board of Elections report on implementation of  
12 same-day registration, and PX60, State Board of Elections  
13 memorandum regarding House Bill 658. And then just now in  
14 Dr. Stewart's exam, it was PX42, Dr. Stewart's report and  
15 surrebuttal report, and PX168, Dr. Stewart's supplemental  
16 report. Those are the exhibits for today.

17           **THE COURT:** Are you going to continue to use the  
18 numbers like PX, or are you going to some other numbers?

19           **MS. O'CONNOR:** We are going to continue with the PX  
20 numbers, and we have provided a list that has the index of all  
21 those numbers, so we will continue to do that.

22           **THE COURT:** To the extent that they are exhibits that  
23 have already been filed and are in the joint appendix, if you  
24 could always tell me the joint appendix number, that would be  
25 helpful.

1           **MS. O'CONNOR:** If it's helpful for reference, we  
2 numbered them so that the 1 through approximately 200 actually  
3 correspond to the tabs in the joint appendix index. So those  
4 numbers, PX1 through approximately 200, match up with your  
5 index.

6           **THE COURT:** Okay. You all have a good evening.  
7 We'll see you tomorrow morning starting at 9:00.

8           (COURT RECESSED AT 5:32 P.M.)

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10                               END OF VOLUME II OF IV

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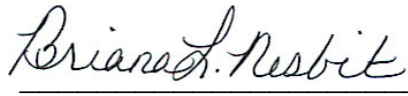
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1 UNITED STATES DISTRICT COURT  
2 MIDDLE DISTRICT OF NORTH CAROLINA  
3 CERTIFICATE OF REPORTER

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I, Briana L. Nesbit, Official Court Reporter,  
certify that the foregoing transcript is a true and correct  
transcript of the proceedings in the above-entitled matter.

Dated this 17th day of July 2014.

  
\_\_\_\_\_  
Briana L. Nesbit, RPR  
Official Court Reporter