
STATE OF NORTH CAROLINA

BEFORE THE

COUNTY OF WAKE

WAKE COUNTY BOARD OF ELECTIONS

IN RE: CHALLENGE TO)
VOTER REGISTRATIONS)

TRANSCRIPT OF
EVIDENTIARY HEARING

Aida Doss Havel, Chairperson
Kristi Tally, Secretary
Joshua H. Howard

TUESDAY, AUGUST 21, 2012

Conference Room

Wake County Public Safety Center

330 South Salisbury Street

Raleigh, North Carolina

9:00 a.m.

Volume 1 of 1

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Jennifer Montgomery, Clerk
Wake County Board of Elections

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1 present.

2 I shared with the county attorney that in the past
3 I have been out of town on a couple of occasions and have
4 called in and have voted over the phone with no problem, and
5 that seems to be the prior practice of this board. However,
6 there is no rule either allowing it or prohibiting it, so I'm
7 just going to ask the challenger, Mr. DeLancy, if he has any
8 objection to Mr. Howard voting by telephone, and if you do,
9 then we'll deal with it, but---

10 Mr. DeLancy: (interposing) Okay. That
11 will be fine. Good morning, Josh. Yeah, that'd be fine.

12 Mr. Warren: And let me clarify. There is
13 authorization in certain circumstances for state government,
14 but--and--but that may or may not apply here, but since
15 everyone is in agreement and this has been the practice of
16 the board, I think we're good to go with Mr. Howard
17 participating.

18 Chairman Havel: Did you get all that, Mr.
19 Howard?

20 Mr. Howard: Yeah. I couldn't hear Scott
21 very well.

22 Mr. Warren: We're good to go.

23 Mr. Howard: Okay, great.

24 Chairman Havel: Okay. So I will just briefly
25 introduce everybody. My name is Aida Doss Havel. I am the

1 chair of the Wake County Board of Elections. To my right is
2 Kristi Tally, the secretary of the Board of Elections, and
3 participating by speakerphone is Josh Howard, the member of
4 the Board of Elections.

5 To my left is Cherie Poucher, the director of the
6 Board of Elections. Sitting to her right is Scott Warren,
7 the county attorney. Over here is--to my right is Gary Sims,
8 the deputy director of the Wake County Board of Elections,
9 and Jennifer Montgomery, clerk to the board. Over here to
10 their right is Kay McGovern, the court reporter. And Mr.
11 DeLancy is here as the challenger.

12 A brief opening statement as to how we got where
13 we are here. This is essentially the second half of a two
14 step process that started on June 26, 2012. On June 26,
15 2012, we had a preliminary hearing on approximately 550
16 challenges that were brought by the challenger, Mr. DeLancy,
17 to the register of Wake County voters on the grounds that
18 they were not U.S. citizens.

19 At the end of that hearing, this board determined
20 that there was probable cause to move forward to this
21 hearing, which is known as a full hearing, on 18 of those
22 challenged voters. And we are here for this full hearing on
23 the registration of those 18 Wake County voters.

24 The burden of proof at that hearing was on the
25 challenger. The burden of proof at this hearing remains on

1 the challenger. And we are conducting this hearing pursuant
2 to Section 163-86 of the North Carolina General Statutes.

3 Following the preliminary hearing, this board
4 directed the director of the Wake County Board of Elections
5 to send letters to the 18 challenged voters requesting that
6 they either provide proof that they were U.S. citizens or
7 asking that they--or to send back a form stating that their
8 names should be removed from the rolls. And I believe the
9 director will be testifying later as to what contact she has
10 or has not had from those various registered voters.

11 The procedure at this hearing will be similar to
12 the last hearing. Mr. DeLancy will present his evidence.
13 Ms. Tally and I, and to the extent that Mr. Howard wishes to,
14 will ask any questions of him. Ms. Poucher will then present
15 evidence on behalf of the county Board of Elections. Ms.
16 Tally and I and Mr. Howard will ask any questions. Mr.
17 DeLancy will then have an opportunity to ask questions.

18 And then we will proceed to vote on each
19 individual challenged voter and make a decision as to whether
20 they are--whether the challenger has met his burden of proof
21 or failed to meet his burden of proof. And that will be the
22 substance of the hearing. Any comments or questions?

23 (No response.)

24 Chairman Havel: All right. At this time I
25 would ask the court reporter to please administer the oath to

1 anyone who's going to testify. I believe that's Mr. DeLancy
2 and Ms. Poucher.

3 Ms. Poucher: Are there any challenged
4 voters---

5 Chairman Havel: (interposing) Are there any
6 challenged voters present, anybody who received a notice
7 today for today's hearing?

8 (No response.)

9 Chairman Havel: All right.

10 (Whereupon,

11 **CHERIE POUCHER**

12 **JAY N. DeLANCY**

13 were sworn collectively.)

14 Chairman Havel: Mr. DeLancy, you may proceed.

15 Mr. DeLancy: Okay. Good morning.

16 Chairman Havel: Good morning.

17 Mr. DeLancy: The--part of what I need to do
18 is refer back to and get it on the record about the previous
19 hearing, because the burden of proof we have--the only proof
20 we ever had was the actual information that people provided
21 to Ms. Lorrin Freeman, the clerk of courts.

22 And as you recall in the previous hearing, she
23 testified that they proved to her that they were not citizens
24 in their getting out of jury duty. And so that was the basis
25 of our challenge. We did not provide anything beyond that

1 because we felt that one government agency testifying that
2 they were not citizens was enough.

3 And so I realize that sadly in the court--you
4 know, I'm not a lawyer, and we don't have lawyers working
5 with us. We--to us that seemed good enough evidence right
6 there, and then to turn around and for the DMV testimony to
7 claim that all those people were citizens was unfortunate
8 because they didn't--they weren't at the hearing in order to
9 actually be asked about people who got licenses before the
10 Technical Corrections Act of 2006, which I've subsequently
11 learned anyone who got a license before then is assumed a
12 citizen.

13 Actually, she said that at the hearing, Ms.
14 DeGraffenreid said that, and yet they were all assumed to be
15 citizens even though we know some of them were not because
16 there are people who have licenses that were issued prior to
17 2006 who are not citizens. And also those licenses are still
18 not expired.

19 So we find it unfortunate that the people who did
20 not obey the law and snuck through actually were not
21 prosecuted and the people who did obey the law and have
22 actually obtained a legal presence license that we have gone
23 forward on them. I understand that's the way it is, but
24 that's the only proof I have really is the testimony of Ms.
25 Freeman from the previous hearing.

1 Chairman Havel: Mr. DeLancy, we're here on a
2 full hearing today just on these 18 challenged voters, so
3 just---

4 Mr. DeLancy: (interposing) Okay, fair
5 enough.

6 Chairman Havel: ---limit your testimony to
7 that, please.

8 Mr. DeLancy: Okay.

9 Chairman Havel: Thank you.

10 Mr. DeLancy: All right. So what I'm
11 prepared to do is just go through--from looking at your
12 evidence, it looks like quite a few of them have presented
13 proof, and we'll sustain--I mean I'll agree with all of
14 those. And there's only one I don't see you have evidence on
15 that I do, that she actually mailed me her naturalization
16 papers, and so I'll be happy to share that with you too. So
17 I'll proceed.

18 Chairman Havel: Well, this is your opportunity
19 to present whatever you have.

20 Mr. DeLancy: Okay.

21 Chairman Havel: I have not looked at this,
22 so---

23 Mr. DeLancy: (interposing) Okay. All
24 right. Well---

25 Chairman Havel: ---you and Ms. Poucher have to

1 present whatever you wish to present at this time.

2 Mr. DeLancy: Okay. All right. Then what
3 I'd like to do is just go through these, I guess, one by one
4 unless--I thought y'all were going to.

5 Ms. Poucher: That's what I'm going to.

6 Mr. DeLancy: Okay. And then will I be able
7 to testify--or to comment on them then, or do I need to say
8 it all now and be done with it?

9 Chairman Havel: This is a fairly informal
10 proceeding, I think. As long as Ms. Tally doesn't have any
11 objection, if you want to comment as she is---

12 Mr. DeLancy: (interposing) It would be
13 more efficient.

14 Chairman Havel: Well, the only problem I have,
15 and I would defer to the county attorney, is that the burden
16 of proof is on you. So you may need to present--I think you
17 probably need to present your evidence first, whatever your
18 evidence is of any voter that is not a registered---

19 Mr. Warren: Do you want me to read the
20 statute, Madam Chair, about the burden of proof?

21 Chairman Havel: Right, I'm happy to do that.

22 Mr. Warren: Or do you want to go ahead--
23 and that might be good for the people listening as well,
24 163-90.1. Do you---

25 Chairman Havel: (interposing) If you'll read

1 it, that's fine.

2 Mr. Warren: This is G.S. 163-90.1, burden
3 of proof. It's two paragraphs. The first one has some
4 application but not much here. "Challenges shall not be made
5 indiscriminately and may only be made if the challenger
6 knows, suspects or reasonably believes such a person not to
7 be qualified and entitled to vote."

8 The second paragraph states that "No challenge
9 shall be sustained unless the challenge is substantiated by
10 affirmative proof. In the absence of such proof, the
11 presumption shall be that the voter is properly registered or
12 affiliated." So the burden is on the challenger, but that's
13 not to say that what you hear from Ms. Poucher can't be
14 subsumed into that to get to your result.

15 Chairman Havel: Do you have any advice on the
16 most expeditious way of going about this?

17 Mr. Warren: It sounds like that Mr.
18 DeLancy and Ms. Poucher are in agreement for the most part on
19 this (indicating), this document.

20 Ms. Poucher: He just got this today.

21 Mr. Warren: Just got it---

22 Mr. DeLancy: (interposing) All I have is
23 the book. I don't have---

24 Mr. Warren: (interposing) He's got a
25 book.

1 Mr. DeLancy: ---anything but the book.

2 Ms. Poucher: He has the book. It's the

3 same book we have, but we've redacted the confidential

4 information. I do not have whatever Mr. DeLancy is referring

5 to.

6 Ms. Tally: But just for clarification,

7 the book--the information in the book, does align with what's

8 on the---

9 Ms. Poucher: (interposing) Correct.

10 Ms. Tally: ---spreadsheet.

11 Ms. Poucher: Yes.

12 Ms. Tally: This does?

13 Mr. Warren: Okay. That's all in that---

14 Ms. Tally: (interposing) It's a succinct

15 version---

16 Ms. Poucher: (interposing) Correct.

17 Ms. Tally: ---of what's in the book,

18 right?

19 Ms. Poucher: Yes.

20 Mr. Warren: Right.

21 Ms. Tally: So he actually has more

22 information---

23 Ms. Poucher: (interposing) If he---

24 Ms. Tally: ---to support what is---

25 Mr. Poucher: (interposing) If he has---

1 Ms. Tally: ---this spreadsheet?

2 Ms. Poucher: If he has received something

3 from a voter that we have not.

4 Ms. Tally: Okay.

5 Mr. Warren: I would recommend,

6 particularly as a precedent, that Mr. DeLancy go forward

7 voter by voter--there's only 18 of them--say what he wants to

8 say, and then let it go to Ms. Poucher.

9 Mr. DeLancy: May I ask---

10 Ms. Tally: (interposing) I think that's

11 the best way.

12 Mr. DeLancy: Part of the problem I'm

13 having, though, is that this burden of proof--I didn't go to

14 law school, and this burden of proof is a problem for me.

15 Would y'all agree--I mean, Ms. Doss, you actually recorded

16 the meeting last time, but I never heard the recording of it.

17 And I'm wondering would you--would anyone in this

18 room agree that the clerk of courts did testify that all the

19 people we submitted were people who had gotten out of jury

20 duty by claiming they were noncitizens?

21 Chairperson Havel: First of all, I did not record

22 the hearing last time. It was recorded by the staff of the

23 Board of Elections. My understanding is there was an equip-

24 ment malfunction---

25 Mr. DeLancy: (interposing) Okay.

1 Chairperson Havel: ---and we do not have that
2 recording.

3 Mr. DeLancy: Okay.

4 Chairperson Havel: Therefore, we all have to rely
5 on our recollection and the findings of fact and conclusions
6 of law in the order that was drafted.

7 We're here solely on a full challenge to these 18
8 voters. And so the burden of proof again is on you to
9 present any evidence that you have as to whether these 18
10 voters are or are not U.S. citizens. If they are not U.S.
11 citizens, then they are not qualified to register to vote or
12 to vote.

13 Mr. Warren: And let me interject too, Mr.
14 DeLancy, for your benefit, the burdens--the standard of proof
15 in these two hearings may not necessarily be the same. There
16 is a lesser burden at the preliminary stage, and the burden
17 here is higher. So does that help? They'll take notice--
18 they certainly have notice of what transpired before.

19 Mr. DeLancy: Yes. Okay. Well, I under-
20 stand that. It's--okay. The idea of our submission of all
21 these was based on state evidence from the beginning that was
22 submitted in the previous hearing, which is why I refer to
23 it. And I didn't bring--I didn't summon Ms. Freeman to come
24 here and testify because we know this from the previous
25 hearing what she said. Does that evidence count in this

1 hearing is all I'm wondering.

2 Mr. Warren: The board takes notice of what
3 has happened before. But again, the burden is different for
4 this hearing, and it's got to be affirmative proof. Now, how
5 that proof gets upon the board is partly up to you and partly
6 to county staff.

7 So I'd recommend going ahead and proceeding, going
8 ahead and going through it, give them what you want to--you
9 know, what you have, what you want to talk about, and then
10 let it shift to Ms. Poucher, and hopefully we'll get to the
11 right place in---

12 Mr. DeLancy: (interposing) Well, the
13 problem I have here now is I would prefer that we not go
14 today if this is the way it'll be because I don't have any
15 additional--I don't have the witnesses. I didn't summon
16 people here, and it looks like I should have. So that's---

17 Mr. Warren: (interposing) Right. I'm not
18 sure what we're missing here.

19 Ms. Poucher: Well, I---

20 Mr. Warren: (interposing) It's just for
21 these 18 that are---

22 Ms. Tally: (interposing) The 18.

23 Mr. DeLancy: I mean if I have to prove
24 something---

25 Chairperson Havel: (interposing) Is it my

1 understanding---

2 Mr. DeLancy: ---from a previous hearing---

3 Chairperson Havel: (interposing) I don't want to
4 put words in your mouth, but do you have any additional
5 evidence regarding these---

6 Mr. DeLancy: (interposing) No.

7 Chairperson Havel: ---18 voters?

8 Mr. DeLancy: Other than one in the
9 affirmative that I---

10 Chairperson Havel: (interposing) Okay.

11 Mr. DeLancy: ---that I'm supporting her--
12 sustaining her staying on the roll, no, I don't. And yeah,
13 that's the bare truth to it---

14 Chairperson Havel: (interposing) Do you---

15 Mr. DeLancy: ---because I didn't bring the
16 witness here and---

17 Chairperson Havel: Do you want to present
18 evidence on that one witness?

19 Mr. DeLancy: Sure, that would be fine, or
20 could we---

21 Chairperson Havel: (interposing) You may
22 proceed.

23 Mr. DeLancy: Could we do it another way?
24 Could we---

25 Chairperson Havel: (interposing) Sure.

1 Mr. DeLancy: Let's go to the ones that are
2 not disputed because there's a whole bunch of them I agree
3 with you just let them go, and then the ones that we don't,
4 perhaps maybe we just carry over the ones that you feel I
5 need to make--I---

6 Chairperson Havel: (interposing) Well, let me be
7 clear. We're---

8 Mr. DeLancy: (interposing) Yeah.

9 Chairperson Havel: ---not carrying anything over
10 unless---

11 Mr. DeLancy: (interposing) Okay.

12 Chairperson Havel: ---I'm on the losing side of a
13 vote between my three colleagues---

14 Mr. DeLancy: (interposing) Yeah.

15 Chairperson Havel: ---or my two colleagues. This
16 hearing was properly noticed and---

17 Mr. DeLancy: (interposing) All right.

18 Mr. Warren: Right.

19 Chairperson Havel: ---scheduled, and we're going
20 to proceed today.

21 Mr. DeLancy: All right. Let's just go.

22 Ms. Tally: I think we need to move
23 forward with (inaudible).

24 Chairperson Havel: Well, yeah. I'm a little
25 concerned about the---

1 The Reporter: (interposing) I'm sorry, I
2 didn't hear you. What did you just say?

3 Ms. Tally: I said I would say we need to
4 move forward with Cherie's testimony so that she can break
5 down the information that has been supplied--supplied to us,
6 or submitted.

7 Chairperson Havel: And I would respectfully
8 disagree just because I think the burden of proof is on Mr.
9 DeLancy, and I think he needs to go first and then Ms.
10 Poucher can go.

11 Ms. Tally: Oh, I was under the under-
12 standing that he didn't have anything beyond---

13 Chairperson Havel: (interposing) I think there's
14 one voter that he---

15 Ms. Tally: (interposing) Oh.

16 Chairperson Havel: ---wants to present some
17 evidence on.

18 Mr. DeLancy: All right. It frustrates me
19 that I'm going to lose all these because of not having a
20 burden of proof. It doesn't surprise me, but I was under the
21 mistaken assumption that a government agency saying--
22 reporting out that they were not citizens was good enough
23 information. And if that's not a burden of proof, then I
24 have nothing else to add to this, so go ahead.

25 Mr. Warren: Can I---

1 Chairperson Havel: (interposing) Do you want to
2 present--go ahead.

3 Mr. Warren: Can I interrupt again? I
4 think--I think you're conflating two things. One is the
5 burden of proof, which falls to you as the challenger, but
6 the statute here states affirmative proof, and what is
7 affirmative proof is up to the board. So this is your
8 opportunity. It doesn't necessarily mean that they won't
9 find affirmative proof to stay the challenges.

10 Mr. DeLancy: Okay.

11 Mr. Warren: Is that okay?

12 Mr. DeLancy: All right. Well, what I will
13 say on the record, then, about this evidence is that each of
14 these people who are still being--who have been carried over
15 to today, I--you know, under oath I will affirm to you that
16 they were--their names appeared to us from evidence given
17 from the Wake County clerk of courts in a process where we
18 asked Lorrin Freeman--and there is an e-mail trail and public
19 record of this.

20 Lorrin Freeman actually provided the data to us
21 that affirmed that these people were not--they had claimed
22 they were not U.S. citizens as part of their proceedings that
23 got them out of jury duty. They gave us a list of--the
24 clerk's office gave us a list of 6,000 people over the last
25 two years who had gotten out of jury duty under that excuse,

1 if you will. And so they were disqualified for jury duty for
2 being noncitizens.

3 And we asked Ms. Freeman to provide us a list of
4 all the people who were provided--who were disqualified for
5 jury duty as being noncitizens, and she did. I do not have
6 that list with me. I'd say poor lawyering here, but the
7 bottom line to it is the fact that we have these names.
8 Those are the names that were left over. And Ms. Freeman
9 made public statements to that effect at a previous hearing,
10 but I don't have Ms. Freeman here with me either. So each of
11 these, that's the reason they're here.

12 Chairperson Havel: What evidence, if any, do you
13 have on these 18 names?

14 Mr. DeLancy: Okay. The only evidence I
15 have on any of them is--thank you for helping me focus on
16 that--is one I'd like to enter as--apparently if I'm reading
17 this binder correctly, you did not have the certificate of
18 naturalization for Ms. Ana Zamfira Muresian (phonetic),
19 Muresan. I can't pronounce it. It starts with an M and then
20 goes---

21 Chairperson Havel: (interposing) We do.

22 Mr. DeLancy: ---u-r-e-s-a-n. You do?
23 Okay. She called me and was very concerned that just in case
24 you didn't get it and wanted me to be sure you had it. And I
25 don't have it in this book, so I didn't know if you got that.

1 And I would ask you not to--not to take her off the roll.

2 Ms. Poucher: We have that. The names are
3 in alphabetical order. It should be in the book unless it
4 was misfiled.

5 Chairperson Havel: Yes, I see that. And so, Mr.
6 DeLancy, your request is that she not be removed from the
7 rolls?

8 Mr. DeLancy: Correct, yes, that y'all keep
9 her on there. She strikes me as a law abiding type.

10 Chairperson Havel: All right. Mr. DeLancy, do
11 you have any further evidence on any of these 18 voters?

12 Mr. DeLancy: Ms. Havel, I'm afraid not.

13 Chairperson Havel: That's fine.

14 Mr. DeLancy: Okay.

15 Chairperson Havel: All right. Ms. Tally, do you
16 have any questions for Mr. DeLancy?

17 Ms. Tally: No further questions.

18 Chairperson Havel: Okay. Mr. Howard, do you have
19 any questions for Mr. DeLancy?

20 Mr. Howard: None for me.

21 Chairperson Havel: Thank you. Ms. Poucher?

22 Ms. Poucher: Okay. First of all, if the
23 noise gets too loud with jackhammering in there, let us know.
24 We have explained to the guard that there is a meeting going
25 on, and they'll see if they can stop.

1 Each of the board members does have a book in
2 front of them. Your books do have the confidential informa-
3 tion in it which relates to the voter's date of birth, signa-
4 ture, driver's license number, et cetera. I have given the
5 complete book to Mr. DeLancy and one for the court reporter.
6 Both of those the confidential information has been redacted.
7 So if you are going to put documents into evidence, the court
8 reporter already does have a copy and a book.

9 If I may go name by name and the board may make a
10 decision with name by name, I do think that would be the most
11 efficient way to do it.

12 Chairperson Havel: All right.

13 Ms. Poucher: The--and if I can--I have
14 numbered the report on the challenge. And I do have
15 additional copies that if the board allows me to have them
16 distributed, they can be distributed now.

17 Chairperson Havel: Do my colleagues have any
18 objection to distributing copies of the report on the
19 challenged voters?

20 Ms. Tally: I do not.

21 Mr. Howard: No objection.

22 Chairperson Havel: And I think people are going
23 to be--need to begin to start speaking up based on that
24 jackhammer.

25 Ms. Poucher: And if you don't mind, because

1 I do hate mispronouncing names, if we can go by numbers, it
2 would be very much appreciated.

3 Chairperson Havel: All right. The VRN, is that
4 what you are referencing?

5 Ms. Poucher: Pardon me?

6 Chairperson Havel: The VRN number?

7 Ms. Poucher: No, there's a--I gave you a
8 new sheet that has numbers on the side.

9 Chairperson Havel: Oh, oh, just 1 through---

10 Ms. Poucher: (interposing) Yeah, 1 through
11 18.

12 Chairperson Havel: Okay, I've got it.

13 Ms. Poucher: Okay.

14 Ms. Tally: Yeah, I thought you meant the
15 VRN too.

16 Ms. Poucher: No. Voter number 1--as the
17 board has already mentioned, after the preliminary hearing a
18 letter was sent to each of the 18 challenges--challengers--
19 regarding the meeting today.

20 They received a copy of the notice of challenge,
21 notice of the hearing, and also a form, "Please use this form
22 to advise us whether you are a United States citizen," and
23 then a spot on the bottom if they were not.

24 For number 1, I have received--he was--the
25 gentleman was naturalized in June 2011. I have received a

1 copy of his passport. And he registered to vote in 2012.
2 Therefore, he was a citizen at the time that he registered to
3 vote.

4 Chairperson Havel: Thank you. Do my board
5 members--do my board colleagues have any questions for Ms.
6 Poucher?

7 Ms. Tally: No. It's clear.

8 Chairperson Havel: Mr. DeLancy, do you have any
9 questions?

10 Mr. DeLancy: No questions.

11 Ms. Poucher: Do we have a motion on---

12 Chairperson Havel: (interposing) May I have a
13 motion on voter number 1?

14 Ms. Tally: I move to dismiss the
15 challenge based on the fact that Mr.--that voter number 1
16 provided appropriate documentation that they are a valid
17 voter.

18 Chairperson Havel: Is there a second?

19 Mr. Howard: Second.

20 Chairperson Havel: And I agree.

21 Ms. Poucher: The second one is a little bit
22 more complicated. Both of the--I mailed a letter that was
23 returned undeliverable. I did a second mailing to the same
24 address or to a different address if the post office gave us
25 an updated address. Both of those were returned

1 undeliverable.

2 That voter through the normal list maintenance
3 procedures has been listed as inactive since May 2009. The
4 person registered and requested an absentee ballot via the
5 federal post card application in 2004 as a citizen living
6 overseas. On the federal postcard she does list the state of
7 birth as New Jersey, and it does have her passport number.

8 She did vote in 2004, but due to the fact that her
9 mailings have been returned, that is all the information I
10 have on her except, as I said, the federal postcard
11 application where she did list her social security number and
12 her full passport number and state of birth as New Jersey.

13 Chairperson Havel: Has she already been removed?

14 Ms. Poucher: No, she is in the inactive
15 status since 2009.

16 Ms. Tally: Would you mind reminding us of
17 the process to make a voter inactive on the roll?

18 Ms. Poucher: If we mail a voter card to a
19 voter and it is returned undeliverable, that voter will be
20 mailed a forwardable confirmation mailing. If we get a new
21 address, it's sent to--it's mailed to the new address. It
22 has a postage--prepaid postcard that they can update their
23 address or let us know they moved out of county.

24 If that also is returned undeliverable, they are
25 then placed in an inactive status, where they will remain for

1 two general elections, federal elections. If after those two
2 federal elections we still have not heard from them, then it
3 will be at that time they are removed.

4 Ms. Tally: So how does--how does a voter
5 reinstate? If they are inactive, how do they reinstate to
6 become a fully--full-fledged, eligible voter?

7 Ms. Poucher: Any type of contact with our
8 office, whether it be updating our address or voting again,
9 will--they will update their address at early voting, et
10 cetera, or if they vote a provisional ballot, it is with
11 the--there is a statement on there that they sign stating
12 that they have not moved out of Wake County. Now, this
13 person we know was overseas.

14 Chairperson Havel: So we have received nothing to
15 counteract the evidence that Mr. DeLancy brought forward at
16 the preliminary hearing?

17 Ms. Poucher: Except for her--the FPCA, the
18 application that she sent, the federal application that she
19 sent listing her place of birth as New Jersey, and her
20 passport number.

21 Chairperson Havel: But we have not seen a
22 passport or any other proof that she is a citizen?

23 Ms. Poucher: That's correct. And she would
24 be one that would be removed after the next cycle.

25 Ms. Tally: So after the 2012, she will be

1 totally removed from the roll?

2 Ms. Poucher: Being that she did not vote in
3 2010 and presumably will not vote in 2012---

4 Ms. Tally: (interposing) Right, and so
5 you're saying---

6 Ms. Poucher: ---then---

7 Ms. Tally: ---that she didn't vote in the
8 2008 presidential---

9 Ms. Poucher: (interposing) Correct.

10 Ms. Tally: ---election, so---

11 Ms. Poucher: (interposing) But she
12 didn't---

13 Ms. Tally: ---she didn't vote until---

14 Ms. Poucher: (interposing) She did not
15 become inactive until 2009.

16 Ms. Tally: Okay. I've got you. Okay.

17 Chairperson Havel: May I have a motion regarding
18 number 2?

19 Mr. DeLancy: May I ask a question?

20 Chairperson Havel: Oh, I'm sorry, Mr. DeLancy, of
21 course.

22 Mr. DeLancy: If--okay, so she's an inactive
23 voter. If she shows up to vote early, would there be--would
24 she just walk in, anyone present in her name and get to vote
25 even though she's inactive, or would there be any burden for

1 her to confirm her identity or anything, ID of any sort?

2 Ms. Poucher: Anytime a voter goes to the
3 polls to vote or early voting, they are signing the
4 authorization to vote or the address change form, which is an
5 affirmation that they are that person.

6 Mr. DeLancy: So no ID required, anybody
7 could walk in there and claim to be her?

8 Ms. Poucher: We follow the law.

9 Mr. DeLancy: And she would sign a piece of
10 paper. I just want to be sure I understand that process.

11 Mr. Warren: Well, let me go, if I could
12 jump in, to 163-90.2(a), "When [a] challenge is sustained for
13 any cause...under 163.85..., the board shall cancel or
14 correct the voter registration." So if the challenge is
15 sustained, her voter registration is canceled. Does that---

16 Mr. DeLancy: Well, no. I'm wondering if
17 it's not sustained and she's still listed as an inactive
18 voter until 2013, until after this election, what would be
19 the--what would be the likelihood of someone getting caught
20 if they walked in and signed--on the last day, or even on
21 election day, if they walked in and signed--signed in saying
22 they were her?

23 Ms. Poucher: The Wake County Board of
24 Elections follows all of the procedures as detailed in North
25 Carolina General Statutes 163. That is all that we can do

1 when it comes to people entering a polling place or an early
2 voting site to vote.

3 Signature is not required. ID is only required if
4 when they originally registered to vote their driver's
5 license number or the last four digits of their social
6 security number were not validated. That is the extent of
7 what all 100 county board of elections can do in the state of
8 North Carolina.

9 Mr. DeLancy: Okay. So the number would be
10 validated. They wouldn't have to show their ID. Okay. I
11 just wanted to be sure I understood that. Also since you
12 have the social security number and you work for the state,
13 were you able to confirm either the social security number or
14 the passport number belonging to this person?

15 Ms. Poucher: I do not work for the state of
16 North Carolina. I work for the county of Wake.

17 Mr. DeLancy: Fair enough.

18 Ms. Poucher: I sent the information to the
19 state. I have gotten no response. I do not have access to
20 contact--counties do not have access to contact Social
21 Security or even DMV individually. It all goes through the
22 State Board of Elections.

23 Mr. DeLancy: So the only evidence we have
24 that she is a citizen is she wrote some numbers down on a
25 piece of paper and mailed it to you in 2000 and---

1 Ms. Poucher: (interposing) In 2004; it was
2 sent electronically through the federal form.

3 Mr. DeLancy: All right. And the only thing
4 I have is her getting out of jury duty by claiming she was
5 not a citizen. Okay. I have no further questions.

6 Chairperson Havel: Any questions or comments by
7 either of my colleagues?

8 Ms. Tally: I don't have any.

9 Mr. Howard: None for me.

10 Ms. Tally: Oh, did he have a comment?

11 Chairperson Havel: I'm sorry. What did you say,
12 Mr. Howard?

13 Mr. Howard: None for me, thank you.

14 Chairperson Havel: Okay. May I have a motion
15 regarding this voter?

16 Ms. Tally: I move that we dismiss the
17 challenge for voter number 2, particularly given that we've
18 already done our due diligence from the BOE's standpoint and
19 rendered this voter inactive on the voter rolls since May
20 2009.

21 Ms. Poucher: Number 3---

22 Chairperson Havel: (interposing) Is there a
23 second?

24 Mr. Warren: All right. Hang on.

25 (Pause.)

1 Chairperson Havel: Mr. Howard, you're not
2 inclined to second that motion?

3 Mr. Howard: I'm not. I think we should
4 actually do--take a little more action on that.

5 Chairperson Havel: Yeah, I'm really--honestly,
6 I'm on the fence about this one. You know, Mr. DeLancy
7 provided evidence that she swore she was not a U.S. citizen
8 on her jury summons.

9 And I believe she's swearing on this federal
10 postcard thing that she is a U.S. citizen and she's given a
11 passport number, but we don't have any affirmative proof of
12 that. And given that the mail has been returned as
13 undeliverable, I'm inclined to think that the challenger has
14 carried his burden of proof on this one.

15 Ms. Poucher: Madam Chair?

16 Mr. Howard: I agree.

17 Ms. Poucher: May I speak also?

18 Chairperson Havel: Yes, Ms. Poucher.

19 Ms. Poucher: If you refer to the documents
20 that I gave you, which is 163-85, Section (e) where it comes
21 to:

22 "Prima Facie Evidence That [the] Voter No Longer
23 Resides in [the] Precinct - The presentation of a
24 letter mailed by returnable first-class mail to
25 the voter at the address listed on the voter

1 registration card and returned because the person
2 does not live at the address shall constitute
3 prima facie evidence that the person no longer
4 resides in the precinct."

5 And again, one of the issues on the challenge
6 form, which is listed in 85(c)(3), would be that a person is
7 not a resident of the precinct--or grounds for challenge:

8 "That a person is not a resident of the precinct
9 in which the person is registered, provided that
10 no such challenge [shall] be made if the person
11 removed his residency and the period of removal
12 has been less than 30 days."

13 And this person has been inactive since 2009.

14 Chairperson Havel: Well---

15 Ms. Poucher: (interposing) So that would
16 be ground--that would be part of the statute to reinforce
17 your motion.

18 Chairperson Havel: I agree. I mean I don't--I
19 don't think that that is controlling, however, because the
20 challenge wasn't made on the ground that she didn't reside in
21 the precinct for 30 days. The statute that the challenge was
22 made on the ground that she was not a U.S. citizen. And I
23 just--I see two ways that we could go about this. I mean she
24 can be removed through statutory list maintenance procedures,
25 which I believe is what you're saying.

1 Ms. Poucher: Yes.

2 Chairperson Havel: That she would be removed
3 because the first-class mail has been returned as undeliver-
4 able.

5 Ms. Poucher: I'm also saying that the board
6 has the option of having the removal now because she has been
7 inactive. And you have the evidence that she is not in the
8 precinct.

9 Chairperson Havel: So that she could be removed
10 for not living in the precinct as opposed to being removed
11 for not being a U.S. citizen?

12 Ms. Poucher: Correct.

13 Chairperson Havel: Do my colleagues have any
14 comment on that?

15 Mr. Howard: If you crafted a motion along
16 those lines, Madam Chair, I would second it. And I would
17 note that I don't know that at that point the challenge would
18 need to be dismissed as to that voter, but rather become
19 moot.

20 Mr. DeLancy: Could you repeat that last
21 part he said?

22 Chairperson Havel: Could you repeat that, Mr.
23 Howard, for Mr. DeLancy?

24 Mr. Howard: I think if the chair were to
25 craft a motion along the lines of what Ms. Poucher just

1 explained, then we could go ahead and order the removal of
2 the voter now, effective immediately, and where that happens,
3 I don't know that the challenge--it's just sort of an
4 unnecessary decision to make, but I think the challenge there
5 wouldn't necessarily be dismissed but rather--well, it would
6 be dismissed as moot, but not because it failed that.

7 Chairperson Havel: I believe there's still Ms.
8 Tally's motion on the table. Is there a second to that
9 motion?

10 (Pause.)

11 Chairperson Havel: If there is not a second to
12 that motion, then I will craft a motion that voter number 2
13 be removed as part of the standard--part of the regular list
14 maintenance procedure in Wake County for the reason that
15 first-class mail sent to her has been returned as undeliver-
16 able and there's some prima facie evidence there that she no
17 longer resides in the precinct. And that is my motion. Is
18 there a second?

19 Mr. Howard: Second; I second.

20 Chairperson Havel: All in favor, aye.

21 (No audible response.)

22 Chairperson Havel: All opposed.

23 Ms. Tally: No.

24 The Reporter: I didn't hear a vote from Mr.
25 Howard.

1 Chairperson Havel: Mr. Howard, I think you need
2 to vote aye or nay.

3 Mr. Howard: Oh. That was an aye, sorry.

4 Chairperson Havel: That's from the court
5 reporter. Thank you.

6 Ms. Poucher: Okay. Number---

7 Chairperson Havel: (interposing) And just one
8 quick thing. And therefore, by that vote it is my
9 understanding that the challenge to number 2 is rendered
10 moot.

11 Mr. DeLancy: Correct.

12 Chairperson Havel: All right. Number 3.

13 Ms. Poucher: Number 3---

14 Mr. Howard: (interposing) Madam Chair, if
15 I may?

16 Chairperson Havel: Yes.

17 Mr. Howard: I have to go into court, so I
18 need to drop off the call now. I have provided a letter to
19 the director that I would encourage her to share with you
20 guys. I will be able to dial back in as needed probably two
21 hours from now, but---

22 Chairperson Havel: (interposing) Hopefully we
23 won't be here, but---

24 Mr. Howard: Well, thank you for your
25 patience in allowing me to take part by telephone. And I

1 will check back in with Cherie as soon as I get out of court.

2 Chairperson Havel: Thank you. Good luck in
3 court.

4 Ms. Tally: Thank you, Josh.

5 Chairperson Havel: Bye bye.

6 Mr. Howard: Bye bye.

7 (Mr. Howard disconnects at 9:39 a.m.)

8 Chairperson Havel: All right, voter number 3.

9 Ms. Poucher: Voter number 3, I--this voter
10 returned a copy of their certificate of naturalization. They
11 were naturalized in June of 2011, registered to vote in
12 September of 2011. Therefore, this voter was a citizen at
13 the time they registered.

14 Chairperson Havel: All right. Do you have any
15 questions for Ms. Poucher?

16 Ms. Tally: I would like to make a motion.

17 Chairperson Havel: Mr. DeLancy, do you have any
18 questions?

19 Mr. DeLancy: No questions or objections.

20 Ms. Tally: I move that we dismiss the
21 challenge for voter number 3 based on the fact that they have
22 provided information through their certificate of naturaliza-
23 tion that they are citizens--that they are a citizen.

24 Chairperson Havel: I second that motion. Voter
25 number 4.

1 Ms. Poucher: Voter number 4, I have
2 received their certificate of naturalization. They were
3 naturalized in July 2010. As I stated, I have received a
4 copy of the certificate. They registered to vote in January
5 2012. Therefore, they were a citizen at the time they
6 registered to vote.

7 Chairperson Havel: Mr. DeLancy, any questions?

8 Mr. DeLancy: No questions.

9 Chairperson Havel: All right. Is there a motion?

10 Ms. Tally: Again I think it's pretty
11 clear here. We--to--I move that we dismiss the challenge for
12 voter number 4, again, based on the fact that they have
13 provided adequate documentation through their certificate of
14 naturalization that they are a U.S. citizen and were eligible
15 to register to vote.

16 Chairperson Havel: I second that motion.

17 Ms. Poucher: Voter number 5, the first
18 mailing to them was returned undeliverable, but from the post
19 office I was able to get an updated address, and on July
20 12th, the voter did fax back the form to us stating that she
21 was not a citizen.

22 Her record currently is inactive--or was inactive
23 once we got the letter back from her stating she was not a
24 citizen. Part of the letter let them know that by stating
25 no, the voter would be removed from our records. This voter

1 has never voted.

2 Chairperson Havel: Is there something in here
3 where she told you she was not a citizen?

4 Ms. Poucher: There should be---

5 Mr. DeLancy: (interposing) The very first
6 page.

7 Chairperson Havel: I see, that form.

8 Ms. Poucher: Yes.

9 Chairperson Havel: Okay. And so you have already
10 removed her from the list?

11 Ms. Poucher: She has been removed.

12 Ms. Tally: She had requested--she's
13 requesting---

14 Ms. Poucher: (interposing) Yes.

15 Ms. Tally: ---to be removed.

16 Chairperson Havel: All right. May I have a
17 motion regarding this---

18 Mr. DeLancy: (interposing) Could I---

19 Chairperson Havel: (interposing) I'm sorry;
20 Mr.--I keep forgetting you. I'm sorry.

21 Mr. DeLancy: The only time you do is when I
22 have a question.

23 Chairperson Havel: It's not intentional.

24 Mr. DeLancy: I know.

25 Chairperson Havel: I apologize.

1 Mr. DeLancy: I'm just curious. Any idea
2 how she registered? I can imagine a lot of scenarios where
3 she was totally innocent and someone just handed her a form.

4 Chairperson Havel: I do not speculate.

5 Mr. DeLancy: Okay. Do we have any idea?

6 Ms. Poucher: Yes, we do, but the location
7 of where a person registered to vote is also confidential.
8 Any of the agencies are--any--because of the number of
9 various agencies that people are allowed to register to vote,
10 those must remain confidential.

11 Mr. DeLancy: Is the registration form
12 itself something the public is allowed to look at?

13 Ms. Poucher: Yes, with the redacted
14 confidential information.

15 Mr. DeLancy: And I always thought by law,
16 Chapter 163 says the confidential information is the driver's
17 license number, the date of birth, and the social security
18 number.

19 Ms. Poucher: And signature.

20 Mr. DeLancy: I've never seen--okay, I'll--
21 okay. I've never seen the location as one of the reasons
22 that--one of the things that would be deleted because that
23 is--that is material.

24 Ms. Poucher: National Voter Registration
25 Act.

1 Mr. Warren: Part of that is because some
2 of these locations are a public welfare group, human
3 services---

4 Mr. DeLancy: (interposing) Well, I just
5 need a citation. I didn't know that. I've never heard that.
6 And it annoys me because I'm concerned about third party
7 registration out in front of Walmart. Would that be
8 confidential too?

9 Ms. Poucher: There is a number at the top
10 of every voter registration application. The number is the
11 source. If it's libraries, it's 8. If it is drives, it is
12 7. ESC, I think, is 1. There are several different
13 agencies. We must redact that number before that voter
14 registration is scanned into our system.

15 When it is scanned, it is scanned in as the batch
16 number from that particular agency because that information
17 is necessary to complete the quarterly National Voter
18 Registration Act forms for where people are registering to
19 vote, but that is confidential, correct.

20 Mr. DeLancy: Okay. So the NVRA says the
21 actual location for any agency. If it was a nonagency, if it
22 were the library for instance, would that be confidential?

23 Ms. Poucher: The number--the forms are
24 numbered with the number 1 through 8 or 9. If you come in
25 and you ask for a group of voter registration forms, you're

1 going to conduct a drive, that's a 7. If you are libraries,
2 when we deliver forms to libraries, they get number 8s.
3 Employment security gets number 1. And I cannot--I mean I
4 can't remember all the various numbers. It's a number at the
5 top of the form.

6 Mr. DeLancy: Okay. My question is for
7 number 7, if an activist group goes in and says, "Give me
8 100, I want to register 100 people," would--would I be able
9 to review the ones they gave, or would that be confidential
10 to even know that it was an activist group that did it as
11 opposed to Social Services or some other organization?

12 Mr. Warren: We are getting away--and it's
13 a fair--it's a fair question.

14 Chairperson Havel: I was going to get to that
15 point after the answer to the confidentiality---

16 Mr. DeLancy: (interposing) Yeah, I'd love
17 to know it because the confidentiality--that alarms me that
18 we cannot find out how someone registered---

19 Chairperson Havel: (interposing) Mr. DeLancy, I
20 think that may need to be a conversation that you have with
21 Ms. Poucher offline.

22 Mr. Warren: But if you forward that
23 question, I will get you an answer. I'll get it--I will
24 forward it to the State Board and let them answer it. That's
25 the best we can do on that.

1 Mr. DeLancy: I was hoping to get it on the
2 record in the transcript, but that's fair enough. Okay.

3 Chairperson Havel: I would like to keep our focus
4 kind of narrow.

5 Mr. DeLancy: All right.

6 Chairperson Havel: I haven't been successful so
7 far, but I will keep trying.

8 Ms. Poucher: And again, I will state Wake
9 County Board of Elections follows the statute, which also
10 includes all state and federal laws when it comes to voter
11 registration, whether it be drives, groups, or agencies.

12 Chairperson Havel: So I think we are on voter
13 number 5. May I have a motion regarding this vote?

14 Ms. Tally: Based on the information
15 that's been presented, I move to dismiss the challenge
16 against voter number 5 given that they have requested removal
17 from the roll. They have been removed by the Wake County
18 BOE, and furthermore, they have never voted.

19 Chairperson Havel: I second that motion. Voter
20 number 6.

21 Ms. Poucher: Voter number 6, both mailings
22 were returned undeliverable. I did not get any type of
23 forwarding address. This voter also currently is inactive,
24 has been inactive since March of 2011.

25 I tried finding him through vehicle and other tax

1 information from the Wake County records to see if there was
2 another address I had. Therefore I have received nothing.
3 He has not voted. So it's somewhat similar to number 2
4 except for the fact that this person did not vote.

5 Chairperson Havel: And this person would be
6 removed through regular list maintenance procedures?

7 Ms. Poucher: After the next two general, so
8 that would be after 2012 and 2014.

9 Chairperson Havel: Unless we direct you to remove
10 him sooner?

11 Ms. Poucher: Correct.

12 Chairperson Havel: Mr. DeLancy, any questions?

13 Mr. DeLancy: You said at least the same
14 reasoning as number 2 for this one. I have no other
15 questions. That's more of a statement, sorry.

16 Chairperson Havel: Is there a motion regarding
17 voter number 6?

18 Ms. Tally: I move to dismiss the
19 challenge for voter number 6 given that they have been deemed
20 inactive on the voter roll by the Wake County BOE and they've
21 never voted. There's no record that they've ever voted.

22 Chairperson Havel: Would you be willing to
23 include in that motion that they be removed from the rolls?

24 Ms. Tally: I'm not inclined to do that,
25 in keeping with precedent from number 2.

1 Mr. DeLancy: I thought number 2 was removed
2 from the roll.

3 Ms. Tally: It was through--not by my
4 vote.

5 Chairperson Havel: I will second that motion, and
6 it is dismissed. Number 7.

7 Ms. Poucher: Number 7, again, I have
8 received no response to date. Both mailings were returned
9 undeliverable. This person did vote in November 2008.
10 When--on his application to vote in September of 2008, he did
11 check the box that he was a citizen of the United States.
12 And I believe you have---

13 Ms. Tally: (interposing) Do you mind
14 repeating that, what you just said?

15 Ms. Poucher: When he registered to vote in
16 September of 2008, he did check the box on the form that he
17 was a citizen of the United States.

18 Chairperson Havel: Any questions?

19 Ms. Tally: So in terms of voter number 7,
20 if they were to present to vote, what would the process be
21 for this one, any different---

22 Ms. Poucher: (interposing) A regular
23 voter.

24 Ms. Tally: A regular voter, got you.

25 Chairperson Havel: Mr. DeLancy?

1 Mr. DeLancy: Okay. This one voted in 2008,
2 and you've been unable to reach him. I would respectfully
3 request that you remove this voter from the roll because he
4 did not respond to your mail, and that was a--it's
5 considered, according to North Carolina General Statute, if
6 he doesn't respond to two mailings he doesn't live in the
7 area.

8 And if I have to turn around and walk across the
9 street and find a challenge form to fill it out saying this
10 guy doesn't live here, I will, but we can make it a lot
11 easier if you would please do that now.

12 Ms. Tally: Just for clarification, the no
13 response to date is based on the recent mailing, not the---

14 Mr. DeLancy: (interposing) Two mailings.

15 Ms. Poucher: We did not receive anything
16 from him. I mailed him a letter. We did not get anything
17 back. This voter is challenged. We gave the opportunity to
18 appear to give testimony and evidence that he was a citizen,
19 but we have not heard anything from him.

20 Ms. Tally: Did we give anyone any type of
21 deadline that they needed to present the documentation?

22 Ms. Poucher: The hearing today.

23 Chairperson Havel: We told them there was a
24 hearing today.

25 Ms. Poucher: And to present themselves at

1 hearing.

2 Mr. Warren: A reminder: the challenge
3 must be substantiated by affirmative proof. In the absence
4 of such proof, the presumption shall be that the voter is
5 properly registered.

6 Ms. Tally: Read that one more time,
7 Scott.

8 Mr. Warren: "No challenge shall be
9 sustained unless a challenge is substantiated by affirmative
10 proof. In the absence of such proof, the presumption shall
11 be that the voter is properly registered or affiliated."
12 That's 163-90.1(b).

13 Chairperson Havel: That's interesting because
14 this one is apparently one where he indicated on a jury
15 summons form that he was not a U.S. citizen.

16 (Pause.)

17 Chairperson Havel: Mr. DeLancy, you have no other
18 evidence on this one?

19 Mr. DeLancy: No. I have no other evidence.
20 I just want to be--do I understand right, the only evidence
21 we have that he is a citizen is he checked a block on a piece
22 of paper at same day registration---

23 Chairperson Havel: (interposing) Well, that's
24 how everybody---

25 Mr. DeLancy: ---in September of 2008?

1 Chairperson Havel: That's how everybody
2 registered.

3 Mr. DeLancy: He said, "Yeah, I'm a citizen
4 and therefore"--okay, I just want to be sure I understood
5 that. And then he voted in 2008 but got out of jury duty
6 after 2008 by claiming he wasn't a citizen. I just want to
7 be sure I hear that right.

8 Chairperson Havel: May I have a motion regarding
9 number 7?

10 Ms. Tally: I move to dismiss based on the
11 statute just read by the county attorney, and we don't have
12 further documentation.

13 Chairperson Havel: I agree and second that
14 motion. Voter number 8.

15 Ms. Poucher: Voter number 8, we have
16 received--the form letter has been returned to us asking to
17 be removed as a voter stating that they are not a citizen.
18 We have removed that voter, who has never voted.

19 Chairperson Havel: I appreciate the honesty. Mr.
20 DeLancy, do you have---

21 Mr. DeLancy: (interposing) No further
22 questions.

23 Chairperson Havel: ---anything on that? All
24 right. May I have a motion regarding voter number 8?

25 Ms. Tally: I move to dismiss the

1 challenge against voter number 8 given that the Wake County
2 BOE has provide due diligence by removing the voter from the
3 roll, the voter has stated that they are not a citizen and
4 have requested to be removed, and they have never voted.

5 Chairperson Havel: I second.

6 Ms. Poucher: Voter number 9, I have not
7 received any response to the letter mailed to them. They
8 registered in 2005. They are now inactive but have never
9 voted.

10 Ms. Tally: I move to dismiss---

11 (Mr. DeLancy exits at 9:55 a.m.)

12 Mr. Warren: (interposing) Hold on a
13 second. We need to note on the record that the challenger
14 left at 9:55, and he is no longer present for the hearing.

15 Ms. Tally: So is the hearing--I mean---

16 Mr. Warren: (interposing) The hearing is
17 still going on---

18 Chairperson Havel: (interposing) We still---

19 Mr. Warren: ---unless there's been---

20 Chairperson Havel: (interposing) We're going to
21 finish this---

22 Mr. Warren: ---a formal recess.

23 Chairperson Havel: We're going to finish this
24 hearing.

25 (Pause.)

1 Ms. Tally: All right. Where were we?
2 Ms. Poucher: We were on number 9.
3 Chairperson Havel: I believe we were on number 9.
4 Ms. Tally: Yeah. I move to dismiss based
5 on the same precedent and the same statute for voter number
6 7, that we have not received further documentation.
7 Chairperson Havel: I second that motion. Voter
8 number 10.
9 Ms. Poucher: Voter number 10, we have
10 received the certificate of naturalization. She was
11 naturalized in September of 2010, and registered to vote in
12 October 2010. Therefore, she was a citizen at the time she
13 registered to vote.
14 Chairperson Havel: And I believe this is the one
15 that Mr. DeLancy actually requested that we---
16 Ms. Poucher: (interposing) Correct.
17 Chairperson Havel: ---dismiss, so---
18 Ms. Tally: (interposing) Right.
19 Chairperson Havel: ---I'm sorry he left before
20 the one that we were all in agreement on. May I have a
21 motion regarding this voter?
22 Ms. Tally: Yes, I move to dismiss the
23 challenge against voter number 10 given that they have
24 provided proper verification through their certification of
25 naturalization that they are a U.S. citizen.

1 Chairperson Havel: I second the motion.

2 Ms. Poucher: Number 11, I have received no
3 response to the letter that we mailed to them. This voter
4 has never voted.

5 Ms. Tally: I move to dismiss voter number
6 11 on the same precedent that--and the statute for number 9
7 and number 7 that we have not received further documentation.

8 Chairperson Havel: I second that motion.

9 Ms. Poucher: Number 12, this voter returned
10 the form with certificate of naturalization. The voter was
11 naturalized in August 2010, registered to vote in September
12 2010, therefore was a citizen at the time they registered to
13 vote.

14 Chairperson Havel: May I have a motion?

15 Ms. Tally: I move to dismiss the
16 challenge against voter number 12 based on the fact that they
17 have proven with verification of their certification of
18 naturalization that they are a U.S. citizen.

19 Chairperson Havel: I second that motion.

20 Ms. Poucher: Number 13, I have two returned
21 mailings from Mr. Patel. He is currently inactive. This
22 gentleman did vote in 2004.

23 Ms. Tally: I move to dismiss the
24 challenge against voter number 13 based on the same precedent
25 of number 9 and number 7 and the statute read by the county

1 attorney, and that we have not received further
2 documentation.

3 Chairperson Havel: Is he going to be removed with
4 regular list maintenance?

5 Ms. Poucher: Yes. Anybody inactive will
6 after---

7 Ms. Tally: (interposing) After 2012,
8 yeah.

9 Chairperson Havel: All right. I second that
10 motion.

11 Ms. Poucher: Number 14, in this mailing I
12 have mailed the voter two letters, both to the same address.
13 We did not get an updated address. They were both returned
14 undeliverable. He is in a confirmation pending status
15 because this was done prior to the primary, where we cannot
16 change a voter from confirmation pending to inactive 60 days
17 before an election. So this voter will become inactive and
18 has never voted.

19 Ms. Tally: I move to dismiss the
20 challenge against number 14, voter number 14, based on the
21 fact again that we have not received further documentation
22 and they've never voted.

23 Chairperson Havel: I second that motion.

24 Ms. Poucher: Number 15, this voter did send
25 in the certificate of naturalization in July 2002, and he

1 registered to vote in October 2002. Therefore, he was a
2 citizen at the time he registered to vote.

3 Ms. Tally: I move to dismiss the
4 challenge against voter number 15, given that they have
5 provided verification through their certificate of
6 naturalization that they are a U.S. citizen.

7 Chairperson Havel: I second that motion.

8 Ms. Poucher: Number 16, this gentleman did
9 return the form stating that he was not a citizen, and
10 because of that we have removed him. He registered to vote
11 in 1997 and voted in 2001. His status now is removed since
12 he stated he was not a citizen.

13 Ms. Tally: I move to dismiss the
14 challenge against Number 16 given that the Wake County BOE
15 has proven here that we have followed the North Carolina law
16 by removing the voter from the roll given that they did not
17 vote for two consecutive presidential elections.

18 Chairperson Havel: I second that motion. I guess
19 I'm confused because of the name that's printed on this form
20 is a little different---

21 Ms. Poucher: (interposing) Yes.

22 Chairperson Havel: ---from the form, but--it's
23 actually a female, I think. They're registered as a female
24 on the voter profile.

25 Ms. Poucher: That's the one that--yes,

1 Hedwig. We got it back from Heidi. But look at the
2 signature.

3 Chairperson Havel: We're not dealing with a
4 husband and wife, are we?

5 Ms. Poucher: Hedwig signed it.

6 Chairperson Havel: Okay. But it's a female
7 that's registered.

8 Female Voice: Hedwig is a feminine first
9 name.

10 Ms. Poucher: Hedwig is a female, and Hedwig
11 is the one that signed the form that came back to us. Look
12 on the first--the bottom of the first page.

13 Chairperson Havel: I see that, but I don't see
14 where--I don't see anything to match that to, so---

15 Ms. Poucher: You have the vote---

16 Chairperson Havel: (interposing) I just want to
17 make sure that this isn't two people. That's what---

18 Ms. Poucher: (interposing) Yeah, I know,
19 the voter profile.

20 Chairperson Havel: Right. All right. I think I
21 already seconded that motion. If not, I will second that
22 motion. All right, number 17.

23 Ms. Poucher: Number 17, this individual was
24 naturalized, and I do have a copy of their certificate of
25 naturalization. They were naturalized in August 2011, and

1 they registered to vote in April 2012.

2 Ms. Tally: I move to dismiss the
3 challenge against voter number 17, given that they have
4 provide verification through their certificate of
5 naturalization that they are a U.S. citizen.

6 Chairperson Havel: I second that motion.

7 Ms. Poucher: Number 18, for this voter we
8 have two mailings that were returned undeliverable. The
9 voter has already--is already inactive. This voter voted in
10 2008.

11 Chairperson Havel: In an election year.

12 Ms. Tally: I move to dismiss the
13 challenge against voter number 18 based on the same precedent
14 for the previous voters of 13, 9, and 7, and the statute read
15 by the county attorney that we don't have further
16 documentation, and they've been rendered inactive on the
17 voter roll.

18 Chairperson Havel: I second that motion. And
19 just as a brief recap, I believe we have dismissed 17 of
20 these 18, and with respect to number 2, that one was rendered
21 moot.

22 (Pause.)

23 Mr. Warren: Does the board want to take
24 any action with those who stated that they were a citizen---

25 Ms. Poucher: (interposing) Or not.

1 Mr. Warren: ---or not?

2 Ms. Tally: No, I believe the board has
3 done their due diligence.

4 Mr. Warren: And Mr. Howard wanted his
5 letter---

6 Chairperson Havel: (interposing) I would be
7 inclined to refer them to the D.A. for prosecution. Mr.
8 Howard is not here, which complicates it. What would the
9 county attorney recommend?

10 Mr. Howard: You could take action on that
11 at a subsequent meeting. I think he needs to be here to vote
12 on that.

13 Chairperson Havel: Are there any further matters
14 in this hearing, any further comments or motions from my
15 colleague?

16 Ms. Tally: I think that we have done
17 everything we needed to do.

18 Chairperson Havel: Any further comments--any
19 further comments from the---

20 Mr. Warren: Mr. Howard wanted his letter
21 into the record.

22 Chairperson Havel: All right. Is there a motion
23 to introduce Mr. Howard's letter into the record?

24 Ms. Tally: So move.

25 Chairperson Havel: I second that. His letter is

1 part of the record.

2 Mr. Warren: That's the letter dated August
3 20th.

4 Chairperson Havel: And at this point I believe we
5 are adjourned. Thank you.

6 (The hearing was adjourned at 10:06 a.m.)

STATE OF NORTH CAROLINA

COUNTY OF WAKE

C E R T I F I C A T E

I, Kay K. McGovern, CVR-CM, do hereby certify that the foregoing pages 5 through 58 represent a true and accurate transcript of the proceedings held before the Wake County Board of Elections in Raleigh, North Carolina, on Tuesday, August 21, 2012.

This, the 12th day of September, 2012.

 /s/ Kay K. McGovern

Kay K. McGovern, CVR-CM
Court Reporter