

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

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

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

16 UNITED STATES OF AMERICA,) CASE NO. 1:13CV861
17 Plaintiff,)
18 V.)
19 STATE OF NORTH CAROLINA, et al.,) Winston-Salem, North Carolina
20 Defendants.) July 29, 2015
) 9:03 a.m.

21
22 TRANSCRIPT OF THE **TRIAL/DAY THIRTEEN**
23 BEFORE THE HONORABLE THOMAS D. SCHROEDER
24 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:** Mr. Peters.

3 **MR. PETERS:** Good morning.

4 **THE COURT:** Good morning, everyone. Are we ready to
5 proceed?

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

7 **THE COURT:** Ms. Strach, I remind you you are still
8 under oath.

9 **MR. PETERS:** Thank you, Your Honor.

10 DIRECT EXAMINATION (Continued)

11 **BY MR. PETERS**

12 Q Good morning, Ms. Strach.

13 A Good morning.

14 Q Before we move on to a new topic, there are two or three
15 things from yesterday that I just want to make sure are clear
16 or follow up on a little bit. The first is you mentioned
17 yesterday that all county boards of elections are made up of
18 three members; is that correct?

19 A Correct.

20 Q How are those three members appointed?

21 A Those members are appointed by the State Board of
22 Elections.

23 Q How are they nominated?

24 A They are nominated by the state parties. The Democrat
25 Party and the Republican Party submit names to the State Board

1 and then the Governor -- the party of the Governor will have
2 the majority of those members, of the two members, and then the
3 minority member -- all of those will be picked by State Board.

4 Q So of the three members, two will be members of the same
5 time political party as the Governor?

6 A Correct.

7 Q And the third member will be a member of another political
8 party, and typically it is going to be the other named
9 political party?

10 A That's correct.

11 Q And how about with the State Board of Elections, the five
12 members?

13 A The Governor appoints the five members of the State Board
14 of Elections, and that's based on recommendations from the two,
15 the Republican and Democrat Party.

16 Q How do the five members -- how does that work politically
17 in terms of affiliation?

18 A The same way. The majority of the board will be the
19 political party of the Governor. So three members will be of
20 the party of the Governor, two of the other party.

21 Q So when you were talking yesterday about -- for a county
22 board to request a reduction in hours for the early voting
23 period and matching the cumulative hours from the last
24 comparable election, I believe you said that that decision has
25 to be unanimous by the county board?

1 A Correct.

2 Q And it also has to be unanimous from the State Board?

3 A Correct.

4 Q Is it fair to say that both the county and the State
5 Board -- that that, in essence, means that the Republican
6 members of the board and the Democratic members of the board
7 have to agree?

8 A That's correct.

9 Q Now, we talked some yesterday about list maintenance and
10 mail verification. I just want to ask one or two follow-up on
11 that.

12 If a person fails mail verification and they fail before
13 their vote is counted, say if they registered toward the end of
14 the registration period or previously under same-day
15 registration and they fail before their vote is counted, if
16 they wish to vote at a later time, do they have to reregister?

17 A If they fail, their registration would be denied; and so,
18 yes, they would have to reregister.

19 Q If a person fails mail verification after voting, the next
20 time they come in to vote, do they have to reregister?

21 A No, they would just have to confirm their address.

22 Q With list maintenance, what happens if the confirmation
23 letter that you described yesterday doesn't come back to the
24 State Board or is returned undeliverable?

25 A During the list maintenance process, if the confirmation

1 mailing goes out and is not returned or is returned
2 undeliverable, that voter would become inactive.

3 Q If a person who was declared inactive for that reason or
4 noted as inactive in the registration list, if they showed up
5 at the polls in the subsequent election to vote, would they be
6 allowed to?

7 A They would, as long as they confirmed their address.

8 Q And as long as they're in the same county?

9 A As long as they're in the same county.

10 Q They would not have to reregister?

11 A They would not.

12 Q Thank you. Let me ask you to turn your attention to
13 same-day registration. And can you briefly describe what
14 same-day registration means?

15 A Same-day registration means that a person could present
16 themselves at an early voting location and register to vote and
17 cast a ballot at the same time.

18 Q And do you recall when same-day registration became
19 available in North Carolina?

20 A I think it first went in in 2007. The first general
21 election year was in 2008.

22 Q 2008. And VIVA discontinued the practice of same-day
23 registration in North Carolina; is that correct?

24 A Correct.

25 Q So same-day registration was not in place in the 2014

1 election; is that correct?

2 A It was not.

3 Q All right. But has the State Board, based on the
4 preliminary injunction issued by the Court, essentially
5 reinstated same-day registration for the upcoming municipal
6 elections?

7 A Yes.

8 **MR. PETERS:** May I approach, Your Honor?

9 **THE COURT:** Yes.

10 **BY MR. PETERS**

11 Q Ms. Strach, have you had a chance to look at this exhibit?

12 A I have.

13 Q Can you identify what it is?

14 A This is a report based on the 2012 election of mail
15 verification failure rates of same-day registration and
16 non-same-day registration voters.

17 Q All right. And let me -- I think this has been mentioned
18 before, but let me ask you to look at the date up at the top in
19 the header, May 2015. Do you know when this report was
20 actually published?

21 A I think it was finalized in June of 2015.

22 Q All right. Did you ask that this report be prepared?

23 A I did.

24 Q And who did you ask to prepare it?

25 A I asked Veronica Degraffenreid and Brian Neesby to both

1 play a part in preparing this report.

2 Q And as a reminder, who is Veronica Degraffenreid?

3 A Veronica Degraffenreid is our elections support manager at
4 the State Board of Elections.

5 Q And is she the person who had prepared the 2013 report you
6 referred to a few minutes ago?

7 A Yes.

8 Q And who is Brian Neesby?

9 A Brian Neesby is a data analyst with the State Board of
10 Elections.

11 Q Why did you ask them to prepare this report?

12 A Back at the first -- in my first deposition, I was asked
13 questions about Veronica's 2012 report, which was a report that
14 looked at mail verification rates of non-SDR voters and -- or
15 non-SDR registrants and SDR voters, and it looked at the rates
16 that -- the people that registered in 2012, the rate at which
17 they failed mail verification.

18 The methodology that Ms. Degraffenreid used was -- she
19 looked at the status of that person in SEIMS, our statewide
20 voter registration system, to make a determination of whether
21 or not that voter had likely failed mail verification.

22 It did not look at whether or not people -- the non-SDR
23 registrants had voted. So when being asked questions about
24 that in my first deposition, it was -- I was being asked
25 questions about same-day registration. So I thought in order

1 to make sure that we dealt with the issues regarding same-day
2 registration, it was important to find the most accurate way of
3 determining whether someone had, in fact, failed mail
4 verification, rather than looking at a status that may or may
5 not be the reason why someone was in that particular status
6 because they had failed mail verification.

7 So Mr. Neesby, being our data analyst, was able to go back
8 and look at the verification log, which is a separate -- it's
9 something in SEIMS that allows him to look at each voter and
10 whether or not they actually failed mail verification without
11 looking at the status the voter was currently in. So it
12 actually looks at the mailings. So that's part of this report.

13 Also, with Ms. Degraffenreid, I wanted to make sure that
14 she included in her analysis whether or not people had voted,
15 because that is certainly significant when it comes to an
16 analysis of same-day registration of whether or not people
17 voted or whether just registered in 2012 that didn't vote.

18 Q And why did you think that was important to look at,
19 whether or not they had actually voted?

20 A Because that's sort of the central -- the concern about
21 same-day registration and mail verification is whether or not
22 someone that registered in the traditional registration period,
23 whether they could register and vote and fail mail
24 verification; whereas, during the same-day registration period,
25 people are registering and voting at the same time. So I think

1 it's important to compare apples to apples, and that seemed to
2 be a better comparison.

3 Q Okay. And what is your understanding of what the report
4 shows?

5 A What the report reflects is that people that registered in
6 2012 and voted, if they registered and voted during the
7 traditional time period, up to 25 days of the election, that
8 they failed mail verification at a lower rate than those that
9 voted -- registered and voted SDR, they failed mail
10 verification at a higher rate.

11 Q Did it tell you anything about comparison on votes being
12 counted, whether -- the rate at which people who registered
13 using SDR, whether their votes were counted compared to those
14 who registered in a more traditional way?

15 A Yes. Same-day registration applicants -- I think the
16 report actually shows that 96 percent of people that registered
17 during the same-day registration period, their votes counted
18 before they could complete the mail verification process. And
19 registrants -- traditional registrants, 96 percent of those
20 people -- I believe that's the correct figure, and I can verify
21 that -- are able to complete mail verification before they
22 vote.

23 Q Let me ask you to look at page 3 of this report. Do you
24 see the second chart, the one at the bottom of the page?

25 A Yes.

1 Q Let me ask you to look at the last line in that chart,
2 which reflects the registration period between October 18,
3 2012, and November 3, 2012.

4 A Yes, I see that.

5 Q Would those dates represent the time in 2012 that same-day
6 registration was available?

7 A It would.

8 Q And let me ask you to look under the column that says
9 "Total New Registrations, Voted."

10 A Yes.

11 Q And what is the number you see there?

12 A 96,529.

13 Q Do you recall being asked last week a question about what
14 the effect on those 96,529 people might have been had same-day
15 registration not been in effect?

16 A I do recall.

17 Q And what is your opinion on the effect on these 96,529
18 people?

19 A My opinion is that I don't believe that if the law was --
20 if there was not -- same-day registration was not in effect, I
21 don't believe that the 96,529 would have likely presented to
22 vote. I base it on the fact that I think that people that want
23 to vote want their vote to count, and that if people are
24 educated and realize that the law does not allow them to do
25 that, they will vote in a way which will allow their vote to

1 count.

2 Q So are you saying that if people are educated as to what
3 the law requires, is it your belief that they adjust their
4 behavior to meet the requirements of the law?

5 A That's exactly right.

6 Q Are you aware of what happened with regard to people
7 presenting to vote out of precinct -- excuse me, I am jumping
8 ahead -- people who presented to vote in 2014 who were not
9 registered --

10 A Yes.

11 Q -- during early voting?

12 A Yes.

13 Q And does that inform at all your opinion on the
14 96,000-plus people who would, you think, not have turned up to
15 vote during -- attempting to use early voting?

16 A It does. We looked at the number of people that presented
17 in 2010, a comparable election, and registered using same-day
18 registration. It was more than 20,000 people during the 2010
19 election that registered SDR.

20 In 2014, there were a little over 800 people that voted a
21 provisional ballot, and that ballot was not counted because
22 they were not registered. So that, to me, says that people
23 understood that you could not same-day register in 2014.

24 Q And I've been reminded that I failed to ask you, is this
25 exhibit Defendant's Exhibit Number 16 that you were looking at?

1 You can look at the blue sticker on the front.

2 A Yes, it is.

3 Q I failed to note that.

4 Do you know whether African-American registration has
5 declined since same-day registration was discontinued under
6 VIVA?

7 A No, I don't believe that it has.

8 Q And other than same-day registration, when it was
9 available, what other ways are there that a person can register
10 to vote?

11 A There are several ways that people can register to vote.
12 People can go to their local county board of elections and fill
13 out a voter registration form. People can go to our website or
14 their county board of elections website, which links to a voter
15 registration form, which they currently can print out and
16 submit to their county board of elections. They can register
17 to vote at the DMV. They can register to vote at public
18 libraries. There's registrations at high school, colleges,
19 public assistance agencies. There are many opportunities where
20 voter registration is offered.

21 Q When you say they can register to vote at high schools or
22 colleges, do you know whether high schools and colleges are
23 required to have registration forms available?

24 A They are.

25 Q Might another way someone can register be through voter

1 drives -- or registration drives?

2 A Absolutely.

3 Q Are you aware of testimony by Dr. Stewart that
4 approximately 11,000 people registered after the close of books
5 in 2014?

6 A Yes, I have been made aware of that.

7 Q Based on your experience as executive director of the
8 State Board, do you have an opinion regarding what the 11,000
9 figure might represent?

10 A I can't say specifically, but one thing I that -- a couple
11 of things is that I don't believe that they are as a result of
12 anything to do with same-day registration because that would
13 suggest that those people had to present at a polling place
14 during the early voting period and try to submit a voter
15 registration.

16 What I would also point out is that places like the DMV
17 and public assistance agencies and other places do not stop
18 offering voter registration because the books have closed. So
19 there are reasons why a registration form would be processed.
20 It may not be processed during the time that the books are
21 closed, but the date of that application could be used as the
22 process date, or the process date could be used, and all of
23 those factors could be -- registration forms that are coming in
24 by some other means, but not as a result of same-day
25 registration.

1 Q I believe you said this before, but when are the votes
2 that were cast by voters who registered using same-day
3 registration -- when are those votes counted?

4 A On Election Day.

5 Q And are those votes retrievable?

6 A The same-day registration?

7 Q Yes.

8 A Same-day registration ballots are retrievable because they
9 are absentee ballots, but the law doesn't allow for them to be
10 retrieved unless they are challenged.

11 Q And when does the challenge have to happen?

12 A Election Day.

13 Q And I want to make sure this is clear, too. You mentioned
14 earlier that same-day registration will be offered during the
15 municipal elections?

16 A It will be.

17 Q Because of the injunction?

18 A Yes.

19 Q How will same-day registration be administered? In other
20 words, is the SEIMS system set up to handle it, or will it be
21 by some other means?

22 A No, the SEIMS system -- it will not be run through the
23 SEIMS system. We set up a process that we actually have
24 piloted -- I wouldn't even call it pilot. We actually
25 implemented it in Pasquotank County, but we sent staff there to

1 make sure that it was a process that would work for our
2 counties. So it's a manual process, but it certainly covers
3 all the areas that we need to cover.

4 Q Now, let me turn your attention to out-of-precinct
5 provisional balloting.

6 A Yes.

7 Q Can you describe what that is?

8 A Out-of-precinct provisional balloting is when a registered
9 voter presents at a precinct that is not their assigned
10 precinct.

11 Q And if they did that, they were offered a provisional
12 ballot; is that correct?

13 A Yes. Is this prior to 589?

14 Q Yes.

15 A Prior to House Bill 589, they would be offered a
16 provisional ballot, and the ballot items on that ballot that
17 they were eligible to vote would be counted.

18 Q And out-of-precinct provisional balloting, was that only
19 something that was available on Election Day, or was it
20 available during same-day registration?

21 A Out-of-precinct only applies to Election Day because
22 during early voting, a voter can present to any voting location
23 in their county because all of the ballots are at these
24 locations, and they don't need to be in their precinct.

25 Q But on Election Day, voters are supposed to present at

1 their own precinct?

2 A They are.

3 Q How do precincts function as part of the administration of
4 elections?

5 A Precincts are a -- function in a way that -- so that
6 county boards of elections can plan for how they will need --
7 the materials they will need to have in those precincts, the
8 number of ballots that they will need to have in those
9 precincts. It is a way for county boards of elections to
10 manage their elections. So they know much people voted during
11 early voting. They can then see how many of those people are
12 not going to be -- will not be showing up on Election Day.
13 That's a way for them to sort of monitor the materials or the
14 equipment and the ballots they need in each precinct.

15 Q Might it also be a way to predict how many poll workers
16 are needed at a particular location?

17 A It could be; right. If they see a particular precinct
18 didn't have as much turnout with early voting, and they had
19 another precinct that did, those voters had chosen to vote at
20 early voting, they may could switch some of their workers to
21 another precinct.

22 Q Do you have an opinion as executive director of the State
23 Board of how out-of-precinct provisional balloting might have
24 had an impact on that planning by county boards?

25 A Well, it does if -- it can have an impact if you have a

1 large number of people that show up at a precinct that they are
2 not assigned to, and that precinct doesn't have the ballots
3 for -- to accommodate those. First of all, they don't have
4 that person's ballot, so they are having to vote ballots that
5 they have not adjusted or planned for. It also would be that
6 they would not have -- might not have enough equipment. It
7 depends on what type of equipment that particular county uses.
8 For example, if they use the DRE, and you have a large people
9 that show up at a precinct that is not their precinct, it could
10 cause longer lines at that precinct.

11 Q And then after Election Day, do you have an opinion as to
12 what administrative impact it has on county boards of elections
13 to have to process the out-of-precinct provisional ballots?

14 A Sure. With an out-of-precinct ballot, if the county board
15 of elections has to research every provisional ballot or every
16 application to determine whether or not it needs to be
17 counted -- for the out-of-precinct voter, if a determination is
18 made that that person is registered in the county, then what
19 they would have to do is they have -- not only do they have to
20 take the envelope and make that determination, they have to go
21 into our statewide election management system and determine
22 which ballot items that voter is eligible to vote.

23 So then they would then have to take that ballot out.
24 They would either have to hand count that ballot for those
25 races, or in some larger counties where that would just take

1 too much time to do, they would have to recreate the ballot
2 that that person would have voted had they presented to their
3 correct precinct, complete it in the way that that voter -- the
4 races that they had voted, and then put it through the machine,
5 the voting tabulator.

6 Q Thank you. Now, Ms. Strach, let me turn your attention
7 now to wait times at polling places. If I talk about wait
8 times, what do you understand that to mean?

9 A The time that people have to wait when they present to a
10 particular -- their early voting location or an Election Day
11 polling place. The amount of time that they would have to wait
12 before they were able to cast a ballot.

13 **MR. PETERS:** May I approach, Your Honor?

14 **THE COURT:** Yes.

15 **BY MR. PETERS**

16 Q Ms. Strach, I've handed you what's been marked as
17 Defendant's Exhibit Number 210.

18 A Yes.

19 Q Do you recognize this document?

20 A I do.

21 Q And what is it?

22 A This was an analysis of voter wait times for the 2014
23 general election.

24 Q All right. Did you ask that this report be done?

25 A I did.

1 Q And who did you ask to prepare it?

2 A I asked Brian LiVecchi, our special counsel.

3 Q And why did you ask that it be prepared?

4 A Well, once again, during, I guess, one of my first
5 depositions, wait times was one of the things that was asked of
6 me, about what is a long line, what is -- what are wait times.
7 And as I said then, and have also confirmed to be true, is the
8 State Board of Elections did not have really any data or
9 analysis on wait times for previous elections, a lot of
10 anecdotal things, but not any data on that.

11 It is a difficult thing to sort of determine how you are
12 going to measure that, and so we were trying in 2014 to come up
13 with ways that we could answer that question. And, initially,
14 I believe in the 2014 primary, we sent some staff members out
15 to sort of -- with a stopwatch, sort of gauging times, but
16 that's certainly not manageable for 100 counties.

17 So after the 2014 election, we wanted to make sure that we
18 did the best we could to at least start a baseline of trying to
19 obtain that information. So we sent a survey, Survey Monkey,
20 which is sort of the tool that State Board of Elections uses
21 with the county boards in order to obtain information, and we
22 asked them questions about wait times in their county for early
23 voting and on Election Day.

24 Q You said this is the tool that the State Board uses to
25 gather information from the county boards. Does that mean

1 you've used Survey Monkey for other things as well with county
2 boards?

3 A Yes, we use it quite frequently.

4 Q Are there other reasons that you wanted this report
5 prepared, say, for future planning purposes?

6 A Absolutely. I think that's one of the things that -- when
7 we have training seminars, that's one -- county boards want to
8 know how best to prepare for their precincts and for election
9 workers and how many people they need to hire, and I think it
10 is information like this that we can use to help them come to
11 those decisions and make better decisions. They know that a
12 particular site had wait times, identifying why it had a wait
13 time. Was it an equipment issue? Was it because your parking
14 lot was too small? Was it the facility itself? All of those
15 things that they can look at and make decisions for future
16 elections.

17 Q To your knowledge, does this report accurately reflect the
18 information that was received as a result of the survey of
19 county boards of elections?

20 A I believe it is, yes.

21 Q And is this a report that was published by the State Board
22 of Elections?

23 A Yes.

24 Q As a report of the Board?

25 A Yes.

1 Q We've had some testimony in this case of a polling place
2 in New Hanover County that had a wait time of over two hours.
3 Did your office receive any reports from New Hanover County of
4 a wait time that long?

5 A We have not. That was not any information that we had.
6 And the report -- this report does not reflect that, and that
7 would be information that the director or staff of the New
8 Hanover County Board of Elections would have provided.

9 Q And that's a good question. When the county boards of
10 elections responded to the Survey Monkey, was it typically the
11 director of the county board of elections that responded?

12 **MR. DONOVAN:** Objection, foundation, Your Honor.

13 **BY MR. PETERS**

14 Q If you know?

15 **THE COURT:** Overruled.

16 **THE WITNESS:** I believe that it was generally the
17 director that usually responds to these. In some larger
18 counties, they may have delegated that to another staff member.

19 **BY MR. PETERS**

20 Q Was it the director of the county board of elections who
21 you asked to respond to it or be responsible for making sure it
22 was responded to?

23 **MR. DONOVAN:** Objection, foundation, Your Honor, to
24 that form of the question.

25 **THE COURT:** Overruled.

1 **THE WITNESS:** The Survey Monkey was sent to each
2 director. So the director would have had to make the decision
3 of delegating it to someone else, but it was sent to the
4 director.

5 **BY MR. PETERS**

6 Q Ms. Strach, we talked some yesterday about voter outreach.

7 A Yes.

8 **MR. PETERS:** May I approach, Your Honor?

9 **THE COURT:** Yes, you may.

10 **BY MR. PETERS**

11 Q Ms. Strach, I've handed you what's been marked as
12 Defendants' Exhibit 234. Do you recognize this document?

13 A I do.

14 Q What is it?

15 A It is a declaration that I made on March 9, 2015,
16 regarding outreach efforts of the State Board of Elections.

17 **MR. DONOVAN:** Your Honor, may I place an objection?
18 We don't object to the exhibits to this. This is obviously an
19 out-of-court declaration, which we did object to, and do. So
20 we don't object to the exhibits and Ms. Strach being examined
21 on them, but the declaration is hearsay, and the witness is
22 here.

23 **MR. PETERS:** Your Honor, I think we can certainly ask
24 her questions about what she has said previously. She is here,
25 and they are able to cross-examine her about it.

1 **THE COURT:** I've accepted a lot of evidence based on
2 expert reports and declarations so far. Is this one somehow
3 qualitatively different?

4 **MR. DONOVAN:** I would say it is different in that we
5 had declarations, too, and part of this was the witnesses
6 rely -- the agreement was declarations during the preliminary
7 injunction. We expressly told them any witness cannot have
8 their declaration in. I don't have an objection to examination
9 on this; but as a matter of evidence, the declaration should
10 not come into evidence is my point, because it is pure hearsay,
11 and we did object to it.

12 **MR. PETERS:** Your Honor, I think the simple answer to
13 your question is, no, it is not different from many of the
14 exhibits that you've already received into evidence.

15 **THE COURT:** Well, it is hearsay, and he's making a
16 hearsay objection. You guys have waived hearsay objections as
17 to all the other reports, but he is raising a hearsay objection
18 to this one.

19 Is there any agreement that this declaration falls
20 within?

21 **MR. PETERS:** No, Your Honor, I don't believe there
22 is.

23 **THE COURT:** Okay. Sustained as to the declaration to
24 the extent it's an out-of-court testimony.

25

1 **BY MR. PETERS**

2 Q Now, Ms. Strach, I believe you testified yesterday about
3 the outreach team?

4 A Yes, I did.

5 Q And the number of members of that team?

6 A Yes.

7 Q What are the races of the members of the outreach team?

8 A Right now, we have four positions. We have three that are
9 actually filled. We are trying to fill one of the vacancies
10 right now, but we have one white male and then we have an
11 African-American female and a white female.

12 Q Can you describe the actions that the outreach team has
13 taken to educate voters?

14 A From the beginning of the outreach team coming on board,
15 the efforts that they have been making have been in several
16 different areas. Certainly photo identification certainly has
17 been an area that they have been very, very involved in in
18 trying to help identify people that may not have a photo ID,
19 educating them on how they can get an ID. That's something
20 that they have been doing and talking to groups about that,
21 about the need to have a photo ID in 2016. And if they need
22 help in obtaining them, helping them do that. They have also
23 been very active in trying to educate the public of other
24 election changes that took place in 2014 and which will take
25 place some in 2016.

1 So they have -- in 2014 specifically, they -- we did --
2 not only our website, we did billboards. They were
3 instrumental in helping us come up with the billboards that
4 showed the voter registration deadline. We did lots of efforts
5 to try to get people to go to our website to look up their
6 precinct so that they would make sure they presented to the
7 proper precinct on Election Day.

8 We made lots of efforts to -- whenever they would go and
9 speak to groups, it was not just a photo identification speech,
10 but also talking about the other changes that would affect
11 voters.

12 Q Has the group done any work to take out any marketing
13 campaigns or advertisements?

14 A Yes. We have -- we put out an RFP to engage an
15 advertising -- a professional advertising company that could
16 advise us on the most effective way to get these messages out.
17 And so we will be doing television, radio, billboards, print.
18 In addition to that, this media company is also assisting us,
19 which was one of the things that I think is really important,
20 is a professional precinct training program for a uniform
21 program for all 100 counties that sort of walks them through
22 all these changes and how we can uniformly address those.

23 Q Let me detour just a second. Does the State Board conduct
24 training programs for county boards?

25 A We provide training to the trainer, I guess, is how you

1 would say it, but it is actually the county boards of elections
2 that train their own precinct officials.

3 Q So the State Board trains the folks for the county board,
4 who then train the local people?

5 A Yes.

6 Q And how often does that kind of training occur?

7 A In an even-numbered year, we do -- we have sort -- we have
8 two statewide trainings. We have -- and then there are other
9 training opportunities that are not necessarily sponsored by
10 the State Board, but the School of Government at UNC. Those
11 are the opportunities that we have. We do lots of Go To
12 Meeting trainings as well with counties on various subjects.
13 So there are several opportunities that we have to train our
14 county boards of elections.

15 Q Now, does the outreach team work in any other forms of
16 outreach other than the advertisements and going to speak to
17 groups?

18 A Yes. A couple of other areas that they have been involved
19 in is working with transit authorities across the state as far
20 as helping with transportation. If a person doesn't have a
21 photo ID and is having trouble getting the documents or getting
22 to the DMV, we have agreements with several transit authorities
23 across the state to assist in -- so that we can call them and
24 they can assist that voter in obtaining photo ID.

25 We also have engaged the community college system, the UNC

1 system, the independent colleges and universities system and
2 are in the process or have already signed MOUs so that we are
3 partnering with colleges and universities and community
4 colleges to get this information out. So we have a message on
5 -- with all of our college students across the state on all of
6 these changes so that we make sure that that message is getting
7 to college students.

8 Q And what does MOU stand for?

9 A A memorandum of understanding.

10 Q And is it the anticipation that there will be MOUs with
11 all colleges, universities, and community colleges in the
12 state?

13 A Yes. I think two have been signed. I think we're just
14 waiting on one, I believe.

15 Q And the two, would that be with -- who are the two with?

16 A I believe we have signed MOUs with -- I know we have
17 signed MOUs with the UNC system and the independent colleges
18 and universities. I think we may have the community college
19 system, but I know that that's its in works if it hasn't
20 happened.

21 Q You mentioned earlier the marketing firm you're working
22 with. Did you include in the directions for that firm any
23 specifics about targeted marketing that you were looking for?

24 A The RFP did ask --

25 Q Let me stop you one moment. What is an RFP?

1 A It's a request for proposal. It is a requirement for
2 state agencies. If they want to enter into contracts with
3 vendors, they have go through a competitive bid process.

4 The RFP that we put out for response required the vendors
5 that were seeking to engage with us -- that they provide
6 information on how they would target certain communities: The
7 low-income, minority, disabled community, and also sort of a
8 general population that sort of looked at everyone. So we
9 wanted to make sure that they were able to provide us
10 information on how they would target specific populations and
11 maybe alter the message so that we make sure that we are
12 reaching everybody.

13 Q Is there a reason that you did not ask them to come up
14 with a plan for targeting college students?

15 A I think when we talked about it, we thought that the
16 general population would probably capture that, and that
17 college students are not the -- a large part of young people
18 population. They don't make up all of what young people are,
19 and so that the other areas would probably -- all of those
20 areas would probably encompass that population.

21 Q Is it true that you are also working on the MOUs with the
22 colleges and universities?

23 A We have been, yes. That was -- that's been going on for
24 some time.

25 Q Did you have some anticipation that that was a way of

1 targeting college students?

2 A Yes, I think that is a very important way of targeting
3 because that gives us an opportunity to get our material
4 straight in the hands of those who have the better access of
5 getting it to the students.

6 Q Now, let me ask you: Do you know what a Multipartisan
7 Assistance Team is?

8 A I do.

9 Q And what is a multipartisan assistance team?

10 A A multipartisan assistance team is something that by
11 statute has been around, and counties were able, if they chose
12 to prior to House Bill 589, they could engage a multipartisan
13 assistance team in order to go to nursing homes or other
14 facilities like that and assist people with voting an absentee
15 ballot.

16 House Bill 589 requires that each county have such a team,
17 and a lot of the reason is is that people that are in nursing
18 homes or other facilities. The workers or -- are not allowed
19 to assist them in the absentee process. So it's important for
20 us to have a way for these people to be able to vote an
21 absentee ballot. So the multipartisan assistance team is a
22 bipartisan team. You cannot have more than one political party
23 on the team. One person affiliated with the same party, you
24 cannot have. So you would have an unaffiliated and a Democrat
25 or a Republican and Democrat, but you couldn't have two of the

1 same party serving on the team.

2 They actually go to the facility and assist the resident
3 with completing a request for a mail-in absentee ballot, and
4 then they will actually go back when that ballot is provided to
5 the facility and assist as being witnesses to that ballot,
6 because there is a requirement of two witnesses.

7 **MR. PETERS:** May I approach, Your Honor?

8 **THE COURT:** Yes.

9 **BY MR. PETERS**

10 Q Ms. Strach, I've handed you what's been marked as
11 Defendants' Exhibit 118.

12 A Yes.

13 Q Do you recognize that document?

14 A Yes. It's a document that has been created by the State
15 Board of Elections that explains the multipartisan assistance
16 teams, or as we call them, MATS.

17 Q You said it was created by the State Board of Elections?

18 A It was.

19 Q Did you direct that it be created?

20 A Yes, I believe I did.

21 Q And who did you ask to create it?

22 A This would have been George McCue.

23 Q And who is George McCue?

24 A He's one of our agency counsel.

25 Q And why did you ask Mr. McCue to prepare this document?

1 A Mr. McCue, one of his responsibilities at the State Board
2 is to -- is rule making, and so as part of that, he's been
3 very, very involved with the -- ensuring that all counties are
4 complying with having a multipartisan assistance team. And
5 this sorts of put together not only the requirements, but also
6 the rules, I believe, that have been recently passed.

7 Q And when you asked him to put this exhibit together, what
8 were you anticipating being done with this document?

9 A Well, this is something that we want to make sure that --
10 and this information is on our website. This is something
11 that's communicated to county boards of elections. We want to
12 make sure that people understand that these multipartisan
13 assistance teams are available, and that facilities across the
14 state can call on the county boards of elections and can
15 utilize these teams to assist residents in their facilities.

16 Q So would it be accurate to say that this was prepared to
17 give guidance to county boards of elections about how
18 multipartisan assistance teams are to function?

19 A Guidance to county boards of elections and any other
20 interested groups that may recognize that this is an option for
21 them.

22 Q Okay. And was part of the idea that this is guidance to
23 the actual members of a multipartisan assistance team?

24 A Yes, because there are specific rules on how they are to
25 conduct themselves in serving on this team.

1 Q And I believe you said that since the enactment of VIVA,
2 counties are required -- county boards are required to make
3 sure that these teams are available?

4 A That's correct.

5 Q In every county?

6 A In every county.

7 Q Now, let's talk for a minute, Ms. Strach, about NVRA. I
8 believe you probably remember having some questions about it
9 last week.

10 A Yes.

11 Q What is NVRA?

12 A It's the National Voter Registration Act.

13 Q And what are the responsibilities of the State Board of
14 Elections with regard to NVRA?

15 A The State Board of Elections' role is to ensure compliance
16 with the NVRA. NVRA requires certain agencies to provide the
17 opportunity to register to vote to -- for example, the DMV,
18 pursuant to the NVRA, is required to offer voter registration
19 to people that present -- customers of DMV. Public assistance
20 agencies are required to offer voter registration to their
21 customers or people that -- clients that come in to public
22 service agencies. So our job is to make sure that they are
23 doing that.

24 Q Who at the State Board is responsible for making sure that
25 the NVRA is being complied with?

1 A Veronica Degraffenreid's -- that's one of her primary
2 roles, and it has been for some time, is to ensure that the
3 agencies -- and to be in contact with the agencies to ensure
4 compliance.

5 Q All right. And how long has Ms. Degraffenreid been with
6 the State Board?

7 A I think Ms. Degraffenreid came on around 2007 or 2008.

8 Q And who hired her?

9 A Gary Bartlett.

10 Q And for the record, what race is Ms. Degraffenreid?

11 A She's African-American.

12 Q Now, you were asked some questions last week about
13 registrations that had come through Social Services agencies.
14 Do you recall that?

15 A I do.

16 Q How does the State Board track which registrations come
17 from a state -- from a Social Services agency?

18 A The way that we track whether -- the various agencies
19 under the NVRA is our voter registration forms. We provide
20 voter registration forms to these agencies upon their ordering
21 of them, and based on the agency that requests that, we provide
22 them voter registration forms that are coded with a certain
23 code so that when those voter registrations are completed by
24 the applicant, we can see the source of where they registered
25 to vote.

1 **MR. PETERS:** May I approach, Your Honor?

2 **BY MR. PETERS**

3 Q I've handed you what has been marked and I believe
4 admitted as Plaintiffs' Exhibit 212A.

5 A Yes.

6 Q And I believe you were asked questions about this last
7 week. Do you recall that?

8 A I was.

9 Q Do you recognize this document?

10 A I do.

11 Q Now, you were talking about a code that enables you to
12 tell where the registration came from. Where on this form is
13 that code?

14 A It's in the upper right-hand corner of the form.

15 Q On this form, what is the code?

16 A It says 06W.

17 Q And what does the Code 06W mean?

18 A That would let us know that someone printed this form from
19 our website.

20 Q From the State Board --

21 A From the State Board of Elections website.

22 Q What is the sort -- are these called source codes?

23 A We call them source codes, yes.

24 Q What is the source code for a social service agency?

25 A 01.

1 Q I assume there may be other codes that indicate other
2 places?

3 A There are. There are -- disability agencies are 02,
4 Employment Security Commission is 03, and DMV is 05.

5 Q I believe you've been asked questions about a decline in
6 voter registrations coming through social service agencies
7 since 2013; is that correct?

8 A That's correct.

9 Q As executive director of the State Board, have you been
10 looking into that decline?

11 A Yes, we have been looking into that decline, and,
12 actually, Ms. Degraffenreid has been also very concerned about
13 that decline earlier in the year and, in fact, at the latter
14 part of last year. So we've been looking at this issue for
15 some time, but more specifically with social service agencies
16 over the last few months, we've been trying to determine what
17 are the reasons for the decline.

18 Q Do you recall when you first became aware that there
19 seemed to be a decline of some kind?

20 A Ms. Degraffenreid, I think, had noticed it sometime later
21 last year and had been actually reaching out to some of the
22 agencies that she felt saw that their numbers were lower. She
23 had been reaching out to several of those agencies.

24 Q By "last year," you mean 2014?

25 A Yes, sir.

1 Q And how did this come to her attention? What was it that
2 she noticed?

3 A She monitors the data on the source codes as well as other
4 data to try to ensure compliance, and so she was actually
5 looking at that data; and based on some of that data, she was
6 reaching out to some of these other agencies to ask questions.

7 Q As executive director, have you come to any conclusions
8 about what might be contributing to the decline?

9 A Well, it is certainly an ongoing process, and we are very
10 committed to ensuring what the issues may be, but there have
11 been some preliminary observations that we have been able to
12 come to. One of the things is because of this source code,
13 Ms. Degraffenreid and myself actually met with the
14 association -- the Department of Social Services has a
15 professional association. We met with them, trying to ask them
16 questions about why these numbers had fallen, which they were
17 very concerned themselves because they take this responsibility
18 very seriously. I believe that.

19 They did not understand the importance of that code, and
20 so some -- as we have gotten to more of a technology --
21 technology has sort of taken its place in some of these
22 agencies now. Some of these agencies were not using -- asking
23 us for the voter registration forms. They were printing the
24 forms off from our website. And so when we -- when we
25 understood that from some of the conversations we were having,

1 the association actually sent a survey around to all 100
2 counties and asked them to tell us what form are you using,
3 and --

4 **MR. DONOVAN:** Your Honor, I just don't want any
5 hearsay to come in. It is kind of a long answer. I don't
6 object to this Q and A, but it sounded like she was about to
7 say what other people said. So that I would object to.

8 **BY MR. PETERS**

9 Q Well, let me rephrase the question or ask a follow-up
10 question. What is your understanding of what is going on?

11 A My understanding, based on the data that has been provided
12 to us, to me, is that there were counties that were using a
13 form other than the 01 form, and there were around ten counties
14 that -- on that list that showed that they were using a form
15 other than the 01 form.

16 Q Are there other things that, in your opinion, may be
17 contributing to the decline?

18 A Well, in our conversations with DHHS and DSS, they have
19 done a very good job of trying to educate us about some of the
20 changes that have gone on; and in addition to that form that
21 the DSS agencies use, the 01, there are certain clients that
22 usually present to the DSS agencies for Medicaid services that
23 now go through HealthCare.gov, and through HealthCare.gov, the
24 voter registration question is posed there, but it points you
25 to the federal form, which is not our form. It is a federal

1 form that you can certainly use to register to vote.

2 So some of those forms -- it is possible that some of
3 those forms were being used. There is no way for us to know
4 if, in fact, that is the case. But the federal -- that's
5 where -- if you were a Medicaid applicant using HealthCare.gov,
6 you would be asked the question and then pointed to this
7 federal form.

8 Q You would be asked what question?

9 A Whether you wanted to register to vote; and if you said
10 yes to that, it linked to the federal form of the EAC, the
11 Election Assistance Commission.

12 Q Does the federal form have a source code on it?

13 A No, because it's not our form. It is a national -- a form
14 that's used by the EAC for all states.

15 Q Are there any other factors you think might be applied?

16 A Well, because of what they explained, and I call it sort
17 of a technology issue, is that over -- and I think Ms. Riggs
18 asked me some questions about this with NC FAST. NC FAST is
19 the system that the Department of Health and Human Services is
20 now using to manage their customers, and it also has a
21 component now through what they call ePASS that allows clients
22 to actually go and obtain services through the Internet.

23 And this technology has, I believe, decreased foot traffic
24 in some of the actual DSS offices. Ms. Riggs talked about a
25 pilot program that NC FAST had engaged in in May of 2012, and

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1 that's absolutely correct; and that that pilot program took
2 place through May, and then I believe all 100 counties were on
3 NC FAST for FNS purposes, Food and Nutrition Services, around
4 March of 2013.

5 And what DHHS has explained to us is that at that time, it
6 still -- customers were walking into the DSS agency. This
7 NC FAST was not allowing the FNS applicant -- they still had to
8 come into the DSS office. It wasn't until a little later in, I
9 believe, April or a little after that that the ability for an
10 FNS applicant to apply online took place, which it would have
11 been at that point that that person would no longer have to
12 present at a DSS office in order to obtain services. They
13 would put in that information. It would be transmitted to the
14 DSS agency. They would then respond by mail or by phone if
15 they needed to.

16 Q One last area I would like to talk about a minute. You
17 touched on this some yesterday, and that's the area of voting
18 irregularity and voter fraud.

19 A Yes.

20 Q In your experience as executive director of the State
21 Board, do you have an opinion as to whether the public is
22 concerned about voter fraud?

23 **MR. DONOVAN:** Objection.

24 **MR. KAUL:** Objection, Your Honor.

25 **THE COURT:** Overruled.

1 **THE WITNESS:** Based on certainly the calls that we
2 get, I definitely think there is a perception that there is
3 voter fraud. I certainly see that -- some of the phone calls
4 that we field on a daily basis, we have people that call that
5 are very, very concerned about the possibility of voter fraud
6 or even the belief that voter fraud is going on. So I do think
7 there is that perception.

8 **BY MR. PETERS**

9 Q All right. And in your opinion as executive director,
10 does that concern or perception affect confidence in the
11 electoral process?

12 **MR. KAUL:** Objection.

13 **MR. DONOVAN:** Objection.

14 **THE COURT:** Overruled.

15 **THE WITNESS:** It does for those people, absolutely.
16 If they believe that there is voter fraud that's not being
17 addressed, that absolutely does I think -- it does affect their
18 confidence in the accuracy and the integrity of our elections.

19 **BY MR. PETERS**

20 Q I believe you mentioned yesterday that you have people on
21 the staff who do investigations.

22 A Yes. We actually have an investigative team. It's
23 recently that we now have a full team in place, but we do have
24 a four -- five-member investigations team.

25 Q And how long have you had that many people to

1 investigate -- do investigations for the State Board?

2 A The team basically came on board as a whole. The chief
3 investigator was hired in June of 2014, and basically it was
4 just him and our longtime investigator. The other three
5 positions were appropriated and were in place March 2015, so
6 just a few months ago. We now have a full team on staff at the
7 State Board.

8 Q You said that the new investigator who came in 2014 came
9 alongside your, I think you said, original investigator?

10 A Yes.

11 Q And who is that person?

12 A Marshall Tutor.

13 Q And before someone new came on in 2013, was Mr. Tutor the
14 only investigator the State Board had?

15 A He was. There were two positions at some point. For the
16 majority of the past, I would say decade, for most of that,
17 Mr. Tutor was really the only one for most of that period.

18 Q And who was the person who came in 2014?

19 A Chuck Stuber.

20 Q And what is his background?

21 A He had just recently retired with the FBI.

22 Q And do you know what sort of work he did with the FBI?

23 A His focus at the FBI was a lot of public corruption
24 crimes. That was his focus over the greater part of his
25 career.

1 Q And did you say there are three other members of the
2 investigation team?

3 A Yes.

4 Q And who are they?

5 A Joan Fleming, and she is also retired FBI; Matt Martucci,
6 who comes from us -- he was a New York City police officer; and
7 Clyde Roper, who was also -- had been a police officer for --
8 in Clayton.

9 Q Okay. Are there other things that the staff is doing with
10 regard to voter fraud, other activities that are engaged in
11 to --

12 A Sure. House Bill 589 authorized the State Board of
13 Elections to engage in sharing of information with other states
14 in order to ensure the integrity of our voter rolls; and as a
15 result of that, we signed an MOU with what they call the Kansas
16 Crosscheck, which is a data sharing between several states that
17 provides -- we share data with each other to see if people are
18 registered in multiple states or people have voted in multiple
19 states.

20 Q Okay. Would the State Board of Elections have been able
21 to participate in that kind of program without the number of
22 investigators that you have now?

23 A I would have to definitely say no. I would not have
24 initially probably said that to you. We engaged in this at the
25 end of 2013, I believe, is when we signed. So we got our first

1 data from the Crosscheck in 2014, prior to having these
2 resources, and the amount of data that you receive from the
3 Crosscheck takes, first of all, a data analyst to go through
4 it, I believe, and make sure that you are looking at good
5 matches.

6 And so in order to look -- and look not only at the data,
7 but then all of those have to be followed up on in order to
8 identify whether or not you actually have a violation.

9 So without the resources to do that type of work, the
10 interviewing and ensuring that that information is correct,
11 it's very difficult to do anything with that data. So until we
12 had the investigators, we had a lot of data, we had a lot of
13 information that we might have double voters, but we had no way
14 really of following up on that.

15 Q When you talk about crosschecks and matches, what is it
16 exactly that's being matched?

17 A We are matching with the voter registration data in the
18 other participating states. So, generally -- or most of the
19 time, that is -- you are looking at first, last, middle name,
20 date of birth, and last four of Social Security number.

21 Q Have you ever personally investigated allegations of voter
22 fraud?

23 A I have.

24 Q What kinds have you investigated?

25 A Well, certainly when I started at the State Board, there

1 would be a variety of different types of violations that I
2 would have looked into.

3 Q Did that include absentee mail-in ballot fraud?

4 A It did. And one of my very first cases that I worked on
5 was a rather big absentee ballot fraud case in Harnett County.

6 Q Based on your experience, both as an investigator at the
7 State Board and as a executive director, do you have an opinion
8 as to whether fraud is easier to detect when it's done in
9 person or by mail?

10 A I do.

11 Q What is that opinion?

12 A I believe that it's certainly easier to detect within the
13 absentee ballot process, and the reason I say that is because a
14 person has to -- the voter has to sign the application, and
15 there are also witnesses to that as well. I think it's an
16 easier thing to detect whether there are issues there, because
17 the county board of elections will receive that information.
18 They have signatures on -- in the voter registration data.
19 They can also see patterns of witnesses signing. There are
20 lots of things that could serve as a red flag in the absentee
21 process. That's different from an impersonation situation
22 where the precinct official would have to be the person that
23 would have to determine that that person was not who they say
24 they are.

25 Q Now, I believe you testified yesterday that particularly

1 in -- perhaps in municipal elections, a small number of
2 improper votes could turn an election?

3 A Correct.

4 Q Am I recalling correctly?

5 A That's correct.

6 Q Do you remember being asked some questions last week about
7 an incident in Pembroke?

8 A I do.

9 Q You were executive director when that case came before the
10 State Board; is that correct?

11 A I was.

12 Q And what is your understanding of what happened in
13 Pembroke?

14 A That was -- there were -- there are actually several
15 things that happened in Pembroke, and the result of that was a
16 new election. We had to have a new election in the town of
17 Pembroke, and that -- in that particular case, at one point,
18 that race was tied, and so every ballot certainly mattered.
19 And there were a number of basketball players, I think, that
20 had attempted to same-day register during that time period or
21 actually had same-day registered and had presented -- and they
22 were not residents there and had presented a document that was
23 a postdated lease that shouldn't have been used by the precinct
24 official because it was not an acceptable HAVA document; but it
25 was a lease, and some leases could be accepted. A housing

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1 authority document could be accepted.

2 And they were able to same-day register and their votes
3 were initially counted, and they were not eligible.

4 Q All right. And you said that the lease they presented
5 should not have been accepted by the poll worker?

6 A It should not have.

7 Q Was there, however, evidence in that case that the lease
8 also was not valid?

9 A That's correct.

10 Q Was there evidence that those persons who presented to
11 same-day register did not live where it was indicated on that
12 lease?

13 A That was the evidence from the county board of elections
14 hearing, I believe, yes.

15 Q And did members of the State Board express concern about
16 that as well as the fact that the poll worker had accepted the
17 lease?

18 A Yes. Yes. There were concerns that -- one of the reasons
19 I think that the new election was called was because there was
20 a concern that ineligible people were being brought to the
21 one-stop sites to register and vote.

22 Q Now, finally, Ms. Strach, I believe you said it's been
23 since March of this year that you had the full staff of
24 investigators?

25 A That's correct.

1 Q Since March, have those investigators referred any cases
2 of fraud to district attorneys?

3 A Yes. Since March 2015, since we've had the full team on,
4 they have been be able to look at -- we have a lot of cases to
5 look at. As a result of their work, we have made or are in the
6 process of making 31 referrals to district attorneys.

7 Q Are some of these cases that may have been sitting for a
8 while that there had not been anybody to look at?

9 A That's correct.

10 Q Do you recall sort of what those 31 cases -- what kind of
11 fraud is involved, or alleged fraud?

12 A Alleged. There were -- I believe 19 of those 31 are where
13 the investigator determined that there is a likelihood that it
14 was --

15 **MR. KAUL:** Your Honor, I would like to raise an
16 objection. I don't believe we've received any documents
17 regarding this issue.

18 **MR. DONOVAN:** They also precluded when we questioned
19 about this during depositions, Your Honor, so I don't think
20 this is fair examination. We did ask, and they said they
21 weren't permitted to talk about it. So --

22 **MR. PETERS:** Your Honor, I would say the information
23 was not available until recently. What we have said could not
24 be done in depositions or otherwise was to identify the names
25 of who was being investigated or anything that could lead

1 someone to know who it was because it was an ongoing criminal
2 investigation. I don't think there is anything that prohibits
3 Ms. Strach from identifying that investigations are occurring.

4 **THE COURT:** What happened in the depositions?

5 **MR. DONOVAN:** We asked questions about it, and we
6 were shut down.

7 **MR. KAUL:** They wouldn't even identify the county in
8 which these cases took place.

9 **THE COURT:** What did they identify?

10 **MR. DONOVAN:** They identified that they had
11 investigators looking into it, and then we asked about who.
12 They did say they had ongoing cases. They said, we can't
13 identify it because it is criminal.

14 We can find those at the break. Your Honor, this is
15 exactly what we want to cross-examine on, especially with the
16 history in North Carolina. There's been two over 35 million
17 votes.

18 **MR. KAUL:** I would add, Your Honor, that if these are
19 ongoing criminal investigations, the same logic should prevent
20 them from raising this issue in this case.

21 **MR. PETERS:** Your Honor, again, I believe the
22 depositions they are talking about are before the information
23 was available. As Mr. Donovan said, she says at the time that
24 the investigators were working on it. Now they have completed
25 it. I don't think there is any reason she can't testify that

1 31 investigations have been referred.

2 **THE COURT:** What other information did you want to
3 elicit on this topic?

4 **MR. PETERS:** Simply the number of referrals there
5 have been and what sorts of fraud or alleged fraud are involved
6 in these investigations. Nothing further.

7 **THE COURT:** Overruled. You can examine just as to
8 that.

9 **MR. KAUL:** May I raise another related issue?

10 **THE COURT:** What's that?

11 **MR. KAUL:** We still haven't received any documents
12 about this issue. They have an ongoing obligation to produce
13 documents. I'm not sure how we're supposed to cross-examine
14 this witness without any information.

15 **MR. PETERS:** Your Honor, the only documents I know
16 that could be provided would be the referrals to district
17 attorneys.

18 **MR. KAUL:** Which we have not received.

19 **MR. PETERS:** And which cannot be disclosed because it
20 is an ongoing criminal investigation.

21 **MR. DONOVAN:** Actually, at the time, Your Honor, she
22 was asked if she knew that some were referred, and she said she
23 didn't really know. And they followed up in saying, "Are there
24 any other cases on voter impersonation?" She says, "I don't
25 know. I'm not the one that would know."

1 **MR. PETERS:** What is the date of the deposition?

2 **THE COURT:** When was the deposition?

3 **MR. DONOVAN:** That was March of this year.

4 **THE COURT:** Okay. All right. Overruled as the two
5 topics that you had indicated.

6 **BY MR. PETERS**

7 Q So the question was simply, do you recall what sorts of
8 alleged voter fraud are included in those 31 referrals?

9 A Of the 31, there are 19 that are as a result of double
10 voting, and I believe that there are two that are voter
11 impersonation, and there are some that were with respect to
12 felons voting. And I think there were actually two that were
13 as a result of candidates falsely completing their notices of
14 candidacy.

15 Q And then, finally, Ms. Strach, do you know whether there
16 were any challenges in the counties in the last election for
17 noncitizens attempting to vote?

18 A There were.

19 Q Do you recall how many?

20 A We had -- I believe that there were at least ten
21 challenges that were sustained by county boards of elections.

22 **THE COURT:** What does that mean, they were sustained?

23 **THE WITNESS:** They had a hearing. Someone challenged
24 the fact that the voter was a citizen, and that as a result of
25 that hearing, the county board determined that they were not a

1 citizen and sustained the challenge to the voter, and the voter
2 was not able to vote.

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

4 **MR. PETERS:** Thank you, Ms. Strach. I don't have any
5 further questions.

6 **THE COURT:** Any cross, Mr. Donovan?

7 **MR. DONOVAN:** Yes, Your Honor.

8 CROSS-EXAMINATION

9 **BY MR. DONOVAN**

10 Q You would agree with me that as much you're worried about
11 a potential unnamed voter who might be ineligible, you're just
12 as worried about eligible North Carolina citizens not being
13 able to vote; correct?

14 A I am certainly worried about anyone who is eligible to
15 vote. I want them to be able to vote.

16 Q Because a small number of eligible North Carolina voters
17 who can't vote could impact a municipal election; true?

18 A Sure. If someone is eligible to vote, they should be able
19 to vote.

20 Q Now, you talked with Mr. Peters about opinions you have on
21 same-day registration; right?

22 A Correct.

23 Q Okay. And you have never been the executive director when
24 same-day registration has been in effect in either a midterm or
25 a Presidential election?

1 A I have not.

2 Q And you haven't been the executive director when
3 out-of-precinct was available in midterm or a Presidential
4 election; correct?

5 A I was not.

6 Q And you haven't been the executive director when 17 days
7 of early voting, or 10 for that matter, have been available
8 during a Presidential election; true?

9 A That's true.

10 Q You talked about the State Board -- it might have been
11 yesterday. You mentioned there was less than 20 people when
12 you started in 2000; is that right?

13 A I believe that's true.

14 Q When you became executive director in May of 2013, how
15 many employees did you have at the State Board of Elections?

16 A I think there were probably 50 maybe. I'm not sure of the
17 exact number. I think it's around 50.

18 Q How many have you hired since you started?

19 A Approximately 10, 12.

20 Q And how many of those were filling existing positions?

21 A Filling existing positions?

22 Q Yes, ma'am.

23 A A couple -- probably three or four.

24 Q Okay.

25 A It may have been more than that, now that I'm thinking

1 about it, if you are talking about filling existing positions.

2 Q Okay. But when you became executive director, when you
3 were suggesting 20 people, you weren't suggesting there were
4 only 20 people at the SBOE when you became executive director?

5 A No, that's when I started in 2000.

6 Q Now, you mentioned the voter outreach team with
7 Mr. Peters, and you identified them generally. What are their
8 names?

9 A Ted Fitzgerald, Lee Cooley, and Jennifer Faulkner.

10 Q And you mentioned in your direct testimony that as part of
11 your job, you meet with various groups, whether through
12 education or to get feedback on the system; right?

13 A That's correct.

14 Q And some of those groups you meet with do voter outreach;
15 is that right?

16 A Absolutely.

17 Q And some of these groups do poll monitoring; correct?

18 A They may.

19 Q And some do poll monitoring, and they come and report to
20 you and your staff what they see at the polls; correct?

21 A One such group I am aware of, yes.

22 Q Who is that?

23 A Democracy North Carolina.

24 Q And who are they?

25 A They're a political watchdog is generally how I see them.

1 They have other areas, too, but they're interested in voting.

2 Q And who -- what -- Democracy North Carolina?

3 A Democracy North Carolina.

4 Q Who is the head of that group?

5 A Bob Hall.

6 Q And what kind of work -- you said they do political
7 watchdog. What does that mean?

8 A Well, I -- I have had -- generally, most of my working
9 with Democracy North Carolina was as my role as deputy director
10 of campaign finance. They did a lot with being the watchdog
11 for political committees.

12 Q And since you've become executive director, have you and
13 your staff met with Mr. Hall?

14 A Oh, on numerous occasions.

15 Q And that's an important way for you to keep apprised of
16 what's happening related to voting; correct?

17 A One of the ways, yes, absolutely.

18 Q And these kind of reports, whether it's Democracy North
19 Carolina or otherwise, on voting, you and your staff review
20 those to stay apprised; correct?

21 A We do review them, and then we do make efforts to meet
22 with Mr. Hall if he has concerns.

23 Q Now, as part of that voter outreach, you discussed about
24 an RFP; correct?

25 A Correct.

1 Q And an RFP, that hasn't been finalized yet; correct?

2 A No, it's been finalized, and it has been awarded.

3 Q Was it awarded and done and in place for the 2014
4 election?

5 A It was not.

6 Q So this, you are suggesting to the Court, is something
7 that's going to happen in the future; correct?

8 A That's happening right now, yes.

9 Q Fair enough. But before of the 2014 election, it didn't
10 happen; correct?

11 A We did not engage a firm for the 2014 election, no.

12 Q And you mentioned that -- if you could look at the exhibit
13 Mr. Peters gave you. It's 234. The attachments is what I'm
14 looking at.

15 A Yes.

16 Q Can you look through the back pages. Just look at those
17 exhibits briefly, and let me know once you've had a moment to
18 look at those.

19 A Yes.

20 Q Okay. So I'm looking at the first exhibit behind
21 Exhibit A. This is related to photo ID; correct?

22 A It is.

23 Q It is not related to same-day registration or
24 out-of-precinct?

25 A It is not.

1 Q Let's go to the documents behind Exhibit B.

2 A Exhibit B?

3 Q Behind Exhibit B, yes, ma'am. And these all have to do
4 with photo ID as well; correct?

5 A They do.

6 Q They don't have anything to do with same-day registration;
7 correct?

8 A They do not.

9 Q None of the exhibits behind Tab B discuss out-of-precinct
10 voting or that such out-of-precinct votes will not count;
11 correct?

12 A These specific documents do not.

13 Q And you mentioned billboards. How many billboards talked
14 about same-day registration?

15 A What it talked about was the voter registration deadline.

16 Q So it didn't talk about that same-day registration would
17 no longer be available?

18 A It said you had to register by this deadline.

19 Q Did it say that same-day registration was no longer in
20 effect?

21 A It did not.

22 Q Now, in your direct testimony, you used the term "initial
23 mail verification"; correct?

24 A I did.

25 Q And you would agree with me the term "initial mail

1 verification" is not in the North Carolina statute; correct?

2 A The word "initial" probably is not in the statute.

3 Q Now, we covered mail verification last time, so I am not
4 going to try to cover that ground again, but I do want to ask
5 some follow-ups from Mr. Peters.

6 Do you have Plaintiffs' Exhibit 212A, this is the voter
7 registration form, in front of you?

8 A I do.

9 Q Let's look at that. And I think you mentioned that the
10 goal of this -- and we talked about this last time -- is this
11 mailing is kind of a negative confirmation of whether someone
12 lives at a particular place in the sense of if the card doesn't
13 get returned, you assume that they live there; correct?

14 A That's how it's set out by statute, yes.

15 Q And if we look at the registration form, if we look back
16 at Section 4, that lists the residential address; correct?

17 A It does.

18 Q And that's where a registrant, under penalty of perjury,
19 has to say where they live; correct?

20 A It is.

21 Q And that needs to be confirmed with HAVA ID; correct?

22 A Yes, it does.

23 Q For the first time?

24 A For the first-time voter, yes.

25 Q And that HAVA ID has to show their current address;

1 correct?

2 A That's a requirement.

3 Q Then the registration also provides, below that, mailing
4 address; is that right?

5 A That's correct.

6 Q Okay. And when you send your -- the mail verification you
7 were referring to on direct, it goes to the mailing address;
8 correct?

9 A It goes to the residential address unless they provide a
10 mailing address.

11 Q Okay. That's my question. If somebody provides a
12 residential address and then provides a mailing address, where
13 does that nonforwardable mail verification go?

14 A I believe that it goes to the mailing address, because the
15 belief is that they cannot receive mail at their residential
16 address.

17 Q So if a North Carolina citizen provides a residence but
18 also provides the mailing address, that mail verification goes
19 to the mailing address, you believe; correct?

20 A Right. I believe that's how SEIMS does that, because it
21 does not know whether or not that person can receive mail at
22 their residential address.

23 Q So when that's done, what you are confirming is that the
24 mailing address that the North Carolina citizen gave you
25 doesn't reject mail for that person that gets sent there;

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1 correct?

2 A For those, that's what it would be.

3 Q So fair to say for people that give you a mailing address,
4 the mail verification you talked about with Mr. Peters does not
5 actually confirm their address; true?

6 A For those, it would be the mailing address, yes.

7 Q Now, we also -- you also discussed 2014. In the 2014
8 election, you are aware that there were voters who registered
9 and voted who had not completed mail verification by the time
10 they voted; true?

11 A Correct.

12 Q And we'll get to this in a moment, but you agree with me,
13 in fact, even after H.B. 589, North Carolina election law
14 envisions and provides for North Carolina voters who vote
15 through what you call the traditional process, the 25 days
16 before, express permission to vote even if they have not
17 completed mail verification; true?

18 A That's true.

19 Q And those individuals that vote -- that register and vote
20 before they complete mail verification, you would not call them
21 illegal voters, would you?

22 A When you say "illegal voters," I couldn't say whether they
23 were illegal or not without investigating whether or not they
24 had provided a false address or they didn't live at the
25 address.

1 Q That's a fair point. The defense counsel has called them
2 illegal. I just want to make sure with you, you wouldn't call
3 them illegal; true? People who have registered and voted, but
4 have not mail-verified, you would not classify them as illegal
5 without doing an investigation; correct?

6 **MR. PETERS:** Your Honor, I do just want to object to
7 the characterization what we're calling things. I don't think
8 that's accurate.

9 **MR. DONOVAN:** It's in their trial brief, Judge, but
10 I'll ask the question differently.

11 **THE COURT:** Can you rephrase it?

12 **MR. DONOVAN:** Sure.

13 **THE COURT:** You had a lot of questions in there, too,
14 and characterized what they said. So maybe just ask your
15 question.

16 **MR. DONOVAN:** I will.

17 **THE COURT:** Thank you.

18 **BY MR. DONOVAN**

19 Q Ms. Strach, we talked about individuals that register and
20 vote before they complete mail verification --

21 A Correct.

22 Q -- do you understand that? Fair to say, that's provided
23 for, in fact, still currently by North Carolina voting law;
24 true?

25 A It is provided for, and it provides a mechanism for

1 somebody to challenge that voter if they have failed one of the
2 cards as well.

3 Q And just by the fact that someone votes and does not yet
4 complete mail verification, you, as the head of -- executive
5 director, would not call them illegal voters; true?

6 A I would not call them illegal. What I would say is if
7 they don't pass mail verification by the mail verification
8 standard, they are ineligible.

9 Q Well, they are not ineligible. We've covered this. What
10 they are is they haven't mail-verified; right? Because to be
11 eligible -- let me just ask my question. To be eligible,
12 ma'am, you need to either be born in the U.S. or naturalized,
13 over 18, and have lived in your location here in North Carolina
14 for 30 days; true?

15 A I guess I would just say that those are your
16 qualifications for being a registered voter. And then another
17 thing that the -- that we have to do is we have to establish
18 that your -- your residency, and that's through the mail
19 verification process, which is an eligibility, I think,
20 requirement.

21 Q We are going to cover it, but we agreed the other day,
22 eligibility is in a different provision you've reviewed as
23 executive director than those mail verification; correct?

24 A I'm sorry?

25 Q Sure. Let me ask it again. I just want to make sure

1 we're using the right words. Eligibility means you have to be
2 born in the U.S. or naturalized, over 18, and have lived in
3 your residence here in North Carolina for 30 days; true?

4 A I guess I would say those are qualifications that you have
5 to -- you have to have those, and then North Carolina requires
6 that you pass mail verification as -- to be eligible. That's
7 how we -- you become then a registered applicant.

8 Q Okay. We'll cover that after the break, because I have
9 the statute for you. I thought we had covered that, but we'll
10 come back to that.

11 Now, are you aware of any traditional registrants who
12 voted during the 2014 election before completing mail
13 verification who you've referred to one of the DAs?

14 A I don't believe any of those -- no, they have not been
15 referred.

16 Q And you are still investigating those; correct?

17 A Investigating?

18 Q Voters who may have voted in 2014 and voted before they
19 completed mail verification; true?

20 A I don't know that investigators are investigating those
21 right now. It's sort of a resource issue.

22 Q Now, you discussed with Mr. Peters same-day registration,
23 and we talked last time, but a same-day registrant, by
24 definition, registers and almost all, but not all, vote that
25 same day; right?

1 A Correct.

2 Q And part of your outreach was -- part of your education
3 was you try to let people know that you -- this election, 2014,
4 you needed to be registered by a certain deadline; correct?

5 A That's correct.

6 Q And you -- I think you said you had billboards and some
7 other things; right?

8 A We did.

9 Q And you think you did a good job?

10 A I think we did.

11 Q So people knew that same-day registration, in your
12 opinion, wasn't available in 2014; is that right?

13 A And I base that on the number of people that presented and
14 voted provisional ballot and did not have their ballot counted.

15 Q So people that you educated would know not to appear on
16 Election Day -- or, excuse me, during early voting because
17 you've informed them that same-day registration isn't
18 available; true?

19 A Well, that's the goal of outreach is so that they
20 understand that they should not appear during that time in
21 order to be able to vote.

22 Q And you're confident that, based on your education,
23 people -- your education outreach efforts, people didn't show
24 up and try to same-day register; true?

25 A I think there were a great number of people that didn't,

1 based on the provisional numbers.

2 Q And that's based on the education efforts of the SBOE to
3 make sure people knew they couldn't same-day register?

4 A I think that that was some of the reason, yes, the
5 education efforts of the State Board of Elections and other
6 groups that were also trying to get that message out.

7 **MR. DONOVAN:** Good place for a break, Judge?

8 **THE COURT:** That will be fine. We'll take our
9 morning break for 20 minutes.

10 (The Court recessed at 10:33 a.m.)

11 (The Court was called back to order at 10:57 a.m.)

12 **THE COURT:** Mr. Donovan.

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

14 **THE COURT:** Yes, please.

15 **BY MR. DONOVAN**

16 Q Ms. Strach, I've handed you what's marked PX723, which are
17 certain provisions related to voting in North Carolina. And
18 you've seen these before; correct?

19 A I have.

20 Q Let's go to the section that is Section 163-82.7(g). It
21 is on the second page. Do you see that? It is called "Voting
22 When Verification Process Is Incomplete."

23 A I do see that.

24 Q And this provision, you are aware, was in law -- was part
25 of North Carolina law before H.B. 589; correct?

1 A It was.

2 Q And H.B. 589 did not repeal this provision; correct?

3 A It did not.

4 Q Okay. Let's just walk through this together. It provides
5 that "In cases where an election occurs before the process of
6 verification outlined in this section has had time to be
7 completed, the county board of elections shall be guided by the
8 following rules."

9 So if we stop there, this is referring to what you say are
10 traditional registrants, people who mail it in maybe on 25 days
11 before the election, and mail verification has not been
12 completed; is that right?

13 A I agree.

14 Q Okay. So if we go to subsection 1, it provides that "if
15 the county board has made a tentative determination" -- let's
16 just stop there. That we've talked about. That's if they look
17 at the registration form and it's fully filled out and they
18 don't have any reason to believe there's anything incorrect,
19 they tentatively qualify someone to vote; is that right?

20 A Based on the information -- they believe that they are
21 qualified based on the information they provided.

22 Q It then goes on to say "that an applicant is qualified to
23 vote under subsection (a)" -- we just discussed that -- "then
24 that person shall not be denied the right to vote in person in
25 an election unless the Postal Service has returned as

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1 undeliverable two notices to the applicant...." Do you see
2 that?

3 A I do.

4 Q So what that means is a traditional registrant sends in a
5 registration form, and they have not completed mail
6 verification, that is, they haven't gotten two rejections.
7 Maybe they've gotten one, but they haven't gotten two. This
8 provision provides that they shall be not denied the right to
9 vote; is that correct?

10 A That's correct.

11 Q Now, it then goes in subsection 2 that "if the Postal
12 Service" -- well, let me take a step back. Under
13 subsection (1), this one could be a voter who you didn't get
14 any -- even the first card returned; right? You might get that
15 first card returned later after the person voted; correct?

16 A That's correct.

17 Q This next section talks about if the county board has
18 received one of those nonforwardable mails back, that is, if
19 they get that back, one of them, that person can still vote,
20 but they have to vote in person; correct?

21 A That's correct.

22 Q They are not allowed to send one of those absentee mail
23 votes in; correct?

24 A That's right.

25 Q The legislature has determined they want people to show up

1 if they failed one of those mail verifications; true?

2 A Yes.

3 Q So the General Assembly, the legislature, then said, when
4 you do that, when you show up in person, you don't mail in
5 something. When you show up, you have to give your correct
6 address; is that right?

7 A Correct.

8 Q Okay. And by "correct address" -- we don't need to go
9 through it again -- that's one of those HAVA that is on the
10 back of your registration form, what you can show to prove your
11 current residence; correct? Do you want me to re-ask?

12 A Yes.

13 Q In subsection 2, when that voter who registered
14 traditionally, but you've got one nonforwardable verification
15 back --

16 A That's correct.

17 Q -- that person, the legislature has determined, has to
18 show up in person; but what the county board has to do is
19 obtain the correct address of that person. Is that right?

20 A Correct.

21 Q And to make sure they were in the correct precinct?

22 A Correct.

23 Q Or place, excuse me, is the word.

24 And to get the correct address, the county board would ask
25 for current proof of their residency; correct?

1 A If they had not -- if they had provided information on
2 their voter registration form, their Social, their date of
3 birth, they may not have to provide that.

4 Q They may not need to provide it because they were able to
5 confirm it in another way maybe?

6 A Right.

7 Q But either way, the legislature has determined that that
8 person should show up in person, and it tells the county board
9 they should just have a procedure to make sure they have their
10 correct address; is that right?

11 A Correct.

12 Q Now, let's go down further. Under subsection 3 --

13 A Yes.

14 Q -- that provides what we've talked about in many other
15 instances, which happened with same-day registration as well,
16 is if the person votes before confirming mail verification, you
17 should send out one of those confirmation mailings; correct?

18 A Yes.

19 Q Ms. Strach, you -- we talked about -- at least I did with
20 you, about the 2015 same-day registration report that's Exhibit
21 Number 16.

22 A Yes.

23 Q I am not going to cover a lot of ground on this again
24 because we already have. I just want to make clear again, you
25 didn't draft any of the text of this report; correct?

1 A I did not.

2 Q You did not collect any of the data?

3 A I did not.

4 Q You didn't analyze any of the data?

5 A I did not.

6 Q And you didn't look at any of the snapshot reports;
7 correct?

8 A I did not.

9 Q But you agree that this -- the request for this report
10 grew out of the depositions in this case; correct?

11 A Right, it grew out of questions posed to me during
12 depositions.

13 Q And we have this DX16 for the 2000. This analyzes 2012
14 voters; is that right?

15 A It does.

16 Q And did you run the same report for the traditional voters
17 for 2014?

18 A No, not for this report, no.

19 Q How about for another report?

20 A Did you ask -- I'm not sure I understand what your
21 question is.

22 Q Sure. So in looking at DX 16, you looked at mail
23 verification rates of voters in the 2012 election; true?

24 A Correct.

25 Q Do -- have you run a similar report for voters who voted

1 in 2014 and their mail verification, either failure rates or
2 success rates?

3 A No, not for this report because that's not the election
4 that this report was looking at. It was looking at election
5 where same-day registration had been in effect, which was not
6 the case in 2014.

7 Q Okay. Let me be clear. In the 2014 election --

8 A Correct.

9 Q -- there wasn't same-day registration; right?

10 A Correct.

11 Q That's why we are. So my question is is did you run a
12 report for the 2014 election to look at the mail verification
13 success rates for those people that we just talked about that
14 were still eligible to vote in 2014? Did you do that?

15 A I don't think we have looked at that, no.

16 Q You haven't asked Mr. Neesby to look at that; correct?

17 A I don't think that I have, no.

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

19 **THE COURT:** Yes.

20 **BY MR. DONOVAN**

21 Q Ma'am, I've handed you what's been marked as Plaintiffs'
22 Exhibit 490. Do you have that before you?

23 A I do.

24 Q Okay. And have you seen this document before?

25 A Yes, I believe that I have.

1 Q Okay. And if we look at the upper left, this is an email
2 from Mr. Neesby to you dated November 7, 2014. Do you see
3 that?

4 A Correct.

5 Q And that's a few days after the 2014 election?

6 A It would be.

7 Q Okay. And it's entitled "Preliminary Verification Mailing
8 Analysis"; is that right?

9 A Correct.

10 Q And Mr. Neesby writes, "I suspect that the verification
11 mailing analysis is no longer that relevant, since most
12 challenges would have to be made on Election Day.

13 Consequently, I have just done a preliminary analysis." Do you
14 see that?

15 A Correct.

16 Q Then he has a chart maybe we should have all used -- we
17 all made our own -- but he has the chart showing that mail
18 verification process, and he colors different boxes; is that
19 right?

20 A He does.

21 Q Okay. And some are blue, some are dark blue, and are some
22 purple and dark purple. If you look on your screen, it might
23 be a little easier to see. Do you see that?

24 A I do.

25 Q Now, let's turn to the back -- or the second page of the

1 email. In this, he's doing a preliminary verification mailing
2 analysis looking at the 2014 election; is that right?

3 A I don't know that he is looking at the 2014. I would have
4 to read it and see.

5 Q Go ahead, and then I'll ask the questions.

6 A I don't believe he was looking at 2014. And as I recall
7 this, Mr. Neesby had just been on staff less than a month at
8 this time, and one of the things that I had talked to him when
9 he came on board about was that this was going to be something
10 I would want him to do is to assist Veronica Degraffenreid in
11 this analysis. And I actually asked him to try to understand
12 what the verification process was so that -- to see if we could
13 do an analysis that actually looked at the verification rates
14 itself. So I believe that this is what he was responding to.

15 Q Okay. So let's look. Do you have any reason to believe
16 that when he says the "challenges would have been to be made on
17 Election Day," that he was referring to any Election Day other
18 than the one that had just passed?

19 A I believe that this was in the context of me discussing
20 with him the analysis that had been done previously by
21 Ms. Degraffenreid and understanding what that report said and
22 the fact that challenges would have to be made on Election Day,
23 in that case, the 2012 Election Day.

24 Q So you believe he was referring to 2012?

25 A I believe that he's referring to 2012 because that was the

1 report that I had asked him to look at.

2 Q Okay. So although he was running this a couple of days
3 after the 2014 election, you believe he was referring to 2012
4 data?

5 A I believe that's what he was because that's the report I
6 discussed with him when he came on board, which would have been
7 during this time period.

8 Q If I understand you then, you haven't run a report and you
9 don't believe this report, this preliminary analysis, is
10 related to 2014; is that right?

11 A I don't believe that it is.

12 Q So fair to say the SBOE has not looked at any mail
13 verification rates for the 2014 election?

14 A I believe that's a true statement.

15 Q Now, ma'am, I want to turn to the multipartisan assistance
16 teams that you talked about.

17 A Yes.

18 Q And these were available before the 2014 election;
19 correct?

20 A They were. They just were not required.

21 Q And in the 2014 election, how many of these absentee
22 ballots were cast that were assisted by the multipartisan
23 assistance team?

24 A I don't know. I don't have that information.

25 Q You can't tell the Court that number; right?

1 A I can't at this time, no. I'm sure I could probably get
2 that information, but I don't know.

3 Q Do you know how many absentee ballots were cast with the
4 assistance of the multipartisan assistance team in 2012?

5 A I don't know. I do know that there were just only a
6 couple of counties that actually utilized them, because we
7 relied on them heavily when coming up with our guidance for
8 2014 for fully implementing it across the state.

9 Q So you are only aware in 2012 that only two counties out
10 of the 100 had the multipartisan assistance teams; is that
11 right?

12 A I said a few. I am not sure if it was two. A few.

13 Q Which counties are you aware of?

14 A The one that comes to mind is Chatham. I believe there
15 were a couple other ones, too, but I'm not sure exactly which
16 ones. I know that Chatham County was one.

17 Q Now, Ms. Strach, you testified earlier that as part of
18 your job, you want to make sure eligible voters can vote;
19 correct?

20 A Yes, it is.

21 Q And it is also part of your job, I think you said, to
22 prevent irregularities or to prevent voter fraud; correct?

23 A Correct.

24 Q Just as much kind of election irregularities as well, that
25 is, by campaigns or officials; correct?

1 A Very important, yes.

2 Q And after you became executive director, and since then,
3 you said you've gotten calls from people regarding a potential
4 concern about voter fraud; is that right?

5 A I have, and other members of our staff have as well.

6 Q And since you've become executive director, you've also
7 made presentations both to the media and the General Assembly
8 about voter fraud as well; correct?

9 A I have made presentations to the General Assembly based on
10 information they had requested on Crosscheck.

11 Q Okay. We'll get to Crosscheck. But you have made
12 presentations publicly since you've become executive director
13 discussing this topic; correct?

14 A Yes, I believe I have.

15 Q Okay. Let's talk about that Interstate Crosscheck.
16 That's with the State of Kansas; correct?

17 A That's correct.

18 Q That's the Secretary of State Kobach; correct?

19 A I believe that that is.

20 Q And the Interstate Crosscheck you referred to, I think you
21 said it checks -- well, tell me. What does it compare?

22 A Well, it's based on the voter registration data obtained
23 by the various states that are involved in it. Generally, it's
24 a match between first, last name, date of birth, and last four
25 Social, if the state obtains the Social Security number. Some

1 states do not.

2 Q When you got that data back of these potential fraud,
3 there were actually four North Carolina legislators on that
4 list; correct?

5 A I'm not sure -- I don't know if that's true or not.

6 Q You were told that, though; right?

7 A I think -- I think I remember someone calling and telling
8 me. I'm not sure the number, but I do remember a conversation.
9 I think it might have been Bob Hall.

10 Q But you are aware -- you became aware before your
11 July 2014 deposition that there were North Carolina legislators
12 on that Interstate Crosscheck list?

13 A Well, I say this -- I am not sure that I am aware of that,
14 because I am not sure how people would have had that
15 information because that would have been confidential data.
16 I'm not sure how they could have obtained that.

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

18 **THE COURT:** Yes.

19 **BY MR. DONOVAN**

20 Q Ms. Strach, if you look at page 62 of your July 2014, it
21 is the second tab, page 62, lines 9 through 13. Let me know
22 when you are there.

23 A I'm here.

24 Q Okay. And on page 62, line 9, were you asked this
25 question and did you give this answer (quoted as read):

NAACP, et al. v. NC, et al. - Trial Day 13 - 7/29/15

1 "Q And you are aware that there's
2 actually North Carolina legislators whose first
3 and last name and date of birth are duplicates
4 with voters in other states?

5 "A I learned that recently."

6 A I'm sorry, Mr. Donovan. I think I was looking at the
7 wrong -- you said --

8 Q Page 62.

9 A I was looking at the wrong one.

10 Q No problem. Second tab.

11 A I'm there.

12 Q So let me re-ask. Were you asked this question, and did
13 you give this answer:

14 "Q And are you aware that there's
15 actually North Carolina legislators whose first
16 and last name and date of birth are duplicates
17 with voters in other states?

18 "A I learned that recently."

19 Is that the question you were asked and the answer you
20 gave?

21 A It is. It is. And I recall that there had been a
22 conversation, I think it was with Mr. Hall, where he had come
23 into my office and had advised me that he believed that some
24 legislators showed up, and I am not sure which data he was
25 relying on, but I do recall that conversation.

1 Q It was actually reported in the press as well; is that
2 right?

3 A I believe he did a press release about it.

4 Q You don't have any basis, if there were North Carolina
5 legislators on there, to suggest to the Court that they were
6 committing voter fraud, do you?

7 A I would have to investigate it.

8 Q Let's just spend a moment on the absentee requests for a
9 ballot. And for an absentee ballot, a voter doesn't need to
10 request that themselves; correct?

11 A That's correct.

12 Q And voter -- a close relative can request an absentee
13 ballot; is that right?

14 A A near relative can, yes.

15 Q And that could be somebody's brother; correct?

16 A Yes.

17 Q And it could be somebody's sister?

18 A Yes.

19 Q And it can be somebody's father?

20 A Yes.

21 Q It could be somebody's mother?

22 A Yes.

23 Q It could be a grandparent?

24 A Yes.

25 Q It could be somebody's child?

- 1 A Yes.
- 2 Q It could be a grandchild?
- 3 A Yes.
- 4 Q It could be a mother-in-law?
- 5 A I believe so.
- 6 Q Father-in-law?
- 7 A I believe so.
- 8 Q Daughter-in-law?
- 9 A Yes.
- 10 Q Son-in-law?
- 11 A Yes.
- 12 Q Stepparent?
- 13 A Yes.
- 14 Q Or stepchild?
- 15 A Yes.
- 16 Q Now, when someone goes to vote same-day registration, they
- 17 have to appear in person; right? Their brother can't show up
- 18 for them; right?
- 19 A That's true.
- 20 Q And they need to present HAVA ID; correct?
- 21 A They do.
- 22 Q And they need to show proof of current address; is that
- 23 right?
- 24 A Correct.
- 25 Q They have to speak to at least an election official or a

1 precinct official; correct?

2 A Correct.

3 Q On the absentee ballot request form, there is not a box
4 that requires providing -- regarding how the person making the
5 request is related to the voter, is there?

6 A I am not sure. I would have to look at the form. I am
7 not sure.

8 Q We do know -- well, withdraw. I just want to follow up on
9 registration for certain individuals.

10 If a registration form is submitted and it's missing any
11 of the required information we talked about, the county board
12 can't process that application; is that right?

13 A Correct.

14 Q They go into, I think we've heard some testimony, what's
15 called the incomplete queue?

16 A That's what it's called.

17 Q And so, for example, if a voter doesn't provide the date
18 of birth, they would go in the incomplete queue because you
19 need that information?

20 A That's correct.

21 Q Same thing if the voter doesn't sign the registration form
22 by accident?

23 A Correct.

24 Q When they are in that incomplete queue, they don't get
25 that nonforwardable registration card, voter card; right?

1 A They get a letter that is sent to them that advises them
2 of the deficiency that they need to address.

3 Q Yeah. So let's do it this way. I am going to get to that
4 in a second, but they don't get that voter registration card
5 that would tell them what precinct to vote at; correct?

6 A Right, because they are not registered yet.

7 Q They are not registered to vote; right. What they get is
8 what you referred to as an incomplete notice, or we looked at
9 the email last time, somebody in another county called it the
10 reject notice; right?

11 A The incomplete letter, yes.

12 Q And if they aren't registered because they didn't have all
13 the information, they're not assigned a precinct to go vote at;
14 correct?

15 A The letter is only asking for information from the
16 applicant.

17 Q Okay. But my question is, if they are in the incomplete
18 queue, they are not yet assigned a precinct to vote at;
19 correct?

20 A No.

21 Q And when a voter gets that incomplete notice, they have to
22 affirmatively respond to that notice; correct?

23 A They do.

24 Q That involves either mailing or delivering it back to the
25 county board of elections?

1 A That's correct.

2 Q And if the voter doesn't respond, the registration
3 application stays in the incomplete queue; correct?

4 A It does.

5 Q If that voter is in the incomplete queue and presents on
6 Election Day, how will they determine which precinct they
7 should go to?

8 A That will be based on the address that the person gives
9 the precinct official.

10 Q But before I, as the voter, leave the house, if I look
11 online, it doesn't provide me my correct precinct because one
12 hasn't been assigned; correct?

13 A That's correct.

14 Q And I haven't gotten a card that assigns the precinct;
15 right?

16 A Right. Because you wouldn't receive a voter registration
17 card.

18 Q And if that voter we just talked about had showed up
19 pre-H.B. 589, even at any precinct because they are not
20 assigned a precinct, they could have voted an out-of-precinct
21 ballot if they showed up at the wrong precinct; correct?

22 A That voter could vote -- would be afforded the ability to
23 vote a provisional ballot pre-H.B. 589 and post-589.

24 Q And pre-589, the vote would count for the elections of
25 which they were permitted to vote in that precinct; correct?

1 A It depends on what the reasons were why that person was in
2 the incomplete queue. If they have cured whatever they needed,
3 then they would be able to vote and that would count. If they
4 had not, then in neither situation would it count.

5 Q It wouldn't count, and it wouldn't count today -- well,
6 not today, but if we assume pre -- 589 is in effect, if that
7 voter fills -- completes the information, but they're at the
8 wrong precinct, they would have to go to the correct precinct,
9 and if they voted a provisional ballot at the wrong precinct,
10 it wouldn't count; correct?

11 A Right. If there is no out-of-precinct voting, they would
12 have to go to their correct precinct.

13 Q Let's talk briefly about -- you talked with Mr. Peters
14 about list maintenance.

15 A Yes.

16 Q And that's part of both the State Board and the county
17 board -- you make efforts in North Carolina to keep your voter
18 rolls up to date; correct?

19 A Yes.

20 Q And that's to kind of prevent some of the potential fraud
21 you were talking about with Mr. Peters; correct?

22 A That's correct.

23 Q And would you agree that, in your view, North Carolina has
24 an open and transparent election process?

25 A I agree.

1 Q Okay. And as part of that, different groups can monitor
2 different aspects of election activity?

3 A Yes.

4 Q And that process is aided by the role of other voters;
5 correct? Let me be a little clearer. So there are actually
6 candidates -- or polling place observers; correct?

7 A There can be.

8 Q And campaigns also kind of follow the precinct and who is
9 voting and who is not; correct?

10 A They do.

11 Q They feel pretty open of contacting the State Board of
12 Elections if they think there is some issues --

13 A They feel very open.

14 Q Yeah. And the election records, as we've made public in
15 this case for sure, they are open and readily available at the
16 county boards of elections; correct?

17 A They are.

18 Q And they are also available online; correct?

19 A We have many records on our website.

20 Q And with list maintenance, that's a kind of continuous and
21 systematic process you have in place to keep your voter
22 rolls -- sometimes people call it clean; right?

23 A Yes.

24 Q And without getting into the details, but you do work with
25 the DMV as part of that list maintenance process; correct?

1 A We do.

2 Q Can you explain what that interaction is between the SBOE
3 and the DMV on list maintenance?

4 A DMV provides us information on a couple of areas. They
5 provide us information on deaths. It is just a tool that we
6 use with DMV. They provide us information as to noncitizens.

7 Q And the Department of Corrections provides you updates on
8 people who are convicted of felonies so you can remove them;
9 correct?

10 A That's correct.

11 Q And do you agree that most removals based on list
12 maintenance are due to a voter moving out of a particular
13 county?

14 A That's certainly one of the reasons that people are
15 removed.

16 Q Do you know if that's the largest reason why people are
17 removed?

18 A I am not sure that it is the largest, but it is certainly
19 one of the ones -- one of the reasons.

20 Q And part of what happens in SEIMS, as part of this, is you
21 look for duplicate registrations; correct?

22 A That's part of the process in SEIMS, yes.

23 Q And also part of the list maintenance, you do what's
24 called no-contact mailings; is that right?

25 A We do.

1 Q Can you explain to the Court what those are?

2 A If a voter has not -- a registered voter has not had
3 contact with the Board of Elections, meaning they have not
4 voted or some other activity, after every federal election --
5 after two federal elections, we would send them a confirmation
6 mailing, which would be -- they would have to then return,
7 stating that they still live at that address. It is a
8 forwardable piece of mail; so if they've moved, it would go to
9 their new address.

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

11 **THE COURT:** Yes.

12 **BY MR. DONOVAN**

13 Q I've handed you what's marked as Plaintiffs' Exhibit 565.
14 This is called list maintenance summary, dated March 2013. Do
15 you see this?

16 A I do see this.

17 Q Have you seen this report before by Mr. Bartlett and
18 Ms. Degraffenreid?

19 A I believe at some point I have seen this.

20 Q If you could turn to page 3. Do you see that?

21 A I do.

22 Q At the top.

23 A Yes.

24 Q So March 2013 is before the enactment of H.B. 589; is that
25 right?

1 A Yes, it is.

2 Q And this report states "North Carolina is recognized
3 nationally as having a sound and efficient election system."
4 Do you see that?

5 A That is what it says, yes.

6 Q Do you agree with that?

7 A Yes, I do.

8 Q Okay. It then goes on to say, "Federal agencies, election
9 officials in other states, and election advocacy groups have
10 all pointed to North Carolina as being a leader in absentee
11 voting for military and overseas citizens, disability voting
12 rights, agency-based voter registration, and clean voter
13 rolls." Do you see that?

14 A I do.

15 Q And do you agree with that?

16 A I am not sure what that's based on. I am not sure of the
17 specific -- what they are speaking to. So I don't know that I
18 could answer that.

19 Q Let's talk about what you talked about with Mr. Peters
20 about how county boards set up elections. I want to start with
21 you talked about before and after 589. I want to do a little
22 bit of that myself, if you don't mind.

23 A Sure.

24 Q County boards before H.B. 589 offered or had to offer
25 in-person early voting at the county election office during

1 business hours during the 17 days; correct?

2 A Correct.

3 Q And they had the discretion, I think you said, to be open
4 before or after business hours; correct?

5 A Correct.

6 Q And they had the discretion to be open on weekend days?

7 A Correct.

8 Q And they had the discretion to open satellite voting
9 locations; correct?

10 A Correct.

11 Q And they had the discretion to set the hours for the
12 satellite locations?

13 A Right. The county board would have to agree on that, but
14 yes.

15 Q And in your experience at the State Board, would you agree
16 that county boards of elections would offer locations and hours
17 based on the needs of voters in their county?

18 A I would say that that's the expectation that that's what
19 county boards are supposed to do.

20 Q Okay. And county boards -- the counties actually pay to
21 run elections; correct?

22 A Yes.

23 Q So if a county board was going to open up another
24 location, they have to pay for that, not the State; correct?

25 A That's correct.

1 Q So if the county board decided to open a satellite
2 location, they would have to decide that they were willing to
3 fund that extra location for some reason; correct?

4 A That's correct.

5 Q So let's stay -- I want to talk about 2010 and 2012.
6 Based on what we've just went through for the 100 counties in
7 the state, fair to say, different counties, based on what they
8 believe the needs of their voters, offered different locations
9 and hours; is that right?

10 A They did.

11 Q Therefore, the number of days and the hours varied by
12 county; correct?

13 A They did vary.

14 Q So, for example, in 2010, the total hours and days varied
15 by county; correct?

16 A I believe they did.

17 Q And same thing in 2012, the total hours and locations of
18 one-stop early voting varied by county?

19 A They varied by county.

20 Q So Wake County may have had a different amount of hours
21 and different number of locations than Mecklenburg County;
22 correct?

23 A True.

24 Q And Mecklenburg County might have had different days and
25 locations than here in Forsyth County; correct?

1 A Yes.

2 Q Now, let's turn to H.B. 589. And as we know, that took
3 away 7 days of early voting. It's true that county boards,
4 even if they believe it would be appropriate, they no longer
5 have the discretion to offer 17 days of early voting; is that
6 right?

7 A That's correct.

8 Q They are limited to 10 days, even if they want to offer
9 more days; correct?

10 A That's correct.

11 Q Okay. And I think you discussed with Mr. Peters they have
12 to offer the same number of hours for the similar election,
13 that is midterm to midterm and Presidential to Presidential.
14 Correct?

15 A Generally, yes.

16 Q Well, because there are some waivers and there are some
17 exceptions, but in general -- I think you said in most cases --
18 and I am trying to understand. What you are saying there is
19 there is the opportunity for exceptions or some modifications
20 to that, but the general rule is for the 2014 election, each
21 county had to provide the same total number of hours as it did
22 in 2010?

23 A Correct.

24 Q So fair to say in 2014, the number of hours available for
25 early voting still varied across all the counties; true?

1 A It did sill vary.

2 Q And looking forward to 2016, that's going to have to
3 offer, with the same exceptions, the same number of hours as
4 2012; correct?

5 A Correct.

6 Q Okay. And so in 2016, you expect that the counties will
7 offer different number of hours county to county?

8 A Additional hours -- the counties will have additional
9 hours likely than they had in 2014.

10 Q I am comparing 2016 now with 2012.

11 A Excuse me. Right.

12 Q So let me -- so in 2016, the requirement there would be to
13 have the total same number of hours as 2012, subject to the
14 same exceptions we just talked about?

15 A Correct.

16 Q So in 2016, the hours available per county here in North
17 Carolina will not be uniform; correct?

18 A When you say "uniform," they will be uniform within the
19 county.

20 Q Across counties we have been talking, Ms. Strach.

21 A Across the counties, no, they will likely not be uniform.
22 That would be up to each county.

23 Q I want to spend a moment -- you talked about waivers
24 regarding the number of hours with Mr. Peters. And if the
25 county board gives a unanimous -- they are unanimous in their

1 agreement to seek a waiver, you can sign off on that as the
2 executive director?

3 A No.

4 Q It still goes to the State Board?

5 A Every one goes to the State Board.

6 Q If a county board of elections does not have a unanimous,
7 can they propose to the State Board a nonunanimous waiver -- or
8 can they seek, excuse me, a nonunanimous waiver?

9 A I think they could seek it, but I don't think the State
10 Board would accept it because it the statute requires that it
11 be unanimous.

12 Q So you think they would reject it?

13 A Yes.

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

15 **THE COURT:** Yes.

16 **BY MR. DONOVAN**

17 Q Ms. Strach, we talked earlier -- in the course of your
18 work, you said you've met with Democracy North Carolina and
19 Mr. Hall; is that right?

20 A That's correct.

21 Q And you talked about some of Mr. Hall and his group's work
22 as a watchdog. He has so many requests, he actually has his
23 own data folder on the State Board of Elections website; right?

24 A He has for some time, yes.

25 Q And he provides feedback and assistance to the State Board

1 over the years?

2 A He does, yes.

3 Q He's made recommendations on voter education in the past?

4 A He has made recommendations and seeks our advice on his
5 education efforts.

6 Q And you understand he also provides voter assistance; is
7 that right?

8 A I believe that he probably does.

9 Q And he also does poll monitoring; correct?

10 A I am not sure that he has in the past, but he did in this
11 election.

12 Q He did in the 2014 election; correct?

13 A Correct.

14 Q And he published a report on the 2014 election; correct?

15 A There were a few reports, yes.

16 Q That's what I want to talk about. So he did an initial
17 report that he provided to the State Board of Elections and
18 your staff; correct?

19 A I know that he did one after the election, yes.

20 Q And that was provided to you and your staff; correct?

21 A Yes.

22 Q And then you and your staff met with Mr. Hall to discuss
23 the report; correct?

24 A We did.

25 Q Okay. And then he made some modifications before he

1 published his final report here, this PX629. Do you see that?

2 A Right. In June of this year, yes.

3 Q And this is a report you've seen before; correct?

4 A I have seen the report, yes.

5 **MR. PETERS:** Your Honor, we'd object to anything
6 about this report on the grounds of it being hearsay and
7 improper opinion testimony or improper opinion.

8 **MR. DONOVAN:** It does go to notice, Your Honor. She
9 just said she reviewed it, her whole staff did. Mr. Hall is
10 well respected --

11 **THE COURT:** I will take it on a question-by-question
12 basis. Overruled for now.

13 **BY MR. DONOVAN**

14 Q Ms. Strach, you were aware when you saw this report and
15 meeting with Mr. Hall that one of the main problems in the 2014
16 election that he identified, if you look on page 1, is that
17 long lines and wait times were made worse by the loss of
18 straight-ticket voting and out-of-precinct voting. Do you see
19 that?

20 **MR. PETERS:** Objection.

21 **THE COURT:** Well, sustained as to his hearsay report,
22 but you can ask her.

23 **MR. DONOVAN:** That was my question.

24 **BY MR. DONOVAN**

25 Q You were aware of that finding by Mr. Hall; correct?

1 A I just want to make sure I clarify that the report that I
2 met with Mr. Hall and our staff met was not this report. It
3 was an earlier report.

4 Q An earlier version?

5 A So this report we have not met with Mr. Hall about.

6 Q You've seen and you've gotten reports from your staff
7 about this; correct?

8 A I have seen the report. I'm not sure how much our staff
9 has had an opportunity to review of the report, since it just
10 came out in June of this year.

11 Q And looking at the bottom left of page 1, one of
12 Mr. Hall's conclusions was that based on his analysis of
13 elections data, the problems reduced turnout by at least 30,000
14 voters in the 2014 election. Do you see that?

15 **MR. PETERS:** Objection, hearsay.

16 **MR. DONOVAN:** Again, Your Honor, I am offering it for
17 notice. She was aware of it and the staff, and she is offering
18 a report that this is --

19 **THE COURT:** I understand. But notice as to what?

20 **MR. DONOVAN:** That she was aware of this, that she
21 was aware when she came to testify and when she issued -- came
22 to testify, she was aware of other reports documenting the
23 problems in 2014.

24 **THE COURT:** All right.

25 **MR. PETERS:** Your Honor, I would point out that this

1 report is dated last month. So her awareness of what's in the
2 report could only be in the last few weeks.

3 **MR. DONOVAN:** But Ms. Strach testified she saw --

4 **THE COURT:** Sustained -- overruled, rather. You can
5 ask your questions.

6 **BY MR. DONOVAN**

7 Q Let me re-ask, Ms. Strach. I'm sorry. I am not sure if
8 we've already did this, but you see Mr. Hall, after meetings
9 with your staff, concluded that -- based on the analysis of
10 elections data in 2014, that he concluded that problems reduced
11 turnout by at least 30,000 voters in the 2014 election. Do you
12 see that?

13 A I am sorry. Where is that?

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

15 **THE COURT:** Yes.

16 **BY MR. DONOVAN**

17 Q Do you see that?

18 A I see that, yes.

19 Q And then at the second column at the top, do you see
20 Mr. Hall has a conclusion, or a calculation, that a 1 percent
21 increase in turnout rate for 2014 to 45.4 percent would have
22 added 66,000 more votes. Do you see that?

23 A I see that.

24 Q Do you have any reason to dispute Mr. Hall's math that if
25 you increase the turnout by 1 percent, it would have increased

1 the vote by 66,000?

2 A I'm not sure that I can agree with what he's saying. Are
3 you asking me do I agree that 1 percent more of the turnout
4 that we had would equate to that number of people voting?

5 Q Yes, ma'am.

6 A I can say that his math may be correct. I can't say that
7 I agree with his conclusion here.

8 Q Let's go to page 10. And you see this is Appendix 1
9 called "Polling Place Problems." Do you see that?

10 A I do.

11 Q Okay. And Mr. Hall and Democracy North Carolina write,
12 "This part of the report describes voter experiences at 100
13 precinct polling places on Election Day." Do you see that?

14 A I do.

15 Q If you look to the second column, but it is above --
16 before he starts going through each of the precincts, Mr. Hall
17 concludes that more than 85 percent of the monitored precincts
18 experienced a decline in 2014. Do you see that?

19 A Is that in the top paragraph?

20 Q Yeah, if you look right here, ma'am.

21 A Okay.

22 Q To the right. Do see you where it says that?

23 A I see where it says that.

24 Q Has the State Board of Elections run an analysis to
25 determine whether 85 percent of the monitored precincts

1 experienced a decline in 2014?

2 A When you say "monitored precincts," you are talking about
3 monitored precincts by Mr. Hall's group?

4 Q Or your own group, State Board.

5 **THE COURT:** I am going to sustain as to that. You
6 are asking her a question about his use of the word "monitored
7 precincts." So --

8 **MR. DONOVAN:** I understand. Withdrawn.

9 **BY MR. DONOVAN**

10 Q Did the State Board of Elections monitor the precincts to
11 determine whether there was increase or decline in 2014?

12 A An increase and decline in?

13 Q Voters per precinct.

14 A I think our turnout numbers is the analysis that we
15 used -- actual voter turnout, that's the analysis that we used.

16 Q Let's go to the next line. Mr. Hall concludes, "Overall,
17 there was a net loss of more than 10,000 votes from what the
18 2010 turnout suggests should have happened." Do you see that?

19 A Yes, I see that.

20 Q And then the appendix goes through the 100 precincts that
21 Mr. Hall and his group monitored. Do you see that?

22 **MR. PETERS:** Objection, calls for speculation on her
23 part, if that's what it actually -- is all the precincts that
24 his group monitored.

25 **THE COURT:** Sustained.

1 **BY MR. DONOVAN**

2 Q Before coming here to testify today, Ms. Strach, did you
3 review the report of Mr. Hall to inform yourself as best you
4 could about potential problems in the precincts in the 2014
5 election?

6 A I have not reviewed this report. I have reviewed previous
7 reports that -- and have discussed previous reports with
8 Mr. Hall after the 2014 election, but I have not reviewed this
9 report.

10 Q Okay. Let's review the report you had Mr. LiVecchi do,
11 which is DX210. Now, this report as well, as I believe you
12 said -- let me get my copy. This was a report you asked
13 Mr. LiVecchi to draft after you received questions during
14 depositions in this case; is that right?

15 A That's correct.

16 Q And Mr. LiVecchi is special counsel for the State Board of
17 Elections; correct?

18 A He is.

19 Q So he is a lawyer?

20 A He is a lawyer.

21 Q Part of his job is representing the State Board of
22 Elections; is that right?

23 A It is.

24 Q And in the DX210, you did not personally look at the
25 survey responses; correct?

1 A I did look at some of the survey responses at the time. I
2 did.

3 Q You did not personally interview any of the county board
4 directors about the wait times; correct?

5 A I did not.

6 Q And when the survey was sent to the county boards of
7 elections, it was sent after the 2014 election; correct?

8 A In November of 2014, but after the election.

9 Q And the county boards of elections were not provided
10 notice that they were going to be asked these questions before
11 the election; correct?

12 A We had discussed it at a training seminar that we would be
13 doing things to try to assess wait times, but they got no
14 specific instructions of what those questions would be.

15 Q They didn't know that there was going to be a Survey
16 Monkey of questions on wait lines; correct?

17 A I don't -- no.

18 Q And in doing this survey, the State Board did not give the
19 counties any instructions on how to calculate wait times;
20 correct?

21 A I don't believe that -- I'm not sure if there were
22 instructions in the Survey Monkey of telling them how to do
23 that. I think there might have been some instructions. I am
24 not sure.

25 Q That would be better for Mr. LiVecchi; right? He would

1 know that?

2 A He would.

3 Q I just want to go over a few points in the report. If you
4 turn to page 2, if you could, right below the first graphs
5 there.

6 A Yes.

7 Q And it provides, talking about in the 2014 general
8 election, North Carolina counties offered a combined total of
9 368 one-stop early voting sites. And then it says, "Of these
10 voter wait times, in excess of one hour were reported at only
11 36, or 9.7 percent, of the total." Do you see that?

12 A I do see that.

13 Q And a one-stop early voting place was only counted as one,
14 even if it was in excess of one-hour wait times every day
15 during the early voting period; is that right?

16 A I believe that they actually looked at the days that sites
17 were -- had delays. So I think it was also broken down by the
18 days that they may have had a wait more than an hour.

19 Q We are going to look at that, but my question here is,
20 when it reports 9.7 percent of the total, what that did is even
21 if an early voting site had reported in excess of an hour more
22 than one day, it still was only counted as one among the 368
23 one-stop early voting --

24 A That's correct.

25 Q If you go to the bottom of page 6, do you see that, ma'am?

1 A I do.

2 Q Okay. And this just lists some of the responses by some
3 of the county directors on some of the factors that affected
4 voter wait times; correct?

5 A Correct.

6 Q And if you look, the second clause provides, "One of the
7 issues was including recent realignments and/or consolidation
8 of precincts." Do you see that?

9 A I am sorry. That's in the --

10 Q The countywide systematic --

11 A -- bottom paragraph?

12 Q Yeah, go ahead and read that to yourself. I have a few
13 questions.

14 So one of the reasons documented here for voter wait times
15 included a recent realignment and/or consolidation of
16 precincts. Do you see that?

17 A I do see that.

18 Q Another one is the long ballot in conjunction --

19 A Right.

20 Q -- with the touchscreen or the DRE voting machines you
21 talked about before; right?

22 A That's correct.

23 Q And he also lists hotly contested local races. Do you see
24 that?

25 A I do.

1 Q Let's go to page 7. Here Mr. LiVecchi writes about
2 certain counties that reported issues. Do you see that?

3 A I do.

4 Q He reports in Randolph County, the 2014 general election
5 was the first time the director could remember voters waiting
6 in lines to vote. Do you see that?

7 A Yes.

8 Q He also talks about Wilson County and then further down
9 Forsyth County. Do you see that?

10 A Yes.

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

12 **THE COURT:** Yes.

13 **BY MR. DONOVAN**

14 Q I've handed you what's been marked as DX236. Don't
15 worry -- I'm sorry. I am going to blow this up, but this is
16 the chart that is the appendix to that report; is that right?

17 A That's correct.

18 Q Okay. If we go across the top -- and I know it's hard to
19 read because we spent a fair amount of time trying to blow it
20 up, but I am going to read it -- some of -- if we look at
21 this -- here I'm focused on Durham County. Do you see that?

22 A Yes, I see Durham.

23 Q I will represent to you that there's two blocks. You'll
24 see there's the first block and the second block. And the
25 first block asked on what days waits were greater than 30

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1 minutes, and the second asked on what days the waits were
2 longer than one hour.

3 A Yes, I see that.

4 Q Does that make sense to you?

5 A It does.

6 Q And then although it is hard to read on here, it's hard to
7 even blow up, if you look at DX236, on the far right-hand
8 column, those are comments that may have been provided by
9 different county boards; is that right?

10 A That's correct.

11 Q So let's look at Durham during the early voting period.
12 If we look at Durham during the early voting period, they
13 reported they had wait times at the early voting site in excess
14 of 30 minutes every day during the voting period except Sunday,
15 October 26, it appears. Do you see that?

16 A I do.

17 Q And then Durham reported that on six of the ten early
18 voting days in 2014, they had waits in excess of one hour. Do
19 you see that?

20 A I do.

21 Q Okay. And I wasn't able to blow it up, but on the far
22 right, are you aware that the Durham County Board gave its
23 rationale for these long lines as the public response to the
24 reduction of early voting days and other election-related law
25 changes? Were you aware of that?

1 A Not specifically. I probably have read that in the past,
2 but I can't recall that right now.

3 Q And you've reviewed Mr. LiVecchi's report, the lawyer for
4 the State Board of Elections. He did not disclose in this
5 report that Durham County had wait lines in excess of 30 or one
6 hour or Durham's response, which is on your screen, in this
7 report marked DX235, did he?

8 A I'm sure that -- if this was the response, that he would
9 have definitely put in the report that they had wait times more
10 than an hour. He would have accurately reflected that.

11 Q On page 7, when Mr. LiVecchi went through comments he got
12 from each of the counties, he did not disclose that Durham
13 County had those waits and its rationale for the long lines was
14 the public response to the reduction in early voting days and
15 other election-related law changes. Do see that there?

16 A I do see that.

17 Q Do you see that in Mr. LiVecchi's report?

18 A That comment is not in his report. I will say that
19 Mr. LiVecchi, in addition to the Survey Monkey, also contacted
20 every county that had wait times in excess of an hour. So I am
21 sure that he based his comments also on those conversations,
22 which may not be reflected in that exhibit.

23 Q Let's look at Durham County here. They have reported some
24 of the reasons for their long wait times. The first one was
25 the ongoing trend of early voting popularity. Do you see that?

1 A I do see that.

2 Q They also reported increased lines because of increased
3 interest in the election due to the amount of media attention
4 given to the candidates; correct?

5 A I see that, yes.

6 Q And they also report efforts by organizations encouraging
7 early voting. Do you see that?

8 A I do.

9 Q You believe those are comments from the Durham County
10 Board of Elections director to Mr. LiVecchi?

11 A I do.

12 Q Now, the 2014 election, as we all know, was the midterm
13 election; correct?

14 A Correct.

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

16 **THE COURT:** Yes.

17 **BY MR. DONOVAN**

18 Q Ms. Strach, I am handing you what's been marked as
19 Plaintiffs' Exhibit 62. This is one of those SBOE-numbered
20 memos we talked about; correct?

21 A It is.

22 Q And it is one from October 22, 2012. Do you see that?

23 A I do see that.

24 Q And this is one when you were at the State Board of
25 Elections but not yet the executive director. This is from

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1 Mr. Bartlett to the county boards of elections; correct?

2 A It is.

3 Q And this is during a Presidential election; correct?

4 A It is.

5 Q And in the first line, Mr. Bartlett reports to the county
6 boards that there is a robust -- let me take a step back.

7 Were you involved in 2012 at all with assisting county
8 boards addressing issues during early voting?

9 A I was not.

10 Q Okay. And so as the director now, you see, "There is a
11 robust one-stop absentee voting activity in all counties for
12 2012 General Election." Do you see that?

13 A I do see that.

14 Q And this memo reports "The wait times at some sites is as
15 long as 2 hours." Do you see that?

16 A I do see that.

17 Q And Mr. Bartlett suggests to the county boards that they
18 "should take immediate steps to alleviate these delays and
19 facilitate a more efficient voting process for North Carolina
20 voters." Do you see that?

21 A I do see that.

22 Q You would do the same thing if there were wait times; you
23 would suggest that county boards seek to alleviate those
24 delays. Is that right?

25 A I would want county boards to address wait times, if they

1 have them, absolutely.

2 Q And in this Presidential election, Mr. Bartlett suggested
3 that "County Boards should consider extending one-stop days and
4 times." And then says, "These changes must be made by
5 unanimous consent"; correct?

6 A Correct.

7 Q Now, after H.B. 589, county boards can't offer more than
8 10 days of early voting; correct?

9 A Correct. And they couldn't offer more than 17 at that
10 time.

11 Q At that time, but at that time there were a fair amount of
12 early voting locations of our hundred, I don't know if you're
13 aware, that were only offering hours during the business hours
14 of the county boards of elections; right?

15 A That's correct.

16 Q Let's turn to out-of-precinct voting you discussed with
17 Mr. Peters. Out of precinct -- how many precincts are there --
18 well, withdrawn.

19 How many precincts were there for the 2014 election --
20 general election here in North Carolina?

21 A I'm not sure of the exact number. More than 2,000.

22 Q Do you know how many precincts there were -- again, an
23 estimate -- in the 2012 election?

24 A I don't.

25 Q Do you think it was around the same range?

1 A I do.

2 Q Okay. We just put on your screen Plaintiffs' Exhibit 689.
3 We talked about this last time. This is this chart.

4 Can we increase the incorrect precinct row, which is the
5 third row down.

6 And in 2010, in this analysis, there were, by my reading,
7 6,274 incorrect precinct ballots; is that correct?

8 A That's correct.

9 Q Even assuming there is only 2,000, that would, on average,
10 be three out-of-precinct ballots per precinct; is that right?

11 A You could look at it that way.

12 Q Let's also look, while we are here on provisional ballots,
13 the row that's unreported move, which is towards the bottom.
14 And we'll try to bring that up on your screen. Do you see
15 that, ma'am?

16 A I do.

17 Q And in 2010, there were approximately 6,289 provisional
18 ballots for unreported move; correct?

19 A Correct.

20 Q So -- and incorrect precinct for 2010 was 6,274; correct?

21 A Correct.

22 Q Approximately the same number; is that right?

23 A Approximately the same number as?

24 Q Of the incorrect precinct.

25 A Correct.

1 Q Thank you. And provisional ballots are part of the North
2 Carolina voting system; correct?

3 A They are.

4 Q And I think, in your words, they provide a fair and
5 appropriate fail-safe; is that right?

6 A Correct.

7 Q And in your direct testimony, you weren't suggesting that
8 provisional ballots should not be counted just because they
9 might be some more administrative work for the county board of
10 elections; correct?

11 A No. If it's the law, then certainly they should be
12 counted. That was my point.

13 Q And you are not suggesting that they shouldn't be counted
14 just because a county board of elections may need to review
15 them and maybe hand count them; correct?

16 A I am saying that if it's -- if North Carolina law allows
17 it, regardless of the burden, the counties will do it.

18 Q And that's my point. Regardless of the type of
19 provisional ballot -- because we know North Carolina kept a lot
20 of them, they only got rid of out-of-precinct -- any
21 provisional ballots that are cast should be reviewed and, if
22 appropriate, should be counted, even if it takes a little bit
23 more work; is that right?

24 A If it's the law for them to be counted, then they should
25 be counted.

1 Q But it doesn't require it, as North Carolina does?

2 A It doesn't require the same process North Carolina uses.

3 Q I want to go back to a topic you discussed with
4 Mr. Donovan about investigations that the State Board of
5 Elections either has conducted or is conducting.

6 The State Board of Elections -- strike that.

7 Same-day registration didn't need to be repealed for the
8 State Board of Elections to be appropriated more money to
9 investigate alleged voter irregularities; correct?

10 A I guess I don't understand your question. Same-day
11 registration had already been repealed.

12 Q Right. The General Assembly could appropriate more money
13 for investigators any time it wanted; right?

14 A Sure.

15 Q And they didn't have to repeal same-day registration to do
16 that?

17 A Like I said, they appropriated money for investigators
18 after the repeal of same-day registration.

19 Q They don't have to change any election law to appropriate
20 more money to -- for investigators; correct?

21 A No.

22 Q Okay.

23 **THE COURT:** No, that's not correct; or, no, they
24 don't?

25 **THE WITNESS:** No, they do not.

1 **BY MS. RIGGS**

2 Q Then you were talking with Mr. Donovan about -- I don't
3 want to mischaracterize what you said -- that absentee --
4 potential absentee voter fraud was somehow easier to monitor?
5 Is that what you said?

6 A I think it is easier to detect.

7 Q There are certainly mechanisms in place when a voter goes
8 to vote in person on Election Day and early voting that it
9 would allow for the detection of in-person voter fraud;
10 correct?

11 A There are -- it is all with the precinct official. The
12 precinct official would have to know that the person stating
13 their name and address is not that person. So I guess
14 that's -- that's what the precinct official has in front of
15 them, the name and address, so that's really the tool that they
16 have.

17 Q The poll worker, the precinct worker, has to get the
18 signature from the voter; right?

19 A They sign an ATV, yes.

20 Q And the county board of elections has that voter signature
21 on record from before; correct?

22 A They do.

23 Q And, in fact, the -- when I say ATV form, do you know what
24 I am talking about?

25 A Sure.

1 Q The authorization to vote form that a precinct worker has
2 the voter sign has the voter's age on it; correct?

3 A It has their age, yes.

4 Q So the precinct worker can compare the approximate age of
5 the person presenting to the age of the person on the rolls?

6 A They could do that, yes.

7 Q Okay. I want to talk to you about -- continuing a little
8 bit of our NVRA conversations from the previous day and what
9 you talked about with Mr. Donovan.

10 You said you had in a meeting with an association of
11 social workers?

12 A It's -- the county Department of Social Services has an
13 association, and so we met with -- Ms. Degraffenreid and I met
14 with some of the leadership in that organization, and we also
15 had a meeting with all 100 county DSS in a sort of Go To
16 Meeting that was hosted by DHHS.

17 Q So explain to me. How many different agencies or offices
18 in each county might be offering voter registration source code
19 with the 01?

20 A I am not sure. I know that you have DSS. There were
21 probably a couple other offices that might fit into the 01.
22 I'm not sure that I know how many in each county.

23 Q Like a local WIC office?

24 A Sure. The WIC office is also one that would offer that as
25 well. It would be an 01.

1 Q Fair to say there is a number of different offices and
2 agencies in each county that might be -- that should be
3 offering 01 source-coded registration applications?

4 A I would say that there are at least a few, yes.

5 Q In bigger counties, there could be a large number?

6 A There could be.

7 Q There is more than one WIC office in Wake County?

8 A Yes.

9 Q When you had the meeting with the 100 county DSS
10 officials, those didn't include workers from every office that
11 should be offering 01-coded voter registration applications;
12 correct?

13 A That particular meeting was with DSS. There have been
14 other meetings with WIC and other public assistance agencies.
15 That was just one that was with DSS.

16 Q When were these meetings with WIC and other public
17 agencies?

18 A Actually, there were -- there's been communication with
19 Ms. Degraffenreid with individual agencies. Actually, we had a
20 meeting with the -- someone with WIC at DHHS several weeks ago.
21 They had someone there. And Ms. Degraffenreid has continued to
22 meet with representatives of WIC.

23 Q So after one of these meetings, did I understand your
24 testimony correctly that there were ten counties that might be
25 using forms other than the 01 source-coded forms?

1 A That's based on the information provided by the social
2 service office's professional association.

3 Q Which counties were those?

4 A As I recall, Durham, Guilford, Mecklenburg, Johnston, I
5 believe -- I'm not sure that I -- I don't want to misstate a
6 county. Those are the ones that I recall.

7 Q And did they represent to you that every office using the
8 01 -- every office within that county that would be using the
9 01-coded form was not doing that?

10 A No. What this represents is just with DSS.

11 Q And in looking at how the numbers have decreased, the
12 01-coded voter registration forms, how they've decreased, have
13 they decreased uniformly across counties in the last two years?

14 A I haven't looked specifically at each county. So I am not
15 sure that I could answer that.

16 Q You have no reason to dispute me saying that they have
17 decreased uniformly across the counties?

18 A I have not looked at it specifically with each county. So
19 I would not -- I wouldn't be able to answer that.

20 Q When we talked about NC FAST last time, we noted that the
21 pilot programs -- the four counties that engaged in the NC FAST
22 pilot program didn't see any decrease in 01-coded registration
23 forms after implementation of NC FAST; correct?

24 A I think you showed a few months after that, and that was
25 one thing I wanted to make clear is that the pilot was still

1 the customer-based portion of NC FAST. So it still required
2 the applicant, the FNS -- I think that's what you were looking
3 at was FNS -- the applicant to come into the office during that
4 time period. The time period that the FNS applicant would then
5 be using an online or had the opportunity to use an online
6 would have been in April of 2013.

7 Q Are you aware that the decrease in the number of 01-coded
8 forms that we've demonstrated through stipulations from the
9 State actually started before then?

10 A Yes.

11 Q Do you know when an FNS customer uses ePASS -- well, one,
12 do you know how many customers -- FNS customers use ePASS to
13 get benefits online?

14 A I don't. I may have had that information, but I don't
15 recall.

16 Q So you don't know if it's a huge percentage or not?

17 A I don't know.

18 Q And that NC FAST is a State-run website program; correct?

19 A It is.

20 Q So they would have no reason to link to the federal
21 application form rather than a state voter registration
22 application form; correct?

23 A No. I have not suggested that that they do.

24 But what ePASS -- what I will tell you is that ePASS had
25 not been linking to the 01 form. It had been linking to our

1 website. So if someone just went on the website and printed it
2 off, they would not have an 01 form.

3 Q And that -- well, strike that.

4 The decline in numbers has persisted through the end of
5 2014; correct?

6 A The 01; right. The information based on registrations
7 with the Source Code 01 has decreased, yes.

8 Q Right. And those 01 source-coded voter registration
9 applications, those numbers are still down as of the end of
10 2014?

11 A Based on the 01 source code.

12 **THE COURT:** Are you talking across all sources?

13 **MS. RIGGS:** Yes. I mean, no, the 01 coded are down.
14 So that was the stipulation, the exhibit we talked about
15 earlier.

16 **BY MS. RIGGS**

17 Q Ms. Strach, I don't think you've been here for testimony
18 all -- the whole time we have been here, but have you seen any
19 witnesses testify who went to vote on Election Day -- went to
20 vote during early voting in 2014 and were not offered a
21 provisional ballot when there was no record of their
22 registration?

23 A I have not seen any of that testimony, no.

24 Q Have you read any depositions that were submitted in this
25 case and designated where voters said they were not offered a

1 provisional ballot even though there was no record of their
2 registration?

3 A I have not.

4 Q You were talking with Mr. Donovan about how if your
5 education efforts to make sure that voters know about the
6 change in election laws, especially as it relates to
7 registration, if that works well, voters will know not to
8 present during early voting to register to vote; is that right?

9 A I think it is one of the factors. It's an important
10 factor. I think if people are educated, and I see our role as
11 educating, that that will allow voters to have the information
12 to know when their votes will be counted.

13 Q You would agree with me that if voters don't cast a
14 provisional ballot, you don't have any -- you won't be able to
15 measure the number of those people who showed up to early
16 voting who didn't know about the change in law?

17 A If a voter didn't vote a provisional ballot, no, I would
18 not; but any voter that presented to a precinct official and
19 was not registered would have been offered a provisional
20 ballot.

21 Q And you are aware there is testimony to the contrary?

22 A I'm not sure of the testimony.

23 Q Okay. You discussed with Mr. Donovan Dr. Stewart's
24 testimony that 11,000 voters had voter registration
25 applications dated during the early voting period; correct?

1 A Yes.

2 Q And you said some of the registrations could have come
3 from DMV; right?

4 A Correct.

5 Q If Joe Smith goes to DMV during the early voting period
6 and registers to vote there, if same-day registration is in
7 effect, even though he went to DMV, he could have also gone to
8 an early voting site and registered to vote there; correct?

9 A If he -- if we had same-day registration, is that what you
10 are saying?

11 Q Yes.

12 A If he went to DMV and same-day registration was in effect,
13 could he go to the early voting site and same-day register as
14 well?

15 Q Yes.

16 A Yes.

17 Q Same thing if another Joe Smith, a different Joe Smith,
18 mails in a voter registration application that's dated during
19 the early voting period, regardless of the fact that he didn't
20 register at an early voting site, if same-day registration had
21 been in effect, he could have gone during early voting and
22 registered to vote there?

23 A He could have -- right. If he had submitted a form, he
24 could also have gone to a same-day registration site. Is that
25 your question?

1 Q Yes.

2 A Yes.

3 Q Okay. Finally and last topic I want to talk to you about
4 is DMV. You mentioned that as one of the places where folks
5 could go to register to vote; correct?

6 A Correct.

7 Q And you are aware, aren't you, that testimony has been
8 given in this case that people have gone to DMV to register,
9 only to find when they go to vote, they are not registered,
10 there is no record of their registration?

11 A I am not aware of specific testimony, but I do know that
12 that has happened --

13 Q And, in fact --

14 A -- because of provisional ballots that we have.

15 Q And you were made aware of a situation involving the
16 daughter of the Chief Justice of the North Carolina Supreme
17 Court who had claimed to register at DMV, and she wasn't?

18 A I am aware of that, yes.

19 Q So you would agree with me, wouldn't you, that if people
20 go to DMV and ask to register at DMV, and then show up at DMV
21 and they aren't registered -- you would agree with me that
22 that's probably not a confidence-boosting situation for that
23 voter to find him or herself in; right?

24 A If that person went to DMV -- you said was registered to
25 vote at DMV?

1 Q Asked to register to vote.

2 A Asked to register to vote at DMV, and they were not
3 registered at DMV?

4 Q Right.

5 A Certainly, anyone that goes to DMV should be offered, and
6 certainly, if they ask, should be registered, yes.

7 Q And it doesn't build confidence in elections when DMV
8 isn't registering voters the way they are supposed to be;
9 right?

10 A Well, if anyone is not registering voters, that's what
11 we -- we certainly need that to boost confidence in elections.
12 So, yes, I think anyone who would present there, the
13 expectation would be is that they would be offered the
14 opportunity to register to vote.

15 Q And you are aware of problems where DMV hasn't been
16 transmitting the full amount of information they need to to
17 county boards of elections to seamlessly process voter
18 registration applications; correct?

19 A What I am aware of is that we have no evidence that DMV
20 has not transmitted -- if someone has registered to vote at
21 DMV, we have no evidence that that voter registration data has
22 not been electronically submitted to us through our statewide
23 election system. There's no evidence that that hasn't
24 happened.

25 What we have had happen is that the card that the person

1 signs that needs to be scanned, sometimes there is a delay in
2 that getting there, but the county board of elections does have
3 the information to go ahead and process that application.

4 Q In fact, some county boards have had to send incomplete
5 mailings to voters because they haven't gotten that image from
6 DMV; is that correct?

7 A That's correct.

8 Q Then that requires more effort on the part of the voter to
9 return that document; correct?

10 A They do need to return that document.

11 Q Now, with respect to the electronic information, going
12 back to the Chief Justice's daughter situation, there was no
13 electronic information about her registration in SEIMS;
14 correct?

15 A There was not.

16 Q Even though she and her father had claimed that they --
17 she registered -- she asked to register at DMV?

18 A I don't think that she actually registered at DMV. I
19 think she did her transaction online.

20 Q What is the basis for that?

21 A We have looked at that information based on the inquiry
22 from the Chief Justice about that. We looked at the voter
23 registration for his daughter, and then we looked with DMV;
24 and, in fact, he had presented to DMV with his daughter, but it
25 was a different daughter.

1 Q He presented to DMV with both daughters that day; correct?

2 A We have no evidence of that. There was no transaction by
3 the daughter that he referred to, Anna Martin. There was no
4 transaction at DMV in person that day.

5 Q There is a -- have you seen the date of her driver's
6 license, the DMV record that Veronica Degraffenreid sent to
7 Gary Sims?

8 A I am not sure that I've seen that, but I think that we
9 have actually looked at the DMV data and the voter registration
10 data. And, actually, Mr. Neesby could probably speak more to
11 that.

12 Q Okay. I will make sure to ask him. Veronica
13 Degraffenreid would have had no reason to convey to Gary Sims
14 at the Wake County Board of Elections inaccurate information
15 from the DMV; correct?

16 A No, and I don't believe Veronica Degraffenreid would relay
17 inaccurate information. I'm not sure what information she
18 provided.

19 Q Okay. Thank you, Ms. Strach.

20 CROSS-EXAMINATION

21 **BY MR. KAUL**

22 Q Good morning, Ms. Strach.

23 A Good morning.

24 Q You testified, I believe yesterday, that voter outreach
25 and education are critical; is that right?

1 A Absolutely.

2 Q And you said that in order for people who want to vote to
3 know how to make their vote count, they need to be educated
4 about the laws concerning voting; is that right?

5 A That's correct.

6 Q And you would agree that people also need to be educated
7 about the rules regarding registration for voting; is that
8 right?

9 A Yes.

10 Q But you also agree that H.B. 589, as part of the repeal of
11 preregistration, repealed mandatory high school voter
12 registration drives; right?

13 A I am aware of that.

14 Q Are you aware that significant amounts of voter education
15 took place during those voter registration drives?

16 A I think -- yes. I will say that I think some of those
17 voter registration drives continue. It is not mandatory, but
18 counties have -- some counties have noted that they are
19 continuing that effort.

20 Q You would also agree that there is much less of that
21 effort going on now than there was before; correct?

22 A I don't know, because I haven't asked the counties, but I
23 just know of some counties that have told us that they have
24 continued that.

25 Q Not all of them have said that, though, have they?

1 A Not all have said that.

2 Q In fact, far from all of them have said that; right?

3 A Well, that's just the volunteering. We have not asked the
4 question.

5 Q How many of the 100 counties have told you that?

6 A I am not sure I know a number. I know a few have.

7 Q So a few out of the 100?

8 A That have told me, yes.

9 Q And you talked about your outreach team before. Do you
10 remember that?

11 A I do.

12 Q And you mentioned that one of the members of the outreach
13 is African-American?

14 A That's true.

15 Q How recently was that person hired?

16 A Ms. Cooley was hired probably within the last couple of
17 months.

18 Q Were you present for the deposition of Ted Fitzgerald in
19 this case?

20 A I was not.

21 Q Have you reviewed his deposition transcript?

22 A I don't think I have.

23 Q Are you aware that he was asked about the diversity of the
24 outreach team?

25 A Yes, I was.

1 Q And at the time, there were no African-Americans on the
2 outreach team; is that right?

3 A That's correct.

4 Q Now, how many members of the outreach team have experience
5 in election work?

6 A I'm not sure, and I did not interview -- Mr. Fitzgerald is
7 the only one of the outreach team that I have personally
8 interviewed.

9 Q He doesn't have any experience in voter outreach; correct?

10 A I'm not sure if he has specific -- he had outreach
11 experience with community involvement, and that was not -- you
12 didn't necessarily have to have experience with elections or
13 voter outreach. You needed outreach experience.

14 Q And to your knowledge, none of the members of the outreach
15 team actually have experience in doing elections outreach;
16 correct?

17 A I don't know the specific credentials of the other two
18 members.

19 Q But, to your knowledge, none of the members have that
20 experience; right?

21 A As I said, I don't know the credentials, so I don't know.

22 Q And a major focus of those -- of that outreach effort was
23 voter ID education; is that right?

24 A That's correct.

25 Q Now, the voter ID law that folks were being educated about

1 is no longer in effect; is that right?

2 A I would not say that. I think that the new law does
3 not -- if you have a photo ID, an acceptable photo ID and you
4 can obtain one, you still have to present that.

5 Q Fair enough. Let me rephrase it the way I described this.
6 Some of the outreach efforts before conveyed to voters that
7 they were required to have a photo identification to vote; is
8 that right?

9 A Right. With some exceptions at that time as well, yes.

10 Q And now there is a broader exception; right?

11 A There is a broader exception.

12 Q And are some of the outreach efforts between now and the
13 2016 election going to be devoted to updating the information
14 that was previously provided regarding the voter ID rules?

15 A Yes.

16 Q Now, you said that mail verification is, I believe, the
17 only way that you have of verifying a person's residence; is
18 that right?

19 A That's by statute, yes.

20 Q You are not saying that's the only way that someone's
21 residence can be verified?

22 A No, I'm saying that's the statutory requirement of how we
23 are to verify residence.

24 Q When same-day registration was in place, there was also
25 on-the-spot verification when an individual registered to vote;

1 is that right?

2 A That was an additional requirement, but they still had to
3 go through mail verification as well. It was not in lieu of
4 it.

5 Q You said that's an additional requirement. You mean an
6 additional requirement compared to other types of registration;
7 is that right?

8 A Correct.

9 Q Now, you mentioned that it's important to keep the voter
10 rolls clean?

11 A Correct.

12 Q And essentially the idea is that keeping the voter rolls
13 clean means -- I'm going to rephrase the question.

14 Are you aware of a report indicating that North Carolina
15 has a particularly low percentage of what's called "deadwood"
16 on its voter rolls?

17 A I'm sorry. I am not familiar with that report.

18 Q Do you know what deadwood is?

19 A I am not sure I know what they mean by that.

20 Q In the voter roll context, is it fair to say that that
21 would refer to people who are on the rolls who shouldn't be
22 there anymore?

23 A That's what I would think it would mean.

24 Q Let me show an exhibit. This is Plaintiffs' Exhibit 564,
25 which I believe has already been admitted.

1 **MR. KAUL:** May I approach, Your Honor?

2 **THE COURT:** Yes.

3 **MR. KAUL:** I apologize. It has not been admitted.

4 **THE COURT:** All right.

5 **BY MR. KAUL**

6 Q It looks like the third page is in -- is flipped upside
7 down, so I apologize for that. But let me direct your
8 attention to the fourth page of the document. That page
9 contains a quote that says, "North Carolina is the state with
10 the lowest percentage of voters considered deadwood." Is that
11 right?

12 A That's what it says.

13 Q And that's from a 2008 analysis by Aristotle
14 International, Inc.; is that right?

15 A That's what it says.

16 Q That's a company that provides voting data to political
17 consultants and others?

18 A I am not sure of them doing that. I know that Aristotle
19 is a company that deals with political candidates' campaign
20 finance disclosure. I did not realize that had any work in
21 voting data.

22 Q Let me direct your attention to the first page of this
23 document, the cover. And that page indicates that this is from
24 a State Board of Elections presentation to the House Elections
25 Committee; is that right?

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1 A That's what it says, yes.

2 **MR. KAUL:** I forget what the status is of moving
3 exhibits in on the Defendants' case, but to the extent they
4 don't object, I'll move that this be admitted as Plaintiffs'
5 Exhibit 564.

6 **MR. PETERS:** Do we have anything establishing when
7 this was prepared, and, particularly, if you're going to be
8 asking Ms. Strach about it, whether it was prepared before she
9 became executive director?

10 **MR. KAUL:** Let me withdraw this, and I will revisit
11 this after lunch with counsel.

12 **THE COURT:** Okay.

13 **MR. KAUL:** Actually, Your Honor, this is probably a
14 good breaking point.

15 **THE COURT:** All right. We'll stop right here then.
16 Before we all leave, let me ask, where do you think we stand in
17 terms of the remainder of this afternoon?

18 **MR. PETERS:** With regard to Ms. Strach, I think,
19 depending how much cross there is for the other side, there may
20 be very little bit of redirect, but not much. I think
21 Mr. Neesby, I am being told one hour. No, he will be the only
22 witness. Mr. Neesby will be the only remaining witness.

23 **THE COURT:** So you all should be prepared to put on
24 any rebuttal --

25 **MR. DONOVAN:** We will.

1 **THE COURT:** -- probably 3:00, somewhere around that
2 or thereafter. You anticipate being able to finish this
3 afternoon?

4 **MR. DONOVAN:** Yes.

5 **THE COURT:** Okay. All right. You all enjoy your
6 lunch. We will see you at 2:00.

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

8 (The Court was called back to order at 2:02 p.m.)

9 **THE COURT:** Mr. Kaul. Good afternoon.

10 **MR. KAUL:** Good afternoon, Your Honor.

11 **BY MR. KAUL**

12 Q Good afternoon, Director Strach. Do you recall being
13 asked some questions by Mr. Peters before about how early
14 voting locations are chosen?

15 A Yes.

16 Q And when you were on the stand the first time, I asked you
17 some questions specifically about one of those locations at
18 Appalachian State. Do you recall that?

19 A I do.

20 Q Is it right that you don't remember the precise details of
21 what the Court that was dealing with that 2014 case had found?

22 A I am not sure that I do. I know that it's gone up to the
23 Court of Appeals right now, I believe.

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

25 **THE COURT:** Yes.

1 **BY MR. KAUL**

2 Q I'm going to show you an article that may refresh your
3 memory. Now, let me direct your attention to the seventh
4 paragraph in that article.

5 A Yes.

6 Q And does that paragraph refresh your recollection as to
7 what the Circuit Court found in that case?

8 A Right. That the Superior Court Judge, Don Stephens, found
9 that moving the site would be unconstitutional.

10 Q And that refers to moving the site away from Appalachian
11 State; correct?

12 A Correct.

13 Q He also indicated that he could find no other intent other
14 than to discourage student voting in moving that site; is that
15 right?

16 A That's what the article says.

17 Q Does that refresh your recollection?

18 A I believe, yes, that's -- it is a similar understanding to
19 mine, yes.

20 Q Just to be clear, your understanding is similar to what
21 the article indicates?

22 A Yes.

23 Q And you talked earlier about the wait times report; is
24 that right?

25 A Yes, sir.

1 Q Now, do you know, did that article -- that report, rather,
2 indicate that long lines were disproportionately in large
3 counties?

4 A I am not sure that that report addressed a trend such as
5 that. I think it just gave information about the various
6 counties and what their particular situation was. I don't
7 think it made conclusions about whether large counties were
8 affected more than small. I don't think that it did.

9 Q Okay. It did go county by county; correct?

10 A Yes.

11 Q So one could determine from analyzing it where the
12 counties were that had long lines; correct?

13 A People could, right, look at that and make their own
14 determinations, yes.

15 Q But you didn't make any assessment as to how those
16 counties broke down; is that right?

17 A I don't think that the report looked at it in that way,
18 no.

19 Q And so you also didn't look at the racial demographics of
20 the counties that had long lines?

21 A No, I don't think -- this was just really looking at wait
22 times and the experiences in the counties that had experienced
23 wait times.

24 Q You didn't look to see if the counties that had long lines
25 tended to have large universities; right?

1 A That was not part of the report.

2 **THE COURT:** Mr. Kaul, hold on just one moment.

3 (Off-the-record discussion.)

4 **BY MR. KAUL**

5 Q Is it also your understanding that in responding to that
6 survey, Wake County did so without any knowledge of whether
7 there were long lines at any of the Election Day precincts?

8 A I believe there was a footnote to the report that
9 talked -- that spoke something about what Wake County -- the
10 information that they could provide. I would have to go back
11 and look at the report to specifically know what they --
12 information they provided.

13 Q Did the statement say something along the lines of what I
14 just said?

15 A I recall that it did, that it said something about -- that
16 they had not -- didn't have specific information on Election
17 Day. I believe that's correct.

18 Q And may I ask you to move the microphone just a little bit
19 closer.

20 A Sure.

21 Q You would agree that an increase in congestion at polling
22 locations can increase wait times; right?

23 A Yes.

24 Q And there was an increase in voters per day at early
25 voting locations in 2014 as compared to 2010; is that right?

1 A I am not sure I'm understanding what you mean by that. Do
2 you mean that there were more people that showed up on a daily
3 basis than 2010?

4 Q That's correct.

5 A That would be as a whole. I'm not sure -- are you -- we
6 would have to look at each site to see if the numbers had gone
7 up at each site.

8 Q I mean across the state.

9 A Right, the numbers did go up, yes.

10 Q And each day, they went up; correct?

11 A Yes.

12 Q And you expect an increase in voters per day at early
13 voting locations in 2016 as compared to 2012; is that right?

14 A Yes, we are certainly going to prepare for that.

15 Q And given that there are now 10 days instead of 17, as
16 long as the numbers stay similar to what they were in 2012,
17 there must be an increase in voters at early voting locations
18 per day; right?

19 A Well, they could, but in 2016, counties will have the
20 opportunity to look back at 2014, especially the information
21 such as in the wait time report, and decide whether or not they
22 need to open additional sites, which would alleviate those
23 numbers.

24 Q There has also been a trend of a significant increase in
25 early voting in North Carolina from election to election over

1 the past decade; isn't that right?

2 A There has been an increase in early voting, yes.

3 Q And the busiest day of early voting has consistently been
4 the Saturday before the election; correct?

5 A I think that's correct.

6 Q Now, previously, counties had the option of keeping their
7 early voting locations open on Saturday afternoons; is that
8 right?

9 A Yes.

10 Q And H.B. 589 changed that; is that right?

11 A That's correct.

12 Q Now those locations must close on the Saturday before the
13 election by 1:00 p.m.?

14 A That's correct.

15 Q Do you know how many counties had early voting available
16 on that Saturday afternoon in 2012?

17 A Had them available? All of them had to be open at least
18 until 1:00 in 2012.

19 Q Do you know how many were open beyond 1:00 in 2012?

20 A I don't know the specific number. Mr. Kaul, I just want
21 to make sure -- I am not sure that Saturday necessarily is
22 the -- I know that the Friday and Saturday are the two probably
23 days that have the most turnout, and I am not -- I am not
24 saying that Saturday is not, but I know that Friday also has a
25 large number as compared to other days as well.

1 Q Okay. And per hour, Saturday is the largest; right?

2 A Per hour, yes.

3 Q Now, you talked before about when challenges can be made
4 to voters.

5 A Yes.

6 Q And you said that they can only be made on Election Day;
7 is that right?

8 A That's for -- for -- for voters that cast their ballots
9 during early voting.

10 Q Now, is that a change in position from the position that
11 the State Board of Elections had when Gary Bartlett was the
12 director?

13 A No. That's a statute -- a requirement statute, and that's
14 not been changed.

15 Q Are you aware that other people have interpreted that
16 statute differently?

17 A I am not sure that I'm aware of that.

18 Q You've never been the executive director of the State
19 Board of Elections during an election that has same-day
20 registration; is that right?

21 A In 2013, we still had same-day registration during some
22 municipal elections, yes.

23 Q Never during a general election; right?

24 A No.

25 Q And you don't dispute that same-day registration ballots,

1 like all absentee ballots, are retrievable until the canvas
2 takes place; correct?

3 A The ballots themselves are retrievable because they are
4 absentee ballots, and they have been identified with a number
5 so that they could be reviewed, but the general statutes
6 provides for when they can be retrieved. So that was my point,
7 that same-day registration ballots, they are absentee ballots,
8 which can only be retrieved due to a challenge from -- an
9 Election Day challenge.

10 Q You said your understanding is based on a state statute;
11 correct?

12 A Yes.

13 Q So the legislature could have changed the date on which
14 challenges occur; correct?

15 A The legislature could.

16 Q It didn't, though; right?

17 A It didn't.

18 Q It eliminated same-day registration?

19 A They eliminated same-day registration.

20 Q Are you aware of a prior report by the State Board of
21 Elections explaining that differences in the mail verification
22 rate between same-day registrants and other registrants are due
23 not to the nature of same-day registration, but to the fact
24 that people are transient?

25 A I am not sure I -- are you saying a report that's been

1 done by the State Board of Elections --

2 Q Are you aware --

3 A -- on mail -- I know that the State Board of Elections had
4 done some reports on mail verification prior to my being
5 executive director. I am not sure exactly what -- all the
6 content of that report.

7 Q For the Court's reference, I am not going to go into that
8 report right now, but the report I am referring to is
9 Plaintiffs' Exhibit 568.

10 Are you aware of another report prior to your arrival at
11 the State Board of Elections that said that colleges -- sorry,
12 that college and university students made up one of the main
13 groups with return verification mailings?

14 A I am not specifically aware of that language being
15 contained in a report.

16 Q And are you aware of any report containing a reference to
17 the fact that military voters accounted for some of the mail
18 verification failures from same-day registration also?

19 A I am not -- I don't recall whether or not I've seen a
20 report that said that. It would have to have been prior to my
21 being executive director.

22 Q And again for the Court's reference, the exhibit I am
23 referring to is Plaintiffs' Exhibit 56.

24 Now, you talked earlier about a mail verification report
25 that was prepared recently; is that right?

1 A That's correct.

2 Q And that was actually published within the last month or
3 so; is that right?

4 A It was.

5 Q And that report arose out of events in this litigation,
6 you said; right?

7 A It arose out of questions that came from my first
8 deposition, yes.

9 Q And in that report, was there an assessment of whether the
10 voters who failed mail verification tended to be students?

11 A There was not -- that was not anything that was looked at
12 specifically, no.

13 Q Was there an assessment of whether the people who failed
14 mail verification tended to be racial minorities?

15 A No.

16 Q Any assessment of whether they tended to be low income?

17 A No.

18 Q Any assessment of whether they were members of the
19 military?

20 A No.

21 Q At the very least, you would have had information about
22 the addresses at which those individuals were reported as
23 having lived at; right?

24 A We certainly would have the address information, yes.

25 Q And you also have their racial information from the voter

1 file; right?

2 A If they provided it.

3 Q Now, you know that several other states have Election Day
4 registration; correct?

5 A I know that some states do.

6 Q But you don't know of any states that have Election Day
7 registration that have significant amounts of fraud connected
8 to it, do you?

9 A I have not studied that.

10 Q And let me ask you a few questions about the DMV.

11 A Sure.

12 Q I believe you testified earlier, and please correct me if
13 I'm wrong, that there was no evidence that people registered at
14 the DMV for whom there wasn't a subsequent electronic
15 transaction; is that right?

16 A What I mean by that is that we have access to the DMV's
17 database, and so we -- we went into that database, and they
18 have an actual voter table in that database, and so we looked
19 to see if there was evidence that anyone had registered to vote
20 and whether or not -- if they had indicated that they had
21 answered yes to that question, we wanted to make sure that we
22 had the information from that registration in our statewide
23 election management system. And we could find no evidence that
24 anyone in the voter table at DMV that we did not get
25 information in our statewide information database.

1 Q Okay. So you are not suggesting that those people didn't,
2 in fact, attempt to register at DMV? You are just saying that
3 there was no electronic record of it?

4 A No. What I am saying is that every -- if DMV -- if the
5 examiner indicated in the -- in their -- on their screen that
6 the person answered yes to the voter registration question, we
7 then looked for that person's name to make sure that we had
8 received that information in our statewide information
9 database. And we found no evidence that if that -- if that --
10 in the voter table of DMV, the person had said they were
11 registering to vote, we had that information.

12 Q But there are numerous cases in which voters say that they
13 attempted to register at DMV and no electronic information can
14 be found; correct?

15 A There are people that may say that they have voted at DMV,
16 but we can only look at information in DMV's database where
17 they actually have answered yes to the question or the examiner
18 has indicated they answered yes to the question.

19 Q Just so the record is clear, you mean people who said they
20 registered at DMV?

21 A Well, right, for people that said that they registered at
22 DMV and may have provided -- one of the things we do is if
23 someone says that and they vote a provisional ballot, we check
24 with DMV to see, hey, maybe we don't have that you registered,
25 but DMV has that you registered. So that's something that we

1 would do.

2 Q And there are thousands of people who say that's happened
3 to them; correct?

4 A I am not sure of -- I am not sure of the numbers and what
5 that's based on.

6 Q Let me show you an exhibit that's already been introduced.
7 This is Plaintiffs' Exhibit 339. Now, this exhibit is from
8 well before your time as director of the State Board of
9 Elections; correct?

10 A Correct.

11 Q And in the second email down here, John Kearney, who is
12 from the Nash County Board of Elections, reports to
13 Mr. Bartlett that one of the biggest issues -- "our biggest
14 issue is people claiming to have registered with DMV," it says,
15 "but are noting showing in our system"?

16 A Yes. I see that.

17 Q Now, there have been similar such complaints or reports
18 from county boards of elections since you became director;
19 correct?

20 A Yes. I have heard where people will say that -- people
21 will come in and say they registered at DMV, and they are not
22 registered.

23 Q And individual voters say that also; correct?

24 A Individual -- excuse me? When you say individual voters
25 said that --

1 Q I'm sorry. You don't just receive that information from
2 the county boards of elections, you are also told that from
3 just regular citizens; correct?

4 A I get that information from the provisional data that we
5 have.

6 Q Okay. And there is actually a box on the provisional
7 ballot form that says DMV provisionals; correct?

8 A Right. That's how I know that.

9 Q That's because it is so common that this happens; right?

10 **MR. PETERS:** Objection.

11 **THE COURT:** Overruled.

12 **THE WITNESS:** I don't know that it's so common. I
13 don't know how long that's been on there. That's something
14 that we check with DMV, since they are an agency where people
15 can register, and we get that information electronically. I
16 think that's why it's on the form.

17 **BY MR. KAUL**

18 Q Are you aware that approximately 250 people marked that
19 DMV provisional box in Wake County in 2014 alone?

20 A I am not sure of that number.

21 Q Are you aware that approximately 13 of those ballots were
22 counted?

23 A I am not sure.

24 Q Let me ask you a bit about fraud. You testified earlier
25 about some referrals that you made to district attorneys'

1 offices.

2 A Yes.

3 Q When were those referrals made?

4 A They've been made -- as I said, we were not able to get
5 our full investigative team on until March of this year; and
6 after that time that we had a full team, as a team, they
7 started working on the backlog of cases that we have. And
8 since that time, that is the total number that have been
9 referred since their coming on board in March of this year.

10 Q Okay. So referrals have been made since what month?

11 A March.

12 Q And do you know how many of the 31 referrals have been
13 made as of, say, a month ago?

14 A I don't. I don't. That's just a total since March of
15 this year.

16 Q And you said the full team was on as of March; correct?

17 A That's correct.

18 Q When did the lead investigator come on?

19 A In June of 2014.

20 Q So he had already been there for about nine months by the
21 time of those referrals?

22 A He had been, and working on two significant campaign
23 finance investigations.

24 Q And you were deposed in this case four times; right?

25 A I believe so.

1 Q And this is your second time testifying?

2 A Yes, it is.

3 Q So that's six times you've been examined in this case;
4 right?

5 A It is.

6 Q The most recent of those depositions was 11 days ago;
7 right?

8 A Yes, it was.

9 Q And do you know whether any information regarding these
10 referrals have been disclosed to counsel for the Plaintiffs as
11 of the date of your last deposition?

12 A I am not sure that they knew that.

13 Q You're not sure that who knew that?

14 A That counsel knew about the referrals. This is
15 information that I obtained from my investigative team.

16 Q And you were the recipient of document requests in this
17 case; is that right?

18 A Yes.

19 Q And those requested information for documents regarding
20 fraud?

21 A I think there have been some, yes.

22 Q And you also received interrogatories asking for
23 information about fraud; correct?

24 A Yes.

25 Q And you understand that you have a continuing obligation

1 to disclose materials in response to document requests; right?

2 A I do. I would say that the information that I recall
3 providing in interrogatories was of the number of cases that
4 we -- I believe the number of cases that we were looking at,
5 and I am quite certain that the 31 cases that we referred were
6 part of that.

7 **MR. PETERS:** Your Honor, I do want to note that with
8 regard to those requests -- those document requests, we
9 objected to them on the grounds that it would require turning
10 over information about individual criminal investigations. So
11 those document requests were objected to.

12 **THE COURT:** All right.

13 **MR. KAUL:** I have gone about as far as I am going to
14 go.

15 **THE COURT:** I will deal with the issue separately.
16 If you want to put on the evidence, they're entitled to know
17 something about it. If you want to not put on the evidence,
18 then you can keep that from them. On the other hand, I am not
19 going to have all of that disclosed publicly at this time if
20 it's ongoing investigations. So if you have other concerns
21 about that, you can raise them at the appropriate time, and I
22 will consider that.

23 **BY MR. KAUL**

24 Q Did you receive any of the information that was part of
25 that investigation -- those investigations that led to those 31

1 referrals from Jay DeLancy?

2 A Those -- I don't think that -- I don't believe that any of
3 the -- those referrals -- I don't think they are anything we've
4 received from Jay DeLancy. I don't believe.

5 Q You have met with him to discuss fraud on multiple
6 occasions; correct?

7 A I have.

8 Q And you said your investigation included a review of
9 historical information; is that right?

10 A When you say "historical information," what are you
11 referring to?

12 Q Cases that had been pending from before when you became
13 director of the State Board of Elections.

14 A Some of them might be. Most of the cases that were
15 pending were things that have come up since I have been
16 executive director.

17 Q So over the last 15 years, there have been a total of four
18 cases of in-person voter impersonation fraud that have been
19 referred to district attorneys, including the two that you have
20 mentioned; correct?

21 A I can speak to the two that have been referred since I
22 have been the executive director. I can't speak to what was
23 referred before that.

24 Q And do you know if one of those four cases involved an
25 individual named James O'Keefe?

1 A That is not one that I have referred.

2 Q And you don't know how many of those cases resulted in
3 criminal charges; is that right?

4 A Some of them have. I do not know the specific number.

5 Q Were you here for Dr. Thornton's testimony?

6 A I was not.

7 Q And you've met Dr. Thornton; right?

8 A I've never met Dr. Thornton.

9 Q Were you here for Professor Minnite's testimony?

10 A I was not.

11 Q And did you review the Government Accountability Office's
12 recent report regarding voter ID laws?

13 A I haven't.

14 **MR. KAUL:** No further questions.

15 **THE COURT:** All right. Any other Plaintiff have any
16 other questions? Mr. Peters.

17 **MR. PETERS:** Just a little bit of redirect, Your
18 Honor.

19 REDIRECT EXAMINATION

20 **BY MR. PETERS**

21 Q Ms. Strach, you were asked about the Wake County Superior
22 Court case involving an early voting site in Watauga County?

23 A Yes.

24 Q Do you know whether that decision by Judge Stephens is
25 currently on appeal?

1 A It is on appeal.

2 Q Now, do you still have up there where you can see them the
3 two charts that Mr. Donovan showed you that were attached to
4 the wait time reports?

5 A Yes, sir. These?

6 Q Yes. Let me ask you to look at the one that does not have
7 an exhibit sticker on it that is a -- has the closeup of Durham
8 County.

9 A Yes.

10 Q And you see -- do you see columns where it gives a date?

11 **THE COURT:** Are these Defendants' 236?

12 **MR. PETERS:** Yes, Your Honor.

13 **THE COURT:** Thank you.

14 **THE WITNESS:** I do.

15 **BY MR. PETERS**

16 Q And do you see an X under that date?

17 A I do.

18 Q Do you know whether the X means that there were long
19 lines -- or long lines were reported for all voting sites on
20 that date or just whether it means that at least one voting
21 site reported a long line that day?

22 A I believe it is at least one site had a wait time.

23 Q Okay. Do you recall Mr. Donovan asking you about comments
24 that were received and noted on the chart for Durham County?

25 A Yes.

1 Q And do you recall Mr. Donovan asking you if those had been
2 included in the report?

3 A Yes.

4 Q These charts, were they attachments to the report?

5 A They were attachments to the report.

6 Q Do you consider them part of the report?

7 A I do.

8 Q So those comments from Durham County, would you say they
9 were included in the report?

10 A They were as an exhibit with the report. So, yes, they
11 were part of the report.

12 Q Now, I believe you testified that you asked Mr. LiVecchi
13 to prepare this report; is that correct?

14 A That is correct.

15 Q Is this a report of the State Board of Elections?

16 A It's a State Board of Elections report.

17 Q And who has the final authority to decide what gets said
18 in a report that comes from the State Board of Elections?

19 A I do.

20 Q And did you yourself approve this report --

21 A I did.

22 Q -- before releasing it as a final product?

23 A I did.

24 Q Okay. Now, Mr. Kaul asked you about whether you were
25 aware that more people -- more voters voted per day in early

1 voting in 2014 than in the previous election. I believe I am
2 getting that right.

3 A I believe that's correct, yes.

4 Q Do you recall that? And I believe you said that there
5 were more voters per day?

6 A I believe that's correct.

7 Q Do you know whether there were also more voting sites?

8 A There were more voting sites.

9 Q And do you know whether the voting sites may have been
10 open more hours on any given day?

11 A Generally, they were, and there were more evening hours.

12 Q Now, you were also asked some questions about the polls
13 closing on the last Saturday of early voting, that the polls
14 closed at 1:00.

15 A Correct.

16 Q What happens to people who are standing in line at 1:00?

17 A They will get to vote.

18 Q As long as someone is standing in line?

19 A At the time at 1:00.

20 **MR. PETERS:** I believe that's all I have, Your Honor.

21 **THE COURT:** Anything?

22 **MR. DONOVAN:** Nothing further, Your Honor.

23 **THE COURT:** Ms. Strach, I have just a couple of
24 questions for you. Plaintiffs' Exhibit 212A, North Carolina
25 Voter Registration Application, do you have a copy of that

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1 there?

2 **THE WITNESS:** I do.

3 **THE COURT:** How does the North Carolina form compare
4 to a federal form? Is it in any way based on it, or is it
5 different from it?

6 **THE WITNESS:** It has basically the same information
7 on it, the federal form does.

8 **THE COURT:** Is it different in any respect?

9 **THE WITNESS:** I am trying to recall. There may be an
10 ordering -- the same required information is included on the
11 federal form.

12 **THE COURT:** During early voting, am I correct to
13 understand that there is out-of-precinct voting during early
14 voting?

15 **THE WITNESS:** Right. A voter can vote anywhere in
16 the county during early voting.

17 **THE COURT:** And before House Bill 589,
18 out-of-precinct on Election Day was limited to the county; is
19 that right?

20 **THE WITNESS:** Limited to the county, yes, sir.

21 **THE COURT:** Okay. How is whatever it is that the
22 county boards of elections did during early voting to
23 accommodate out-of-precinct voting different from anything --
24 if at all, different from anything that the counties would have
25 to do to accommodate out-of-precinct during Election Day?

1 **THE WITNESS:** It's very different for most because
2 early voting sites are going -- you are going to have --
3 usually just the board -- it is the board of elections and then
4 any additional satellite sites that they open. So that's
5 generally going to be a lot less than the number of precincts
6 that would be open on Election Day. So for early voting, if
7 you have additional sites, they are going to be less. You have
8 to have all the ballots there, and you have the names of every
9 person in the county.

10 On Election Day, you have more precincts that you
11 would have to do the same thing. You would have to equip -- as
12 in Wake County, they have 200 precincts. They only have, like,
13 less than, I think, around ten early voting sites. So you
14 would have to equip those 200 precincts with the same amount of
15 materials that you equipped the early voting sites with. So
16 that's the big difference.

17 **THE COURT:** How do you equip them with materials?

18 **THE WITNESS:** It would be every ballot style for
19 every voter in the county would be one of the things. Then you
20 would have to have additional voting equipment to accommodate
21 that as well.

22 **THE COURT:** If it's an electronic machine that's
23 being used, which is what I think is used here, for example, in
24 Forsyth County --

25 **THE WITNESS:** It is.

1 **THE COURT:** -- how do you provide that information
2 for Election Day, and how would that be any different from
3 whatever you would be doing during early voting?

4 **THE WITNESS:** Well, what -- as a good example, with a
5 county that uses the electronic machine is they wouldn't be
6 able to use the electronic machine on out-of-precinct. On
7 Election Day -- in early voting sites, they don't use that
8 because you have to program the machine for the different
9 ballot styles. So if you have -- the -- usually the machine
10 can only handle a certain number of ballots styles.

11 So on Election Day, if you had -- if you were using
12 the electronic voting equipment in all the, say, 200 precincts,
13 you would have to have the ability to program every one of the
14 ballot styles of the county into that machine. Or if you
15 couldn't do that, you have to be able to vote on paper, a
16 provisional ballot or some other paper, in order to accommodate
17 that.

18 **THE COURT:** So during early voting, if you have early
19 voting at the board of elections, for example, and you are
20 using an electronic machine, does that machine have the
21 capability of being programmed for any ballot in the county?

22 **THE WITNESS:** Well, at least they would have multiple
23 machines to do that. Because it may be, if you have more
24 ballot styles than the machine can handle, you would have to
25 have different machines to do that. So if -- the early voting

1 sites or the county board, yes, you would have the ability to
2 do that.

3 **THE COURT:** Why would that not still be something you
4 could do on the same kind of electronic machine on Election Day
5 in each of the precincts?

6 **THE WITNESS:** You could do that. You would just have
7 to have multiple machines that were programmed and enough of
8 those to accommodate the amount of voters that would come, and
9 you would have to do that for every single precinct.

10 **THE COURT:** Okay. So if you are not using an
11 electronic but you're using paper ballots, how is that handled
12 during early voting for people who vote out of precinct?

13 **THE WITNESS:** Who go to the early sites? Right, you
14 have to have the ballot styles for every voter in the county at
15 these early voting sites. So if you have three sites, you
16 would have all the ballot styles in those three sites. If you
17 did that on Election Day, unless you went the provisional
18 ballot way, you would have to have the ballot styles for
19 every -- every voter in the county -- each precinct would have
20 to have the ballot style for that voter.

21 **THE COURT:** How many precincts are in a county?

22 **THE WITNESS:** It depends. Wake County comes to mind.
23 They have 200, but you have some smaller counties that have a
24 smaller number of precincts, and there may be even some
25 counties that have a larger number of precincts. So it varies

1 county by county; but, generally, your precincts are going to
2 be a lot higher than your early voting centers.

3 **THE COURT:** Then you also talked about the mail
4 verification process during early voting. I just want to make
5 sure I understand. If someone shows up for early voting, and
6 they have not completed the two-card process --

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

8 **THE COURT:** -- and they vote --

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

10 **THE COURT:** -- then under statute, what happens to
11 their vote?

12 **THE WITNESS:** It would count unless that voter was
13 challenged on Election Day. And if that voter is not
14 challenged on Election Day, that ballot would count.

15 **THE COURT:** What if the second card comes back before
16 they attempt to vote?

17 **THE WITNESS:** If the second --

18 **THE COURT:** I'm sorry. Somebody goes through the
19 normal registration and the second card comes back before they
20 attempt to vote during early voting or during the election.

21 **THE WITNESS:** If someone registers and both cards
22 come back before they vote, their registration is denied and
23 their ballot wouldn't count before they vote. They couldn't
24 vote.

25 **THE COURT:** All right. Is it possible for somebody

1 during same-day registration to have had an incomplete
2 registration, that is, that they showed up for same-day
3 registration during early voting, registered and voted? Is it
4 possible for that person to ever be declared incomplete in the
5 registration?

6 **THE WITNESS:** Usually it would be the job of the
7 precinct official, that they would have to have enough
8 information on that voter registration form to be able to
9 complete that process. So, generally, you wouldn't have
10 incomplete information at a same-day registration site because
11 they're standing in front of the registrant and obtaining that
12 information.

13 **THE COURT:** Okay. For someone who registers in the
14 traditional 25 days or before the election time frame, is it
15 possible for them to have incomplete registration?

16 **THE WITNESS:** Yes.

17 **THE COURT:** And if that person shows up to vote at
18 any time, what happens to them?

19 **THE WITNESS:** They would not be on the poll book
20 generally. If the incomplete information was required
21 information that didn't allow the Board of Elections to process
22 them, they wouldn't show up on the poll book, but they would be
23 afforded the ability to vote a provisional ballot; and if the
24 information they provide in the provisional ballot process is
25 enough to satisfy the requirements, their vote -- their ballot

1 would count.

2 **THE COURT:** Do you know what the law was in North
3 Carolina before House Bill 589 as to the order of candidates on
4 the ballot, how they were to be listed?

5 **THE WITNESS:** Yes, I think I do. It depends on what
6 type of election it is. If it is a primary, there is a random
7 order that the candidates' names would appear in. It's based
8 on a random order that the State Board sets. And then in the
9 general, I believe prior to 589, the Democratic candidate -- it
10 would be in order of parties so that the Democratic candidate
11 came first. I think that was changed with 589. And we still
12 have the random selection during primaries.

13 **THE COURT:** You say the Democratic candidate was
14 listed first under --

15 **THE WITNESS:** Right. I think it was based on
16 alphabetical of party. I believe that's how it was.

17 **THE COURT:** Was that by statute?

18 **THE WITNESS:** That was by statute.

19 **THE COURT:** Okay. Anybody have any questions in
20 light of my questions on those topics?

21 **MR. PETERS:** Just a very a little bit, Your Honor.

22 **THE COURT:** All right.

23 **BY MR. PETERS**

24 Q Ms. Strach, in response to some questions from the judge,
25 you referred to ballot styles.

1 A Yes.

2 Q What is a ballot style?

3 A A ballot style is actually the -- based on where you live,
4 you're only entitled to vote for certain races, and that is
5 your ballot style. That is the ballot that you are entitled to
6 vote, which may be different from someone else's ballot style
7 that lives in a different place and is entitled to vote for
8 different races.

9 Q So just as an example, if you and I lived across the
10 street from each other, but the line for House of
11 Representative districts went down the street so that I am in
12 one district and you are in a different district for the House
13 of Representatives, that would require two ballot styles, one
14 for you and one for me?

15 A Correct. Generally, in a precinct, there may be multiple
16 ballot styles.

17 Q Do you have a sense of how many ballot styles -- in a
18 general election when we are electing members of Congress and
19 members of the General Assembly, do you have a sense of how
20 many ballot styles there can be in a county?

21 A It can range in the range -- it depends on how counties
22 code their ballots. So you could have hundreds of ballot
23 styles. You could. You could have a few number of ballot
24 styles. It just depends on the number of races and basically
25 the size of the county and the size of the districts within

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1 that county.

2 Q But as I understand it, during early voting, if a county
3 uses optical scan equipment, then during -- at the early voting
4 centers, they are required to have some of all of the ballot
5 styles for the county?

6 A They have to have every ballot style for every voter in
7 the county.

8 Q And based on what you just said, that could be over a
9 hundred ballots -- possibly be over a hundred ballot styles at
10 every early voting site?

11 A It could be.

12 Q And is part of what the voter does when they come in to
13 vote at the early site designed to make sure that the elections
14 officials know which ballot style that voter is supposed to
15 get?

16 A That is the job of the early voting worker or the precinct
17 official.

18 Q I think you testified to this either yesterday or last
19 week, but, again, how many counties use the optical scan
20 equipment as opposed to the touchscreens?

21 A Basically 70 -- around 70, or -- I think that's a fair
22 number. Around 70 counties use optical scan, but every county
23 has to have an optical scan system because -- to count
24 provisional ballots. So they may not use that as their primary
25 method of voting, but every county has to have an optical scan

1 machine.

2 Q And I just want to make sure I am clear on what you were
3 saying earlier, that if a county used in touchscreens in early
4 voting, I believe you said that it is possible that one machine
5 might not be able to hold the program to hold all of the ballot
6 styles for that county; is that correct?

7 A That's true.

8 Q And you talked about more than one machine. Do you mean
9 one machine might have the ballots for Precincts 1 through 10
10 and another machine might have the ballots for 11 through 20
11 and so on?

12 A Exactly.

13 **MR. PETERS:** That's all I have, Your Honor.

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

15 **MR. DONOVAN:** Thank you, Your Honor.

16 RECROSS-EXAMINATION

17 **BY MR. DONOVAN**

18 Q Ms. Strach, in response to one of the Court's questions,
19 you said unless you go provisional, you would need every ballot
20 style. Do you remember that?

21 A I do.

22 Q What do you mean "unless you go provisional"?

23 A I thought that Your Honor was asking if you were trying
24 to -- going to make early voting just like Election Day, why
25 couldn't you do early voting to Election Day, which to me

1 suggested that you would not do a provisional ballot. The
2 provisional ballot would mean you would just vote the ballot
3 that's in that precinct, and you wouldn't be entitled to all
4 the things on that ballot.

5 Q That's what I want to talk about. So if you are at a
6 precinct, let's take Mr. Peters' example, they could give me
7 the ballot, and maybe we have some races that are different,
8 but we'd have some races that are the same, for example,
9 President, Governor, and U.S. Senator. Correct?

10 A Yes, sir.

11 Q That's what you mean when you say you go provisional. I
12 get that ballot, but there may be some races, because I'm in a
13 different precinct, I don't get to vote for; right?

14 A That's correct.

15 Q Okay. You also said that in a precinct, people would have
16 to be looked up. We covered this last time, but I just want to
17 emphasize it, is that the State Board of Elections provides at
18 no cost that electronic poll book application in SEIMS;
19 correct?

20 A That's correct.

21 Q So that means on the computer, people can look up whether
22 that person is registered in the county; correct?

23 A Yes.

24 Q Okay. Let's cover --

25 A Not all counties use that on Election Day.

1 Q I understand, but you offer it free of charge; correct?

2 A We do.

3 Q And let's switch to that same-day registration example --

4 I'm sorry -- the traditional registration example you were

5 talking about with the Court. You went through the example if

6 there is one card gets returned and they vote, it counts; if

7 the second cards returns before they vote, it doesn't count.

8 Correct?

9 A If it's returned before, they would be denied.

10 Q I'm sorry. They would be denied. That needs to be the

11 second card; right?

12 A Yes.

13 Q And if a voter -- even if you get one card returned, they

14 then vote. You then get the second card returned later, their

15 vote counts. They would then become an inactive voter, and you

16 would sent them a confirmation mailing; correct?

17 A That's correct.

18 Q But their vote would count?

19 A If mail verification had not completed, yes.

20 Q Correct.

21 **MR. DONOVAN:** Thank you.

22 **MR. PETERS:** Nothing further.

23 **THE COURT:** Now I have a follow-up. So I want to go

24 back to the out-of-precinct. What was happening before 589 on

25 Election Day? What was being counted?

1 **THE WITNESS:** On Election Day, prior to 589, the
2 precincts only had the ballots for which their voters in that
3 precinct were entitled to vote. So if someone came that was
4 not in that precinct, their ballot was not there. So they had
5 to vote a ballot that was in that precinct, and then the county
6 board of elections would then research to see which of the
7 ballot items that they voted were they entitled to vote, and
8 then they would have to hand count those or create a new
9 ballot, take the ballot that they would have voted had they
10 gone to their correct precinct, fill out with the ballot items
11 that they voted, and put it through the machine.

12 **THE COURT:** How do they create a new ballot?

13 **THE WITNESS:** They would take the ballot style -- a
14 plain ballot from the precinct from which that person should
15 have cast their ballot, and they would fill in the races that
16 they voted for in the out-of-precinct precinct. They would
17 fill in -- they would fill in that ballot just as that voter
18 did in that precinct for only the races that they were
19 entitled.

20 **THE COURT:** Where is that done? Is that at the
21 precinct level or the county board?

22 **THE WITNESS:** That's done at the county board level.

23 **THE COURT:** All right. Any further questions?

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

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

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

2 **MR. PETERS:** Your Honor, at this point, the
3 Defendants would move into evidence Defendants' Exhibit 16,
4 which is the SDR report that -- the header on it says May 2015;
5 Defendants' Exhibit 210, which is the November 2014 wait time
6 report; and Defendants' Exhibit 118, which is the multipartisan
7 assistance team's document.

8 **THE COURT:** Does 210 include the attachments, which I
9 thought were 236?

10 **MR. PETERS:** It does not include the attachments,
11 Your Honor.

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

13 **MR. DONOVAN:** Your Honor, I do only as to
14 Exhibit 210, and only in part. I have no objection to it
15 coming in as the basis for her opinion or notice, but I don't
16 believe it is appropriate as non-hearsay. She testified that
17 she did seek this as part of this litigation in response to
18 deposition questions.

19 The wait report, she did not speak with any of the
20 county boards. She did not draft it, and it was drafted by a
21 lawyer for the State Board. So I don't object to it coming in,
22 but I do object to it as a -- coming in for the truth of the
23 matter asserted.

24 **MR. PETERS:** Your Honor, I would respond to that.
25 She testified that it is a report of the State Board,

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1 regardless of who was drafted by. It was drafted an employee
2 of the State Board.

3 She also testified that one of the reasons she
4 drafted -- asked for the report to be drafted -- that part of
5 the reason was because questions had been asked in this
6 litigation, but she also testified that part of the reason she
7 asked for it was to enable the State Board to help counties
8 avoid long wait times in the future and learn how to manage
9 wait times, that she thought there was a deficiency because
10 there had not been a real analytical report in the past.

11 I think clearly it would fall under Rule 803(6) as a
12 record of regularly conducted activity and Rule 803(8) as a
13 public record. It is a report of a state agency.

14 **MR. DONOVAN:** Your Honor, on the regular practice,
15 they admitted they had never done it before. She testified it
16 was in response to this. So it is actually not regularly
17 conducted.

18 And the parts that I have objections to that weren't
19 covered is there are statements in the report that weren't
20 covered by either party that go -- that are kind of opinion,
21 and they are the opinion of Mr. LiVecchi, who is a lawyer for
22 the State Board of Elections, a Defendant in this case.

23 So if they want to put in analytics, again, no
24 objection to that, so, for example, the exhibits, the charts;
25 but getting in statements, which were not covered on direct,

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1 that are really opinion of a lawyer who represents the
2 Defendant is not appropriate under 803(6).

3 **MR. PETERS:** Your Honor, Ms. Strach testified this
4 afternoon that she had final approval authority over this
5 report and that it is a report of the State Board. All reports
6 of any state agency have to be drafted by somebody. They don't
7 write themselves.

8 **THE COURT:** I understand. Let me ask: I thought
9 that you had said that this chart was the attachment?

10 **MR. DONOVAN:** It is. If you look at the back, it's a
11 blank page because it was electronic.

12 **THE COURT:** So why would the chart not be part of the
13 report, I guess is what I am asking?

14 **MR. DONOVAN:** We have no objection to the chart.

15 **THE COURT:** Mr. Peters?

16 **MR. PETERS:** Your Honor, I am sorry. I was just
17 trying to check because I think there was some confusion on our
18 side. Those exhibits -- it was 236 -- should be part of the
19 exhibit, and that was my mistake to say they were not included
20 there. So it should be 210 and 236. It just somehow got
21 separated.

22 **THE COURT:** Well, the report was prepared at the
23 direction of Ms. Strach as the executive director of the State
24 Board of Elections. So I am going to admit all four of the
25 exhibits. You can argue as to --

1 **MR. DONOVAN:** I think I made my point to the fact
2 finder.

3 **THE COURT:** You can argue what you think I should
4 draw from it at the appropriate time.

5 **MR. DONOVAN:** I will. Your Honor, if Mr. Peters is
6 done, we would like to move in, really just for reference,
7 Plaintiffs' Exhibit 723, which was the statute provision I
8 examined Ms. Strach on, going through voting when the
9 verification process is incomplete; Plaintiffs' Exhibit 490,
10 which is the email from Mr. Neesby to Ms. Strach; Plaintiffs'
11 Exhibit 565, which is the list maintenance summary report; and
12 Plaintiffs' Exhibit 629, not for the truth of the matter, but
13 for notice and going to credibility, the report of Democracy
14 North Carolina. And then also Plaintiffs' Exhibits 742 and
15 743, which were blowups of the charts that are attached to the
16 report Mr. Peters moved in.

17 **MR. PETERS:** Your Honor, I think the only one of
18 those we have an objection to is 629. I understand that
19 Mr. Donovan is saying they are not moving it for the truth of
20 the matters asserted, but they say they are moving it to show
21 that Ms. Strach had notice of what it says, and she testified
22 she had not seen it before.

23 **THE COURT:** I thought she did say she hadn't seen it
24 before.

25 **MR. DONOVAN:** She saw drafts.

1 **MR. PETERS:** But there is no evidence that the prior
2 draft looks anything like this report or contains the specific
3 parts he asked her about.

4 **MR. DONOVAN:** Your Honor, actually, I believe, if we
5 check the record, she did say she saw this one. What she said
6 is she didn't see it before they issued their report.

7 Again, Your Honor, I am asking this to be moved in.
8 I did examine her. She said Mr. Hall is well known. She's had
9 meetings with him. It goes to just notice and credibility of
10 the State Board of Elections' report, one report that just came
11 into evidence that she didn't even draft or really have any
12 part in, but I think it is only fair that the record reflect --
13 and she gave opinions, Judge, about why she thought certain
14 things happened. That's what I'm asking for this document to
15 be --

16 **THE COURT:** Hold on, please. You all can have a
17 seat.

18 (Pause in the proceedings.)

19 Ms. Strach says at 11:36 this morning:

20 "Q You were aware of that finding by
21 Mr. Hall; correct?

22 "A I just want to make sure I clarify
23 that the report that I met with Mr. Hall and
24 our staff met was not this report. It was an
25 earlier report.

1 "Q An earlier version?

2 "A So this report we have not met with
3 Mr. Hall about."

4 So I am going to preclude this report. The questions
5 you have in the record, but her testimony was she had not
6 reviewed this report, as I recall it. So I am going to exclude
7 that. All the others, though, any objections to any of the
8 others?

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

10 **THE COURT:** Hold on just a minute. 723 is admitted.
11 490 is admitted. Did we get a date on the presentation that's
12 564? Have you all agreed on this?

13 **MR. KAUL:** We are going to withdraw that.

14 **THE COURT:** All right. I am trying to identify the
15 rest of them. 565 is admitted. 723, I have already spoken to.
16 629 is denied. And what are 742 and 743?

17 **MR. DONOVAN:** Your Honor, we can mark it at the
18 break. 742 is the blowup of the attachment to the wait time
19 report showing the days of Durham County. It's this one, and I
20 can mark it at the break, but that will be 742. And 743 is the
21 text of the comment box for Durham, which is -- again, they're
22 just demonstrative blowups so you can actually read them of the
23 attachment to the wait times.

24 **THE COURT:** Are those different from the ones that
25 were Defendants' 236?

1 assumptions beyond the data and analyze it, that's my role.

2 Q All right. Could you tell the Court a little bit more
3 about what you mean by data analytics specifically?

4 A Sure. There is a general term called business
5 intelligence, and I think that would summarize what I do. It
6 is about taking data, looking at the assumptions about the
7 data, connecting that data together using a code called SQL,
8 and it's about analyzing it for what it means as far as what we
9 can assert from reality about that.

10 It is a different role than a lot of IT team does. IT is
11 generally doing -- giving data to us, but they are not
12 necessarily analyzing that data. And in that regard, I'm kind
13 of a business liaison between IT and the business side.

14 Q Is there anyone else at the State Board of Elections who
15 does the kind of data analytics that you do?

16 A No, there is not.

17 Q Can you tell us briefly what your education is?

18 A Sure. I was -- I got a bachelor's of art in political
19 science at UCLA. I also got a juris doctorate at Loyola Law
20 School. That's it.

21 Q Do you have any prior employment that relates to what you
22 do at the State Board of Elections?

23 A I do. I worked for Toyota for eight and a half years,
24 and, actually, I was a consultant for Toyota. And there, I
25 worked on several projects. One of the projects was -- I was a

1 Sarbanes-Oxley consultant. I helped build their database and
2 was a database administrator for Sarbanes-Oxley compliance. I
3 also was the data analyst as well as the data steward for
4 Sarbanes-Oxley compliance.

5 I also worked for the vehicle services team, in which case
6 they had about 25 different databases, several different fields
7 of data, and they wanted analytics around -- how their leasing
8 is being managed and seeing if they could see the ebb and flow
9 of their lease management system. And they also worked with
10 the vendor to determine -- and that vendor was basically
11 dealing with fleet management, and I helped deal with the
12 analytics around that and the different data fields that that
13 was regarding.

14 Q Are there any commonalities between the types of data and
15 databases that were working with at Toyota and what you worked
16 with at the State Board of Elections?

17 A Yes. Toyota used Workday and PeopleSoft for their people
18 data, so I dealt a lot with data around names and different
19 data fields and having to do with -- similar to the voter
20 rolls. There was a lot of data about contact information, and
21 it also was a very complex database. They had, like I said, 25
22 different databases. They used SQL. They had a SQL server,
23 and SEIMS is built on a SQL server. Like I said, it was a very
24 complex interwebbing of 25 different databases, about 3,000
25 fields of information, and so in many ways, that's very

1 similar, if not more complex, than the SEIMS database is that I
2 work with at the State right now.

3 Q All right. You mentioned the term "SQL server."

4 Number one, could you spell that?

5 A Sure. S-Q-L. It stands for structured query language.

6 Q And what is a SQL server?

7 A A SQL server is the database that a series of applications
8 is built upon. And so -- and SQL is the language that is used
9 to analyze data within the database.

10 Q All right. Mr. Neesby, we are going to look at
11 Defendants' Exhibit 16.

12 **MR. STRACH:** And, Your Honor, I believe this is
13 already -- you may already have a copy of this DX16, and we'll
14 put it on the screen. It is the State Board of Elections'
15 analysis of mail verification failure rates of SDR and non-SDR
16 voters.

17 **BY MR. STRACH**

18 Q Mr. Neesby, are you familiar with this report?

19 A I am.

20 Q Did you help do any of the analysis for this report?

21 A For Part 2, I did the data analytics behind the report.

22 Q All right. So I believe Part 2 is on page 5 of the
23 report; is that correct?

24 A Yes.

25 Q All right. Let's look first at the chart on page 4 of the

1 report. Did you kind of contribute any analysis to this chart?

2 A Yes. This is -- so by Part 2, there is a second analysis,
3 and that analysis is broken up in two parts. Both of those I
4 contributed analysis for.

5 Q All right. So looking specifically at the chart on page 4
6 of Exhibit 16, can you tell the Court about any conclusions you
7 draw -- drew based on the numbers in this chart?

8 A Sure. What this chart represents is we looked at of the
9 2012 registrants, how many voted and then failed mail
10 verification, and then we broke that up into two buckets, one
11 bucket being SDR and the other being non-SDR.

12 And so you see that number for SDR is 2300 -- 22,361, and
13 non-SDR is 2,306. And then we then compared in this part,
14 Section 1 of my analysis -- we compared that to 2012
15 registrants who voted, and then you will notice that results in
16 a failure rate for SDR at 2.44 percent and a failure rate
17 non-SDR .49 percent, and I am specifically talking about the
18 2012 general election, which is five times as high for SDR 2012
19 registrants.

20 Then we did the same analysis for the 2012 primary
21 election, and you get -- voted then failed is 396 for SDR and
22 104 for non-SDR. You convert that to failure rates, and SDR is
23 2.19 percent compared to .22 percent for non-SDR, and I believe
24 that's seven times as high -- it's later in the report where I
25 can say for sure, or with a calculator.

1 Q All right. So let's look at the chart on page 5. Was
2 this another part of the analysis that you did of failures of
3 initial mail verifications during the 2012 election?

4 A It is the same -- part of the same analysis. And what we
5 are doing there is we're taking -- what I am doing there is
6 taking the same numerator, which is those that voted but failed
7 mail verification, and it is another way of looking at it,
8 simply dividing by all 2012 registrants. And so if we do it
9 that way, you see that SDR fails at -- if you could go down a
10 little bit on the page. That would be helpful. Thank you.

11 Yeah. They fail about seven times as much in the 2012
12 general election. When you do 2012 primary election, it's
13 actually over 36 times as much, as frequently.

14 Q So what overall conclusions did you reach in analyzing
15 this data about the likelihood of SDR registrants voting and
16 then mailing mail verification over non-SDR registrants?

17 A I concluded from this that based on the data alone, you
18 can tell that SDR registrants who vote and then fail mail
19 verification as compared to non-SDR registrants fail much more
20 frequently, and it ranges between 5 times to 36 times as much.

21 Q All right. You are aware of -- let me ask you this: When
22 did you start at the State Board of Elections?

23 A October of 2014.

24 Q And are you aware of prior reports that the State Board of
25 Elections has done on the issue of same-day registration and

1 mail verification?

2 A I am.

3 Q And you are aware that those -- that report was done by
4 Ms. Degraffenreid?

5 A Yes.

6 Q How did your methodology in Defendants' Exhibit 16 differ,
7 if at all, from Ms. Degraffenreid's methodology?

8 A There are two main ways that it differed. Probably one of
9 the more important one is, we talked about this before, that
10 Ms. Degraffenreid used proxies, and what that means is she used
11 the status, whether active or inactive, and the reasons for
12 that status, which tended to give verification information.

13 I can go into why that's inaccurate, but what I did
14 instead is I looked at the actual verification history logs and
15 looked to see, with the benefit of hindsight, how many of those
16 verification processes actually failed. And so we are looking
17 at the logs per voter to determine if that person failed or did
18 not fail.

19 And then the second way that it differs, at least from our
20 initial report, is I limited it to voting history for those
21 that voted and then failed.

22 Q All right. So you are looking at the actual history of
23 each individual voter rather than using a proxy for that
24 history, which is a certain code?

25 A Right. And just to be clear, that other thing is that

1 proxy has to do -- the other thing that is different is that I
2 isolated the new voter mail verification process, which
3 Ms. Degraffenreid wouldn't have been able to do.

4 Q All right. Was there any particular mail verification
5 process in particular that you were looking at in this report?

6 A Yes, I was particularly looking at the new voter mail
7 verification process, which is related to the statute that
8 we've all been referencing in this case.

9 Q Are there other mail verifications processes that the
10 State Board does?

11 A There are. There's four other mail verification
12 processes. There is an NCOA process, national change of
13 address, there is an admin mailing verification process, there
14 is a voter change process, and there is a list maintenance,
15 no-contact mail verification processes used. And all these
16 processes will affect that reason code that I mentioned earlier
17 and the verification state.

18 Q What is the difference, if any, between the initial mail
19 verification process or initial mail verification in general
20 and these other mail verification processes?

21 A It's -- statutorily at least, it serves as a gateway to
22 becoming the difference between an applicant and a registrant.
23 In SEIMS, it is the only one that you can actually only go
24 denied for. All other verification processes, you won't ever
25 go denied. So it is a gatekeeper function uniquely as compared

1 to the other verification processes.

2 Q All right. Mr. Neesby, let's talk a little bit -- let's
3 shift gears a little and talk about the NVRA and public
4 assistance applications. Are you aware of a report on that
5 subject submitted by Dr. Allan Lichtman in this case?

6 A I am.

7 Q Have you reviewed his report?

8 A I have.

9 Q Were you able to conduct any analysis regarding his
10 report?

11 A I was. I was able to match his numbers specifically in
12 his Table 1 in Chart 1 and Chart 2. And would you like me to
13 go into how I did that?

14 Q Yes.

15 A What I did is I took the data from the FTP site that he
16 references in one of his footnotes. I then downloaded it, and
17 if I pivot for -- or, sorry, "filter" is a better term -- for
18 Source Code 01, which is public assistance applications
19 generally, and Source Code 03, which is Employment Security
20 Commission, and then I only filter for new registrations, I am
21 able to duplicate his results in that chart.

22 Q And, Mr. Neesby, what is a source code?

23 A Source code, as we mentioned earlier, is the code on that
24 actual form. So 01 will be on the top of a public assistance
25 form.

1 Q All right. So you were able to duplicate the numbers in
2 his report only by using the Source Code 01 and Source Code
3 03 --

4 A Uh-huh.

5 Q -- results?

6 A Yes.

7 Q Did that exclude any other source codes?

8 A It did. There was a couple of things that were odd about
9 that. One is that it excluded Source Code 02, disability,
10 which is another public assistance NVRA agency, and it also --
11 if your question is about NVRA compliance, to limit it to new
12 registrations is a little odd because you also have changes of
13 information and you also have duplicates. And those come from
14 the EAC, those -- the definitions for those terms, and those
15 all represent registration services that have been provided to
16 the registrant, or the applicant in this case. So they show
17 that this public assistance agency has done their job in
18 submitting a form to the county office.

19 Q All right. So let's break that up a little bit. So what
20 are new registrations?

21 A So new registrations are exactly what they sound like.
22 They are someone that newly registers, and that means that a
23 form has been submitted from the public assistance agency to
24 the county office.

25 Q All right. And what are registration changes?

1 A I believe the term is "changes of information" in that
2 report, and that is changes of information to four specific
3 data points: Mailing address, residential address, name, and
4 party.

5 Q All right. So these are opportunities for the agency to
6 offer voter registration services that you would want to look
7 at if you are were looking at NVRA compliance?

8 A And more so, they are actually forms that have been
9 submitted from the public assistance agency that has been
10 processed through what's called Voter Scan. It's an
11 application. So that form has been submitted, and it just is
12 simply not a new registration. It changes those specific four
13 data points.

14 Q All right. And what are duplicates?

15 A Duplicates aren't what they sound like. They are any
16 changes other than those four data points. So it could be that
17 someone has added a Social Security number. It could be that
18 someone added a driver's license or changed any other field
19 that they already -- that is not one of those four data points.

20 Q All right. I am going to get a little technical on you,
21 but I think it's something that we need to discuss. The State
22 Board of Elections has an internal -- it's a website that's
23 available to the public called FTP site; is that right?

24 A That's right.

25 Q What is that?

1 A File Transfer Protocol. It's simply somewhere you can
2 house documents where -- it is a protocol that allows you to
3 house documents on a server that public generally have access
4 to or certain agencies have access to. So this is a public FTP
5 site.

6 Q Is there a lot of data on that site also?

7 A There is a ton of data on that site.

8 Q Is there any data regarding the NVRA and public assistance
9 agencies?

10 A There is. There is a specific folder called the NVRA
11 Reports folder that has a bunch of data.

12 Q Where exactly does that data come from?

13 A That data is exported from a specific table in SEIMS
14 called the NVRA_STAT table.

15 Q What is that?

16 A What did you say?

17 Q And what is that?

18 A That's a table that purports to give NVRA statistics about
19 NVRA compliance and the different types of information that we
20 just discussed.

21 Q Are there any limitations to the data in that particular
22 table?

23 A Sure. There is a couple of limitations, as is true of all
24 data. You only get -- and this is going to get a little
25 technical as well. I apologize. You only become -- a record

1 is only inserted into the NVRA_STAT table if it's gone from the
2 public assistance agency through the Voter Scan, or scanning
3 application, goes through the queues, so incomplete queue and
4 review queue, in which case they're reviewing information, and
5 finally becomes a registration record.

6 So there are several applications that wouldn't go all the
7 way through there and would not be included in that table at
8 all. So the way I would summarize that is the NVRA_STAT table
9 only has applications that become a registration record, not
10 applications that eventually do not.

11 Q All right. Have there been any changes to the code and
12 the NVRA_STAT table that would affect the accuracy of the data?

13 A So the NVRA_STAT table is what we call a dynamic table.
14 That means that records are being continually added to it based
15 on changes to other tables. So coding changes happen over
16 time, and there was a lot of coding changes around 2011, I
17 think December 2011.

18 One of those was -- you can see the annotations in the
19 code, such as source ID fixed for NVRA. You see another
20 annotation says fixed the administrative changes so they are no
21 longer included. I know for a fact that earlier they changed
22 how changes of information were determined as compared to
23 duplicates; and before, changes of information included a lot
24 more data points, and they distilled that down to the four data
25 points that we just mentioned, and those changes occurred

1 somewhere in 2011.

2 Q Is it fair to say these are limitations to using the
3 NVRA_STAT data for assessing NVRA compliance?

4 A They are.

5 Q Is there any alternative way to assess NVRA compliance
6 using State Board of Elections data?

7 A Yes. I think it is better to go to the -- what I
8 mentioned before is Voter Scan, and let me explain that a
9 little bit. That's an application where the county officials
10 will scan in the forms. And so those scans go through two
11 different tables within SEIMS, the SCAN_VOTER_REG table and the
12 SCAN_VOTER_REG_ARCHIVE table. Between each of those words, for
13 the reporter, there is an underscore.

14 And those two tables provide metadata around each of those
15 forms that are scanned.

16 Q You are talking about registration forms?

17 A Registration forms. And so you can query that table and
18 you get -- you have what we've talked about before as source
19 code information, and it is a lot better than the NVRA_STAT
20 table.

21 Q When you say you can query the data, what are you talking
22 about there?

23 A You can write logic using SQL code to basically look at
24 every scan that occurs, every form that's been scanned, and you
25 can then filter for a specific type. So you can say I only

1 want to look at Source 01 forms. I only want to look at this
2 particular form of registration.

3 Q All right. Is the data in the SCAN_VOTER_REG table and
4 SCAN_VOTER_REG_ARCHIVE table superior to data in the NVRA_STAT
5 table?

6 A It is. There is a couple of reasons for that. The first
7 reason is because you are only -- like I said before, the
8 NVRA_STAT table only gets populated when there is registration
9 activity that is elevated to the level that it becomes a
10 registration record. This shows -- only looks at scans and,
11 therefore, the form itself has been submitted. And as far as
12 NVRA compliance goes, you want to know has registration
13 services been offered.

14 So your question is, has there been a form submitted from
15 the public assistance agency? So I think it is more germane to
16 compliance for that reason.

17 And, secondly, you are subjecting that dataset to one set
18 of logic as opposed to having coding changes over time that
19 will do different sets of logic based on the day that that form
20 was submitted.

21 Q All right. So in your review of Dr. Lichtman's report, is
22 it fair to say he used data from the FTP site, which came from
23 the NVRA_STAT table?

24 A That is true.

25 Q Did you find any evidence in his report that he used any

1 data from the SCAN_VOTER_REG table or SCAN_VOTER_REG_ARCHIVE
2 table?

3 A No, he definitely used only the FTP site data.

4 Q All right. And there was some earlier testimony today
5 about the source codes. And you have told us what Source Code
6 01, 02, and 03 are. Is there a Source Code 06?

7 A There is.

8 Q What is that?

9 A Source Code 06 means mail-in or website forms, so we
10 receive them by mail or it's been downloaded from a website.

11 Q And were you here -- were you able to hear the testimony
12 from Ms. Strach regarding possible explanations for the decline
13 in public assistance applications?

14 A I did. I was.

15 Q Are you familiar with some of those reasons?

16 A I am.

17 Q What are they?

18 A So I think the two main reasons -- or maybe three reasons.
19 One is that NC FAST specifically came online about -- and was
20 connected to ePASS around April of 2013. That decreased foot
21 traffic, and, therefore, there was less opportunities for
22 registration.

23 The second reason is about ACA and the fact that there was
24 an online implementation of ACA. That also decreased foot
25 traffic because they could link to the -- it would link -- ACA

1 has linked you to EAC, which links to the federal form.

2 Q What is the ACA?

3 A EAC? Oh, ACA. The Affordable Care Act.

4 Q You are talking about HealthCare.gov?

5 A I am.

6 Q What is the EAC?

7 A EAC is the -- it's basically that one that governs NVRA
8 compliance. I forget what the acronym stands for.

9 Q Those are two explanations. And was there a third?

10 A There was. We've canvassed the counties, and about ten
11 counties don't use Source 01 forms. And that's roughly
12 25 percent of the population. So there is some evidence that
13 if the -- Lichtman's data is based on whether or not the Source
14 01 form is being used, and we have some evidence that that is
15 not the case for about 25 percent of the population.

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

17 **THE COURT:** Yes.

18 **BY MR. STRACH**

19 Q Mr. Neesby, I've handed you what we are going to mark as
20 Demonstrative Exhibit BN-1.

21 A Okay.

22 Q Are you familiar with this chart?

23 A I am.

24 Q Did you prepare it?

25 A I did.

1 Q And how did you prepare it?

2 A I took those two tables that we mentioned earlier, the
3 SCAN_VOTER_REG and the SCAN_VOTER_REG_ARCHIVE table, and then I
4 filtered for only Source Code 01 applications and grouped that
5 into four-month increments. And do you want me to tell you
6 what the table represents?

7 Q Yes, please.

8 A The table represents -- what you notice is there is always
9 a spike right around an election. So every year, there is a
10 spike in the amount of public assistance applications that have
11 been generated.

12 Q Why is that?

13 A That's because you have -- people, I think, are more
14 likely to register to vote near an election, and you also have
15 counties that are more likely to process more forms around an
16 election. So you have a corresponding spike in the data around
17 elections. Now, there is a bigger spike around general
18 Presidential elections than other elections.

19 Q Then what happens after the election?

20 A Then you see a precipitous drop after every election, the
21 biggest ones being the two general elections on this chart.
22 And then after that, you see a slow build until the next
23 election.

24 Q Okay. And on this chart, after the 2012 general election,
25 we see the decline, but we don't see the slow build the way you

1 see it previously. Based on your review of the data, do you
2 have any explanations for that?

3 A Yes. So like you mentioned, I think it is not surprising
4 that there was a decline following the November 2012 election.
5 You see a similar decline following the 2008 election. What is
6 more surprising is the fact that it didn't continue to pick up
7 and that that didn't happen somewhere between -- or after March
8 of 2013.

9 Q There is a key. You have some numbers on the chart that
10 are keyed to a legend in the right-hand corner. Can you
11 explain to the Court what that is?

12 A Certainly. So those are the different events that we have
13 researched as sort of a preliminary analysis to try to
14 determine the cause for this decline or the inability for it to
15 pick up again.

16 And so what you see is -- in March 2013, you see that the
17 NC FAST case management system was fully rolled out as a case
18 management system. EPASS wasn't connected to that case
19 management system until April 2013, and that is what we would
20 argue would possibly decrease foot traffic.

21 Q And let me stop you there. Why would decreased foot
22 traffic matter?

23 A Because it is -- when they're in the office is when they
24 are more likely to be offered registration services. So if
25 they don't go into the office, they are less likely to be

1 confronted with the ability to offer registration services.

2 Q All right. And then you have July 13?

3 A July 13 we started -- we saw NC FAST started to
4 accommodate the ACA Medicaid applications.

5 Q What does that mean?

6 A So they had seven or so phases of their plan and -- of
7 rolling out NC FAST. And then the second through the sixth
8 phase had to do with getting ready for ACA and the fact that
9 they would have to connect NC FAST to HealthCare.gov. And so
10 that's what that's -- they are beginning the process of
11 accommodating their IT for that.

12 Q All right. And then Number 4 is what?

13 A Number 4 is that HealthCare.gov was launched.

14 Q What significance would that have?

15 A Once again, you are going to see people that if they go on
16 HealthCare.gov, instead of getting -- they may still be offered
17 registration services because there's a link that says "go here
18 to register to vote," but if they click on that link, they go
19 to EAC's website where they get a federal form that does not
20 have our source code on it.

21 Q All right. Then what's Number 5?

22 A Number 5 is the Medicaid certification, and it is my
23 understanding that that is when NC FAST and Medicaid and
24 HealthCare.gov got connected.

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

1 **THE COURT:** Yes.

2 **BY MR. STRACH**

3 Q Mr. Neesby, I handed you what we will mark as BN-2, the
4 second demonstrative exhibit of your testimony. Do you
5 recognize this chart?

6 A I do.

7 Q And did you prepare it?

8 A I did.

9 Q And what does it reflect?

10 A So I did the same analysis that I did for the Source 01
11 public assistance applications. Instead, I am looking at
12 Source 06, which, as I remind you, is the website and mail-in
13 forms, but I am specifically filtering for only federal forms.

14 Q All right. And what did you conclude from the data,
15 looking just at the Source 06 forms?

16 A So what you see is a general correlation with the federal
17 elections. So you see a spike in 2008. You see a spike in
18 2012. What you don't see is a spike in the midterm elections.
19 Those aren't Presidential election years, so you see less of a
20 spike with federal forms. But somewhat surprisingly, you see a
21 spike in the 2014 year, and we know that spike occurs right
22 after the confluence of three different events that were on the
23 previous chart.

24 Q Which events were those?

25 A That was the -- when NC FAST began their process of

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1 accommodating the ACA, or the HealthCare.gov, Medicaid
2 applications, HealthCare.gov being launched, and then the
3 Medicaid certification when it was all connected through
4 NC FAST.

5 Q Okay. Mr. Neesby, you mentioned the EAC a moment ago.
6 Are you familiar with a report that they produced regarding
7 NVRA compliance?

8 A I am.

9 Q And did you have an opportunity to review the most recent
10 report that they issued on that topic?

11 A I did review that report, yes.

12 Q And were you able to determine whether or not any other
13 states operating on the federal HealthCare.gov exchange had
14 a -- also had declines in reported public assistance voter
15 registration applications?

16 A I did, and I saw a general decline in -- in federally
17 facilitated exchanges. I remember South Carolina declined from
18 about 2,300 in the 2011-2012 year to 1,650. I know that
19 Virginia went down by about 30 percent. New Jersey actually
20 went down from about 10,500 to 4,000. So there's been a
21 decline as a pattern for the federally facilitated exchanges
22 for them all basically to go down.

23 **MR. STRACH:** Your Honor, I am going to be moving to
24 another topic.

25 **THE COURT:** We'll take a break here. We'll take a

1 break for 20 minutes.

2 (The Court recessed at 3:42 p.m.)

3 (The Court was called back to order at 3:59 p.m.)

4 **THE COURT:** All right. Mr. Strach.

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

6 **BY MR. STRACH**

7 Q Mr. Neesby, I am going to shift gears here and have you
8 refer to a Plaintiffs' exhibit, Plaintiffs' Exhibit 689. I am
9 going to put it on the screen so we don't have to give you a
10 hard copy.

11 Hopefully, I am going to blow that up a little bit. Are
12 you familiar with this document?

13 A I am.

14 Q What does it reflect, to your knowledge?

15 A It reflects the different reasons that someone voted
16 provisionally, and then it reflects whether they voted during
17 early voting or Election Day, and then breaks that down by
18 race.

19 Q One of the races that are -- let's look -- for instance,
20 let's start with the provisionals for no record of
21 registration.

22 A Okay.

23 Q Do you see that, about the middle of the page?

24 A Right.

25 Q And what are the races or categories of race that are on

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1 that chart?

2 A If you scroll up, I think it's black, white, other, and
3 unknown.

4 Q Do you know what "unknown" means?

5 A Sure. Unknown is made up of two different values in
6 SEIMS. One is undesignated, meaning that the voter didn't --
7 or the registrant didn't designate a race and, two, null, which
8 is a blank value.

9 Q All right. So taking specifically the no record of
10 registration line -- category here, it says that in the 2010
11 election, the number of provisional ballots that were not
12 counted, that are in the N category, for unknown is 19. Do you
13 see that?

14 A I do.

15 Q So 19 could be 19 white voters; correct?

16 A Yes.

17 Q It could be 19 black voters?

18 A Yes.

19 Q Or it could be some mixture of white and black voters in
20 that 19; correct?

21 A Yes, and any other race, too.

22 Q All right. Have you had an opportunity -- what I would
23 like to do is have you calculate the percentage of voters in
24 2010 that cast provisional ballots during early voting because
25 of no record of registration who were black. Have you had an

1 opportunity to do that before?

2 A I have. Are you particularly looking at the not counted?

3 Q Yes. And have you done that calculation -- when you do
4 that calculation, do you do it using the unknown value or not
5 using the unknown value?

6 A I didn't use the unknown value because they could be
7 black, white, or any other race. So it is a general
8 understanding of data analytics if you are trying to compare
9 something like that that you don't use unknowns.

10 Q Okay. Would you calculate -- do you have a calculator up
11 there with you? Using the numbers in the chart, would you
12 calculate the percent of voters in 2010 who cast provisional
13 ballots during early voting because of no record of
14 registration for -- do it for black voters excluding the
15 unknown value.

16 A Right. And for not counted?

17 Q And for not counted, the N category.

18 A Right. So this one's fairly easy. You have 39 early
19 voted not counted. You subtract the 19 unknown, which gives
20 you 20. That goes in your denominator. In your numerator, you
21 would have nine blacks divided by that 20 of the known -- where
22 we have known race data, and that was easy enough. That's
23 45 percent.

24 Q 45 percent. Could you do the same calculation for the
25 2014 numbers?

1 A Certainly. Let me get this calculator on real quick.

2 So for 2014, you have 818 early voted. You subtract 818
3 minus 93, equals 725. You then divide the 256 under black
4 divided by 725. And you get 35.31 percent.

5 Q Okay. So around 35 percent?

6 A Yes.

7 Q So the percent of voters in 2014 who were not counted
8 during early voting because of no record of registration who
9 were black, when you exclude unknowns, it dropped from
10 45 percent to 35 percent; is that correct?

11 A That's correct.

12 Q All right. Let's look at a similar calculation, but a
13 little bit different. For 2010, let's do the same percentage
14 except for the percent of black voters who were counted during
15 early voting. So could you calculate -- excluding the
16 unknowns, could you calculate for 2010 the percent of voters
17 who were counted during early voting who were black because of
18 no record of registration?

19 A Sure. You would take the 58 that were counted. There is
20 no partially counted here, so we don't have to worry about
21 that. Subtract it by 16 unknown, which I believe is 42. And
22 then you would take the 10 divided by 42. You are going to
23 have something close to -- and you get 23.8 percent.

24 Q So about 24 percent; correct?

25 A Correct.

1 Q And could you do the same -- the same calculation for
2 2014?

3 A Certainly. You have 150 early voted that said yes -- or
4 that were counted. No partially counted. So you subtract the
5 150 minus 19 to get a total of 131, and then you divide the 44
6 by 131, and you get 33.58.

7 Q Okay. So almost 34 percent?

8 A That's correct.

9 Q All right. So the percent of black voters who were
10 counted during early voting because of no record of
11 registration increased from 2010 to 2014 by almost 10 percent;
12 is that correct?

13 A Increased by ten percentage points.

14 Q Right. All right. Let's look at a different category.
15 Let's look at the incorrect precinct. So for 2010 in the
16 incorrect precinct category, could you calculate the percentage
17 of ballots cast on Election Day by black voters in 2010 who
18 were not counted because they were out of precinct and
19 excluding the unknowns?

20 A Sure. You have I think -- is that 49? My screen is
21 fuzzy.

22 Q Yes, 49.

23 A 49 minus 16 for the unknowns equals 33. 17, under the
24 black column, divided by 33. You get 51.5 percent.

25 Q All right. Could you make the same calculation for 2014?

1 A Certainly. You have 1,387 total Election Day, subtract
2 the 108 unknown, for a total of 1,279. Then you divide the 576
3 by 1,279, and you get 45 percent.

4 Q All right. So excluding unknowns, as a percentage of
5 ballots cast, the percentage of ballots cast that were not
6 counted because they were out of precinct for black voters
7 dropped more than 6 percent between -- percentage points
8 between 2010 and 2014; is that correct?

9 A That's correct.

10 Q Let's move to a different topic, Mr. Neesby. Are you
11 familiar with a witness in this -- who's testified in this
12 trial named Isabel Najera?

13 A I am familiar with what she testified, yes.

14 Q And what is your understanding of what she said?

15 A I believe Isabel Najera -- was she the one that was a poll
16 monitor?

17 Q That's a different --

18 A That's different. Isabel Najera -- oh, she was the one
19 that went and she said that she registered, I believe --

20 Q All right.

21 A -- at the DMV.

22 Q Do you recall if she said she registered at the DMV?

23 **MR. RIGGS:** Objection, foundation.

24 **MR. DONOVAN:** Leading, too.

25 **THE COURT:** Why don't you just -- I am going to

1 overrule. You can lay the foundation of who you want to ask
2 about and ask if he knows about it.

3 **BY MR. STRACH**

4 Q Have you done any research regarding Isabel Najera?

5 A I did, yes.

6 Q Did you do -- in the work that you do at the State Board
7 of Elections, do you have access to the SEIMS database?

8 A I have access to SEIMS, and I have access to the SADLS
9 database.

10 Q Which is the DMV database?

11 A That is correct.

12 Q In your research of the records for Ms. Isabel Najera,
13 were you able to conclude anything?

14 A Right. So I looked at SADLS and I saw that she --
15 according to the SADLS database, there is a couple of tables
16 that you would look at to see if someone registered to vote or
17 declined to register to vote.

18 There is the MVD_VOTER table, which would say if they
19 eventually were put in as a registered voter. She wasn't
20 there. There is also the DRIVER_EVENT_HISTORY table, and that
21 shows every transaction that the DMV examiner does, and it
22 shows that she answered no to all three of the registration
23 questions.

24 Q All right. And are you aware of testimony in this case by
25 a poll monitor named Susan Schafer?

1 A I am.

2 Q What is your understanding of her testimony?

3 A So she was a poll monitor that looked at -- I believe
4 there was 59 people that came out of a specific precinct in
5 Durham, and she created a list of those people and asserted
6 that they -- I believe she asserted they didn't have the
7 opportunity to vote because they were out of precinct.

8 Q All right. Were you asked to do some research on the
9 individuals listed in the exhibit she provided?

10 A I was.

11 Q What kind of research did you perform?

12 A So I went to look and see if they -- if that person, based
13 on the data she provided, which was name and phone number, if I
14 could find the registration record conclusively and determine
15 that they did have voter history for the 2014 general election.

16 Q All right. And what did you find?

17 A I found that there were seven that we couldn't conclude
18 because -- for instance, it was John Smith. There were too
19 many John Smiths. There were 49 out of the 52 that we could
20 conclude that did indeed vote in the 2014 general election.

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

22 **THE COURT:** Yes.

23 **BY MR. STRACH**

24 Q Mr. Neesby, I've handed you what's been marked as
25 Defendants' Exhibit 343. Are you familiar with this exhibit?

1 A I am.

2 Q And what is it?

3 A It is a -- it is a couple of things. It is a summary of
4 those 59 people that Susan Schafer mentioned in her -- what she
5 called addendums. So the first two pages summarized whether I
6 found them to have voter history or not. As you can see, seven
7 we didn't have sufficient information, but of the 52, we did;
8 49 ended up voting in the 2014 general election.

9 Q Okay. And then aside from the results in the
10 spreadsheets, what else does the exhibit consist of?

11 A So these consist of -- if you go into our voter tool
12 online, you can look up the voter registration information. So
13 I have screenshots of these specific individuals that shows
14 that they do have voter history for the 2014 general election.

15 And I should say that if there were multiple people that
16 went under that name and phone number, for instance, usually
17 it's a name, all of them would have to have voter history for
18 me to conclude that that person had voter history.

19 Q All right.

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

21 **THE COURT:** Yes.

22 **BY MR. STRACH**

23 Q Mr. Neesby, I am going to switch gears a little bit. I
24 handed to you Defendants' Exhibit 13. Does that look familiar
25 to you?

1 A It does.

2 Q Did you prepare this?

3 A I did.

4 Q And I will note that for some reason, there are three
5 pages to this exhibit. Are all three pages identical?

6 A They are.

7 Q All right. How did you prepare this exhibit?

8 A So I took the schedules for the one-stop sites for 2014
9 that were on Election Day. I took the schedules for the
10 one-stop sites that were in 2010 on Election Day -- or the
11 schedules were on Election Day, but they were about the
12 one-stop schedules. And then I did analytics to compare the
13 cumulative hours, the number of sites, and the number of days,
14 and I broke that up into several categories.

15 Q So, for instance, in the first chart at the top of the
16 page, does it demonstrate that the total cumulative hours
17 difference between 2014 and 2010 was 3.1 percent?

18 A As a percent change, yes.

19 Q Right. So the total number of hours in 2014 was just
20 3.1 percent lower than in 2010; is that correct?

21 A That's correct.

22 Q And the number of sites between 2010 and 2014 increased by
23 72; is that correct?

24 A That is correct.

25 Q And then, of course, the number of days decreased by 376;

1 is that right?

2 A That is correct.

3 Q Now, what does this chart show regarding evening hours for
4 early voting between 2010 and 2014?

5 A What it shows is that by every indicator that we could
6 come up with, that evening hours -- that one-stop sites were
7 more accessible in the evening. So you have a 72 percent
8 increase in evening hours, which is after 5:00 p.m., by the
9 way, an 85 percent increase in total sites, 47 percent increase
10 in total days, and even the number of counties that provided
11 evening hours.

12 Q All right. And what about the weekend hours? What does
13 this chart tell you regarding the number of hours on weekends
14 from 2010 as compared to 2014 for early voting?

15 A We see a similar pattern where they are all increasing.
16 If you go by Saturday, cumulative hours, you have an increase
17 of about 59 percent. Then Sunday, and that's -- it should say
18 either, but either Saturday, Sunday, you still have an increase
19 of 57 percent.

20 Q Is that also true for the number of days and number of
21 counties for which there were weekend hours?

22 A That is true.

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

24 **THE COURT:** Yes.

25

1 **BY MR. STRACH**

2 Q Mr. Neesby, did -- are you familiar with a mailing by the
3 State Board of Elections as part of their outreach efforts for
4 the photo ID provisions?

5 A I am. I provide the data that they used to mail.

6 Q Okay. And what was that mailing?

7 A That was a mailing to our no-match list, which meant that
8 we could not find at least a match between the DMV database and
9 the voter registration database we call SEIMS.

10 **MR. COOPER:** Objection, Your Honor. I am not sure
11 what the relevance of this line of questioning is. It seems to
12 be related to the voter ID provision.

13 **MR. STRACH:** There's been a lot of testimony about
14 some of the matching. This is just simply part of the outreach
15 efforts that numerous witnesses have testified about in this
16 case regarding House Bill 589.

17 **MR. DONOVAN:** Your Honor, this is post the General
18 Assembly passing it. The testimony that's come in is what did
19 the General Assembly know when they passed it, either
20 subsequent efforts, which may be at issue in our subsequent
21 trial, or another day, but it certainly isn't today. The only
22 evidence that's been at issue is what did the legislature know
23 on that report. So this is similar to the Dr. Stewart and
24 other people that they have actually redacted out of the
25 reports, and we understood this was not at issue in this case.

1 **MR. STRACH:** Your Honor, we also redacted a lot out
2 of the affidavit that I just handed up. We redacted a lot of
3 Mr. Neesby's matching analysis out of that. The part that we
4 want to discuss with Mr. Neesby, though, also goes to the
5 integrity of the voter rolls in terms of the number of people
6 who were mailed and then the number of responses that came back
7 and the number of responses, frankly, that did not come back or
8 couldn't be delivered.

9 **THE COURT:** All right. I will let you put it in for
10 that purpose.

11 **MR. DONOVAN:** Your Honor, we would also object -- he
12 can ask about it, but we do object to a declaration. Again,
13 it's hearsay, and it shouldn't be referred to in testimony or
14 otherwise.

15 **MR. STRACH:** Your Honor, I only handed up the
16 declaration to assist Mr. Neesby with his memory of these very
17 specific numbers if he needs it.

18 **THE COURT:** All right.

19 **BY MR. STRACH**

20 Q So, Mr. Neesby, can you describe for the Court what this
21 mailing was?

22 A This mailing was to that no-match list, and we sent out
23 around 218,000 mailings to individuals.

24 Q So this was a no-match list that had been prepared by the
25 State Board of Elections itself?

1 A That is correct.

2 Q And do you recall what the results of that mailing were?

3 And if necessary, to remember the numbers, feel free to
4 reference or review the affidavit.

5 A So at this time, it was about 35,000. I believe that
6 responses -- I believe that's gone up to 60,000.

7 Q So as of the time of this affidavit, you had received a
8 little over 35,000 responses?

9 A That's right. And the responses received that were
10 returned as undeliverable were about 17,500. I believe now
11 that's closer to 30,000.

12 Q All right. How many did the State Board of Elections
13 receive that had feedback?

14 A At this time, it was about 18,000.

15 Q All right.

16 A At the time that I wrote that declaration.

17 Q Of the number of cards that came back that had feedback on
18 them, how many of them indicated that they already possessed an
19 acceptable form of ID?

20 A 91 percent.

21 Q And how many of voters indicated they did not possess an
22 acceptable form of ID?

23 **MR. COOPER:** Objection. This doesn't seem to be
24 related to the list maintenance or the accuracy of the rolls or
25 anything other than whether people have ID.

1 **MR. STRACH:** Your Honor, just statistics regarding
2 the mailing that went out.

3 **THE COURT:** All right. I will sustain.

4 **BY MR. STRACH**

5 Q Mr. Neesby, were there any responses that were unmarked or
6 indicating that the addressee was deceased or moved out of
7 state?

8 A Yeah, there were several responses. I think it was, at
9 the time of this declaration, about 700, or about almost
10 4 percent. They were deceased, moved out of state, they
11 weren't current residents, or some other special category.

12 Q All right. Do you recall what that number is now?

13 A I do not.

14 Q Mr. Neesby, were you asked -- let's switch gears for a
15 moment. Were you asked to perform any research on a voter
16 named Bessie Ward?

17 A I was.

18 Q Were you able to find any evidence regarding whether
19 Ms. Ward is registered to vote?

20 A She registered recently using a provisional ballot, but my
21 research was whether she registered before that.

22 Q And what did you do to research that issue?

23 A So you can -- I'm going to use the word "query." You can
24 query the SEIMS database to determine if you can find any
25 permutation of their name or birthdate or anything, and so I

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1 queried the voter registration table for anyone other than that
2 provisional ballot that started with B and ended with Ward. I
3 tried different diminutives and nicknames such as Elizabeth,
4 Lizzie, BeSandra. I Googled her to see if there were any other
5 nicknames I could come up with. I also tried legacy
6 birthdates, which in SEIMS is 1/1/1900, to see if I could find
7 a registration record, and I also tried her birthdate, and I
8 could not come up with a different registration record other
9 than that of her provisional ballot.

10 Q So you could find no evidence that she had registered
11 prior to October 2014?

12 A If that's the date, yes, that would be around her
13 provisional ballot.

14 Q Did you perform any similar research for a voter named
15 Alexander Louis Ealy?

16 A I did.

17 Q What did you find through the research?

18 A I found that he is registered as of -- I think it was
19 April of this year.

20 Q All right.

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

22 **THE COURT:** Yes.

23 **BY MR. STRACH**

24 Q Mr. Neesby, I've handed you Defendants' Exhibit 344. Are
25 you familiar with this exhibit?

1 A I am.

2 Q And what is it?

3 A It is some analytics that I created that analyzes the
4 voter turnout, the proportion, and the percent of total
5 registered of those registrants age 24 and under.

6 Q Did you prepare this chart?

7 A I did.

8 Q And you prepared this chart using data from the State
9 Board of Elections?

10 A Yes, from the SEIMS database.

11 Q And what did you conclude from the data that you analyzed
12 for this chart?

13 A I think you see a general increase specifically of turnout
14 in proportion. During the general election of 2008 and 2012,
15 you see that number is a little bit -- that there is a decrease
16 in midterm elections; but, overall, we see on every statistic
17 that I generate here a marginal increase between 2010 and 2014.

18 Q Okay. So, for instance, what is the red line at the
19 bottom of the chart?

20 A The red line is a proportion which is the -- for instance,
21 it is the age 24 that voted out of those that were registered.

22 Q What does that -- the red line indicate when you compare
23 2010 versus 2014?

24 A The red line indicates that it goes up from 3.92 percent
25 to 4.22 percent.

1 Q All right. And what about -- what is the -- looks like a
2 gray line in the middle?

3 A The gray line is percent of total registered. And that
4 would divide the age 24 that were registered, usually around
5 600,000, divided by the total registered, and you see generally
6 it is around 10 percent but with a marginal increase from 2010
7 as compared to 2014.

8 Q And what about the blue line?

9 A The blue line is turnout, and that -- there is a far
10 bigger turnout in the Presidential elections. Once again, you
11 have a marginal increase between 2010 and 2014.

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

13 **THE COURT:** Yes.

14 **BY MR. STRACH**

15 Q Mr. Neesby, I've handed you what's been marked as
16 Defendants' Exhibit 349. Do you recognize this chart?

17 A I do.

18 Q And what is it?

19 A This is a comparison of curbside ballots by race.

20 Q And did you prepare this chart?

21 A I did.

22 Q Using data that you have access to at the State Board of
23 Elections?

24 A I did, by SEIMS.

25 Q And what did you conclude from the data you pulled for

1 this particular chart?

2 A That African-Americans use curbside voting at a higher
3 percentage. This is specific to 2014, this data, but I've
4 checked other elections, and it is also true.

5 Q Do -- African-Americans use curbside voting in a higher
6 percentage for which kinds of elections?

7 A Well, this is -- I looked at general elections and midterm
8 elections.

9 Q All right. Now, Mr. Neesby, we were talking a little
10 while ago about the mail verification process and the analysis
11 that you did for 2012 registrants. Do you recall that
12 conversation?

13 A I do.

14 Q Were you able to do an analysis of mail verification --
15 initial mail verification failure rates for individuals who had
16 been preregistered?

17 A I did.

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

19 **THE COURT:** Yes.

20 **MR. KAUL:** Your Honor, we are going to object to this
21 discussion. We haven't seen this document before.

22 **THE COURT:** I don't know where it came from and --

23 **MR. STRACH:** Your Honor, we are simply using it to
24 illustrate Mr. Neesby's testimony. It is just a demonstrative.

25 **THE COURT:** This is based on data that's been

1 produced?

2 **MR. STRACH:** Yes, Your Honor. The Plaintiffs have
3 access to all this data.

4 **MR. KAUL:** We certainly don't have an expert report
5 on this.

6 **THE COURT:** Overruled. You can use it as a
7 demonstrative.

8 **BY MR. STRACH**

9 Q Mr. Neesby, could you describe for the Court what research
10 you did regarding mail verification rates for preregistrants?

11 A Certainly. I am going to try to keep it noncomplicated,
12 but what I did is I took that same dataset that I started with
13 with the SDR analysis, based on those tables you see there, and
14 determined if mail verification failed or did not fail, and
15 then I combined to that analysis whether they had preregistered
16 or not.

17 And what you see is preregistrations fail at about
18 2.85 percent when you include 2010 through 2012, and that those
19 that don't use preregistration fail at 1.73 percent, so that's
20 about a 60 percent change.

21 **MR. KAUL:** Your Honor, may I raise an additional
22 objection? It appears from this that this not data that we
23 received. It's dated 2015. It's a snapshot. I admit I am not
24 a data expert, but...

25 **THE WITNESS:** This is --

1 **THE COURT:** Hold on just a minute. Was he declared
2 as an expert?

3 **MR. DONOVAN:** No, he wasn't, Your Honor.

4 **MR. STRACH:** Your Honor, this is the kind of analysis
5 he does in his job. We are not offering him as an expert.

6 **MR. DONOVAN:** Your Honor, and this -- mostly -- but
7 this is really kind of -- they said he's a litigation support
8 guy. What they've had is kind of -- it sounds like he is
9 running different reports.

10 **MR. KAUL:** Your Honor, this is multiple examples of
11 this today where we've gotten something that we've never seen
12 before or heard of before.

13 **THE COURT:** Okay. Has this data been produced to
14 them?

15 **MR. STRACH:** As far as I know, Your Honor. That's my
16 understanding.

17 **MR. KAUL:** Can we inquire as to when the data is
18 from?

19 **THE WITNESS:** Yeah, so the SCAN_VOTER_REG and the
20 SCAN_VOTER_REG_ARCHIVE table are two -- are the tables that, as
21 I understand, are in the export that you received around
22 January, I think. The other tables are -- were given to you as
23 part of the SDR report that we produced.

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

25 **MR. KAUL:** The SDR report produced in June of this

1 year?

2 **THE WITNESS:** I believe that's right.

3 **THE COURT:** All right. As long as you have the data,
4 I am going to overrule. You can ask him about it.

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

6 **BY MR. STRACH**

7 Q So, Mr. Neesby, this chart that we have in front of you,
8 we are going to mark it as Defense Demonstrative Exhibit BN-3.
9 Does this chart accurately reflect the results of your research
10 of preregistrants who failed mail verification?

11 A Yes, it does.

12 Q And does the chart accurately reflect the sources of data
13 that you used?

14 A It does.

15 **MR. STRACH:** Thank you, Your Honor. That's all I
16 have for now.

17 **THE COURT:** Cross? I am going to let him testify to
18 this because he is simply pulling data from the data that you
19 all have access to.

20 **MR. DONOVAN:** Yeah, we understand that anyone can
21 produce the data.

22 **THE COURT:** As far as I see it, he's a fact witness
23 who simply knows how to get the data and is simply pulling it
24 out and reporting whatever it is that's in there as a matter of
25 fact.

1 **MR. KAUL:** This was after the close of discovery,
2 Your Honor, and well after the close of expert --

3 **THE COURT:** I understand that. You can hand him a
4 computer right now and ask him to go find some numbers, and he
5 could do that as well and testify to it.

6 **MR. KAUL:** We haven't had a chance to analyze this or
7 respond to it or have our experts consider it.

8 **THE COURT:** I understand, but you had the data for a
9 long time.

10 **MR. KAUL:** A month.

11 **THE COURT:** All right. We got a lot lawyers in the
12 courtroom.

13 All right. Ms. Riggs?

14 CROSS-EXAMINATION

15 **BY MS. RIGGS**

16 Q Good afternoon, Mr. Neesby.

17 A Good afternoon.

18 Q Am I correct that prior to your employment with the North
19 Carolina State Board of Elections, you never worked in
20 elections before?

21 A I worked with data, but not with elections specifically.

22 Q So you have been with the State Board of Elections just
23 nine months now; correct?

24 A October, so that sounds about right.

25 Q I first want to ask you some questions about your

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1 discussion with Mr. Strach on various NVRA topics. You are
2 aware, aren't you, that the State of North Carolina is required
3 to report data on voter registration applications collected at
4 public assistance agencies to the EAC, that the National Voter
5 Registration Act compels that; correct?

6 A I am.

7 Q And you are aware, aren't you, that the data that is on
8 the FTP site right now is the data that has been reported to
9 the EAC?

10 A It is not.

11 Q The report that is on the FTP that the State stipulated to
12 on public assistance agency data from 2008 to 2014 has not been
13 submitted to the EAC?

14 **MR. STRACH:** Objection, Your Honor. I just want to
15 make clear what we stipulated was that the data on the website
16 is the data on the website. We did not stipulate that -- or
17 characterize it any other way than that.

18 **THE COURT:** All right.

19 **MS. RIGGS:** I am just asking him if he is aware that
20 what's on the website was reported to the EAC.

21 **THE WITNESS:** It wasn't. I think what you are -- if
22 I may answer, I think your assumption -- the data on the FTP
23 site is specific monthly exports of a specific table within
24 SEIMS. We submit different data to the EAC, and, specifically,
25 it is a much broader date range. So it has a similar source

1 with, I would argue, probably similar data analytics, but it is
2 not -- those datasets we actually don't produce to the EAC.

3 **BY MR. RIGGS**

4 Q You are aware that the data reported to EAC for its most
5 recent 2014 report reflected that public assistance agencies
6 registrations in North Carolina had dramatically dropped?

7 A That report is specific to -- are you talking about the
8 50,000 to 18,000?

9 Q I am talking about Table 2A in the 2014 EAC report, which
10 you said you reviewed.

11 A Right. Is that the 50,000 to 18,000?

12 Q It's around there.

13 A So that's specific to, I believe, only public Source 01,
14 and it only includes new registrations, and that is a different
15 date range. I think that's a two-year date range.

16 Q Okay. That's fine. So you are aware that North Carolina
17 reported to the EAC that new voter registrations submitted to
18 01 sources went from, in two years, approximately 50,000 down
19 to 18,000; correct?

20 A I am aware of that.

21 Q Okay. And are you also aware that the difference between
22 new registrations and the changed information registrations, as
23 you have described it, that changed registrations -- those
24 voters were already registered in that county?

25 A Changes of information means that they were already

1 registered, yes.

2 Q Okay. Now --

3 A Can I clarify one thing?

4 Q I'm sure you can clarify whatever you want on the
5 redirect. I am going to ask you my next question, which is --

6 **THE COURT:** Well, if you need to explain your answer,
7 you can explain it.

8 **THE WITNESS:** Could you -- I understood your question
9 to ask am I aware that -- are you saying that NVRA compliance
10 went down, or are you saying that new registrations went down?

11 **BY MR. RIGGS**

12 Q My question was about the difference between changed and
13 new registrations, which you answered. That was not my
14 question.

15 A Okay.

16 Q Do you know -- now that ePASS has been introduced as an
17 option for FNS customers to register -- or to apply for
18 services online, do you know what percentage of FNS customers
19 use ePASS?

20 A I do not. I don't think that data is readily available.

21 Q But you offered that as a possible explanation for why
22 voter registrations from public assistance agencies had
23 dropped?

24 A I offered three possible explanations that work in
25 confluence, I think. Once again, this is a very preliminary

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1 analysis that we are trying to determine why these
2 registrations in Source Code 01 specifically have dropped.

3 Q So ten people could be using -- ten FNS customers could be
4 using ePASS online for all you know?

5 A Or 100 or 90 percent. I assume it's very convenient, so I
6 think that most people would probably use that form, but I have
7 no data.

8 Q You have no grounds for guessing that 90 percent of Food
9 and Nutrition supplement assistance recipients are using online
10 ePASS; correct?

11 A I have no grounds for 10 or 90 percent.

12 Q All right. Do you know what kind of assistance in voter
13 registration that public assistance agencies are required to
14 provide under the NVRA?

15 A As I understand it, they are required to provide
16 registration services, which includes a new registration form.
17 It also could include a registration change of any field,
18 including the four I mentioned or those that we grouped under
19 duplicates. It would also include -- if the registration
20 services were offered and they were declined, it would include
21 that as well. So all of those. Or if registration services
22 were offered and the person had the form but didn't end up
23 submitting the form, that would be available under preference
24 data that we have that would not be available under that
25 NVRA_STAT data.

1 Q And are you aware that any online transactions are
2 considered covered transactions under the NVRA?

3 A I don't know what that means.

4 Q When you went to look at the EAC report to see what other
5 states, who were part of the federal exchange under the ACA --
6 what had happened to their registration numbers, did you
7 systematically look at all states' federal exchange or state
8 exchanges to see what had happened to the public assistance
9 agency registrations?

10 A I looked at all federal exchanges.

11 Q Did you look at the State of Georgia?

12 A I believe I did.

13 Q Georgia uses the federal exchange; correct?

14 A Yes.

15 Q And do you know what happened to Georgia's public
16 assistance registration numbers?

17 A Like I said, most of the federal exchanges, as a pattern,
18 have gone down. There were a couple of exceptions. Texas and
19 Georgia are the ones that come to mind. I would say that 70 or
20 75 percent of the federal exchanges all went down.

21 Q What happened to Georgia's numbers?

22 A I don't recall. I know they went -- they might have gone
23 slightly up.

24 Q Did they double?

25 A I don't think so, but you can show me the data.

1 Q I would be happy to. You also have done no quantification
2 or measurements on gathering this data for the Court from the
3 2012 to 2014 EAC report; correct?

4 A Explain that again. I have not done any measurements?

5 Q Have you made a chart?

6 A Of gathering data for the EAC report?

7 Q You've talked about viewing the EAC report.

8 A Right.

9 Q I'm just wondering if you are providing -- you are not
10 providing that to the Court in any way; correct?

11 A The data that I used to send to the EAC? I wasn't here.

12 Q No. Reviewing the EAC report --

13 A Okay.

14 Q -- 2012 to 2014.

15 A Okay.

16 Q You said that 70 percent of --

17 A That's a guess.

18 Q Okay. So you have no numbers to support that guess right
19 now?

20 A My testimony was that I have looked at the federally
21 facilitated exchanges, and, as a pattern, I have seen most of
22 them decrease.

23 Q But you also weren't aware that Georgia's numbers doubled
24 from 2012 to 2014?

25 A I was aware that there were a couple of exceptions that

1 went up. Georgia was one of them. I don't remember the
2 percentage change differential.

3 Q Okay. So, Mr. Neesby, I want to talk about Defendants'
4 Exhibit 16. Do you still have that handy?

5 A I believe I do.

6 Q Now, you were here for Ms. Strach's testimony earlier
7 today; correct?

8 A Give me a second.

9 Q Take your time.

10 A I don't have it here. I am sure it's somewhere. I will
11 use the screen.

12 Q I prefer you have a paper copy.

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

14 **THE COURT:** Yes.

15 **BY MS. RIGGS**

16 Q So going back, Mr. Neesby, you were here earlier when
17 Ms. Strach testified about this report?

18 A I was.

19 Q And were you here when she testified last week?

20 A I was.

21 Q So as I understand it, you, Ms. Degraffenreid, and
22 Mr. LiVecchi were asked to work on this 2015 report; correct?

23 A Correct.

24 Q And Ms. Degraffenreid was primarily responsible for Part 1
25 of the report, yes?

1 A That's correct.

2 Q And you helped with some of the data analytics in her
3 section; is that right?

4 A I removed duplicates in one of her exports.

5 Q And you filtered for voters at one point as well?

6 A She had filtered for them. Once I removed duplicates, I
7 did the same thing she did, which was filtering for voting.

8 Q So you were responsible for all of the data analytics in
9 Part 2; correct?

10 A Yes, sir.

11 Q And no one checked your data for Part 2; correct?

12 A We checked assumptions behind my data, but I wouldn't say
13 anyone else -- I'm the only data analyst on the Board.

14 Q No one checked your numbers on Part 2; right?

15 A That's right.

16 Q And Marc Burriss, who's been at the State Board of
17 Elections for 15 years and who worked for -- worked on earlier
18 versions of these mail verification analyses, he had no role in
19 the data collection in this report; right?

20 A I don't think Marc Burriss worked on earlier versions. The
21 IT team may have presented data to Ms. Degraffenreid, who did
22 that, but I am not aware that he did any specific data
23 analytics around SDR.

24 Q You weren't there at the time, though; correct?

25 A No. Just based on my review of the 2013 report by

1 Ms. Degraffenreid.

2 Q And you didn't feel like you needed anyone to check your
3 numbers because you felt you like understood SEIMS well enough?

4 A I think you are misunderstanding checking my assumptions
5 and checking my numbers. So I did ask several IT people, how
6 does mail verification work, had long conversations about it.
7 I even asked them the logic behind my SQL code; but as far as
8 having someone else duplicate my analysis, I did not have that.

9 Q Okay. And while you focused on Part 2, you also checked
10 some of the statistics in Part 1, made some charts for Part 1,
11 and rewrote a few sentences; correct?

12 A I don't know that I rewrote sentences for Part 1. I did
13 check some of the numbers. I think that's all I did. I might
14 have helped with the chart, but these charts were then modified
15 afterwards.

16 Q Okay. Turn with me to page 2, please. On page 2, the
17 report replicates the findings from the 2013 State Board of
18 Elections' analysis on SDR and non-SDR verification corrects;
19 correct -- verification rates; correct?

20 A The report replicates?

21 Q Yes.

22 A You mean we were just copy-pasting that chart from our
23 2013 report?

24 Q Right.

25 A That's correct.

1 Q And for that 2013 analysis, the State Board of Elections
2 looked at five different registration periods, yes?

3 A That's correct.

4 Q And the three registration periods in the non-highlighted
5 rows are during regular registrations; correct?

6 A Right.

7 Q And when I say "regular registrations," you understand
8 that to mean non-SDR registrations?

9 A I do.

10 Q Okay. And the two registration periods highlighted in
11 blue are from the 2012 primary and 2012 general election
12 same-day registration periods; correct?

13 A That's correct.

14 Q For the three non-SDR registration periods in this 2013
15 report, the State Board of Elections found the undeliverable
16 rate was 3.2 percent, 4.38 percent, and 1.99 percent
17 respectively; correct?

18 A The undeliverable rate is here being used as a proxy for
19 those source codes and those reason codes. So it actually
20 isn't the undeliverable rate. It is a shorthand for those
21 proxies.

22 Q We'll talk more about that later, but what the State Board
23 of Elections reported as replicated in this chart were the
24 numbers I just read aloud?

25 A That's correct.

1 Q And then, likewise, the 2013 SDR report from the State
2 Board of Elections found that the undeliverable rate was
3 1.15 percent and 1.3 percent respectively for the two SDR
4 periods highlighted; right?

5 A Right. Regardless of whether they voted or not.

6 Q Right. So then I want to -- Footnote 1 down at the bottom
7 mentions that there were some duplicates in the data used in
8 the 2013 State Board of Elections reports; correct?

9 A That's correct.

10 Q And "duplicates" refers to duplicate voter registration
11 entries?

12 A Right. It's duplicate records, which can be multiple
13 tables queried together, but that some registration records
14 appear more than once.

15 Q Sitting here today, you can't tell us how many duplicates
16 were contained in each of the two SDR periods; right?

17 A I believe this footnote was just about precision. So the
18 duplicates didn't necessarily throw off the data. I remember
19 there was 60 duplicates in one. Several -- I think there was
20 another where it was a lot bigger, maybe 200 or so, but that
21 footnote was just to reference some precision within that.

22 Q Okay. So for this report, you removed the duplicates
23 before rerunning the same analysis -- or Ms. Degraffenreid then
24 ran the same analysis she had run back in 2013, yes?

25 A That's correct, except that she now filtered for voting.

1 Q So let's look at the chart -- the first chart on the top
2 of page 3.

3 A Okay.

4 Q The only difference then is the removal of the duplicates;
5 correct? No, wait, actually, I'm sorry. This isn't voters,
6 though; right? This isn't who voted, this top chart?

7 A No. Chart 3 would be voted and Chart 2 would just be,
8 right, removing duplicates, and then there is another change as
9 well.

10 Q Right. So that's what I want to talk about. But these
11 aren't labeled Chart 1 and Chart 2 and Chart 3; right? So when
12 you say Chart 2, you're talking about the chart that's on the
13 top of page 3; right?

14 A I am.

15 Q Okay. Because concern had been expressed that perhaps a
16 snapshot from late November 2012 might have been from too soon
17 after the April to May 2012 SDR period to allow mail
18 verifications to be returned undeliverable, if they were going
19 to be returned undeliverable, that was a reason for one of the
20 changes in this chart we are discussing now; correct?

21 A Not correct.

22 Q Please explain.

23 A It was -- the concern was that there was not enough time
24 for the November registration period, not the May registration
25 period.

1 Q Okay.

2 A And that's part of the problem with using proxies is for
3 every voter, there's a specific time where their new voter mail
4 verification has ended and no other verification process has
5 begun, and you want to have the snapshot date be around that
6 time. The problem is when you're dealing with thousands and
7 thousands of voters, there's no perfect time. So we were
8 trying to -- we felt that based on the snapshot dates of the
9 other periods, which you will notice is February, that we
10 needed to extend the snapshot date of the general election.

11 Q Okay. So then you decided to use a snapshot from
12 March 22nd, 2013; correct?

13 A Yes.

14 Q And even though you weren't worried about the time that
15 had lapsed before the 2012 primary same-day registration period
16 and the snapshot, you changed that snapshot date as well?

17 A So we -- and I think that was a miscommunication between
18 Ms. Degraffenreid and my team and myself, but we were trying
19 to -- we -- I then did -- when she found duplicates, I then
20 removed the duplicates for both SDR periods which were
21 available in a couple of spreadsheets and then just simply gave
22 those numbers. And the reality is you can use the 1.87 -- once
23 again, the snapshot date is this fluid thing -- or you could go
24 back a page and use 1.15. I don't think it changes the
25 analytics at all.

1 If we were to do it over, we could use the other period.
2 I don't think this is a major deal. It was simply that I was
3 looking at the SDR data, and we used the same snapshot date.
4 So to summarize, it was really about the general election.

5 Q Okay. And you decided to use 3/22 as a snapshot date for
6 the same-day registrations because that's what you had
7 available to you; correct?

8 A Correct. SEIMS is only -- there is only specific
9 snapshots that are created of the entire SEIMS database. Those
10 are on beginning of the calendar year, and then you also have
11 on major Election Days. So this is data Ms. Degraffenreid had
12 in her possession that was already pulled when we looked at
13 this back in 2014, 2015. And so she simply used the data that
14 she had, which was closest to the general election.

15 Q And there was no snapshot for the non-SDR registrations
16 from that same date; correct?

17 A That's correct. The IT team had pulled a specific query
18 that was about SDR. So there was no 3/22 snapshot for the
19 non-SDR periods. Once again, this goes to why this is an
20 imprecise way to do it, and that's why I was commissioned to do
21 the second part, which was about looking at voter verification
22 history logs about their verification process.

23 Q Okay. We'll get to that. So you stuck with the
24 February 6, 2014, snapshot for the non-SDR periods; correct?

25 A We had no other choice, or Ms. Degraffenreid had no other

1 choice.

2 Q And you've agreed with me that it would have been
3 preferable to use the same snapshot if you were comparing SDR
4 and non-SDR return rates; correct?

5 A Yes, another reason why the second part is preferable.

6 Q So looking at this first chart on page 3, once you made
7 these data corrections, that is, removing the duplicates and
8 using a later snapshot, you found that the undeliverable rates
9 for SDR verifications increased; right?

10 A And once we filtered for voting.

11 Q Right. So I am on the first chart. You found that once
12 you made these data corrections, the percentages increased;
13 correct?

14 **THE COURT:** Hold on. You said the first chart?

15 **MS. RIGGS:** On page 3.

16 **THE COURT:** The top chart?

17 **MS. RIGGS:** Yes.

18 **THE WITNESS:** Yes, that's what the data says.

19 **BY MS. RIGGS**

20 Q Okay. And for the May primary, the May primary SDR
21 period, the undeliverable rate went from 1.15 to 1.8 percent;
22 right?

23 A Right.

24 Q And for the November general election, the rate went from
25 1.3 to 2.25 percent?

1 A That's correct.

2 Q And sitting here today, you can't tell me how much of that
3 increase in undeliverable rate is attributable to the removal
4 of duplicates and how much is attributable to the later report
5 date; correct?

6 A As far as those two differences, no. I can just say that
7 these statistics are an inaccurate representation, all of them.
8 They are imprecise. So that is why we did verification history
9 logs.

10 Q Sitting here today, you can't explain what part of the
11 difference in that rate was duplicates and what part was
12 deciding to use a later date?

13 A That would be a very difficult analysis to do.

14 Q Okay. So now the second chart on page 3 is what I want to
15 talk to you about. As I understand it, one of the primary
16 differences besides the proxies, which we'll talk about later,
17 between the 2015 and 2013 reports is that you wanted to examine
18 who of those SDR and non-SDR registrants who failed the initial
19 mail verification actually voted; right?

20 A Right.

21 Q And that additional piece of information is reflected on
22 the second chart on page 3?

23 A It is reflected there. Once again, Ms. Degraffenreid is
24 using proxies.

25 Q Yes. You mentioned --

1 A I mean with regard to voting as well.

2 Q Right. Okay. So she filtered who voted of the number she
3 had from the previous chart?

4 A She filtered SDR registrants by whether their ballot
5 status was returned as okay, and she concluded "and it likely
6 means they voted"; but that's different than voter history
7 being applied.

8 Q But you would agree with me that almost everyone that uses
9 same-day registration actually votes; right?

10 A It is a very high percentage.

11 Q Because that's the whole point of same-day, registering
12 and voting at the same time?

13 A It is.

14 Q And that's not true of people who use regular or non-SDR
15 registrations; right?

16 A That is correct.

17 Q And many of those registrants don't end up voting?

18 A I think that's part of the point of our analysis, yes.

19 **MS. RIGGS:** Your Honor, I have -- I'm at a stopping
20 point, but I'm happy to keep going.

21 **THE COURT:** How much more do you have?

22 **MS. RIGGS:** Total, 30 minutes.

23 **THE COURT:** Oh, okay. We'll stop here. I was
24 thinking if it were just a few minutes, we would see if we
25 could finish this witness. You may step down.

1 Let's stop right there then with him. Do other folks
2 have examinations?

3 **MR. KAUL:** Yes.

4 **THE COURT:** Okay. So I am trying to get a sense then
5 of where you think you'll be. Any more witnesses after this
6 one?

7 **MR. STRACH:** Not from us, Your Honor.

8 **THE COURT:** All right.

9 **MR. FARR:** Your Honor, we'll be moving in some
10 exhibits, and that may take a while.

11 **THE COURT:** Okay.

12 **MR. DONOVAN:** How long do you think that will take?

13 **MR. FARR:** Well, it's Michael McKnight, so it will go
14 more quickly than if I was doing it.

15 **MR. DONOVAN:** So, Your Honor, it sounds like this
16 witness will probably go to 10:00 or around that. It could
17 take a half hour. I guess after morning break, it might come
18 back to us. I need to go back and coordinate, but I don't
19 think we have more than an hour, an hour and a half in total
20 for rebuttal. That puts us done by lunch and closings after
21 lunch.

22 **THE COURT:** What I may propose doing then is
23 finishing early, if we finish -- is there any chance we might
24 finish early?

25 **MR. DONOVAN:** Tomorrow?

1 **THE COURT:** Before lunch?

2 **MR. DONOVAN:** Oh, yeah.

3 **THE COURT:** So I am just trying to -- I don't know
4 how much rebuttal --

5 **MR. DONOVAN:** That's what I need to coordinate. It
6 is not going to be very much. I need to go back and coordinate
7 --

8 **THE COURT:** If we are done by -- if we start at
9 9:00 and then we are done by 10:45, then I would like to go
10 ahead and keep moving. If we finish at 11:30 or 12:00, I was
11 going to propose that we just take the break and then start
12 with the closings right after an early lunch and maybe start at
13 1:00, or something like that. So that's what I'm --

14 **MR. DONOVAN:** That sounds great.

15 **THE COURT:** But it all depends on how long you'll
16 think you'll go.

17 **MR. FARR:** I would just point out, Your Honor, I am
18 going to expect that we will have some cross-examination of the
19 rebuttal witness or witnesses. We don't know who they are yet.
20 We would like to know at some point in time.

21 **MR. DONOVAN:** We will disclose that. I was waiting
22 last night to hear which their final witnesses were.

23 **THE COURT:** Okay. All right. Well, we'll just
24 proceed with witnesses; and when we're done, if there is a lot
25 of time left, I may go right into the closings. So be

1 prepared. And if it looks like it's a logical time to take a
2 break for lunch, I would be happy to give you a little more
3 time to organize your notes so that you can then close.

4 I would like to do it all tomorrow. I would like not
5 to go beyond tomorrow. So I was thinking it would be, at most,
6 maybe two hours a side. Are you all anticipating you're going
7 to need more than that?

8 **MR. DONOVAN:** We haven't really finalized that. I
9 hope not, Your Honor.

10 **MR. PETERS:** Again, Your Honor, I think we were
11 anticipating we would not use that much.

12 **THE COURT:** Okay.

13 **MR. DONOVAN:** Some of it, Your Honor -- I know you
14 want to wait until the close. Some of it kind of will be
15 directed kind of, as I said, what your questions are. We could
16 summarize the evidence, but I know the legal issues would be
17 helpful to know so we can kind of --

18 **THE COURT:** Well, let me tell you now a few things to
19 think about. I don't think this is going to affect anybody's
20 remaining evidence. So I feel it's fair to tell you this. I
21 don't think any of these things are going to be revelations to
22 anybody.

23 I am interested in hearing what you may have to say
24 about the relationship between Section 2 and Section 5.

25 There's been a lot that's been said about *Shelby County* and the

1 effect of the Supreme Court's decision on a lot of things.
2 Some of it's factually related. I am interested in the legal
3 relationship between Section 2 and Section 5. I have been
4 reviewing a lot of Section 2 cases. It seems to me the vote
5 dilution cases are not as helpful as the vote denial cases, but
6 you may have a view on that.

7 I don't see Mr. Ho. Is he here -- there he is. I
8 know -- I think you may have even written on a lot of this, but
9 somebody knows a lot about Section 2, and I will be interested
10 in hearing from you on that. I am interested to hear your
11 discussion of burden. I am interested in a discussion of
12 burden versus -- traditional sense of burden and what some have
13 called, in some of the cases I have been reviewing, a
14 convenience, a voting convenience. That's not my term. That's
15 a term I read in the cases.

16 I will be interested to hear what baseline applies
17 under Section 2 or whether you think one doesn't apply.

18 The second major category is how does party
19 affiliation get considered when it's aligned with racial
20 considerations. I understand the *Gingles* factor, but there are
21 some cases that speak to the party issue, and that's been
22 raised in this case.

23 And then the third major area is -- and this is not
24 as major, but the Defendants in their trial brief raised an
25 issue that I did not see that the Plaintiffs had directly

1 spoken to, and that's because you filed at the same time, and,
2 that is, the effect of the Fourth Circuit's pronouncements in
3 this case as to any issue that's before me now.

4 So, certainly, I am a lower Court. I am bound by
5 higher courts, by the Fourth Circuit and then by the Supreme
6 Court of the United States, and so I am interested to know what
7 you think the applicable law is that applies to me in this
8 case.

9 **MR. DONOVAN:** Sure.

10 **THE COURT:** All right. I have a lot more questions,
11 but those are the major buckets that I would put them in, if
12 you want to think about that, because that's what's on my mind.

13 **MR. DONOVAN:** And we have talked to kind of divide up
14 our time among the parties and address different issues. I
15 will lay that out for you before we start.

16 **THE COURT:** I would like to finish tomorrow, if
17 possible; but I am not going to truncate anybody's argument as
18 long as we are making progress. It's important and I want to
19 make sure everybody has a chance to be heard, but whatever you
20 can do to make it efficient -- as I said I think at the outset,
21 even in the highest court of the United States, everybody only
22 gets 30 minutes a side, I think; is that right?

23 So if -- there is more here. We are doing a lot more
24 things than what they do in an appellate court, but -- there is
25 a lot of information. It's more helpful to kind of pull it

1 together than just to repeat everything that I've heard,
2 because I have a realtime transcript. I have a lot of
3 exhibits. I will be able to read everything. I just need your
4 view on how to pull it all together.

5 I am concerned about how the arguments made in this
6 case will, for lack of a better phrase, survive as a rule
7 that's applicable in other contexts. In other words, a rule of
8 application ought to make sense, not just here, but in other
9 cases; and so in certain contexts, what happens in other states
10 is relevant. In other contexts, this is all about North
11 Carolina. I understand the difference, but there's been a lot
12 of evidence as to what's going on in other states and how North
13 Carolina compares, and so I think about what's happening in
14 other states and whatever decision comes out of this case has
15 to be something that makes sense in the body of case law that
16 we have.

17 So other than that, I will wait to hear from you
18 tomorrow. We'll start at 9:00, and we'll just do the best we
19 can to finish tomorrow, if we can. If we have to go a little
20 past 5:00, my inclination would be to try to do that so we can
21 finish. On Friday -- if it looks like we have to go much past
22 5:00, I don't want to impose on everybody, and I will probably
23 just have everybody come back Friday morning.

24 Any questions about any of that?

25 **MR. STRACH:** Not from us, Your Honor.

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

2 **THE COURT:** If you all would, make sure you have
3 worked with Ms. Engle and everybody's clear on the exhibits,
4 what's in evidence, what's not in evidence. Do all of that
5 before you close all your cases so that there is no question
6 about what's in and what's not in so that, not only do you all
7 understand among yourselves what's in, but Ms. Engle as well is
8 in agreement with what you all have so there is no
9 misunderstanding. Okay?

10 **MR. DONOVAN:** Sounds good. Thank you.

11 **THE COURT:** Look forward to seeing you tomorrow at
12 9:00. Have a good evening.

13 (The Court recessed at 5:08 p.m.)

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15 END OF TRIAL DAY THIRTEEN

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1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER
4
5

6 I, Briana L. Nesbit, Official Court Reporter,
7 certify that the foregoing transcript is a true and correct
8 transcript of the proceedings in the above-entitled matter.
9

10 Dated this 12th day of August 2015.
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14 Briana L. Nesbit, RPR
15 Official Court Reporter
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